

# UNITED STATES INTERNATIONAL TRADE COMMISSION

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In the Matter of: ) Investigation No.:  
DIOCTYL TEREPHTHALATE (DOTP) FROM KOREA ) 731-TA-1330 (FINAL)

**REVISED AND CORRECTED**

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**Place: Washington, D.C.**  
**Date: Tuesday, June 13, 2017**



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UNITED STATES OF AMERICA  
BEFORE THE  
INTERNATIONAL TRADE COMMISSION

IN THE MATTER OF: ) Investigation No.:  
DIOCTYL TEREPHTHALATE (DOTP) ) 731-TA-1330  
FROM KOREA ) (FINAL)

Main Hearing Room (Room 101)  
U.S. International Trade  
Commission  
500 E Street, SW  
Washington, DC  
Tuesday, June 13, 2017

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

1 APPEARANCES:

2 On behalf of the International Trade Commission:

3 Commissioners:

4 Chairman Rhonda K. Schmidtlein (presiding)

5 Vice Chairman David S. Johanson

6 Commissioner Irving A. Williamson

7 Commissioner Meredith M. Broadbent

8

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12 Staff:

13 Bill Bishop, Supervisory Hearings and Information  
14 Officer

15 Sharon Bellamy, Records Management Specialist

16

17 Porscha Stiger, Investigator

18 Philip Stone, International Trade Analyst

19 John Benedetto, International Economist

20 Emily Kim, Accountant/Auditor

21 John Henderson, Attorney/Advisor

22 Elizabeth Haines, Supervisory Investigator

23

24

25

1 Opening Remarks:

2 Petitioner (Christine M. Streatfeild, Baker & McKenzie LLP)

3 Respondent (Jeffrey M. Winton, Jeffrey M. Winton PLLC)

4

5 In Support of the Imposition of Antidumping Duty Orders:

6 Baker & McKenzie LLP

7 Washington, DC

8 on behalf of

9 Eastman Chemical Company ("Eastman")

10 Colin Gouveia, Vice President and General Manager for  
11 Chemical Intermediates, Eastman

12 Cari Jo Parker, Vice President, Advanced Materials and  
13 Fibers Manufacturing, Eastman

14 Dr. Stephen R. Cullen, Business Unit Director, Oxo and  
15 Plasticizers, Chemical Intermediates Business Organization,  
16 Eastman

17 Jason Clark, Business Unit Manager, General Purpose  
18 Plasticizers, Eastman

19 Thomas Rogers, Economist, Capital Trade, Inc.

20 Kevin M. O'Brien and Christine M. Streatfeild - Of  
21 Counsel

22

23

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1 In Opposition to the Imposition of Antidumping Duty Orders:

2 Jeffrey M. Winton PLLC

3 Washington, DC

4 on behalf of

5 ALAC International Inc. ("ALAC")

6 Lily Frishman, Managing Director, ALAC

7 Aaron Wei, Managing Director, ALAC

8 Jeffery M. Winton - Of Counsel

9

10 Rebuttal/Closing Remarks:

11 Petitioner (Kevin M. O'Brien, Baker & McKenzie LLP)

12 Respondent (Jeffrey M. Winton, Jeffrey M. Winton PLLC)

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

2 MR. BISHOP: Would the room please come to  
3 order?

4 VICE CHAIRMAN JOHANSON: Good morning. On  
5 behalf of the U.S. International Trade Commission, I welcome  
6 you to this hearing on investigation number 701-A-330 final  
7 involving Dioctyl Terephthaltae or DOTP from Korea.

8 The purpose of this investigation is to  
9 determine whether an industry in the United States is  
10 materially injured or threatened with material injury, the  
11 establishment of an industry or the establishment of an  
12 industry in the United States is materially retarded by  
13 reason of less than fair value imports from Japan -- of --  
14 from Korea of DOTP. My apologies, there was a typo there.

15 Schedules setting forth the presentation of this  
16 hearing, notices of investigation, and transcript order  
17 forms are available at the public distribution table. All  
18 prepared testimony should be given to the Secretary. Please  
19 do not place testimony directly on the public distribution  
20 table.

21 All witnesses must be sworn in by the Secretary  
22 before presenting testimony. I understand that parties are  
23 aware of the time allocations. Any questions regarding the  
24 time allocations should be directed to the Secretary.

25 Speakers are reminded not to refer in their

1 remarks or answers to questions to business proprietary  
2 information. Please speak clearly into the microphone and  
3 state your name for the record for the benefit of the court  
4 reporter.

5 If you will be submitting documents that contain  
6 information you wish classified as business confidential,  
7 your requests should comply with Commission Rule 201.6.

8 Mr. Secretary, are there any preliminary  
9 matters?

10 MR. BISHOP: No, Mr. Chairman.

11 VICE CHAIRMAN JOHANSON: Very well, let us begin  
12 with opening remarks.

13 MR. BISHOP: Opening remarks on behalf of  
14 petitioner will be given by Christine M. Streatfeild of  
15 Baker and McKenzie.

16 STATEMENT OF CHRISTINE M. STREATFEILD

17 MS. STREATFEILD: Good morning, Mr. Chairman,  
18 Commissioners, and staff. I'm Christine Streatfeild with  
19 Baker and McKenzie. I'm joined today by my partner Kevin  
20 O'Brien. And we're here on behalf of the petitioner Eastman  
21 Chemical Company.

22 The record is clear from the public prehearing  
23 staff report, our prehearing brief, and other submitted  
24 evidence that volumes of subject imports of Dioctyl  
25 Terephthalate or DOTP from Korea are growing and significant

1 throughout the 2014 to 2016 period.

2 The price of these imports have dropped sharply  
3 throughout the period as well, a point that's not in dispute  
4 here in the final phase and was also uncontested in the  
5 preliminary phase.

6 All parties also agree that DOTP is a commodity  
7 product, which means that it competes primarily on the basis  
8 of price. The high degree of substitutability between the  
9 Korean produced and U.S. produced DOTP compounds the price  
10 and volume effects that we've seen. Regarding the  
11 Commission's quarterly price comparisons, this final phase  
12 contains important revisions to that data and also shows  
13 pervasive underselling by subject imports.

14 During the same period of underselling, the  
15 domestic industry has experienced declines in all of the  
16 statutory factors that the Commission considers in trade  
17 remedy cases. Put differently, the data show that subject  
18 imports are more than a minimal or tangential cause of  
19 injury.

20 You're going to hear today about U.S. demand and  
21 how it's driven by the regulatory framework and increasing  
22 scrutiny on phthalate plasticizers. Both the preliminary and  
23 final phase staff reports describe the effects of the  
24 relative -- the regulatory framework and the corresponding  
25 shift from phthalates to non-phthalates in key end use segments,

1 including flooring. Eastman's witnesses today will give you  
2 more context for this trend.

3           While demand has increased, subject imports have  
4 surged. Throughout the period of investigation, subject  
5 import volumes have increased using below market pricing as  
6 a lever at Eastman's customers. Your staff report, the  
7 public version, confirms this. For example, nine out of 10  
8 U.S. purchasers who bought Korean instead of U.S. produced  
9 product reported that Korean prices were lower. And seven  
10 of these purchasers reported that price was a primary reason  
11 for purchasing Korean rather than U.S. product.

12           The lost sales and revenue descriptions that we  
13 provided tell the same story consistent with respondent's  
14 reports. This aggressive pricing has contributed to the  
15 drop in U.S. prices and resulted in both the depression and  
16 suppression of Eastman's prices, along with diminished and  
17 diminishing returns on reduced sales volumes and severe  
18 declines in profitability throughout the period.

19           Korean imports thus have a causal connection to  
20 the injury experienced by the domestic industry, despite  
21 what's happening with raw material costs. The arguments to  
22 the contrary by the U.S. importer ALAC can't hide the steep  
23 price declines, the large and significant import volumes,  
24 and the convincing underselling that characterizes their  
25 market activity.

1                   We'll also address other claims of ALACs,  
2                   particularly as to whether or not purchasers can switch  
3                   between DOTP and other plasticizers. The necessary question  
4                   is do they? You'll hear from Eastman's witnesses today that  
5                   purchasers do not go back to phthalates after making the  
6                   commitment to a non-phthalate alternative.

7                   What the Commission is left with is a series of  
8                   claims that wholly miss the point. For example, but for  
9                   regulatory issues, other plasticizers could be used in place  
10                  of DOTP. But for the drop in U.S. price, Eastman would have  
11                  realized a profit. But for the lack of profitability, the  
12                  U.S. industry would be in good health.

13                  Eastman's financial trends in this business  
14                  segment show plainly the impact of low priced imports. As  
15                  you'll hear directly from the company witnesses today about  
16                  business plans that have become unworkable under the current  
17                  market conditions and the deteriorating economics.

18                  Without relief, petitioner's confident that high  
19                  volumes of low priced subject imports will resume, along  
20                  with the revenue impacts so evident in our data. The  
21                  information in our prehearing brief also addresses why the  
22                  Commission should make an affirmative threat of material  
23                  injury determination as well, based on factors like enormous  
24                  capacity, capacity expansions, and export orientation.

25                  We urge you to keep these factors in mind as you

1 consider the record before you and to make a final  
2 affirmative injury determination. We greatly appreciate  
3 your attention to this investigation. Thank you.

4 MR. BISHOP: Opening remarks on behalf of  
5 respondent will be given by Jeffrey M. Winton from the Law  
6 Office of Jeffrey M. Winton.

7 STATEMENT OF JEFFREY M. WINTON

8 MR. WINTON: Good morning. I've been  
9 introduced, so I won't repeat myself. ALAC International is  
10 here today. They are an importer of DOTP from Korea. As  
11 you heard, I think, it's undisputed that most of the metrics  
12 the Commission normally looks at in these cases, things like  
13 production, shipments, capacity, things like that,  
14 investment are all up. This is a growing market. It's  
15 growing rapidly. U.S. industry is making major investments.  
16 Eastman has made a major investment in increased capacity.  
17 BASF is -- has made a major investment to be able to produce  
18 DOTP in the United States. That investment I'm told is  
19 going to be online in the early third quarter, which I think  
20 is next month.

21 But the fly in the ointment, and I think we all  
22 agree on this, is that prices are down. Prices are down a  
23 lot. There's no denying that. And the issue in this case  
24 is why are prices down. Now Eastman tells you that prices  
25 are down because, well, dumping. Prices are down because

1 imports are up. And imports are up, because of dumping.  
2 That's their story.

3 Well, it's very simple. And in this case, it's  
4 not consistent with the dynamics of the market. In fact,  
5 DOTP competes with other plasticizers that serve the same  
6 general purposes. And were to expand DOTPs use in the  
7 market, Eastman has had to take sales away from competing  
8 plasticizers like DINP.

9 The regulatory framework does not prevent people  
10 from using plasticizers like DINP or other thalates. It  
11 just puts some burden on using it. You have to put a  
12 warning label on or you have to show that your exposure  
13 levels are not above a certain threshold. And so to take  
14 sales from DINP, Eastman has been pricing aggressively.

15 And prices are down because DOTP prices compete  
16 with other plasticizers like DINP. If you were to map the  
17 trends in DOTP prices, we did this confidentially and we'll  
18 do it with some public information we have later today,  
19 you'll see DOTP and DINP prices are almost identical as they  
20 go down over the quarters that you're looking at.

21 Why? Because both DOTP and DINP are made from  
22 petroleum feed stocks. And crude oil prices have fallen  
23 even faster than DOTP and DINP prices. You have raw  
24 material costs going down for both DOTP and DINP. We have  
25 the prices competing as DOTP takes market share away from

1 DINP and the prices go down together, because they compete.  
2 This is not about imports. It's about competition between  
3 plasticizers in the U.S. market.

4 Now it's also true, as far as we know, that  
5 imports are up. We would have to be careful of that,  
6 because ALAC, which has been traditionally the major  
7 importer from the Korean producer Aekyung, ALAC's imports  
8 are not up over the period that you're looking at. But we  
9 understand from talking to Aekyung, and Aekyung is my client  
10 in the DOC proceeding, but is not participating after here,  
11 Aekyung has told us that they have increased their exports  
12 to the United States because they've been selling to BASF,  
13 nothing in 2014, but increasing quantities in 2015 and 2016.

14 And you'll have to ask BASF why they were buying  
15 from Aekyung. I won't try to put words in their mouth. But  
16 Aekyung has told us that they've been told by BASF that once  
17 BASF's production comes online, its new production comes  
18 online next month or whenever it is, that BASF is going to  
19 stop buying from Aekyung for U.S.

20 So we have a situation -- I don't know why BASF  
21 bought from Aekyung, not Eastman. I can think of lots of  
22 reasons why BASF would not want to buy from Eastman, which -  
23 - because they're going to be the two competing U.S.  
24 producers in the future.

25 But that's not a matter of dumping, it's a

1 matter of BASF's corporate strategy. And we have here kind  
2 of the reverse of the material retardation case. Right?  
3 It's not imports from Korea are preventing establishment of  
4 the U.S. industry. Imports from Korea, as far as I can tell  
5 from Aekyung at least, were helping BASF get prepared to  
6 start up its U.S. production.

7 What's going to happen in the future? Well, the  
8 future's always hard to predict, but I think I'm reasonably  
9 sure of two things. First, prices for DOTP will continue to  
10 follow DINP and other plasticizers because they compete in  
11 the market. And second, imports from Korea are going to be  
12 sharply lower, sharply lower. Have to be because BASF is  
13 going to start producing in Texas. And they're going to  
14 stop importing from Korea. And so, the future dynamics in  
15 this market are just going to be very different. And  
16 imports are not going to be an issue. Thank you.

17 MR. BISHOP: Would the panel in support of the  
18 imposition of the anti-dumping duty order please come  
19 forward and be seated? Mr. Chairman, all witnesses on this  
20 panel have been sworn in.

21 You may begin when you're ready.

22 MR. O'BRIEN: Thank you. Good morning, Mr.  
23 Chairman and Commissioners. Good morning, Mr. Chairman and  
24 Commissioners. My name is Kevin O'Brien with the law firm  
25 of Baker & McKenzie. We have several witnesses this morning

1 for you. If I can take a moment to introduce them.

2 On my far left is Mr. Colin Gouveia, vice  
3 president and general manager for Chemical Intermediates,  
4 Eastman Chemical Company. To Mr. Gouveia's right is  
5 Christine Streatfeild. Then to my immediate left is Dr.  
6 Stephen Cullen, business unit director, OXO and  
7 Plasticizers, Chemical Intermediates business organization  
8 for Eastman. To my immediate right is Ms. Cari Jo Parker,  
9 the vice president, Advanced Materials and Fibers  
10 Manufacturing for Eastman. In the second row on the far  
11 left is Mr. Jason Clark, business unit manager, general  
12 purpose plasticizers for Eastman. And then Mr. Thomas  
13 Rogers of Capital Trade.

14 With that, we'll turn to our first witness, Mr.  
15 Colin Gouveia.

16 STATEMENT OF COLIN GOUVEIA

17 MR. GOUVEIA: Good morning. My name is Colin  
18 Gouveia and I am the vice president and general manager for  
19 Chemical Intermediates, which includes the plasticizers  
20 business unit. Chemical Intermediates generates \$2.5  
21 billion annually in revenue for Eastman, out of a total of  
22 \$10 billion.

23 Eastman's headquarters is in Kingsport,  
24 Tennessee, where we've manufactured product since 1920. We  
25 now have roughly 15,000 employees worldwide, with 6,500 of

1 those employees in Tennessee and another roughly 1,000 in  
2 Texas at our Longview and Texas City locations.

3 Overall, we have more than 50 locations  
4 worldwide. Eastman became a publically traded company when  
5 we were spun out from Eastman Kodak in 1994 and listed on  
6 the New York Stock Exchange. Today, we are one of the  
7 world's largest specialty chemical companies and one of the  
8 leading employers in the state of Tennessee. We are the  
9 21st largest exporter by volume in the United States and  
10 have won numerous awards, including our sixth consecutive  
11 Energy Star partner of the year, which is awarded by the  
12 U.S. Environmental Protection Agency.

13 We also have been recognized by the Ethisphere  
14 Institute for the fourth consecutive year as one of the  
15 world's most ethical companies. In addition, Eastman was  
16 nominated for just capital in Forbes magazine inaugural Just  
17 100 list, which for the first time ranks the publicly traded  
18 companies in the U.S. that perform best on things that  
19 Americans care most about.

20 We at Eastman are grateful that the Commission  
21 made an affirmative preliminary injury finding. And we are  
22 here today to ask the Commission to vote in the affirmative  
23 in this final phase so that our industry may get relief we  
24 need from unfairly traded imports.

25 This is crucial for our business, as we have

1       seen rising quantities of dumped imports from Korean,  
2       seizing volume by undercutting our prices and adversely  
3       affecting our industry across several financial indicators.

4               I understand that the Commission often hears  
5       testimony of U.S. industries that have been left behind  
6       because they failed to innovate, upgrade, and compete. You  
7       won't hear that today about Eastman. We're a world class  
8       global specialty chemical manufacturer that not only uses  
9       the most advanced technology, but have refined it ourselves  
10      in proving various processes right here in the United States  
11      for the past 90 years.

12             Eastman Chemical's founder is George Eastman,  
13      who also founded Kodak. And he established our facility in  
14      Kingsport following the outbreak of World War I, which  
15      caused a scarcity of raw materials, including many chemicals  
16      needed to make photographic paper.

17             George Eastman was determined to provide an  
18      independent supply of chemicals. And it is from this vision  
19      that many of Eastman's basic chemical building blocks were  
20      developed, manufactured, and optimized.

21             Today, Eastman is the only U.S manufacturer of  
22      DOTP. And we were the first to ever produce a worldwide,  
23      launching DOTP in 1974. After more than 40 years, we are  
24      still manufacturing at the same site in Kingsport,  
25      Tennessee. For us, this case is about our ability to

1 sustain the site and our sites in Texas City and Longview in  
2 the face of a major decline in revenue that we experienced  
3 over the past three years due to imports from Korea.

4           This morning, you will hear from my colleague  
5 Cari Parker, a chemical engineer and leader of the  
6 plasticizer manufacturing operations in our locations in  
7 both Tennessee and Texas. She will tell you the great  
8 lengths we've gone to as a company to stay ahead of the  
9 curve, save U.S. production jobs through our acquisition of  
10 our Texas City site, and conversion of its operations to  
11 DOTP production and provide a truly excellent product in the  
12 U.S. and abroad. Indeed, Eastman's DOTP production  
13 benefits from an integrated process that we believe makes us  
14 among the most competitive producers of DOTP in the world.

15           Over many years, we have made significant  
16 investment in production safety, process technology,  
17 applications technical service, research and development,  
18 and logistics to better service our customers and ensure we  
19 remain competitive in the plasticizer space.

20           However, however, this has not been enough.  
21 Since 2010, we have seen a staggering trend of increasing  
22 Korean imports at ever dropping prices. These imports have  
23 driven our prices down and forced us to make difficult  
24 choices and decisions about the future of our business,  
25 decisions that are inconsistent with a market in which

1 demand is increasing.

2           These decisions include Eastman postponing our  
3 plans to add capacity in the United States in response to  
4 market needs and to initiate painful headcount reductions in  
5 our plasticizer technology and market development teams in  
6 response to adverse market conditions.

7           We describe these issues in our questionnaire  
8 response and noted that we had to take these actions until  
9 our returns on DOTP sales could again support such  
10 investments. As of now, and during the investigation  
11 period, our deteriorating profitability did not allow for  
12 such investments.

13           We have no doubt what has driven these poor  
14 market conditions. Purchasers have been encouraged by  
15 decreasing prices and increasing volumes of Korean imports  
16 to demand larger discounts and lower prices in their  
17 contract negotiations. Our sales teams hear directly from  
18 our customers that the source of competitive bids are Korean  
19 producers or U.S. importers selling Korean product. This  
20 confirms what we already know, that one of the most  
21 important factors in purchasing decisions is price. This is  
22 particularly so with a commodity product like DOTP. The  
23 importance of price, coupled with the high degree of  
24 substitutability between DOTP and various sources, whether  
25 ours or produced in Korea, means the U.S. market is highly

1 competitive.

2 In our experience, most purchasers obtain bids  
3 from more than one supplier. And those purchasers will  
4 change suppliers based on the price -- on the best price  
5 offered. The downward price pressure has been a blow to our  
6 profitability by itself, but the effect is compounded by the  
7 volume of these imports.

8 In such a case, we have been left with two  
9 undesirable options, lose volume with our customers or sell  
10 our product for less. Despite our best efforts, we have  
11 done both and the impact on our bottom line is clear from  
12 the responses we have filed with the Commission.

13 We have invested more than 40 years and tens of  
14 millions of dollars in our U.S. DOTP production operations.  
15 I can't stress enough that Eastman can and does compete with  
16 any producer from any country anywhere in the world when the  
17 competition is fair. We asked you for that opportunity in  
18 the United States to compete at a level playing field by  
19 granting us relief from dumped DOTP imports. Thank you.

20 MR. O'BRIEN: We will now hear from Ms. Cari  
21 Parker.

22 STATEMENT OF CARI JO PARKER

23 MS. PARKER: Good morning, all. I'm Cari Parker  
24 and as a Vice President with Eastman I have responsibility  
25 for one of our large manufacturing organizations. I

1 testified at the preliminary hearing last July and I  
2 appreciate the opportunity to again stress the importance of  
3 our Petition for an antidumping order.

4 I'm a chemical engineer by training and I have  
5 worked for Eastman since 1987. I have held positions  
6 associated with the plasticizer business, beginning in 2005  
7 including responsibility for DOTP manufacturing units in  
8 both Kingsport, Tennessee and Texas City, Texas. As Colin  
9 testified we have proudly produced DOTP in the United States  
10 since the 1970's in our Kingsport facility.

11 Because of increased worldwide demand for DOTP  
12 that resulted from changes in customer perceptions about  
13 phthalate plasticizers we developed options for adding a  
14 second site to increase our capacity. We learned that  
15 Sterling Chemicals Incorporated had idled its plasticizer  
16 unit at their Texas City site and with that came a reduction  
17 of positions and layoffs of hourly workers. We acquired  
18 Sterling in 2011 for 100 million dollars and made an  
19 additional investment there to modify the plasticizer unit  
20 and restart it to produce our DOTP. I was the first site  
21 leader after our acquisition of that Texas City site so I  
22 oversaw the retrofit of the facility and the subsequent  
23 restart of the unit in 2012.

24 We hired previously laid off employees and  
25 transformed the site into a more productive asset. This

1 transformation came after years of decline of operations at  
2 the location. At the time of Eastman's purchase, only one  
3 production unit was operating on the 300-acre site.  
4 Beginning with the investment to modify the idle plasticizer  
5 unit, Eastman revitalized the location.

6 Our public press releases from 2011 noted the  
7 extensive retrofit that was required to convert the  
8 phthalate plant into a facility to produce non-phthalates.  
9 This makes a crucial point. While there are general  
10 similarities in the production of phthalate versus  
11 non-phthalate plasticizers there are key differences  
12 including the raw materials used.

13 For example, materials handling equipment for  
14 storage and transfer of raw materials will vary to address  
15 the differences in physical state. Some are handled as  
16 liquids, some as solids. Some are molten. Our DOTP is made  
17 from two primary raw materials, 2-Ethylhexanol or 2-EH and  
18 dimethylteraphthalate or DMT; another general purpose  
19 plasticizer mentioned earlier DINP is made primarily from  
20 isononal alcohol and phthalic anhydride.

21 Differing raw materials necessarily result in  
22 products that differ chemically and because any  
23 contamination of non-phthalate products is not acceptable,  
24 assets cannot be used effectively to make both. We  
25 manufacture DOTP using a continuous production process 24

1 hours a day, 7 days a week for maximum efficiency.

2 Eastman internally produces those raw materials  
3 at our two largest integrated sites. Our DOTP production  
4 generates a byproduct methanol and that methanol that's  
5 generated is recycled back into our DMT production. We  
6 believe our integrated raw material position and methanol  
7 recovery make Eastman among the most competitive producers  
8 of DOTP in the world.

9 Despite our efficient manufacturing process and  
10 the increased global demand for DOTP our business segment  
11 has experienced profitability declines. Korean imports  
12 entering the U.S. at increasing volumes and continually  
13 lower prices have sidelined our plans to increase our  
14 manufacturing capacity to the point that we can no longer  
15 justify previously announced capital investments that would  
16 otherwise be called for by the market demand.

17 Our sales volume grew and our productivity  
18 improved yet our DOT prices have plummeted and we have lost  
19 tens of millions of dollars of sales revenue. Eastman is a  
20 world class company known for high quality chemical  
21 products. We routinely and successfully compete with the  
22 largest most sophisticated chemical producers in the world.

23 We have produced DOTP in the United States for  
24 more than 40 years. In 2010 there was basically no Korean  
25 DOTP in the market. Since 2011, market conditions changed

1 rapidly. The Korean producers, LG Kim, Ike Yun, and Hanwha  
2 entered the market in force, undercutting U.S. prices time  
3 and again. We believe this is a result of Korea having  
4 approximately three times the capacity for plasticizer  
5 production than is needed for its domestic consumption.

6 Korean producers have rapidly sought Western  
7 outlets for their excess capacity using price as a basis for  
8 competition. The effect of low prices in Korea is magnified  
9 when considered with the volume surge. From 2013 to 2016  
10 Korean Imports were on a staggering growth trajectory. The  
11 percentage growth is significant enough but the volumes are  
12 also huge. Because DOTP is a commodity these lower priced  
13 Korean Imports gain market share, demand increased but  
14 unrelenting price reductions have cut Eastman's price in  
15 half since 2013, well beyond any change in raw material  
16 costs.

17 Eastman has attempted to differentiate itself  
18 from these Korean Imports as a high quality, reliable  
19 Domestic Producer however such substantial import quantities  
20 have come into the U.S. Market and with price as a basis of  
21 competition that supply is now wholly commoditized to the  
22 extent the product is now generically referred to as DOTP.

23 We have made repeated price reductions in direct  
24 response to Korean competitive pricing as we discussed in  
25 detail in our Petition and questionnaire responses. We have

1 done this to avoid further volume losses with our customers.  
2 We have had to sell more for less and the effect threatens  
3 the health of our business.

4 On behalf of our management team, our employees  
5 and the communities in which we operate we ask for an  
6 affirmative determination, thank you.

7 MR. O'BRIEN: We will now hear from Dr. Stephen  
8 Cullen.

9 STATEMENT OF DR. STEPHEN R. CULLEN

10 DR. CULLEN: Madame Chairman and Commissioners,  
11 hello and good morning. My name is Steve Cullen and I'm the  
12 Business Unit Director for Eastman's Oxo and Plasticizer  
13 Businesses. Like Cari Parker, I testified at the  
14 preliminary hearing. I still have global P&L responsibility  
15 for the upstream Oxo business, the main raw materials to  
16 make plasticizers amongst other derivatives as well as the  
17 downstream plasticizer businesses.

18 I have an honors degree and PhD in chemistry from  
19 the University of York in the UK and have held commercial  
20 roles in the chemical industry for my whole career which so  
21 far has spanned 23 years. This month I celebrate 15 years  
22 working for Eastman and I have led the plasticizer business  
23 for the last 8 years. I relocated to the U.S. in 2008 to  
24 take up the position of business manager for the plasticizer  
25 business during one of the greatest periods of change in the

1 industry.

2 In 2011 and 2012 I held a role focused on  
3 developing the long term plasticizer strategy before  
4 resuming P&L responsibilities as the Business Director for  
5 the Plasticizer business in 2012. I will testify today  
6 about the U.S. demand for DOTP including the regulatory  
7 framework that you have already heard much about and the  
8 role that other plasticizers play in the U.S. Market  
9 particularly in view of that regulatory framework and the  
10 impact on changing costs on DOTP pricing.

11 DOTP is unique and not interchangeable with other  
12 plasticizers. The increase in demand in the United States  
13 is based in large part on DOTP's specific chemical structure  
14 that imparts particular and increasingly desirable  
15 characteristics. It is a non-phthalate as opposed to an  
16 ortho-phthalates or more commonly abbreviated as phthalate.

17 Ortho-phthalates are a class of compound that  
18 have been the standard plasticizers since at least the  
19 1950's. DOTP was invented by Eastman in the 1970's so the  
20 question is why the surge in demand now? The answer is that  
21 non-phthalate plasticizers fundamentally differ from  
22 phthalate plasticizers in terms of raw material inputs,  
23 chemical structure and significantly from a toxicity  
24 perspective.

25 Phthalate plasticizers have been increasingly

1 subject to criticism of the carcinogenic and reproductive  
2 toxicity concerns seen in animal testing and as a result  
3 increasing regulatory scrutiny. These concerns were  
4 confirmed by the EPA in its Chemical Action Plan for  
5 phthalates and in the Consumer Product Safety Improvement  
6 Act of 2009 prohibiting the sales of toys and mouthable  
7 children's products using the most common phthalate  
8 plasticizers and in the findings of the subsequent CPSC  
9 Chronic Hazard Advisory findings.

10 In addition, the two most commonly used general  
11 purpose phthalate plasticizers DOP and DINP are listed on  
12 California's Proposition 65 as materials known to the State  
13 of California to cause cancer. It's worth noting that DOP  
14 has been listed as a California Proposition 65 Chemical for  
15 many years. In fact, since January 1988. DINP is a  
16 relatively new listing that resulted from the increased  
17 scrutiny that I have just described.

18 DINP continues to be the chemical of choice in  
19 many applications where the use of phthalate is not viewed  
20 as an issue. I believe this makes clear that the products  
21 are not substitutable. You may hear claims today that if  
22 not for the regulatory issues customers would use DOTP  
23 interchangeably with other plasticizers. That's not true.  
24 Historically, producers selected DINP and not DOTP.

25 In applications where the use of phthalate

1 plasticizers is not an issue producers would likely continue  
2 to buy DINP because it is easier to work with. For 35 years  
3 Eastman produced DOTP with modest sales and fairly  
4 consistent volumes. The increased scrutiny of the  
5 phthalates in consumer products fundamentally changed the  
6 demand.

7 Applications that decide to switch to DOTP share  
8 two main characteristics. They are consumer products with a  
9 high level of human contact and secondly where there is high  
10 brand-owner equity where the risk of damaging a brand by  
11 association with chemicals linked with toxicity is a  
12 paramount consideration. The resulting decision by brand  
13 owners and consumers makes this decision irreversible.

14 So, for example, the largest application for DINP  
15 is in wiring and cable where the final product is often  
16 hidden behind a wall. In this segment there is no end user  
17 demand or brand-owner driver for a non-phthalate so little  
18 if any DOTP is used in wire and cable applications today in  
19 the United States. Another large application for DINP is in  
20 automotive underbody coatings. Again, there is currently no  
21 market driver for a non-phthalate in these applications so  
22 DINP remains the preferred product selected particularly  
23 because DINP's physical characteristics help it to  
24 formulate in both of these end use applications.

25 On the other hand, there is considerable evidence

1 regarding the end-user demand for a non-phthalate in the  
2 flooring market segment which is a primary end use for both  
3 Eastman's product and the Korean DOTP. Where the market  
4 calls for a non-phthalate plasticizer because end-users are  
5 asking for it or because brand-owners are insisting on it  
6 then DOTP is used.

7 I believe that customers would confirm that when  
8 DOTP has replaced DINP or another phthalate there is no  
9 going back. These products are not substitutable because  
10 these markets will no longer accept the use of a phthalate.  
11 Simply put, regulation, consumer preference, and the choices  
12 of brand-owners have driven a technology shift away from the  
13 use of phthalate leading to significant growth in the demand  
14 of non-phthalate plasticizers and in particular DOTP and  
15 flexible PVC products.

16 I would now like to address price trends. No one  
17 disputes what has happened to U.S. prices over the past 3 or  
18 4 years. It is clear. They have fallen dramatically. The  
19 issue was raised as to how much of this price drop relates  
20 to cost reductions and how much if any relates to pricing  
21 for other plasticizers.

22 Neither of these reasons account for the price  
23 declines that we have seen during the period of this  
24 investigation, both far surpassed by the effect of Korean  
25 pricing. Regarding raw materials costs have fallen since

1 2014 and general purpose plasticizers are petrochemical  
2 products so under normal market conditions prices would  
3 fluctuate roughly with the raw material changes.

4           Reductions in the price of oil would typically  
5 result in reduced DOTP prices for example but DOTP price  
6 drops in this case far outpaced raw material cost reduction  
7 as we showed in our brief. This is because at the same time  
8 we have faced substantial and sustained price pressure from  
9 Korean competition. We describe the competition and  
10 quantified the impact in our Petition and again in our U.S.  
11 Producer Response and Brief.

12           The overall point is clear. We had to reduce our  
13 prices to maintain volume with our longtime customers and  
14 even still we lost ground either selling smaller volumes or  
15 through contracts lost entirely. Competition for sales  
16 volume centers on price and Korean imports drove down U.S.  
17 prices throughout the past three years. Our financial  
18 reporting shows the impact. The connection between the  
19 price trends and the presence of Korean Imports is  
20 compounded by the fact that our DOTP is highly  
21 interchangeable with DOTP from Korea. The products have  
22 comparable specifications, characteristics and properties.  
23 We compete at the same time for customers for the same end  
24 uses unlike for other plasticizers as I have described  
25 above.

1           This interchangeability means the purchasers are  
2           able to switch back and forth between sources of DOTP based  
3           on price. And they do. We have repeatedly been presented  
4           with lower competitive bids for Korean product as direct  
5           substitutes for our product and our customers have purchased  
6           Korean products in place of ours during the past three  
7           years.

8           We described in detail in our petition specific  
9           instances of lost sales and lost revenue to the low-priced  
10          Korean producers without any question as to the highly  
11          interchangeable nature of U.S. and Korean DOTP and use in  
12          the same final applications. I also testified at the  
13          preliminary conference that when oil prices increased again  
14          in 2016 we were not able to pass that cost increase onto our  
15          customers through an increased DOTP price.

16          We announced a price increase for April 2016  
17          following an increase in our raw material costs but the net  
18          effect of those announced price increases was an overall  
19          lower price in April last year compared to March. We have  
20          now further examples of where we have been unable to pass on  
21          pricing increases since the Commission's preliminary  
22          determination.

23          The result is that our revenue declined  
24          substantially at the same time the cheap imports increased.  
25          As Korean Imports got cheaper the volumes of those imports

1 increased. We described the particulars in our prehearing  
2 brief and we request that the Commission consider this  
3 ongoing impact due to the presence of dumped imports.

4           Regarding other plasticizers' pricing, the issue  
5 was raised if DOTP prices may be impacted by the prices of  
6 other plasticizers, particularly DINP. As an initial  
7 matter, Eastman does not produce or sell DINP and so we have  
8 limited knowledge of the details of the DINP pricing. The  
9 primary influence on DOTP pricing has been Korean Imports.

10           I discussed the regulatory framework earlier and  
11 how consumer products applications choose to switch to a  
12 non-phthalate alternative and how those decisions are not  
13 reversed. I know of no North American customer who has gone  
14 from DOTP back to DINP after committing to the switch. As  
15 such in our experience the pricing of DINP does not directly  
16 impact the pricing of DOTP.

17           I previously noted the increase in U.S. Demand  
18 for DOTP and would also like to point out that Eastman has  
19 sufficient capacity to address these increases in demand in  
20 the U.S. Market. Compared to U.S. domestic consumption,  
21 Eastman's capacity could more than handle the U.S. Market.  
22 We also have significant export sales which we could divert  
23 to the U.S. as needed.

24           MR. CULLEN: We have two locations for DOTP  
25 production, and another site for production of raw

1 materials, decisions made with security of supply in mind.  
2 And in addition, where we have added capacity we have done  
3 so in a planned way in modest increments phased in advance  
4 of market growth. At no point over the past three years  
5 have we been unable to supply customers with requested  
6 volume of DOTP in the U.S;

7 One final note on capacity. We announced that we  
8 had completed an expansion in 2014. As part of that plan,  
9 we indicated that a further expansion was expected to be  
10 completed by 2016, and based on market factors and needs.

11 Because of the impact of creative import pricing  
12 on the economics of our business, we cancelled that  
13 expansion. We think the evidence on the market for  
14 nonphthalates is plain. Purchasers have shifted to DOTP and do  
15 not switch between DOTP and DINP. ALAC submitted an article  
16 with its brief as Attachment 2.

17 They said the article confirms that many U.S.  
18 producers of vinyl flooring tiles continue to use phthalate  
19 plasticizers. I know this situation very well. The  
20 article's title is "New Study Finds Toxic Chemicals  
21 Widespread In Vinyl Flooring."

22 The article appeared in April 2015, and it  
23 triggered a rapid completion of the shift that was already  
24 underway. Within two months of the article coming out, all  
25 flooring manufacturers in the U.S. switched to DOTP. This

1 makes two important points.

2 One, the regulatory framework and perception is  
3 crucial. And, two, people are not going back and forth  
4 between these products.

5 I join Colin, Cari and all of Eastman in  
6 asking you to make an affirmative final finding in this  
7 case. Dumped Korean DOTP has damaged our business,  
8 negatively affected our expansion plans, and left us with  
9 deteriorating and nonexistent profits at a time of increased  
10 demand and reductions in cost.

11 Prior to filing this case, there was no end in  
12 sight to the enormous and increasing import volumes. We  
13 need the relief of an Order. And so on behalf of our  
14 company, we request an Injury Finding.

15 Thank you.

16 MS. STREATFEILD: Thank you, Steve.

17 Again for the record this is Christine  
18 Streatfeild of Baker & McKenzie. We would like to now go  
19 through a short PowerPoint presentation that puts the  
20 particular facts to which our witnesses have testified in  
21 the context of the factors that the Commission will consider  
22 in making its determination in this case.

23 (A PowerPoint presentation follows:)

24 I'll start with the threshold issues. Then I'll  
25 turn it to Kevin O'Brien and Tom Rogers to discuss

1 conditions of competition, the import volumes, the price  
2 effects, and the reasons why subject imports are the cause  
3 of the material injury to the domestic industry and future--  
4 threaten future injury if relief is not imposed.

5 With respect to the domestic like-product, the  
6 domestic industry and negligibility, little is in dispute in  
7 this case. None have been challenged, and there is no cause  
8 for the Commission to depart from its preliminary  
9 determination on these issues.

10 The domestic like-product should include DOTP and  
11 only DOTP from Korea, regardless of the method of  
12 manufacture and in any form. Eastman is the only U.S.  
13 producer, and we request that the Commission find a single  
14 domestic like-product co-extensive with the scope of the  
15 investigation.

16 You have heard from the industry witnesses about  
17 each of the factors that you consider in the like-product  
18 analysis. I will briefly go through them again now.

19 DOTP is a unique chemical compound. It differs  
20 chemically and physically from other plasticizers in ways  
21 that affect its toxicological and regulatory profile, which  
22 is to say it is treated more favorably based on its physical  
23 characteristics. This directly affects end uses.

24 Slide five is a screen shot from a YouTube video  
25 that depicts the differences between Eastman 168--that's

1 Eastman's branded DOTP--and DINP. The video is available at  
2 the link shown, and it was created before the filing of the  
3 Petition in 2013.

4 It captures, in layman's terms, why  
5 terephthalates are not the same as phthalates. And the  
6 particular example used is DOTP as being fundamentally  
7 different than DINP. As Cari Parker described, different  
8 raw materials distinguish the products, and the resulting  
9 regulatory framework indicates very different toxicological  
10 profiles based in part on the fact that the chemical  
11 structure of the two products is different, as shown here.

12 Regarding channels of distribution, in the  
13 preliminary phase the Commission found similar channels for  
14 DOTP and other plasticizers. But given the importance of  
15 the physical characteristics of each unique chemical and the  
16 resulting regulatory framework, this factor should not drive  
17 the like-product determination.

18 Customers and producers view DOTP as unique from  
19 other plasticizers. The record in this case confirms their  
20 perceptions. With respect to manufacturing facilities and  
21 production processes, Cari Parker also testified about the  
22 significant retrofitting that was required in order to  
23 convert the Sterling Chemical Plasticizer assets into  
24 facilities that could product DOTP.

25 Dr. Cullen testified today and also at the

1 preliminary conference last July that while it is physically  
2 possible to convert these assets from DOTP to other  
3 plasticizers, it is incredibly costly. Petitioner produced  
4 DOTP and only DOTP on its units in Kingsport and Texas City  
5 throughout the Period of Investigation.

6 Finally, on price U.S. purchasers indicated that  
7 other plasticizer prices do not affect the price of DOTP.  
8 Thus, the six factors that the Commission considers indicate  
9 a single like-product co-extensive with the scope of the  
10 investigation as you found in the preliminary phase.

11 Based on the above with respect to the domestic  
12 industry, the Commission should find that Eastman is the  
13 sole domestic producer and constitutes the entire domestic  
14 industry.

15 Finally, the record is clear that Korean imports  
16 exceed the negligibility threshold, so that's not an issue  
17 in this case.

18 STATEMENT OF KEVIN M. O'BRIEN

19 MR. O'BRIEN: This is Kevin O'Brien with Baker &  
20 McKenzie. I would now like to briefly address some of the  
21 conditions of competition.

22 The demand for DOTP increased during the Period  
23 of Investigation. Our industry witnesses testified about  
24 the extensive regulatory pressure on the use of phthalate  
25 plasticizers which drove demand by customers and brand

1 owners increasingly for a toxicologically clean nonphthalate  
2 plasticizer for use in downstream products. But that  
3 ignores a critical point.

4 U.S. prices plummeted during the Investigation  
5 Period. It is the combination of severely dropping prices  
6 with the significant volumes of subject imports that put the  
7 domestic industry in the financial state that it's in, and  
8 formed the basis of our request for relief in this case.

9 As Dr. Cullen testified, U.S. purchasers can and  
10 do switch regularly between Korean and U.S. produced DOTP.  
11 And as your record reflects, price is the predominant factor  
12 in purchasing decisions.

13 Looking at supply, the record confirms that there  
14 have been no supply issues. This is confirmed both through  
15 Eastman's reporting and by U.S. purchasers, none of whom  
16 reported supply constraints of domestically produced DOTP.

17 On the other hand, purchasers indicated increased  
18 Korean supply. And this is without the data of one of the  
19 three largest Korean suppliers, Hanwha, who refused to  
20 cooperate with the Commission in this investigation.

21 Another important condition of competition is the  
22 high degree of substitutability where responding companies  
23 indicated that Korean and U.S. DOTP is always or frequently  
24 interchangeable. This makes DOTP very price sensitive.

25 The Commission's Staff Report noted that the

1       overwhelming majority of importers indicated that purchases  
2       involved negotiations. Several stated that they quote  
3       competitor's prices in these negotiations. The second most  
4       cited factor driving purchasing decisions was price, with  
5       the overwhelming majority citing it as either the first or  
6       second factor.

7               The purchasers also responded that they generally  
8       purchased the lowest priced DOTP that they are offered.  
9       This means that despite Eastman's strong brand and  
10      reputation for quality, reliability, and service, there is  
11      direct competition between the subject imports and the  
12      domestic product, without tiers or brand distinction in the  
13      market.

14             As Dr. Cullen testified, Eastman has had to  
15      reduce prices in response to competitive quotes for Korean  
16      product again and again. And this isn't just Eastman's own  
17      statement. The Staff Report fully backs up that from the  
18      companies responding.

19             The Korean producers have established  
20      sophisticated supply chains. They are in the U.S. market in  
21      big volumes, and at the same customers, and the purchasers  
22      make their decisions on the basis of price.

23             With respect to volume, subject imports are  
24      significant by any standard. The volume of subject imports  
25      increased significantly from 2014 to 2016, and the trend is

1 more dramatic when 2013 is considered. The month-by-month  
2 data make clear that the decline in import volumes only  
3 began late in 2016 after the filing of the Petition in this  
4 case.

5 The Petition effect is also confirmed by the  
6 questionnaire responses. During the same Period of  
7 Investigation, price dropped sharply. Our prehearing brief  
8 contains a figure showing the pricing of products which have  
9 bottomed out during the investigation until the Commerce  
10 Department's preliminary determination.

11 Two other points should be made. The price  
12 comparisons indicate that Korean product undersold domestic  
13 product in the vast majority of instances with very  
14 significant under-selling percentages.

15 The quantity of under-selling and the  
16 under-selling margins show how Korean imports forced  
17 Eastman's prices down while it attempted to fend off the  
18 competitor's pressures.

19 Figure 4 of our brief shows that the Korean  
20 market share was highest when its under-selling margins were  
21 greatest. It is no surprise that Eastman repeatedly  
22 confirmed on this record that it has had to take Korean  
23 prices into account in key customer negotiations. And its  
24 financial condition is the result of having to sell more for  
25 less due to the downward price pressure.

1           Faced with the strong evidence of material  
2 injury, the importer in opposition, ALAC, attempts to  
3 attribute injury to causes other than subject imports.  
4 Because of the confidential nature of these arguments, we  
5 will have to address them mainly in our post-hearing brief,  
6 but we do have some summary comments here.

7           First of all, the declines in the domestic  
8 industry indicators are wholly inconsistent with ALAC's  
9 statement that the U.S. industry is healthy.

10           Second, Petitioner's claim is not based solely on  
11 the fact that DOTP prices fell sharply during the period--  
12 this is an important factor--but the injury relates to the  
13 dropping price and the considerable volume of subject  
14 imports entering the U.S. and being sold at these  
15 continually declining prices. The high degree of  
16 substitutability and factors indicating the importance of  
17 price in making the U.S. sale demonstrate that Eastman's  
18 injury is caused by the subject imports.

19           Third, ALAC's attempt to characterize the  
20 dropping prices as unrelated to the Korean imports is simply  
21 without support.

22           The Commission's questionnaires explicitly asked  
23 this question, and a large percentage of the responding  
24 companies noted that U.S. producers had to reduce prices in  
25 order to compete with lower-priced Korean imports. And

1       there were very significant price reductions that were  
2       reported in the questionnaire responses.

3               Further, the record does not indicate that other  
4       plasticizers' pricing has driven down the price of DOTP or  
5       even affected it. Again, the questionnaire responses  
6       overwhelmingly confirmed the opposite: that changes in  
7       prices of DINP had no effect on DOTP.

8               And with respect to raw material costs, dropping  
9       U.S. prices were not solely due to this factor, as prices  
10      declined faster and larger than raw material costs during  
11      the Period of Investigation.

12              The injury suffered by the domestic industry is  
13      also not due to non-subject imports. Your Staff Report  
14      shows that the non-subject imports declined in volume over  
15      the period and have virtually no effect on the conditions in  
16      the domestic market.

17              Finally, the financial indicators declined  
18      throughout the period, including declines in growth, profit,  
19      and operating income. In addition, subject imports threaten  
20      future injury if an Order is not imposed. The Korean  
21      product is sold in the U.S. at dumped prices, as Commerce  
22      has preliminarily found. The U.S. Market began its  
23      downward price spiral when Korean producers grossly  
24      overbuilt their capacity and targeted the U.S. as a  
25      destination for their unfairly priced imports.



1 with Capital Trade. You have just heard from the industry  
2 experts on the product, market trends, and the impact of  
3 increasing imports on Eastman's business.

4 Most of the data, as you know in this case, in  
5 this final phase are proprietary, so I will refer to the  
6 record in general terms. And we have removed the Y axis  
7 from the charts that you are going to see, so you can see  
8 the trends but not the actual figures.

9 In other cases I'll refer you simply to specific  
10 charts and figures that are proprietary in Eastman's  
11 prehearing brief.

12 Now picking up, and in some cases re-emphasizing  
13 the issues addressed by Kevin O'Brien and the company  
14 witnesses, I will be addressing certain key economic factors  
15 related to the conditions of competition, material injury  
16 and causation, and threat.

17 Turning to the conditions of competition in the  
18 DOTP market, the nature of the product is critical. By  
19 "nature," I mean that the DOTP as you've heard is a  
20 commodity with unique physical characteristics and  
21 properties that distinguish it from other plasticizers.

22 These characteristics have important  
23 ramifications for the demand for DOTP. Significantly, as  
24 shown in slide 16, the Commission established in the  
25 preliminary phase that DOTP is a commodity product that

1 competes primarily on price. And reinforcing the commodity  
2 nature of the product, importers and purchasers reported  
3 that domestic and subject DOTP are highly interchangeable.

4 The staff has proposed an elasticity of  
5 substitution of 4 to 8, and that range suggests that the  
6 products are moderate to highly substitutable, and we agree  
7 with that assessment.

8 And for these reasons, price-based competition is  
9 the lens through which you should focus your analysis of the  
10 DOTP market.

11 Next, we heard from the industry witnesses  
12 another important condition is that purchasers increasingly  
13 are buying DOTP instead of other plasticizers due to the  
14 regulatory environment. For example, major producers and  
15 retailers of vinyl flooring have switched to DOTP-based  
16 products.

17 Slide 18 is a little tough to read in the fine  
18 print, but this is from the 2016 Luxury Flooring Catalogue  
19 issued by Armstrong, a major flooring manufacturer. In the  
20 catalogue, Armstrong touts that its luxury vinyl flooring is  
21 OP-free. That is, it contains no orthophthalates. So as  
22 Dr. Cullen indicated, the brand users--brand owners, really  
23 emphasize the absence, or the use of DOTP.

24 The next slide shows examples of the same switch  
25 but on the retail end, noting the shift at Home Depot and

1 Lowes. Again, they're emphasizing the use of nonphthalates.  
2 Thus, DOTP's basic toxicology profile has fueled a  
3 significant jump in demand, and this is reflected in the  
4 apparent domestic consumption that's compiled in the  
5 prehearing report.

6 In other words, the market is shifting and there  
7 are fewer economic substitutes for DOTP. Now normally you  
8 would expect that such a surge in demand would lead to  
9 higher prices. In recent years, however, that was not the  
10 case for DOTP, and subject imports are a major reasons.

11 Now regarding the potential substitute DINP, the  
12 name of the plasticizer that DOTP is replacing, the Respondent  
13 floated a theory that lower prices for DINP drove down the  
14 market for DOTP. The actual record compiled by the  
15 Commission sinks that theory. Nearly all purchasers  
16 reported that DINP prices do not reflect DOTP prices.

17 Others may have checked the S Box, but that  
18 indicated that the two products are not viable substitutes  
19 for many end uses. Further, as you heard from Dr. Cullen,  
20 DINP is not an option for users that have switched to DIN--  
21 DOTP.

22 In sum, as shown in the next slide, these  
23 conditions of competition reflect a market where the lowest  
24 price generally captures the sale, and the low volumes of  
25 low--large volumes of low-priced subject imports have had a

1 direct negative impact on Eastman's results for DOTP.

2 Now I want to turn to the question of injury and  
3 causation. Just to summarize the record data, again we  
4 can't talk specifics because of the proprietary nature, but  
5 you've got surging subject import volumes. There's  
6 significant under-selling, price depression, price  
7 suppression, a cost-price squeeze, and deteriorating  
8 profitability.

9 Looking at each of these in turn, for the volume  
10 of imports the specific figures are confidential but the  
11 absolute volumes and the rate of the increase over the  
12 period are substantial.

13 In our prehearing brief, Figure 1 illustrates the  
14 trends of the greater volumes and lower prices of Korean  
15 DOTP. This large Korean volume and share increase was  
16 achieved through aggressive pricing.

17 Now there's no doubt that this volume had a  
18 negative and material impact on Eastman's sales. Eastman  
19 has had to drop its prices and sacrifice profits in order to  
20 maintain its market share.

21 MR. ROGERS: The confidential data highlights  
22 the pricing trends and the impact. In general terms, the  
23 pre-hearing report shows that the average unit values for  
24 Korean DOTP declined, and there were substantial  
25 underselling and Eastman was forced to reduce its prices to

1 remain competitive.

2                   And Slide 22 shows this trend. The pre-hearing  
3 report noted that subject imports undersold Eastman in  
4 twenty of twenty-four instances, totaling over 61,000 metric  
5 tons of undersold product over the period. Particularly,  
6 for a commodity, these underselling margins are significant,  
7 and they range from 1.7% to almost 15%.

8                   In addition to the demonstrated underselling, a  
9 majority of responding purchasers also stated that Eastman  
10 had reduced its prices to compete with the lower priced  
11 Korean imports. These purchasers estimated price reductions  
12 of up to 30%. Clearly, there is significant price  
13 depression.

14                   Regarding the underselling data, I wanna  
15 emphasize the final record gets it right. Because it  
16 collected pricing data on a delivered basis; that is, at the  
17 point of competition.

18                   The direct impact of this underselling was  
19 transmitted into the market through numerous instances of  
20 lost sales and lost revenue. As detailed in Eastman's  
21 documentation, and corroborated by the Commission, low-price  
22 competition from Korea has hit Eastman across a range of  
23 accounts.

24                   To summarize, the Commission found that a  
25 significant share of purchasers bought subject imports

1       instead of U.S. product, that import prices were lower and  
2       that price was a primary reason for the decision to purchase  
3       imported product. Thus, we concede that subject imports had  
4       a readily apparent adverse price effect on Eastman. Put  
5       another way, Korean exporters purchased and have held on to  
6       substantial market share at Eastman's direct expense.

7                 As you heard, raw materials account for a  
8       significant share of the cost to produce DOTP, and raw  
9       material prices declined over the period. The record shows,  
10      however, that what should've been great news was  
11      overshadowed as Eastman's net sales for DOTP declined by a  
12      far greater amount than its raw material cost.

13                As shown in the next slide, Eastman experienced  
14      a dramatic cost-price squeeze, and its gross profit margins  
15      for DOTP declined every year of the POI. The impact of  
16      these low-priced, high-volume imports from Korea and the  
17      consequent price decline shows up plainly in Eastman's  
18      financial results for DOTP. I'd refer you to Figure 6 in  
19      Eastman's pre-hearing brief to get a good illustration of  
20      these trends.

21                The next slide shows a similar picture, and you  
22      can see the sharp downward trend for Eastman's operating  
23      income and net income are lost on its DOTP business. The  
24      picture is very stark.

25                So if the Commission evaluates these trends and

1 injury and causation, I would emphasize the drop in  
2 Eastman's DOTP financial results incurred, as you've heard,  
3 during a period of increasing demand, declining costs and  
4 greater productivity, whereas these external factors would  
5 indicate that profits should've been increasing year over  
6 year, Eastman's financial performance for DOTP, instead,  
7 deteriorated over the period, a result we believe is caused  
8 by subject imports.

9 Now, finally, I just wanna turn to supplement  
10 the record, the earlier comments on the question of threat.  
11 Couple points here. First, in addition to the adverse  
12 trends in import volumes and domestic industry performance,  
13 as shown in this slide, you can see that there's a  
14 significant increase in U.S. importers end-of-period  
15 inventories. So this is an overhang in the market that's  
16 not picked up in your import data going through 2016.

17 Second, the questionnaire data demonstrate that  
18 responding importers had a significant volume of arranged  
19 imports. That is, product that's already contracted for  
20 would be entered and sold in the U.S. following the end of  
21 the Commission's investigation period. Again, in addition  
22 to the other threat factors previously enumerated, these  
23 already stocked and purchased products highlight yet another  
24 risk to Eastman.

25 In conclusion, the evidence on the record

1 demonstrates that Eastman is materially injured by reason of  
2 a large volume of low-priced subject imports. Thank you.

3 MR. O'BRIEN: Madame Chairman, that completes  
4 our presentation. We'd like to reserve our remaining time  
5 and would be happy to answer any questions.

6 CHAIRMAN SCHMIDTLEIN: All right. Thank you  
7 very much. I'd like to thank all of the witnesses for being  
8 here today. We very much appreciate it. And we will start  
9 with Commission Williamson for questions.

10 COMMISSIONER WILLIAMSON: Thank you, Madame  
11 Chairman. And I, too, want to express my appreciation to  
12 all the witnesses for coming and presenting their testimony  
13 today.

14 This first question is, can you provide an  
15 approximate share of U.S. DOTP market broken out by end use  
16 shares? For example, what shares PVC flooring, other  
17 flooring, etcetera? And if you wanna give -- maybe just in  
18 general -- and then maybe if you wanna give it detailed in  
19 post-hearing, that's fine.

20 MR. CULLEN: This is Steve Cullen from Eastman.  
21 The end use applications for DOTP, as all general-purpose  
22 plasticizers, are actually very fragmented. So there are  
23 many, many different end use applications for  
24 general-purpose plasticizer. And that kind of ties into the  
25 name of why they're referred to by the industry as

1 general-purpose plasticizers.

2           So the vast majority are in PVC applications.  
3 And if you can think about the different types of PVC,  
4 flexible PVC that may be used, a general-purpose plasticizer  
5 like DOTP could be used in any of those. So there are many  
6 different ones. I think I referred to three in my  
7 testimony. Vinyl flooring, which is like vinyl sheet and  
8 tile, those kind of applications would be the largest  
9 currently to date.

10           The largest application for plasticizers in most  
11 countries -- it's certainly true for the U.S. and Canada is  
12 in wire and cable -- and it's about zero share of DOTP used  
13 in that application. Automotive underbody, anti-chip  
14 coatings kind of thing in car manufacture, again, is a very  
15 large application area for plasticizers and very little, if  
16 any, DOTP is used in that application.

17           COMMISSIONER WILLIAMSON: Thank you. For the  
18 uses of DOTP, are there distinctive conditions of  
19 competition for the end use markets? I know you gotta  
20 characterize them, but are there some big difference in the  
21 conditions of competition between the different, shall we  
22 say, segments of DOTP consumption?

23           MR. CULLEN: This is Steve Cullen again. No.  
24 Really, the basis of competition for each of the segments is  
25 in terms of price. There are not applications where Eastman

1 product is suitable and other DOTP is not. I think we  
2 testified as to the ability of interchangeability of  
3 different sources of DOTP. So the primary basis of  
4 competition is price.

5 COMMISSIONER WILLIAMSON: Are there particular  
6 segments where that the DOTP share the costs of the product  
7 is much or significantly greater, and would that affect  
8 conditions of competition there?

9 MR. CULLEN: Steve Cullen. No, I don't think  
10 so. I think the proportion of plasticizer that's used in  
11 each of the applications -- so if you think that the largest  
12 two components of a flexible piece of PVC, like this file,  
13 for example, is PVC resin and the plasticizer. And then are  
14 some other additives.

15 Generally -- and the purpose of a plasticizer,  
16 the softer or more flexible you want the product to be, the  
17 more plasticizer you would use, but generally that's in a  
18 relatively narrow band, so it's by weight is normally  
19 something in the region of 20% to 30%.

20 COMMISSIONER WILLIAMSON: Okay.

21 MR. CULLEN: If that answers your question.

22 COMMISSIONER WILLIAMSON: Okay. What about  
23 competition with subject imports? Is that more intense for  
24 certain end uses?

25 MR. CULLEN: Steve Cullen. Not from my

1 experience, no. It appears to be across-the-board in any  
2 and all of the applications.

3 COMMISSIONER WILLIAMSON: Okay. Thanks. Tell  
4 me about the industry's market share. And the industry has  
5 gained market share steadily over the POI. You know, this  
6 is business proprietary, so I can't go into detail. But  
7 this, like, brought to the imports, they have done well. So  
8 given this situation of the industry market share, how it's  
9 evolved, on what basis should we find the volume of subject  
10 imports to be significant? You stated the domestic  
11 industry's market share is going boom-boom-boom down in  
12 these cases.

13 MR. O'BRIEN: Commission Williamson, this is an  
14 unusual situation where you have a market that's growing  
15 rapidly at the same time. So and without getting into  
16 proprietary information, I think you do need to distinguish  
17 between subject and nonsubject imports as well.

18 I think it is true that the domestic industry  
19 increased its capacity and production, but it was doing so  
20 in response to a growing market demand. And I believe it's  
21 fair to say that the subject imports behaved in a way where  
22 the increased volume and decreased prices affected the  
23 entire pricing structure of the entire industry.

24 So in a sense, regardless of what happened to  
25 market share, it was every single sale that was affected by

1 the surging volumes of the Korean imports.

2 MR. ROGERS: This is Tom Rogers. I'd just like  
3 to supplement -- couple points. First, when we filed the  
4 case, the POI extended to 2013 and I think that's an  
5 important indicator or barometer to look at when you're  
6 starting to measure the rise in import volume and the impact  
7 on the industry. And so you saw significant increase in  
8 market share at the beginning of the period. Eastman --

9 COMMISSIONER WILLIAMSON: Market share for whom?  
10 For the subject imports?

11 MR. ROGERS: Subject import market share.

12 COMMISSIONER WILLIAMSON: Okay, thanks.

13 MR. ROGERS: I'm trying to skirt the proprietary  
14 data.

15 COMMISSIONER WILLIAMSON: Understood.

16 MR. ROGERS: Then, you know, it's Eastman, and  
17 you can see the margins of underselling at that point were  
18 greater than they came over the period. And as Eastman was  
19 forced to respond to these imports and had to lower its  
20 pricing to kind of deal with this competitive threat, so  
21 then I think you've seen the market stabilize a little bit  
22 more, at least in terms of percentage basis in terms of  
23 share.

24 But that does not mean that Eastman has not had,  
25 has suffered injury because it has had to respond to these

1 threats by lowering its prices and you've seen that effect  
2 dramatically on its profitability. So this volume is  
3 significant. They've captured a huge, a large share of the  
4 market, the imports have. And that's transmitted directly  
5 to the bottom line for Eastman.

6 COMMISSIONER WILLIAMSON: Okay. Someone started  
7 mentioning nonsubject imports, 'cuz they seem to be almost  
8 insignificant. Did the subject imports kind of keep them  
9 out of the market, too? 'Cuz you would think with a rapidly  
10 expanding market, there might be other people wanting to  
11 come in.

12 MR. O'BRIEN: You would think that, Commissioner  
13 Williamson, but I think the data speaks for itself on that  
14 point. And I believe it's pretty clear that the enormous  
15 surge in imports from Korea with the low prices, prevented  
16 what otherwise might occur.

17 COMMISSIONER WILLIAMSON: Okay, thank you. This  
18 one is a side -- and those exports are significant. Can you  
19 say something about U.S. export markets for this product?  
20 Just briefly?

21 MR. CULLEN: I'll address my comments generally  
22 rather than specifically because of confidential  
23 information.

24 COMMISSIONER WILLIAMSON: Understood, yeah.

25 MR. CULLEN: So Eastman invented the molecule,

1 DOTP, which we branded as Eastman 168 in 1974. We recognize  
2 that the -- we felt that the market demand for that product  
3 from the mid-2000s was going to grow sharply because of the  
4 pressure on phthalate plasticizers. Mainly in the more  
5 developed economies, North America and Western Europe.

6 In addition, we understood that a lot of  
7 consumer products are also manufactured in Asia, and then  
8 shipped back to Western Europe and to North America, so we  
9 believe that the market demand for DOTP or Eastman 168 would  
10 develop in those countries. And that certainly has proven  
11 to be the case. So as part of our strategy and plan was to  
12 participate in those markets and to, you know, to help grow  
13 our business by exporting to where that demand was going to  
14 be.

15 COMMISSIONER WILLIAMSON: Have the Korean  
16 exports had any impact on that strategy? Again, can you  
17 say?

18 MR. CULLEN: They certainly have had impact on  
19 those markets. For example, in the European market, I think  
20 you can see the export statistics for the DOTP from Korea  
21 and where that material goes. Very significant quantities  
22 are exported to Europe, for example.

23 My belief and understanding is that Korean's  
24 capacity for plasticizer manufacture was developed really to  
25 supply material into China for products that are

1 manufactured there, both for the DOTP or DOP, DINP. And a  
2 lot of China has developed its own capacity to produce and  
3 so those imports to China market, which is a rather large  
4 and rapidly growing market, but have been displaced. And so  
5 they've looked for other destinations for that material.

6 COMMISSIONER WILLIAMSON: Okay. Thank you for  
7 those answers.

8 CHAIRMAN SCHMIDTLEIN: Thank you. Commissioner  
9 Broadbent.

10 COMMISSIONER BROADBENT: Thank you, Chairman  
11 Schmidtlein. Um, appreciate the witnesses coming today.  
12 This is really helpful. Glad to have you here. I guess  
13 this would be for Mr. Gouveia. Why is Eastman the only U.S.  
14 DOTP producer?

15 MR. GOUVEIA: So I think in some earlier  
16 testimony, we tried to explain that a little bit. And so  
17 maybe I'll start. And this is Colin Gouveia. And then  
18 Steve could finish.

19 Eastman -- as the plasticizer market, you know,  
20 grew over the years and people looked for technologies, this  
21 was a technology that Eastman initially invented that felt  
22 like it could have great promise in terms of a direct  
23 competitor to some of the other plasticizers that were  
24 currently in use. And so when we invented that material and  
25 went to market it -- not that I was there in 1974 -- but it

1 didn't necessarily grow according to initial plans.

2 I think the real mega-driver that helped DOTP  
3 become prominent and then really take off as a growth  
4 product was the fact that phthalates came under  
5 environmental pressure, and our customers in certain end  
6 segments started actively looking for technology that could  
7 move them away from phthalates to non-phthalates.

8 And so we had started it out as a plan in 1974  
9 to build the plant and produce, and there was some niche  
10 applications for it, and the business grew, but it really  
11 didn't grow quickly until the regulatory drivers kicked in  
12 and that attracted, you know, a lot more competition in that  
13 space. Steve could probably help out on that.

14 MR. CULLEN: The market for DOTP really started  
15 to accelerate around 2010. I think there was, for example,  
16 European law that became, in relation to toys, so it  
17 prohibited the sale of toys containing six phthalates came  
18 into force in 2005, and that really started to accelerate  
19 the industry starting to look for an alternative.

20 COMMISSIONER BROADBENT: Of the final product  
21 uses for this product, what's most suscept- -- and you  
22 mentioned that if it's in a pipe that's in a wall, it  
23 doesn't matter that has phthalates associated with it. How  
24 do we -- what's the best place to find the information on  
25 the end use market and whether it's affected by the

1 preference for DOTP?

2 MR. O'BRIEN: We can provide that in a  
3 post-hearing submission.

4 COMMISSIONER BROADBENT: Can you give me kind of  
5 just a sense?

6 MR. O'BRIEN: I believe vinyl flooring will be,  
7 if not, the largest among the largest uses for DOTP. And  
8 then there's a series of other applications, including toys  
9 and FDA applications and others that will also be included.

10 COMMISSIONER BROADBENT: And with vinyl  
11 flooring, is that market-driven by trying to be more  
12 environmentally safe?

13 MR. CULLEN: This is Steve Cullen.

14 COMMISSIONER BROADBENT: Or is it more of a toy?

15 MR. CULLEN: In toys, there is a regulation, a  
16 law from the CPSIA of 2009, and in Europe as well, and  
17 actually in many countries around the world have very, very  
18 similar laws. If you look at an industry like vinyl  
19 flooring, there's no specific regulation.

20 Regulations that do impact are like California  
21 Proposition 65 which is a labeling requirement. But really  
22 it's around brand owner preference in two ways. So firstly,  
23 I think a brand owner or a market of selling consumer  
24 product wants to spend their time focusing on the attributes  
25 of their product, growing their market, competing with other

1 different categories like hardwood flooring or carpet, not  
2 answering questions about the chemicals that they use to  
3 make their material.

4           So if they have an option to move to something  
5 that takes that controversy away, then they would take it.  
6 What you saw in 2015, when there was an NGO kind of expos  
7 on material sold in retail stores, as the retail stores  
8 reacted to that by saying, we're going to protect our brand  
9 and we're going to issue a public statement saying we will  
10 stop selling flooring that contains phthalates by the end of  
11 the year. So that, by the end of 2015.

12           So I think that's an example of how substitution  
13 decisions are taken, as I say, with applications where there  
14 is a lot of human contact and high brand equity. Those are  
15 the most likely to say, we're going to try and get on with  
16 our regular business and just move away from the controversy  
17 by switching to a non-phthalate.

18           COMMISSIONER BROADBENT: But that must've really  
19 been a sharp increase in demand there in 2015 for the  
20 non-phthalate product?

21           MR. CULLEN: Yes. But the trend actually had  
22 been going on since about 2010. So in 2010, and this is  
23 public information, one of the leading companies in North  
24 America, Tarkett, that's who's the largest vinyl flooring,  
25 resilient flooring manufacturer in the world, made the

1 announcement that they were deploying non-phthalate  
2 technology and with a plan to do that globally for all of  
3 their locations by 2020.

4 So that company was the industry leader, if you  
5 like, in doing that and announcing that publicly, and then  
6 the other players in the market started to respond to that  
7 at their own pace. Really, as I mentioned, what happened in  
8 April, 2015, when there was that report that, you know,  
9 we've referred to, was the companies that were still using  
10 phthalate plasticizers, changed very, very quickly.

11 And there were one or two companies that were  
12 doing that, so by the end of July, all of those companies  
13 had stopped using DINP in their manufacturing and switched  
14 to DOTP.

15 COMMISSIONER BROADBENT: Must have been huge  
16 between April and July there in terms of a shift in demand.

17 MR. CULLEN: It was significant, yes.

18 COMMISSIONER BROADBENT: This is a question about  
19 raw material prices. How much of the price decline in DOTP  
20 between 2014 and 2016 is due to a decline in raw material  
21 prices?

22 MR. O'BRIEN: Yes, I think we'd like to give the  
23 specific numbers in our post-hearing submission and what we  
24 will have observed is that the overall price decline was far  
25 in excess of the decline in raw material costs. So --

1                   COMMISIONER BROADBENT: Did prices in the U.S.  
2 fall faster than prices in your other export markets?

3                   MR. CULLEN: Yes, I'd need to check on that one.

4                   MR. O'BRIEN: We will address that in the  
5 post-hearing submission.

6                   COMMISIONER BROADBENT: Okay, what is the best  
7 publically available raw material price data that the  
8 Commission can use to compare raw material price trends with  
9 DOTP price trends?

10                  MR. GOUVEIA: I would suggest that the best  
11 public information would be available on indices that are  
12 both published in the U.S. and overseas for propylene which  
13 is one of the key stocks that go into making the downstream  
14 materials and also paraxylene. Also, you can get those  
15 indices in the public domain.

16                  COMMISIONER BROADBENT: Okay.

17                  MR. GOUVEIA: This was Colin Gouveia.

18                  COMMISIONER BROADBENT: How aware are U.s.  
19 Purchasers of the raw material costs?

20                  MR. CULLEN: This is Steve Cullen. I would say  
21 very aware. Generally as we described plasticizers  
22 including DOTP are petrochemical products and so their raw  
23 material cost fluctuate on a month-to-month basis and so as  
24 we said prices will move up and down generally with those  
25 fluctuations in the raw material prices linked to the price

1 of oil so for example as propylene would move up and down,  
2 plasticizer prices would generally move up and down with  
3 that material.

4 So in some cases customers will buy in on  
5 contracts where the pricing is determined by a raw material  
6 formula but freely negotiated prices customers are very  
7 familiar with the movements of pricing drivers.

8 MR. O'BRIEN: If I could just add, one of the  
9 frustrating aspects has been that Eastman had been unable to  
10 pass on price increases so when raw materials went down the  
11 prices would go down or tend to go down but when raw  
12 material pricing went up because of the unfair dumping there  
13 was no price increase that could compensate for the higher  
14 costs.

15 COMMISSIONER BROADBENT: Wait, raw materials went  
16 up because of unfair dumping?

17 MR. O'BRIEN: No, no, when raw material pricing  
18 went up, Eastman would naturally have liked to increase the  
19 prices of the DOTP to its customers.

20 COMMISSIONER BROADBENT: When would that have been  
21 in the POI?

22 MR. CULLEN: This is Steve Cullen. I referred to  
23 that in my testimony so as one example, in April 2016 the  
24 price of oil had increased and so our raw material costs had  
25 increased and so we announced a price increase to be

1 effective on the 1st of April. We were not only  
2 unsuccessful in getting that increase through but actually  
3 our end pricing near the end of April was actually lower  
4 than in March.

5 COMMISSIONER BROADBENT: How much did the price of  
6 oil go up at that time period?

7 MR. CULLEN: I will need to check the details and  
8 come back to you on that.

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

11 COMMISSIONER SCHMIDTLEIN: Alright, thank you.  
12 I'm next in line here. So you mention the April price  
13 increase and I think in your prehearing brief there is an  
14 exhibit that shows you increased prices in September of 2016  
15 as well if I understand that correctly? Can you tell us why  
16 you increased prices later that year? Is that a follow up  
17 to your attempt to raise them in April or something else?

18 MR. CULLEN: This is Steve Cullen. The September  
19 increase at that time raw materials were also moving up. It  
20 was an attempt to try and recover margins because our  
21 margins had been impacted so significantly.

22 COMMISSIONER SCHMIDTLEIN: And were you able to  
23 do that in September?

24 MR. CLARK: This is Jason Clark. We had moderate  
25 success versus our announced price increase.

1                   COMMISSIONER SCHMIDTLEIN: Moderate success? I  
2 see. So I'm curious, are other countries using  
3 non-phthalate plasticizers increasingly like the United  
4 States? I would assume that Europe is?

5                   MR. CULLEN: Yes, this is Steve Cullen. Yes,  
6 it's actually been a global phenomenon. As I mentioned,  
7 Europe and North America is the most developed economies  
8 with the most developed regulatory frameworks have been  
9 leading the scrutiny and as I also mentioned Asia and in  
10 particular as a place where consumer products are made and  
11 then sold in Western Europe and then North America in  
12 Particular are also seeing that trend dictated by the  
13 brand-owners who are selling those products.

14                   COMMISSIONER SCHMIDTLEIN: And so why don't we  
15 see more non-subject imports here? Why aren't other  
16 countries trying to compete in the U.S. Market? We have a  
17 little bit but not too much.

18                   MR. CULLEN: Yes, that's true. The data shows  
19 that non-subject imports are very small and I think have  
20 declined. I can't answer for those individual companies,  
21 they make their own choices but I would assume that pricing  
22 here is just unattractive for them.

23                   COMMISSIONER SCHMIDTLEIN: Are there other  
24 non-phthalate plasticizers that are not DOTP or is that, I  
25 think in your testimony you had said that's become sort of a

1 general way to describe it but are there other chemically  
2 distinct plasticizers that are non-phthalate that would  
3 compete with DOTP?

4 MR. CULLEN: Yes. This is Steve Cullen again.  
5 So as far as a classification, a material is not based on as  
6 an orthophthalate ester would be classified as a  
7 non-phthalate. There are a number of compounds that would  
8 meet that classification first and foremost. As to whether  
9 those individual molecules are suitable for the application  
10 many of them are not. There are many, many plasticizers  
11 that are sold, most of which have niche applications so the  
12 general purpose products are very few in number, there are  
13 5 or 6 globally.

14 So there are more than two other materials that  
15 have been also benefitted from that switch from phthalates  
16 to non-phthalates although really in North America and  
17 particularly in the U.S. those have not been significant.  
18 They are not manufactured here and have not been a  
19 significant part of the market here.

20 COMMISSIONER SCHMIDTLEIN: Even though they could  
21 be used -- even though their properties, how they -- that  
22 they could be used in children's toys? In other words, it  
23 works for that purpose.

24 MR. CULLEN: Yes. Other products are used in  
25 children's toys for those end applications but what I would

1 say is on a global basis DOTP has been the most successful  
2 of the molecules that are used for a combination of reasons  
3 not the least of which is a performance relative to the  
4 other alternatives.

5 COMMISSIONER SCHMIDTLEIN: So in the vinyl  
6 flooring segment, which is the largest end-use segment as I  
7 understood, this that does not have evidence on the record  
8 about customer perceptions. There is no regulation or other  
9 government labeling requirement for vinyl flooring, is  
10 there?

11 MR. O'BRIEN: There's not a Federal regulation  
12 prohibiting the use of phthalates --

13 COMMISSIONER SCHMIDTLEIN: Which there is for  
14 children's toys, correct?

15 MR. O'BRIEN: Correct, yes, however the  
16 Proposition 65 Law in California would require the use of a  
17 warning label specifying that the product contains a known  
18 carcinogen if a phthalate was used in a flooring product, so  
19 it's quite a stark warning label if you choose to use a  
20 phthalate in California.

21 COMMISSIONER SCHMIDTLEIN: I guess and that's for  
22 products sold in California?

23 MR. O'BRIEN: Prop 65. Yes, that's correct.

24 COMMISSIONER SCHMIDTLEIN: Okay. And in your  
25 prehearing brief you state there is a price premium for DOTP

1 because of that when it's used in vinyl flooring. Did I  
2 understand that correctly? So you can charge more for DOPT  
3 because the consumer preference for it?

4 MR. CULLEN: This is Steve Cullen. You would  
5 think that. We certainly hoped that but that proved not to  
6 be the case because the actual transaction price level ended  
7 up being determined by the impact of the Korean imports and  
8 that's why we are seeing the impact on the financial results  
9 that we refer to.

10 COMMISSIONER SCHMIDTLEIN: So over the POI you've  
11 seen prices of DOTP and DINP I guess is the other named  
12 phthalate plasticizer that we've been looking at. We didn't  
13 look too much at it but it's mentioned in the Staff Report  
14 and I think in your prehearing brief. If you've seen prices  
15 of that they've been roughly the same over the POI or --?

16 MR. CULLEN: This is Steve Cullen. I guess as I  
17 mentioned in my testimony we don't manufacture or sell DINP  
18 so we can't talk in detail and know that. What we see is  
19 that they don't tend to compete in the sense of that word.  
20 Historically for 35 years of its existence of our product  
21 Eastman 168 DOTP it had a very small place in the North  
22 American market, a small kind of niche applications and  
23 essentially flat sales.

24 It wasn't until the end consumer brand started  
25 asking, insisting on having non-phthalate plasticizers in

1 their end products that the demand really started to take  
2 off as I mentioned, probably around 2010 and resulting from  
3 the regulatory changes and focus started to come in the  
4 early 2000s. In general terms, most of the general purpose  
5 plasticizers tend to sell in similar areas but have  
6 individual markets the price determinator for DOTP has been  
7 Korean Imports.

8 COMMISSIONER SCHMIDTLEIN: But when consumers  
9 became more aware of the health concerns with regard to  
10 phthalate plasticizers and your demand took off again since  
11 toys are a relatively small part of this market, right? We  
12 are really talking about vinyl flooring, so wasn't DOTP at  
13 that point displacing sales of DINP? Or where existing  
14 vinyl flooring manufacturers that were switching from DINP  
15 to DOTP?

16 MR. CXULLEN: Yes, that would be the case. So  
17 generally --

18 COMMISSIONER SCHMIDTLEIN: But not all of them  
19 have switched?

20 MR. CULLEN: Correct. The overall market has  
21 been relatively flat so the growth in DOTP demand in North  
22 America has been through substitution.

23 COMMISSIONER SCHMIDTLEIN: Through substitution.  
24 So doesn't that mean that they're competing?

25 MR. O'Brien: Only in an attenuated sense in the

1 following: The choice that a customer has is that do they  
2 want to use a toxic component in their vinyl flooring or do  
3 they want to use a non-toxic component in their vinyl  
4 flooring? That is not a price-driven calculation primarily.

5 There are a lot of things, for example when other  
6 competitors like Home Depot and Lowes and Menards decide to  
7 get rid of phthalates in the vinyl flooring then the  
8 industry as a whole had to move in that direction. Now that  
9 is not a price consideration, it's a do you want your  
10 products to have a warning label that it contains  
11 carcinogens or not. The only other point I'd want to  
12 mention is the questionnaire responses that the Commission  
13 has received I think are compelling on this point that the  
14 decision on whether to purchase DOTP or the pricing of DOTP  
15 depends on other suppliers of DOTP and not on suppliers of  
16 DINP.

17 I think the questionnaire responses are almost  
18 uniform in making that point.

19 COMMISSIONER SCHMIDTLEIN: Alright, thank you  
20 very much. Vice Chairman Johanson?

21 VICE CHAIRMAN JOHANSON: Thank you Chairman  
22 Schmidtlein and my first question will follow upon the  
23 discussion of Chairman Schmidtlein. What is the latest  
24 verdict of the Food and Drug Administration on phthalates?  
25 My impression is that the FDA finds no elevated risk and

1 does not regulate them, is that correct? Also, what is the  
2 basis for the Consumer Products Safety Commission  
3 regulation of phthalates in toys?

4 MR. CULLEN: This is Steve Cullen. I think you're  
5 understanding on the FDA's position on phthalates is the  
6 same as my understanding. There is no regulation in place  
7 restricting the use of phthalates in applications under the  
8 FDA's jurisdiction. The basis for the conclusion of the  
9 CPSIA, Consumer Products Safety Improvement Act of 2009, I  
10 wasn't party to the deliberations that came to that  
11 conclusion but I believe, my understanding is that it was  
12 felt that exposure to phthalates in toys did pose a risk or  
13 potential risk to children and so it was decided by the  
14 legislatures that they would choose to impose a ban.

15 MR. O'BRIEN: If I could just add, as a practical  
16 matter the FDA has approved Eastman's DOTP to be an  
17 additive, a packaging, a food contact substance. To our  
18 knowledge DINP is not approved nor is it used for that  
19 purpose.

20 VICE CHAIRMAN JOHANSON: Due to the phthalates?

21 MR. O'BRIEN: It simply isn't used. I'm not  
22 exactly sure why.

23 VICE CHAIRMAN JOHANSON: Okay. Now I'm curious  
24 about this. I worked in the Congress before coming here.  
25 I've worked extensively on the Food Safety Modernization

1 Bill and there was a lot of discussion at that point about  
2 BPA and there were consensus of some that there was going to  
3 be an attempt to regulate the market for a product which had  
4 not been proven to be unsafe, even though many consumers  
5 believe the products were unsafe.

6 Given my background involving that issue, how  
7 much of the switch from DINP to DOTP has been due to the  
8 perception of consumers versus actual regulations? To the  
9 extent that toys are only formally regulated what share do  
10 toys make of the U.S. Consumption that has shifted from DINP  
11 to DOTP?

12 MR. CULLEN: This is Steve Cullen. I think your  
13 experience of as you mentioned in relation to BPA is  
14 actually a very similar story to what has occurred in the  
15 plasticizer industry. So BPA has been under regulatory  
16 scrutiny and controversy and a lot of applications have  
17 chosen to move away from that and other alternatives are  
18 coming to the market.

19 You're correct in that the only area to my  
20 knowledge where there is regulation against the use of  
21 phthalates is in the sale of toys in the U.S. A very, very  
22 small proportion if any of the DOTP consumption in North  
23 America goes into the manufacture of toys. My  
24 understanding is that most toys that are sold in North  
25 America are actually manufactured outside of the U.S.

1                   VICE CHAIRMAN JOHANSON: Okay, thank you Mr.  
2 Cullen. Are the health concerns with BPA and phthalates  
3 similar in nature? I'm partly curious about this because we  
4 have dealt with BPA issues in a past case on lightweight  
5 thermal paper. Do floor tiles present a health concern,  
6 especially if the product has to be injected.

7                   MR. CULLEN: This is Steve Cullen. I am not a  
8 toxicologist so I'm not qualified to comment on that. I  
9 think the point is that brand owners who are selling  
10 products for flooring or for whatever choose to move away  
11 from the controversy. The rights and wrongs I think are  
12 very complex and in some cases debated and a brand-owner  
13 chooses -- now we have an option to move away from the  
14 controversy and we can get back to running our normal  
15 business.

16                   VICE CHAIRMAN JOHANSON: It's interesting that  
17 phthalates were apparently banned in the use of toys through  
18 legislation and not through a regulatory finding. I believe  
19 you said that, Mr. Cullen?

20                   DR. CULLEN: Yes, that's my understanding. It was  
21 the Consumer Product Safety Improvement Act of 2009.

22                   VICE CHAIRMAN JOHANSON: Okay. Thanks a lot. And  
23 so what's been driving this was in Proposition 65? Is that  
24 what you all are contending, in California?

25                   DR. CULLEN: This is Steve Cullen. Yes, that's

1       been a major contributor, not the only one. I think, as I  
2       mentioned, I think the largest driver has been just the  
3       whole controversy around the use of these phthalate  
4       plasticizers in consumer products. So where an existing  
5       alternative is out there that's viable and can be used  
6       that's available in sufficient quantity, et cetera, brand  
7       owners have chosen to use that and to move away from  
8       phthalates.

9                   MR. GOUVEIA: This is Colin Gouveia, if I could?

10                   VICE CHAIRMAN JOHANSON: Go ahead.

11                   MR. GOUVEIA: Just briefly I'd add some comments  
12       from our customers. The growth of nonphthalate flooring,  
13       it's really a customer pull. So it's our customers coming  
14       to us saying, hey, do you have technology that can support  
15       this? Because, as Steve may have mentioned, they spend  
16       their time competing for share of floor. So they're  
17       competing against carpet, and tile, and hardwood. And so  
18       they really want to eliminate anything that could be used as  
19       a potential negative competing against flooring  
20       alternatives.

21                   So really it has been a customer pull driving the  
22       growth of this technology.

23                   VICE CHAIRMAN JOHANSON: Okay. Yes?

24                   MR. ROGERS: This is Tom Rogers. I was going to  
25       make the same point and just refer you to slide 18 in our

1 deck. And that's an excerpt from the Armstrong Flooring  
2 Catalogue. In two places on that page they stress that  
3 their products are OP-free. So that's an important part of  
4 their pitch now.

5 VICE CHAIRMAN JOHANSON: Okay, thank you. And  
6 just as an aside, I know when I'm in California, when I  
7 enter a hotel there's always a long list of products which  
8 may be found in the hotel which are carcinogenic, or there  
9 are carcinogenic concerns, and I kind of wonder after awhile  
10 how many people actually pay attention because we're so  
11 busy.

12 But anyway, that's just an aside--

13 MR. ROGERS: This is Tom Rogers. I think that's  
14 an important point, though, because what's done in  
15 California doesn't just stay in California.

16 VICE CHAIRMAN JOHANSON: Right.

17 MR. ROGERS: And manufacturers follow that for all  
18 of their production. So just because it's the standard in  
19 California, I think it has a national impact on producers'  
20 activities.

21 VICE CHAIRMAN JOHANSON: Right. Now I don't want  
22 to indicate that I'm not concerned about my health, but  
23 there sure is a long list. And considering you have no  
24 other choices, because every hotel has a long same sign on  
25 the door that we're all a little confused by. But, anyway,

1 that has nothing to do with our investigation, I don't  
2 think.

3 So I'll move on to my next question. You all  
4 state that DOTP is sold at a price premium because  
5 purchasers want it more than phthalate plasticizers. But  
6 considering that both types of plasticizers can be used in  
7 flooring, which is the largest category of use, is there a  
8 limit as to how much more purchasers will be willing to pay  
9 for DOTP?

10 MR. GOUVEIA: So I'll just start with my  
11 perspective. This is Colin Gouveia. So DOTP is a  
12 commodity. And in chemical intermediates we have many  
13 product lines that are commodities. And so for many product  
14 lines, including DOTP, it's produced by many producers  
15 globally. It travels well in terms of being able to be  
16 transported by sea, inexpensively in some cases, and it's  
17 not difficult to handle.

18 So when we say it travels well, meaning we don't  
19 have the ability to price. If you get too much price, your  
20 competitors will switch to other sources. And so that  
21 happens not just with this product but with many different  
22 product lines in our chemical intermediates business.

23 The challenge you've had here is that we feel the  
24 pricing has been unfair and below fair market value for the  
25 Korean material coming into the U.S., which has driven our

1 issues.

2 VICE CHAIRMAN JOHANSON: Alright, thank you, Mr.  
3 Gouveia. I know I spent a lot of time on phthalates versus  
4 DOTP, but that does seem to be what is largely generating  
5 activity in the market. So that's why I'm looking so  
6 closely into this.

7 My time is about to expire, so I will conclude  
8 with that.

9 CHAIRMAN SCHMIDTLEIN: Commissioner Williamson?

10 COMMISSIONER WILLIAMSON: Okay, thank you.

11 Continuing along the same line, in its brief  
12 Respondents provide data to show that prices for DINP fell  
13 earlier and by a greater amount than prices for DOTP over  
14 the POI. Wouldn't falling prices for a similar product put  
15 pressure on DOTP prices? It's kind of a similar question to  
16 Commissioner Johanson's--Vice Chairman Johanson just asked.

17 MR. O'BRIEN: Commissioner Williamson, you've got  
18 two different, or at least two different things going on  
19 here in the following sense:

20 There is no evidence whatsoever of a customer  
21 switching from DOTP to DINP. So this is a one-way decision,  
22 where a customer is using DINP and makes the decision to  
23 switch to DOTP. Once that decision is made, it requires a  
24 new formulation. You've now gone from toxic to non-toxic,  
25 and you're not going to go back.

1           There is no evidence of any customer every doing  
2           that. So all that is to say is that it's much more than a  
3           price calculation. And at some point would price be a  
4           factor? I would have to say of course. But the fundamental  
5           decision is: Do you want your product in the group of toxic  
6           products? Or do you want your product in the group of  
7           non-toxic products? That's what we have seen in terms of  
8           the movement from DINP to DOTP.

9           COMMISSIONER WILLIAMSON: Okay, Mr. Gouveia I  
10          assume you would say that's just not a choice that any  
11          corporate strategist wants to dealing with?

12          MR. GOUVEIA: I would say several things. In  
13          terms of the question, I think that no company--so if  
14          there's legislation that forces companies to change how they  
15          manufacture, or forces them to change raw materials, people  
16          are obligated to change. There's no legislation around end  
17          uses like flooring. But there is a viable alternative  
18          that's economically efficient. So that drives companies to  
19          make the choice because of consumer preference and market  
20          pull.

21          If there wasn't an alternative and they couldn't  
22          do it economically and return their investment on capital,  
23          they wouldn't change until there was a regulation. But DOTP  
24          is an economically viable choice to change to something that  
25          gives them a better story as they compete in the marketplace

1       versus alternative choices for flooring.

2                   COMMISSIONER WILLIAMSON: Okay, and you wouldn't  
3       mess that opportunity up. Okay, anything else on that?

4                   DR. CULLEN: Yeah, this is Steve Cullen. I  
5       would just add, I think if a user of Eastman 168 came to us  
6       and presented a competitive price for DINP, then we wouldn't  
7       react to that because if that company is making a choice to  
8       switch to DOTP then that's the way that they're thinking. I  
9       gave a couple of examples. You know, one being the largest  
10      single application area for plasticizers, which is in wire and  
11      cable, where there is no driver for people to switch to a  
12      non-phthalate. Nobody is asking for it. And so the market  
13      stays with DINP.

14                  COMMISSIONER WILLIAMSON: Okay. Thank you. Okay,  
15      do purchasers face price competition from imports of  
16      downstream products made with DOTP? If so, does this affect  
17      DOTP prices? So if you had imports of downstream products  
18      made with DOTP, and that's undercutting one of your  
19      purchasers, would that affect the DOTP price in the U.S.?

20                  DR. CULLEN: I guess, you know, not being active  
21      in those markets we can't comment with authority on what our  
22      customers are seeing in terms of import pricing, but--for  
23      their end products, but what we can--the only thing we  
24      really can comment on is what has driven DOTP pricing in  
25      North America that hasn't been with people coming to us and

1 saying we're losing share of our product because of import  
2 pricing.

3 The vast majority of cases has been we can buy it  
4 from a Korean source at a lower price.

5 MR. ROGERS: Commissioner Williamson, this is Tom  
6 Rogers.

7 COMMISSIONER WILLIAMSON: Sure.

8 MR. ROGERS: The other part of the equation of  
9 course is the demand. And the demand for DOTP is rising  
10 dramatically over the period. So I think that should be  
11 applying an upward pressure to price in the market, but  
12 we're not seeing that. And I would say that's because of  
13 what's going on because of the imports.

14 COMMISSIONER WILLIAMSON: Okay. And in terms of  
15 the imports of downstream product, might one say that DOTP  
16 is not such a dominant price factor that a purchaser might  
17 feel that he's under price competition because of that?

18 DR. CULLEN: Generally a plasticizer is only a  
19 component of the total price of a product in terms of its  
20 raw material inputs. What that proportion is is going to  
21 depend very much on what the end product is. It could be  
22 very small. I think you'd need to have a specific case to  
23 answer the question.

24 COMMISSIONER WILLIAMSON: Okay. Okay, thank you.  
25 This is a financial question for post-hearing. Please

1 address the arguments at pages 4 and 5, and footnote 9 of  
2 the Respondent's brief.

3 MR. O'BRIEN: Yes. We will do that, Commissioner  
4 Williamson.

5 COMMISSIONER WILLIAMSON: Thank you. Our pricing  
6 data show under-selling in a majority of price comparisons.  
7 By contrast, if you look at Table 2-8 that table indicates  
8 that almost all purchasers rated U.S. and Korean products as  
9 comparable with respect to price.

10 That is kind of unusual. We have this  
11 under-selling data, yet you see their perception of what's  
12 going on in the market. Is there any way to explain this  
13 information?

14 MR. ROGERS: This is Tom Rogers. It's a commodity  
15 product. Everybody recognizes that. So I think the prices  
16 have to be within a general range, or all of the entire  
17 market will tilt one way or the other. So I think you're  
18 going to see from a purchaser's perspective that there is  
19 going to be some comparability between the different  
20 suppliers.

21 Having said that, the market--the data that  
22 you've collected shows that there is--you know, there was  
23 dramatic under-selling certainly in the period, and there  
24 was persistent under-selling in most of the period. So 20  
25 out of the 24 pricing comparisons showed under-selling.

1                   So I think when you get to the specific  
2 individual transactions you're seeing that the imports are  
3 lower priced than Eastman, but within an individual  
4 transaction, or an individual negotiation, the purchaser  
5 would be contacting both Eastman and another source and  
6 there could be--you know, obviously they're in the same  
7 ballpark.

8                   COMMISSIONER WILLIAMSON: But here we have--I  
9 mean, look at 2-8. There are probably 10 or 15 different  
10 items in which a purchaser has to compare the two products.  
11 And to come and say the price is comparable when you have  
12 that massive under-selling, it seems like it just doesn't  
13 seem to add up. Usually you would think that if there's so  
14 much under-selling that everybody's got the impression that  
15 the Korean product is cheaper, and yet the data doesn't show  
16 that.

17                  MS. STREATFEILD: Commissioner, if you take a look  
18 at some data that does explain particularly the purchasers  
19 that are buying Korean rather than U.S. product, I think it  
20 gives you the context that you're looking for.

21                  If you isolate those purchasers who reported  
22 buying Korean product, they responded on why they did. And  
23 they responded that it was based on price, and reported that  
24 prices were lower.

25                  COMMISSIONER WILLIAMSON: Okay, thank you. The

1 others just don't know better (laughing). Okay, thank you.  
2 If you have anything else on that, that would be helpful.  
3 One of the last questions is, because I'm always thinking  
4 about the competitiveness of the different parts of the  
5 U.S., and since I live in New York City, I was just curious.  
6 Was this technology in the product developed in the  
7 Rochester area, originally?

8 MR. GOUVEIA: So actually I believe it wasn't. So  
9 Kingsport, Tennessee, is where all the chemicals business  
10 for Eastman Kodak began, and most of the operations in  
11 Rochester were the film business.

12 COMMISSIONER WILLIAMSON: Okay.

13 MR. GOUVEIA: So I believe this was invented in  
14 Tennessee.

15 COMMISSIONER WILLIAMSON: Okay. Just curious.

16 MR. GOUVEIA: But we can check that.

17 COMMISSIONER WILLIAMSON: Thanks. No further  
18 questions.

19 CHAIRMAN SCHMIDTLEIN: Commissioner Broadbent.

20 COMMISSIONER BROADBENT: How do we sort of  
21 distinguish this situation from, as you're presenting it  
22 here, from just a general situation of competition where  
23 you've had a sole source supplier that's been able to charge  
24 a premium for a long time. And a new entrant comes into the  
25 market, so there is some price pressure? How do we know

1 this is such an unfair situation?

2 MR. GOUVEIA: This is Colin Gouveia. I can start,  
3 and perhaps someone else can add in. So in general, when  
4 running these commodity businesses they go through certain  
5 cycles that we're used to seeing over time. We have a lot  
6 of data in terms of what happens in terms of raw material  
7 input pricing and market pricing.

8 And so what happens is, if raw material inputs  
9 increase we need to increase price to stay in business, and  
10 when raw material input prices decrease the customers are  
11 well aware that's happening and they come to us and they  
12 want price decreases. And that typically happens with  
13 competition.

14 So it's a general cycle that we see all the time  
15 and have for years in terms of selling many of the products  
16 in the chemical intermediates portfolio.

17 In this particular case, it was markedly  
18 different in terms of raw materials were increasing and we  
19 couldn't get price increases. Not only that, the pricing  
20 that we believe that was happening in the marketplace was  
21 significantly underneath our market price. And, you know,  
22 it was completely going in the wrong direction. And then  
23 when raw materials decreased on this material, DOTP, yeah,  
24 we did lower pricing, as we typically do in these commodity  
25 cycles. But our pricing and the market pricing went

1 significantly lower, tracked way faster, decreased way  
2 faster than the raw materials cycle.

3 So that's where we really started saying, you  
4 know, this is an issue. The pricing we're seeing is below  
5 fair market value for this particular product and didn't  
6 follow a particular track that we have seen in the past on  
7 many of our commodity products.

8 COMMISSIONER BROADBENT: Okay.

9 DR. CULLEN: This is Steve Cullen. I would add a  
10 couple of comments. Firstly, for 35 years of its history  
11 the product was a niche application and with fairly flat  
12 sales and not particularly attractive for others to enter  
13 the market.

14 It was really when the demand increased  
15 significantly that we saw the subject imports start to  
16 become a factor in the market. And that wasn't because of  
17 any inability of Eastman to supply, or any gap in terms of  
18 our capability. I think--and I think the Staff Report  
19 points out that our quality, our consistency of our quality,  
20 our reliability of supply, were all very good.

21 If the pricing level was, you know, at a very,  
22 very attractive level, then imports from other countries  
23 would have been more of a factor. But what we found was  
24 that Korean imports specifically targeted the U.S. market as  
25 an area to move volume. Why would an end user choose to buy

1 material from so far away? It was really only because of  
2 price, and using price as a lever to drive that intent.

3 COMMISSIONER BROADBENT: Okay. I wonder if you  
4 all could help me on how you believe the Commission should  
5 analyze the impact of the Korea Free Trade Agreement, the  
6 U.S.-Korea Free Trade Agreement on increase in imports from  
7 Korea?

8 DR. CULLEN: I think if that had been the only  
9 factor, and I think we were asked this question during the  
10 preliminary hearing, that when the Free Trade Agreement came  
11 into force, the impact of that was the removal of the 6-1/2  
12 percent import duty, then you might have seen prices fall by  
13 that duty. And that's not the case. I think the data shows  
14 that the impact of price has been way, way over and above  
15 that impact of duty removal.

16 MR. O'BRIEN: Commissioner, I do think it is also  
17 relevant on the question of the third--the non-subject  
18 imports, because the Korean products do have a 6-1/2 percent  
19 duty advantage over third-country prices. And that may well  
20 have contributed.

21 COMMISSIONER BROADBENT: Right. But the duty  
22 dropped immediately on implementation of it, and that was,  
23 what, 2012 or 2013? When was that?

24 MR. O'BRIEN: I believe that's correct, yes.

25 COMMISSIONER BROADBENT: 2012 or 2013?

1                   MR. O'BRIEN: I'm not sure which one it is, but I  
2 think it did drop immediately. We can check, but I'm not  
3 sure whether it was '12 or '13.

4                   COMMISSIONER BROADBENT: Okay. The Commission has  
5 put in a lot of Orders since the Korean FTA went into effect  
6 against Korean products. And so it's generally heightened  
7 the import competition.

8                   I think that's all the questions I have for the  
9 time being right now. Thank you.

10                  CHAIRMAN SCHMIDTLEIN: Okay, thank you. In the  
11 Respondent's brief, actually on the last page, they argue  
12 that Eastman has made a choice to increase capacity and  
13 production in order to expand its DOTP sales from a  
14 relatively protected market into other segments where it  
15 must compete with other plasticizers.

16                  When I read that, it sounded to me like they were  
17 arguing that Eastman sort of created the demand for this  
18 product by choosing to move into these other segments. And  
19 so I wondered if you could like explain sort of which came  
20 first. Was this after Proposition 65? Was that when you  
21 decided to move into the vinyl flooring market? Or after  
22 Home Depot and Lowe's made a decision?

23                  DR. CULLEN: This is Steve Cullen. It wasn't a  
24 choice by Eastman to move into those markets. It was when  
25 the demand came to us. So as I mentioned, the product was

1 launched in 1974. We had an existing plant and our sales  
2 were modest and largely flat.

3 We had existing capacity at that time, but we saw  
4 that the pressure on phthalates was going to increase, or we  
5 felt was going to increase, that demand, because of the  
6 characteristics of the product, which is what we saw. So it  
7 wasn't us going out and, if you like, pushing into those  
8 applications.

9 Yes, we did offer it as an alternative, but it  
10 was only when application segments and individual customers  
11 made their own decisions that, no, we're going to stop using  
12 a phthalate-based plasticizer to make our consumer product  
13 and move to an alternative that we saw the market start to  
14 take off.

15 CHAIRMAN SCHMIDTLEIN: And many of these were  
16 new customers for you?

17 DR. CULLEN: Yes. Many were new customers, yes.

18 CHAIRMAN SCHMIDTLEIN: Okay. So apparently, I  
19 think this was mentioned in the opening, there is going to  
20 be a new producer of DOTP in the U.S. market. How do you  
21 think that will change the U.S. market and the subject  
22 imports?

23 DR. CULLEN: All we know about the potential for a  
24 new entrant is what has been announced publicly by press  
25 announcements, et cetera. We understood a plant was due to

1       come onstream on early 2017. As of today, we are not aware  
2       that that is operating.

3               What will happen in the future, I mean we can  
4       speculate and give opinions. I'm not sure we would want to  
5       do that in a public forum. And we can't comment really on  
6       why individual companies make a decision. What would the  
7       impact be on subject imports? I guess it depends on how  
8       those imports are priced.

9               If they continue to be priced unfairly, then they  
10       will continue to depress the market pricing in the U.S.

11              CHAIRMAN SCHMIDTLEIN: Okay. I don't think I have  
12       any other questions. Okay, in the post-hearing brief could  
13       you provide more specific information on periods in which  
14       you were not able to react to raw material movements--the  
15       price of raw materials moving?

16              MR. O'BRIEN: Certainly we will do that.

17              CHAIRMAN SCHMIDTLEIN: Okay. Alright, I don't  
18       have any further questions.

19              Vice Chairman Johanson?

20              VICE CHAIRMAN JOHANSON: Thank you, Chairman  
21       Schmidtlein.

22              Can anyone comment on the U.S. market impacts of  
23       the BASF production outage in Europe? Also, please explain  
24       the situation there and what products were affected?

25              MR. GOUVEIA: I can start on that. So it was a

1 tragic situation for BASF in terms of what happened with  
2 their plant in Ludwigshafen and that more or less impacted  
3 their entire site to a certain extent, but not as badly as  
4 people had originally anticipated.

5           So one of their key raw material feedline into  
6 the plant, which provided critical feed stocks to produce  
7 many different types of products ruptured, unfortunately.  
8 And they were able to work around and continue production,  
9 just not at higher rates. But there's hundreds of product  
10 lines that they produce there.

11           And it's difficult to comment specifically on  
12 what might've happened for each particular one. I think  
13 they employ over -- I wanna say 25,000 people or more at  
14 this time. It's such a gigantic site. So specifics, it  
15 would be difficult, but in general, there was a bit of an  
16 interruption in some product lines globally.

17           VICE CHAIRMAN JOHANSON: Do you know if those  
18 product lines included DOTP?

19           MR. CULLEN: This is Steve Cullen. To answer  
20 that specific question, not to my knowledge, I do not  
21 believe that BASF manufactures DOTP in Europe. Um, in  
22 relation to your first question as to what was the impact,  
23 BASF did announce publicly a *force majeure* situation on  
24 certain plasticizer lines. That information's in the public  
25 domain or we can provide it in the post brief if required.

1                   But I think very few, if any, of those materials  
2                   were supplied to the North American market. So the impact  
3                   on the U.S. market has not been very significant.

4                   MR. GOUVEIA: This is Colin Gouveia again. We  
5                   certainly can provide much more detail from folks within  
6                   Eastman who know the situation very well, if needed.

7                   VICE CHAIRMAN JOHANSON: Maybe just a brief  
8                   follow-up in the post-hearing brief, if you wouldn't mind.  
9                   Because this could, of course, potentially impact the  
10                  worldwide price, or could potentially impact the price for  
11                  DOTP.

12                  Okay. The respondents argue that Eastman's  
13                  desire to have DOTP product replace several phthalate  
14                  plasticizers in the market place drove DOTP prices down  
15                  because Eastman needed to compete in those markets at a  
16                  price to convince users to switch to DOTP.

17                  Considering that you've stated that DOTP sells  
18                  at a premium to non-phthalate plasticizers, is this a valid  
19                  explanation for the low price of the DOTP?

20                  MR. CULLEN: Hello, this is Steve Cullen. No,  
21                  that's not a valid explanation for what has happened to the  
22                  price of DOTP. I think as we've mentioned and discussed in  
23                  a fair amount of detail, the demand for DOTP has come along  
24                  when end users have chosen to move away from the existing  
25                  products that they were using and most commonly, DINP.

1                   And that for a very large period of time, for 35  
2 years, people would -- when there was, if you're like free  
3 choice between -- and no concerns about using a phthalate or  
4 not, they chose to use DINP, so that decision was not a  
5 function of price then, and we don't believe it's a function  
6 of price now.

7                   It is this regulatory scrutiny, the controversy  
8 around these phthalates that have driven people to make  
9 decisions. So from that point of view, the primary  
10 influence on the price of DOTP in the U.S. market has been  
11 the import pricing.

12                   VICE CHAIRMAN JOHANSON: Thanks, Mr. Cullen, or  
13 Dr. Cullen. In your brief at Page 22, you argue that Korean  
14 imports were virtually non-existent in the United States in  
15 2010, showing an incredible growth trajectory in recent  
16 years. What was the level of the demand in 2010? And was  
17 the Korean/U.S. Free Trade Agreement a turning point then  
18 for imports? I'm just wondering, in general, why is 2010 so  
19 important?

20                   MR. CULLEN: 2010 was really the year when the  
21 market demand for DOTP started to accelerate in the U.S. At  
22 that point there were little to no Korean imports at that  
23 point. So, no, I don't believe that the Korean Free Trade  
24 Agreement was a turning point in the appearance of Korean  
25 material in the U.S.

1                   VICE CHAIRMAN JOHANSON: What is the tariff? Is  
2     it 6%?

3                   MR. CULLEN: Six and a half percent.

4                   VICE CHAIRMAN JOHANSON: Six and a half percent  
5     non-FTA. So that's a fairly high tariff for a commodity  
6     product. When that came off, you'd almost expect more  
7     imports coming, correct?

8                   MR. CULLEN: That's the standard tariff for any  
9     imports as I understand it.

10                  VICE CHAIRMAN JOHANSON: But that's a fairly  
11     high tariff though for a chemical commodity product, I would  
12     think. I mean the profit margin can't be --

13                  COMMISSIONER BROADBENT: I mean it's bigger than  
14     the margin, right?

15                  VICE CHAIRMAN JOHANSON: So that's just -- I'm  
16     just curious about that.

17                  MR. CULLEN: In relation to that question  
18     regarding the Korean Free Trade Agreement 2012 or 2013, I  
19     think the pricing margin impacts from 2014 to '15 and '16,  
20     you know, demonstrate the impact of unfairly priced imports  
21     on the market and on the profitability of the domestic  
22     industry.

23                  So if that were the case, the difference between  
24     2012 and 2013 when the Free Trade Agreement came into force,  
25     then you would see a step change difference. That's not the

1 case. What you're seeing in 2014, 2015, and 2016 is a very  
2 clear downward trend in terms of pricing and in terms of  
3 profitability of the domestic industry at the time when  
4 demand was increasing and costs were decreasing.

5 MR. O'BRIEN: If I may, at that same time, you  
6 see the biggest margins of underselling, accompanied by very  
7 large gains in market share by the Korean product. So it's  
8 really not a -- it's not just the effect of the Korean  
9 tariff being eliminated. It was the Korean exporters  
10 targeting the U.S. market and then underpricing to increase  
11 market share.

12 VICE CHAIRMAN JOHANSON: Okay, thank you, Mr.  
13 O'Brien and Dr. Cullen. You all mention on Page 42 of your  
14 brief, in your threat section, that China is a key  
15 destination for the Korean industry, but that capacity  
16 increases in China may mean more competition at market for  
17 Korean exports.

18 Can you all comment perhaps in a post-hearing  
19 brief on the magnitude of that effect? And what have been  
20 the trends in Korean exports to China as far as you know?

21 MR. O'BRIEN: Yes, we will do that.

22 VICE CHAIRMAN JOHANSON: Okay. Thank you, Mr.  
23 O'Brien. In your brief, you talk about changes in the  
24 production process that need to occur when a plasticizer  
25 user changes from phthalate to a non-phthalate plasticizer

1 and that the user then needs to accept compromises in  
2 performance. That's found in Page 8 of your brief.

3 What are some examples of changes in the  
4 production process that you're talking about? And how is  
5 the performance of the final plastic compromised?

6 MR. CULLEN: I'm sorry. Could you repeat the  
7 question? We weren't sure if the initial part of the  
8 question was related to change in the manufacture of a  
9 plasticizer.

10 VICE CHAIRMAN JOHANSON: Okay.

11 MR. CULLEN: And the second part was clearly  
12 about compromises that an end user of the plasticizer  
13 product making a consumer product.

14 VICE CHAIRMAN JOHANSON: Okay. In your brief,  
15 you talk about changes in the production process that need  
16 to occur when a plasticizer user changes from a phthalate to  
17 a non-phthalate plasticizer. And that the user then needs  
18 to accept compromises in performance.

19 MR. CULLEN: Yeah, this is Steve Cullen. I'll  
20 give maybe one example. Each of the plasticizers is going  
21 to have its own characteristics in terms of things like  
22 efficiency. So how much plasticizer you need to make a  
23 product meet the certain levels of softness. That's what  
24 it's there to do.

25 And a second example would be in terms of

1 fusion. So you are adding plasticizer to PVC resin, then  
2 it's fused at that high temperature to make the final PVC  
3 product. So switching from, say, DINP to DOTP, the  
4 efficiencies are broadly similar, but the fusion  
5 characteristics are different, so you may need to change the  
6 formulation to make exactly the same consumer product that  
7 looks the same, feels the same and performs the same, you  
8 may need to change the composition of the formulation, and  
9 you may need to change the processing conditions that lead  
10 to that same product.

11 VICE CHAIRMAN JOHANSON: In that way, you would  
12 make it an acceptable product, is that the way it goes?

13 MR. CULLEN: Yes. So generally, a producer of  
14 PVC, flexible PVC consumer products, when they make a switch  
15 from phthalate-based plasticizer to non-phthalate, wants to  
16 make exactly the same consumer product, looks the same,  
17 feels the same, performs the same, it just doesn't contain  
18 phthalate with the controversy that goes along that, and  
19 they switch to a non-phthalate to make that controversy go  
20 away, and they can get back to the business of, you know,  
21 selling those consumer products.

22 VICE CHAIRMAN JOHANSON: Right. All right.  
23 That concludes my questions. I appreciate you all appearing  
24 here today. This is something I'd read about in my--as a  
25 layman--and now I'm learning all about phthalates and DOTPs,

1 quite interesting. I appreciate it. Thank you.

2 CHAIRMAN SCHMIDTLEIN: All right. Any more  
3 questions for the panel? I just had one follow-up question  
4 to something you just said about the processing conditions?  
5 What -- can you give us some examples of what changes they  
6 would have to make? From switching from DINP to DOTP? Or  
7 to switch back?

8 MR. CULLEN: Well, the question of switching  
9 back, I think we addressed, that I'm not aware of anybody  
10 who has actually done that, because if you feel compelled  
11 enough to move away from a phthalate product to a  
12 non-phthalate product, then you going back into the  
13 questions and controversy around phthalate plasticizers in  
14 your end product. So that doesn't tend to happen.

15 I'm not an expert on formulation. We have  
16 experts in the company that do that, but one example I gave  
17 earlier on was, say, around fusion. So the fusion  
18 characteristics of DINP are a little better, you might say,  
19 than DOTP. And so you may have to operate an oven that's  
20 used to fuse the products or the final products a little  
21 longer or a little higher temperature, something like that.

22 Or you maybe would need to add another component  
23 to the formulation to get the fusion performance that you  
24 want. I think, as we said, the shifts from phthalate to  
25 non-phthalate generally is done for only that reason that I

1 want to move to a non-phthalate. And generally that  
2 formulation requires an end user or a processor to make some  
3 compromises to do that.

4 CHAIRMAN SCHMIDTLEIN: Well, does it require  
5 capital expenditures on their part, do you know? Do they  
6 have to change equipment or --

7 MR. CULLEN: In general, no. It's primarily  
8 around changes to the formulation.

9 CHAIRMAN SCHMIDTLEIN: To the chemical formulas?

10 MR. CULLEN: To the chemical formulas, yes. The  
11 percentages of the mixtures and the other components that  
12 are in that formulation.

13 CHAIRMAN SCHMIDTLEIN: Okay. I do not have any  
14 other questions. Do you? Okay. All right. That concludes  
15 the Commissioners' questions. Do staff have any questions  
16 for this panel?

17 MS. HAINES: Elizabeth Haines. Staff has no  
18 questions.

19 CHAIRMAN SCHMIDTLEIN: All right, thank you. Do  
20 respondents have any questions for this panel?

21 MR. WINTON: No, thank you.

22 CHAIRMAN SCHMIDTLEIN: All right, thank you. So  
23 this brings us to our lunch hour. So we are going to break  
24 for an hour and we'll reconvene at 12:50. You should take  
25 your confidential materials with you as the hearing room is

1 not secure during the lunch hour. And so with that, we  
2 stand in recess.

3 (Recess from 11:51 a.m. to 12:50 p.m.)

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

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

3                   CHAIRMAN SCHMIDTLEIN: Good afternoon. Mr.  
4 Secretary are there any preliminary matters?

5                   MR. BISHOP: Madame Chairman, I will note that  
6 the Panel in Opposition to the Imposition of the  
7 Anti-dumping order have been seated. All witnesses have  
8 been sworn.

9                   CHAIRMAN SCHMIDTLEIN: Very good. Mr. Winston,  
10 you may begin when you're ready.

11                  MR. WINSTON: thank you very much. I am going to  
12 turn it over to Lilly Frishman to give a statement.

13                                   STATEMENT OF LILY FRISHMAN

14                  MS. FRISHMAN: Good afternoon Commissioners,  
15 Secretary and all the ITC Staff. Thank you for giving me  
16 this opportunity here today. My name is Lilly Frishman. I  
17 am one of the Founders and Managing Directors of ALAC  
18 International. I'm joined today by my colleague Aaron Wei  
19 who is our other Founder and Managing Director.

20                  ALAC International is an importer of chemicals  
21 for use in the production of vinyl and rubber products.  
22 Aaron and I founded the company in 2004. We are  
23 headquartered in New York City and supply approximately 100  
24 customers that range in size from small family-owned,  
25 family-run business to global multinational firms. We

1 import both DINP and DOTP from Korea. Our primary supplier  
2 for those products has until recently has been Aekyung  
3 Petrochemical and until last year we were the largest U.S.  
4 Customer for Aekyung's DOTP products.

5 Among U.S. distributors of these products, ALAC  
6 is unique in having shore terminal positions that allow us  
7 to provide truckload quantities of both DINP and DOTP and  
8 short lead times to customers. In other words, we received  
9 imported DOTP and DINP in bulk ocean vessels, store the  
10 imported materials in our storage terminals at a port in New  
11 Jersey and then deliver the material to the customers from  
12 the terminal.

13 We used to have a terminal in Savannah, Georgia  
14 as well but we found that we could not compete for customers  
15 in the Southeast region with the low prices offered by  
16 Eastman from its Kingsport, Tennessee Plant. We closed our  
17 Savannah Terminal in September 2015. We are now focusing  
18 our marketing efforts on customers in the mid-Atlantic and  
19 Northeast regions where we have a freight advantage compared  
20 to Eastman's Tennessee and Texas Plants.

21 I think it would be helpful to give a brief  
22 background about the developments in the U.S. Market for  
23 plasticizers since we started our business. At the outset,  
24 I should mention that there are a number of plasticizers  
25 with unique chemistries and capabilities. Some are better

1 for specific applications than others and some cannot be  
2 used in certain applications due to purely technical  
3 reasons.

4 Each customer has to take those technical issues  
5 into consideration when choosing what plasticizer to use.  
6 But there are a broad range of applications where DOP and  
7 other competing plasticizers overlap. It used to be that  
8 the dominant general purpose plasticizer in the U.S. Market  
9 was something called DOP and Eastman, the Petitioner in this  
10 case was the main U.S. Producer of DOP but DOP came under  
11 regulatory pressure because of concerns about toxicity.

12 Exxon Mobil then started to promote an  
13 alternative called DINP which did not have the same health  
14 concerns at the time. Also Exxon Mobile offered DINP at a  
15 lower price than DOP which never hurts. As a result, most  
16 customers switched from DOP to DINP. DOP held on only in  
17 certain specialty applications such as bags used to store  
18 blood where DINPs performance did not meet the customer's  
19 needs.

20 But in 2013 to 2014 timeframe more and more  
21 concerns began to be heard due to health risks due to  
22 exposure to phthalates found in vinyl products made using  
23 DINP as a plasticizer. Eastman saw this as an opportunity  
24 to get back the plasticizer market that it had largely lost  
25 to Exxon Mobile and DINP.

1           As a result we saw Eastman pushing its DOPT as a  
2 safe alternative to DINP, whether through design or pure  
3 luck Eastman's efforts were bolstered by the 2013 listing of  
4 DINP on California Proposition 65 and the 2014 regulatory  
5 requirement that products sold in the State of California  
6 that contain DINP above a certain exposure level must have a  
7 toxic warning label.

8           Despite the boost, Eastman's efforts initially  
9 ran into a great deal of resistance. A number of customers  
10 were not convinced, at least at first, that the  
11 terephthalate in the DOTP was any safer than the phthalate  
12 in DOP or DINP. To such customers the so-called  
13 bio-plasticizer seemed like a safer alternative. At the  
14 same time other customers questioned the risks posed by  
15 DINP.

16           The science is open to dispute and there are many  
17 experts that have concluded that exposure to products made  
18 using DINP do not present a serious risk. Furthermore, even  
19 after California regulators first tried to impose  
20 restrictions on DINP, the legal status of those restrictions  
21 remained unclear due to Exxon Mobile's appeals. Over time  
22 however it is clear that DOPT's share has been growing while  
23 DINP's share has been falling.

24           The clear trend in the market has been to replace  
25 DINP with non-phthalate plasticizers especially in toys and

1 other products targeted at small children. The trend has  
2 been accelerated by the decisions by a number of big box  
3 retailers, like Home Depot, Lowes and Lumbar Liquidators to  
4 mandate that the vinyl flooring products they sell be  
5 phthalate-free.

6 At ALAC we have seen this shift in our own  
7 customers. The vast majority of customers that purchase  
8 DOPT from us used to be our own customer for DINP. When  
9 those customers decided to reformulate their products to  
10 replaced DINP with DOPT they naturally looked to us to  
11 supply the DOPT they need. Of course, the willingness of  
12 downstream producers and retailers to give up  
13 phthalate-containing products depends on the availability of  
14 alternatives at competitive prices.

15 It is very easy to persuade a producer or  
16 retailer to take the high ground on an issue like this if  
17 they have assurances that they can obtain a basically  
18 equivalent product at the same price point. On the other  
19 hand, if a phthalate-free alternative is going to have a  
20 significantly higher cost that would put them at a  
21 competitive disadvantage they are necessarily going to look  
22 more carefully at the scientific basis underlying the  
23 alleged health risks before making a decision to change.

24 This is true for the manufacturers that use  
25 plasticizers to make their products and it is try of the

1       retailers that sell those products as well. In the case of  
2       flooring tiles the choice has been relatively easy for  
3       downstream producers and retailers because DOPT provides a  
4       cost competitive alternative to DINP, the flooring  
5       manufacturers do have to incur costs to reformulate and test  
6       their products after switching but with only a small  
7       difference before switching, but with only a small  
8       difference between the prices of DINP and DOPT.

9               Most U.S. flooring manufacturers have found that  
10       they can switch without losing competitiveness against other  
11       U.S. and foreign manufacturers who continue to use DINP and  
12       those manufacturers always maintain ability to switch back  
13       from DOPT to DINP if DOPT prices get out of line. You must  
14       remember that U.S. Manufacturers that use DOPT or DINP have  
15       to compete not only with other U.S. Producers but more  
16       importantly also with Foreign Producers of competing  
17       products.

18               They are extremely sensitive to anything that  
19       will raise their costs. In the case of flooring tiles, many  
20       of the U.S. Companies that are now manufacturing tiles in  
21       the United States used to import foreign tile products  
22       themselves and re-label them as their own products.  
23       Although they have decided to switch from such private label  
24       imports to U.S. production they remain very much aware of  
25       the pressure imposed by their Foreign Producers that used

1 to supply them in the past.

2 When they feel that DOPT prices are not  
3 competitive with DINP prices they do not hesitate to  
4 threaten to switch back to DINP. At ALAC a number of our  
5 customers have explicitly told us that they will switch back  
6 from DOPT to DINP or other phthalate containing  
7 plasticizers such as DPHP when they feel that they are not  
8 mentioned the other plasticizer prices. There are also a  
9 number of manufacturers that have not switched from DOTP to  
10 DINP.

11 Some have concluded that even when using DINP the  
12 phthalate level in their foreign products fall under the  
13 level that would require warning labels under California's  
14 regulations. Others have decided that it is more  
15 cost-effective to continue to use DINP and put the necessary  
16 warning labels on their products. As a result, the U.S.  
17 Producers that have switched to DOTP still have to compete  
18 in the markets with U.S. made products that still use DINP.

19 They also have to compete with imports of  
20 flooring products made with DOTP or DINP while they can  
21 advertise their products as phthalate-free and as "Made in  
22 America". In the end they still have to be price  
23 competitive. In this competitive context the markets for  
24 DOPT and the DINP are not independent. Instead, the  
25 willingness to switch from DINP to DOPT depends in large

1 part on the relative prices of the two.

2 If DOTP prices are closer to DINP prices  
3 manufacturers will be willing to switch. If DOTP prices are  
4 much higher than DINP prices manufacturers will find  
5 justifications to continue to use DINP. Manufacturers that  
6 have already switched from DINP to DOTP will switch back.  
7 At the margin then it is interplay between DINP and the DOTP  
8 that determines the price level for DOPT.

9 The main inputs for making DINP are derived from  
10 petroleum products as crude oil prices have fallen sharply  
11 in the last few years the costs for the raw materials used  
12 to make DINP have fallen as well. The result has been a  
13 drastic decrease in the price of DINP. In fact, prices for  
14 CIMP have fallen by around 40 percent over the last three  
15 years. To put it another way, DINP prices today are about 60  
16 percent what they were at the start of 2014.

17 Of course the main inputs for making DOTP are  
18 also derived from petroleum products. Not surprisingly, the  
19 prices for DOTP and the DINP have followed the same trend.  
20 We have a graph showing the trends in the crude oil DINP and  
21 DOPT prices for the last 12 quarters. I think the influence  
22 of declining crude oil prices and DINP and the DOTP prices  
23 is self-evident. While the DOPT pricing data is not as  
24 precise as the pricing information that the Commission has  
25 collected, the parallel between DINP and the DOTP prices is

1 still remarkable.

2 Now you may have noticed that I mentioned earlier  
3 that our importance to our Korean supplier Aekyung  
4 Petrochemical has changed recently. Let me explain a bit  
5 what has happened. Our purchases of DOTP from Korea were  
6 fairly consistent over the 2014 to 2016 time period that the  
7 Commission has been examining. Our imports from Korea were  
8 up some from 2014 to 2015 and then somehow lower in 2016  
9 than they had been in the previous years.

10 Our U.S. sales of Korean DOTP were about the same  
11 in 2016 as in 2014 but we became less significant as a  
12 customer of Aekyung because of other developments in the  
13 U.S. Market. In particular the emergence of BASF as a  
14 customer of Aekyung according to information that Aekyung  
15 has provided to us they had no sales of DOTP to BASF in the  
16 United States in 2014. In 2015, their sales to BASF  
17 represented about a quarter of their total U.S. sales. In  
18 2016 Aekyung's sales of DOTP to BASF represented about 2/3  
19 of their total U.S. sales of DOTP.

20 As a result BASF has taken ALAC's place as  
21 Aekyung's main U.S. customer but that change will only be  
22 temporary as the Commission is aware BASF is due to start  
23 production of DOTP in the United States later this year and  
24 Aekyung has told us that they do not expect to sell any DOTP  
25 to BASF in the United States once BASF's U.S. Production has

1 fully ramped up.

2 On the other hand, even after BASF stops buying  
3 from Aekyung, I doubt that we will regain our former  
4 importance. Aekyung has told us that other markets are much  
5 more attractive to them than the United States.

6 MS. FRISHMAN: For example, explosion at one of  
7 BASF's European facilities has created enormous  
8 opportunities to supply the European market. I understand  
9 that the BASF plant that makes DOTP makes plasticizer in  
10 Europe is not expected to come back online until the end of  
11 this year.

12 Also, another major European producer of DOTP,  
13 the Belgian producer OXEA, has decided to exit DOTP  
14 production and focus on production of upstream feedstock  
15 items like THE.

16 Outside of Europe, ACAM and most other observers  
17 expected that U.S. demand will continue to grow, especially  
18 as flooring manufacturers ramp up their new production. But  
19 they expect even greater demand growth in Asian markets that  
20 are much closer to ACAM's production facilities. As a  
21 result, we at ALAC have had to look elsewhere this year to  
22 purchase DOTP we need to supply our customers.

23 There are a number of reasons we would prefer to  
24 continue to work with ACAM. They produce great product, and  
25 we have always been able to count on them to meet the

1 deadline they promise. Also, we cannot commingle DOTP from  
2 different suppliers in our storage terminal. And  
3 logistically, ACAM is one of the few foreign producers that  
4 can handle the bulk shipments we need to fill our terminal.

5           Consequently, we hope to be able to continue our  
6 relationship with ACAM. If the supply dislocations in  
7 Europe are resolved, and if ACAM returns to the U.S.  
8 markets, but given our limited storage capacity, and with  
9 BASF due to emerge as U.S.-based competitor in the DOTP  
10 market, we see no real prospect for our share of the U.S.  
11 DOTP market to grow significantly above their current  
12 levels.

13           Of course as more and more customers switch from  
14 DINP to DOTP, and with reported new investments in flooring  
15 manufacturing capacity in the United States, we expect that  
16 overall demand in the United States for DOTP will continue  
17 to grow.

18           We understand that Eastman has expanded its  
19 capacity to meet the projected future demand. BASF's new  
20 U.S. production facility will also emerge as a formidable  
21 competitor in that market. But because DOTP competes with  
22 DINP at the margin, if not in every single sale, it is not  
23 possible for the prices for DOTP and DINP to get too far out  
24 of line.

25           Before the recent Valley scares, when DOTP was

1 just a specialty niche product that did not overlap much  
2 with DOTP or DINP, these men could charge a premium for  
3 DOTP. But as DOTP has emerged as a phthalate-free  
4 substitute for DINP, the competition between DOTP and DINP  
5 has necessarily constrained Eastman's pricing power. To  
6 expand the market for DOTP, Eastman had to lower its prices  
7 to compete with DINP to gain more and more market share.  
8 And as crude oil and DINP prices fell sharply over the last  
9 few years, DOTP prices necessarily followed.

10                   Unfortunately, we cannot define gravity, and  
11 neither can Eastman. Thank you.

12                   MR. WINTON: We--my main goal is to have Lily and  
13 I answer your questions, but there are a few points I wanted  
14 to make before turning it over.

15                   The first is, our argument is everyone  
16 understands that we think this is a case about prices. DOTP  
17 prices are explained by competition between DOTP and DINP  
18 and other plasticizers. And we heard earlier today that  
19 that was simply not true. DOTP is a market unto itself.  
20 But there is something Mr. Clark said that I thought was  
21 very revealing--I think it was Mr. Clark. It was in  
22 response to a question by Commissioner Williamson who asked  
23 about whether the competitive prices of other plasticizers  
24 put pressure on DOTP. And Mr. Clark said, I think I wrote  
25 this down, he said, if there was no viable alternative that

1 was economically efficient, customers wouldn't switch. The  
2 reason they switched to DOTP was because it's a viable  
3 alternative that's economically efficient.

4 I'll have to see the transcript, but I remember  
5 "viable alternative" and "economically efficient." What  
6 that means, I have a brother who teaches at business school  
7 and so I love to make fun of business school ways of saying  
8 things, but what that means in simple English is: It was a--  
9 you wouldn't have switched to DOTP except for the price was  
10 competitive. That's what he's saying. You wouldn't switch  
11 to DOTP unless the price was competitive. That's obvious.

12 And when you look at the pricing information,  
13 we've handed out this table. I don't know how to do things  
14 on the screen. I apologize. I'm a little technologically  
15 backward. The price here, we've submitted a comparison in  
16 our prehearing brief that's based on the confidential  
17 information in the Staff Report.

18 This price information comes from a different  
19 source. It combines imports and Eastman's products. And  
20 we're not sure, but it gives the same basic trends. And  
21 what you see is, we started this in April of 2014, because  
22 that was the peak crude oil price during this period.

23 And then we indexed everything to that. So just--  
24 -because I didn't want to disclose confidential information,  
25 the pricing information we have is confidential, what you

1 see is that the DINP and DOTP basically went from 100 to 65  
2 or so in the period up until July 2015.

3 Now why is July 2015 relevant? Because that's  
4 when we were told, that's when the competition was going on  
5 between DINP and DOTP, right? We heard in April 2015  
6 there's an article saying why haven't flooring manufacturers  
7 switched over fo phthalate-free? And by July 2015, Mister--  
8 I can't keep--Mr. Gouveia said, by July 2015 everyone wanted  
9 switched over [sic]. By July 2016, all of the price damage  
10 that allegedly happened in this case had happened. It's  
11 because DOTP and DINP are competing in that period for  
12 sales.

13 And as Mr. Clark said, DOTP was able to compete  
14 because it's a viable alternative that's economically  
15 efficient.

16 One other quick point. There were questions--and  
17 maybe you'll ask us for it, but if you don't I will address  
18 the questions--you asked about who came first? Was it the  
19 demand? Or the supply? Was it people looking for  
20 phthalate-free, or was it Eastman out there pushing the  
21 product?

22 I think the timing of this is interesting.  
23 Eastman has told us that they bought their Sterling plant in  
24 2012. They've been improving it and expanding it. The big  
25 change from DINP to DOTP took place after 2012. It started,

1 we heard, in 2010. The first of flooring manufacturers--I  
2 don't remember the name--was started--but the rest of the  
3 market hadn't changed. We heard the rest of the market  
4 didn't change until July 2015. Eastman, looking ahead, has  
5 invested in the Sterling plant in 2012. They are ahead of  
6 the market on this.

7 And we can--I can't tell you, but Lily and Aaron  
8 can tell you that they went to trade shows and Eastman would  
9 be at the trade shows in this period saying switch to DOTP.  
10 It's the green alternative. The marketing materials--  
11 Eastman was out there. And in a way, it was really smart  
12 and prescient. They saw the opportunity. They invested in  
13 it.

14 On the other hand, the opportunity didn't develop  
15 quite the way they wanted. There was more resistance,  
16 clearly more resistance to switching. The U.S. flooring  
17 manufacturers talked about expanding capacity in the United  
18 States. Lily referred to that. A lot of that still is  
19 being talked about but hasn't happened.

20 And so, you know, the timing--I don't know that  
21 it matters to argument, but if you want to understand what's  
22 going on in this market, it's Eastman saw an opportunity,  
23 invested and hoped the market would be there. The market  
24 wasn't there, and they had to compete on price. And the big  
25 change, as we heard, was in July 2015 at which point the

1 price deterioration that they're complaining about had  
2 mostly happened.

3           The other--the final thing I wanted to mention  
4 briefly is the role of BASF in this story. You know, to my  
5 mind BASF is either the elephant in the room or the  
6 800-pound gorilla, or the 800-pound elephant, I'm not sure  
7 which analogy to use here. But they are--you know, what's  
8 going on here is they are going to be a U.S. producer of  
9 DOTP. And Lily and Aaron can tell you a little bit about  
10 what they've heard in talking to Aekyung about what BASF's  
11 plans are. But it's clear that BASF has driven most, some,  
12 all--some percentage, which I can't tell you--of the imports  
13 from Korea.

14           If you looked at this case, taking out the BASF  
15 imports from your analysis, it would look very different to  
16 you. And the question is: What is BASF doing? And why are  
17 they doing that? And I think that's confidential. You have  
18 to look at what they've told you in the questionnaire  
19 responses. Lily and Aaron I think can put a little guidance  
20 on that, if you have questions about what they've heard  
21 about this as well.

22           With that, I thank you for your time. I reserve  
23 whatever we have left if there's any more rebuttal, and we  
24 look forward to your questions. Thank you.

25           CHAIRMAN SCHMIDTLEIN: Alright, thank you very

1 much. I would like to thank both of you for being here  
2 today. We very much appreciate it.

3 And this afternoon we actually begin the  
4 questioning with Commissioner Broadbent.

5 COMMISSIONER BROADBENT: Why would you say, Ms.  
6 Frishman, that Eastman is the only U.S. producer of DOTP?

7 MS. FRISHMAN: Eastman produce 100 percent of U.S.  
8 domestic production, so they are the only producer for DOTP.

9 MR. WINTON: But I think, you know, BASF is going  
10 to be a U.S. producer. Lily can answer. The question  
11 posed, I guess, is why isn't there anyone else?

12 MS. FRISHMAN: Oh. So my understanding is  
13 plasticizers are very unique products. And there are only a  
14 handful of producers in the world produce economic skill,  
15 and it has to do with their what kind of feedstock they have  
16 and set up to produce.

17 For general purpose plasticizers, we have over  
18 500 products in the world. But maybe 50 to 100 are  
19 commercialized. And just in U.S., as we are aware of, there  
20 are DINP, DIDP, DPHP, and BASF also has two non-phthalate  
21 called Bench, for years. But the cost is higher for that  
22 products, and so Eastman has the feedstock to produce DOTP,  
23 but my understanding is other producers they may not have  
24 that feedstock to product DOTP. And, yeah, that's my  
25 understanding.

1           MR. WEI: Yes, my name is Aaron Wei. I think this  
2 morning I saw a news release about the most current status  
3 of BASF's conversion of their 2PH alcohol to 2EH alcohol,  
4 which is what they will require to start their DOTP major  
5 production here in the U.S.

6           So I think Eastman will be joined very soon by  
7 BASF as the other major U.S. domestic producer of DOTP.

8           COMMISSIONER BROADBENT: But they were the only  
9 producer because they were the only ones that had the  
10 ability to do this feedstock conversion?

11          MR. WEI: Well, I think we have some very  
12 distinguished panels from Eastman Chemical, but my  
13 background with Formosa Plastics for PCV resin out of  
14 graduate school, so my over 20 years in this industry led me  
15 to believe that they were really competing plasticizers for  
16 our vinyl industry. And Peach is dominated by a global  
17 multinational company.

18          In the case if DINP, you have a great U.S.  
19 company in Exxon-Mobil who successfully markets their DINP  
20 not only here in the U.S. but globally. Very strong  
21 presence in Europe. Very strong presence in Asia. And you  
22 have Eastman for their DOTP part to that, DOP plasticizer.

23          Then you also have companies such as BASF who has  
24 been promoting in the past, before this current switch or  
25 investment in DOTP development, was promoting a true

1 nonphthalate product, my partner Lily mentioned earlier, a  
2 product called DINCH. And the reason that I don't believe  
3 DINCH is very well received in the market is because the  
4 cost is prohibitive.

5           So in other words, if you really want to go true  
6 nonphthalate, we all know with experts in this room, that  
7 the DINP and DOTP were talking about the differences of  
8 orthophthalate and terephthalate, but the "P" is still  
9 there. And that's phthalate. So to be true nonphthalate,  
10 you have a product that BASF has in DINCH. And the reason  
11 that they are not promoting as aggressively here in this  
12 market in North America is, my understanding, because of  
13 cost.

14           It is more costly for them to produce that  
15 plasticizer, and therefore it is not as well received in the  
16 market. And BASF has realized that. So they've also tried  
17 to promote their version of a phthalate product, DPHP, but  
18 now they're switching away from DPHP and tried to join  
19 Eastman in the production of DOTP.

20           So I think as we all know from working with this  
21 different--again, let's focus on the growing application  
22 because this is, as Eastman presented, because I agree  
23 totally that it is by far the largest end use application in  
24 the industry for vinyl, for a plasticizer, as well as PVC  
25 resin for this application.

1           So the flooring manufacturers literally could--I  
2           mean, we've been told this multiple times--that they could  
3           switch between these major commodity plasticizers. And,  
4           yes, they do see the value in promoting DOTP as being the  
5           nonorthophthalate alternative. Therefore, as long as it  
6           does not increase their manufacturing costs so they can  
7           remain to be competitive with their finished product in the  
8           marketplace, they will be more than glad to switch to DOTP.

9           But if the cost is becoming prohibitive, then  
10          they will have to refer back to DINP or DPHP. As we heard  
11          this morning, the switching from one of the two to the DOTP  
12          does require a formulation change, but it does not really  
13          involve a capital investment as Madam Chairlady had asked  
14          for say equipment investment, a product line total  
15          refurbishing, but it's merely just a formulation.

16          COMMISSIONER BROADBENT: Are there differences in  
17          prices between U.S. produced DOTP and DOTP imported from  
18          Korea that are the result of a difference in raw material  
19          product mix?

20          MR. WEI: I don't believe it's necessarily the  
21          product mix. I believe when we talk to the European  
22          producers, or the Asian producers, they typically tell us  
23          that they cannot really follow the market that we serve,  
24          which is here in North America, but they follow their  
25          feedstock pricing, their product pricing in their

1       respective regions.

2                   In other words, I guess if we're talking about  
3       the subject producers from Korea, they're trying to follow a  
4       feedstock pricing in Asia as well as the market pricing of  
5       their product. In other words, this is what I can sell  
6       somewhere else, therefore this is what I need to sell the  
7       product for.

8

9                   In the case of LG, I believe they have their own  
10      feedstock in 2EH. In the case of Aekyung, they procure TH  
11      from a merchant market which is a commodity. So I don't  
12      believe it's the product.

13                   COMMISSIONER BROADBENT: Well maybe you could--I'm  
14      sorry, I'm not quite following you. What are the raw  
15      materials that are used for producing DOTP in Korea? And  
16      how have those price declines compared to price declines in  
17      the U.S.?

18                   MR. WEI: I think the main, alcohol is 2EH, which  
19      is the same product Eastman uses--

20                   COMMISSIONER BROADBENT: Right. So had the price  
21      declines of that product, that input product, been similar  
22      in Korea and in the U.S.?

23                   MR. WEI: Yeah, Commissioner, I believe that's an  
24      internationally traded commodity. So it follows sort of the  
25      general market trend.

1                   So there are European exports to Asia. In fact,  
2                   there might be U.S. but I'm not 100 percent, but I know for  
3                   sure there are European exports to Asia of 2EH. Obviously  
4                   there is Asian produced 2EH as well.

5                   COMMISSIONER BROADBENT: Okay, so wouldn't that  
6                   indicate then that the price for DOTP should be similar in  
7                   all markets, or major markets?

8                   MR. WEI: From a feedstock point of view, if it's  
9                   internationally traded--

10                  COMMISSIONER BROADBENT: But I mean the product,  
11                  the final product, the DOTP.

12                  MR. WEI: The final product of DOTP, I guess it's  
13                  a supply and demand to a degree, because my understanding is  
14                  in Europe today all plasticizers are very tight, as  
15                  Commissioner Johanson had mentioned, the BASF has been the  
16                  force majeure and they're unfortunately joined by their  
17                  German colleague, Evonik who produces, a major producer of  
18                  DINP as well as alcohol INA. So European market is in total  
19                  shock that you have to major, if not the two producers of  
20                  DINP, both force majeure, at the same time. So they just  
21                  would tend to pay more for the same plasticizer because they  
22                  can't get it.

23                  COMMISSIONER BROADBENT: My timer has expired.  
24                  Thank you.

25                  CHAIRMAN SCHMIDTLEIN: Thank you.

1           Ms. Frishman, this morning in your statement you  
2 say that a number of your customers have explicitly told you  
3 that they will switch back from DOTP to DINP if the price  
4 gets out of line.

5           And my question is: Has anyone actually done  
6 that?

7           MS. FRISHMAN: Yes. We have a very diversified  
8 customers, and we have customers making yoga mats, or color  
9 paint and--

10           COMMISSIONER BROADBENT: These are customers in  
11 the United States?

12           MS. FRISHMAN: Yes, all in the United States.  
13 And so during this POI, customer was using--before was using  
14 DINP, and but for certain applications the price is very  
15 sensitive. For example, for customers making small floor  
16 mats, and they had to compete with imports from China.

17           And so if the price--even though they have the  
18 desire to make it more greener, but if the price was too  
19 high, they couldn't compete with imported finished products.  
20 And then they had to switch back.

21           And we did have customers who told us they--if  
22 DOTP price is good, they're going to use 100 percent DOTP,  
23 but in fact they didn't. And some of them even switched  
24 back to DINP and just to choose to put a label on the  
25 product.

1                   COMMISSIONER BROADBENT: And you supplied the DINP  
2 as well? Is that right?

3                   MS. FRISHMAN: Yes.

4                   COMMISSIONER BROADBENT: Okay.

5                   MS. FRISHMAN: We have been supplying DINP for  
6 years. And then some customers decided to try DOTP. They  
7 naturally came to us for supply of DOTP. So majority of our  
8 DOTP customers were our DINP customers.

9                   COMMISSIONER BROADBENT: Okay. And so is it just  
10 this one that has actually switched back? Or have there  
11 been others?

12                   MS. FRISHMAN: There were others.

13                   COMMISSIONER BROADBENT: Okay. If you could  
14 provide that in more detailed information in the posthearing  
15 brief, that would be helpful.

16                   MS. FRISHMAN: Okay.

17                   COMMISSIONER BROADBENT: Okay. Mr. Winton, this  
18 might be best directed to you. I know that your argument is  
19 that the prices are following the crude oil price, which of  
20 course you provided on this exhibit.

21                   So my question is: How do you respond to the lost  
22 sales and lost revenue information that's in the Staff  
23 Report, where we have seven purchasers who reported that  
24 price was a primary reason for the decision to purchase  
25 subject imports rather than U.S. product. Eight purchasers

1 reported that U.S. producers had reduced prices in order to  
2 compete with the lower priced subject imports.

3 MR. WINTON: I think my view of the case is  
4 Eastman can complain about we lost sales, we would have sold  
5 more if there weren't these damn Koreans--maybe not with the  
6 word "damn"--but when you look at the information, what you  
7 see is Eastman in a quantity sense in terms of how much  
8 they're selling, they're doing great. I don't know if  
9 that's APO or not, but I think they said. Quantity is  
10 great. That's not their problem. Losing sales is not  
11 their problem.

12 When you look at the imports from Korea, it's not  
13 that imports from Korea are growing and taking sales away on  
14 the whole from the U.S. producers. What's happening is that  
15 customers are switching from phthalate to nonphthalate on  
16 the whole. Yeah, at the margin maybe they lost a sale or  
17 two, maybe, but on the whole what's happening is customers  
18 are switching from DINP to DOTP.

19 And Lily said--told you that's what her customers  
20 are. We had a discussion at lunch--I hadn't known this, and  
21 it's Lily's story--but, you know, as we've described, the  
22 reason, one of the reasons import from Korea have increased  
23 is because of the BASF purchases. And when Lily found out  
24 about this, she was kind of ticked off. And she went to  
25 Aekyung---it's her story, but I'll tell it; she can confirm

1 this--she went to Aekyung and said what are you doing? You  
2 know, you're competing with us. And Aekyung said to them,  
3 no, we've talked to BASF and BASF has said we're buying this  
4 DOTP because we're transitioning our customers from DPHP to  
5 DOTP.

6 So really what's happening on the whole in the  
7 market is BASF has existing customers for DPHP, and we're  
8 told, at least they've told Aekyung who has told us, told  
9 Lily, who has told me, that what's happening with BASF is  
10 they're buying DOTP to help those customers transition. And  
11 then BASF is going to be the U.S. producer and they're going  
12 to supply that from the U.S.

13 ALAC, when you look at what they've sold in the  
14 imports sort of ex-BASF, take out BASF which is not them, so  
15 that's my story. It's, you know, yeah, they're

16 COMMISSIONER BROADBENT: And the lost revenue,  
17 then?

18 MR. WINTON: On the whole, I would say the issue  
19 when you look at Eastman's results, what's happened here is  
20 to the extent that they're complaining we sold more but we  
21 didn't get enough price for it. That's their complaint.  
22 That the prices are down, that's why they lost sales. And  
23 they have some anecdotal statements, oh, here's the  
24 situation.

25 But if you look at the situation overall, I think

1 it's clear what's going on here. Customers are moving from  
2 DINP to DOTP if the price is right. And if the price isn't  
3 right, they're not moving or they're delayed.

4 COMMISSIONER BROADBENT: Okay. So are you saying  
5 that those eight purchasers that reduced their prices--the  
6 eight U.S. purchasers that reported that the U.S. producer  
7 had reduced its price in response to the subject import,  
8 that's not material? Is that the essence of that?

9 MR. WINTON: That's a much more succinct way of  
10 saying it.

11 COMMISSIONER BROADBENT: I see. So why were  
12 subject imports under-selling the U.S. product in so many  
13 instances? I think here in the final report it's 20 of 24  
14 instances there was under-selling. If both products are  
15 responding to the drop in oil prices, why the pervasive  
16 under-selling?

17 MR. WINTON: Well I'm not sure it's pervasive. I  
18 think there's a timing element. I think also when you look  
19 at product one and product two, one of those is obviously a  
20 much more heavily traded product, especially for imports,  
21 than the other. So that's one thing.

22 Second point, it was asked by I think  
23 Commissioner Williamson earlier today, why if there's  
24 under-selling to the purchasers as a whole, say prices are  
25 comparable? And I think it goes to a methodological choice.

1 And I understand the methodological choice that was made,  
2 but one has to recognize it has consequences.

3 When you look at delivered prices, which you have  
4 done, right? What you're comparing is not just the price of  
5 the material but the cost of freight. And without going  
6 into proprietary information, I think you should look at who  
7 ships farther and has higher freight costs.

8 And if what you're seeing is the U.S. producers  
9 hypothetically ship farther and have higher freight costs,  
10 and therefore their prices look higher, that's not  
11 under-selling. They have higher freight costs because they  
12 ship farther.

13 COMMISSIONER BROADBENT: Okay. And then finally,  
14 in the staff report seven importers and ten purchasers  
15 stated that the price of DINP has not affected the price of  
16 DOTP. So how do we reconcile that with your testimony here.

17 MR. WINTON: I don't know, because I'm a lawyer  
18 not a market participant, right? I've been told by the  
19 people who actually participate in the market what they  
20 understand. Beyond that, the responses to the  
21 questionnaires are not actually consistent. There are a  
22 number of purchasers who say, yeah, the price matters. And  
23 the competitive price matters, and we could switch back, and  
24 they're interchangeable.

25 We are talking about a commodity product, and

1 we're talking about a market where people talk to each  
2 other. And what you're--to assume that we know that there  
3 are people who will switch. We know that there are people  
4 who think the price matters, and they're insisting, we're  
5 not going to switch to DOTP unless you give us a  
6 competitive price. And Eastman's argument is, okay, we'll  
7 do it with those customers but we're not going to do it for  
8 anyone else, and they're not going to find out, and they're  
9 going to be happy paying a higher price than their  
10 competitors. I've never heard of a market that works that  
11 way.

12 COMMISSIONER BROADBENT: Okay. Would you like to  
13 add anything, Ms. Frishman, as the market participant?

14 MS. FRISHMAN: I am, first, very surprised that  
15 purchasers would say our price is lower than Eastman's,  
16 because when we--for the last few years, in fact it was very  
17 difficult for us to gather supply from ACAM because ACAM,  
18 they do not focus on--or we keep telling them U.S. is  
19 important market. But for ACAM, they feel they have many  
20 other important market too, including China, Turkey, or  
21 India, Europe, Africa. And we have been getting DOTP at  
22 locations from ACAM. And we often also realize how  
23 important plasticizer is to many factories in U.S. because  
24 it's a very difficult product for customers to handle.

25 It's not like packaging in bags, you can just put

1 on the floor in your warehouse. And every customers, they  
2 have limited tank capacity to hold the liquid. And  
3 therefore supply to them on time to make sure they don't  
4 shut down their plant is a huge liability.

5 And we often tell customers we--to encourage them  
6 to have multiple sources. And we often tell them that, you  
7 know, don't come to us for a lower price because it's just  
8 not practical. And we can't compete with Eastman because  
9 Eastman is domestic producer and they have, you know, large  
10 volume.

11 We are only your alternative suppliers, and we're  
12 not interested in large volume. If we look at import data,  
13 the quantity we import into U.S. probably is one-third of  
14 one single flooring producer use monthly.

15 COMMISSIONER BROADBENT: You're talking about your  
16 business? Not all imports from Korea? Correct?

17 MR. WINTON: Correct.

18 COMMISSIONER BROADBENT: You're not speaking on  
19 behalf of all importers, just your business?

20 MS. FRISHMAN: Um-hmm. Yes.

21 COMMISSIONER BROADBENT: Okay. Okay, are you  
22 finished? I don't want to cut you off.

23 MR. WEI: Although I might want to follow up, we  
24 are only representing our companies and how we operate the  
25 business. But I do believe there are other smaller

1 importers, perhaps by volume, besides BASF where we were  
2 importing a significant amount. But there are other smaller  
3 importers. Perhaps they will just bring in a container and  
4 just re-sell.

5           So Lily is correct. This goes back to the very  
6 basic reason why we have this business, is that our customer  
7 want to have a alternative supplier, but not just for  
8 plasticizer because we also provide pretty much everything  
9 else they use in their vinyl formulation.

10           So one of the reason that Lily and I volunteered  
11 to come here today, although we're not Korean producers, but  
12 we really are puzzled a little bit by the Petitioner's  
13 theory, that how can that be the case? Because just like  
14 she said, the stories we hear are quite different, that for  
15 instance we have major flooring users that come to us and  
16 say we want you to have a position with us. We always want  
17 a second supplier, second source. It is our corporate  
18 purchasing policy that we don't single-source any item, let  
19 alone an important chemical like plasticizer.

20           But here is an index price that you must compete  
21 with, because this is what we enjoy today, which ties into  
22 the feedstock of public information, which makes perfect  
23 sense to us except that we cannot compete on those levels.  
24 Because when we look at index formulas, compared to our  
25 buying cost, there's just--we're not even near to be

1 competitive.

2 So we have pretty much walked away from all  
3 --customers. But again, Commissioner, you're correct that  
4 this is only our story. But perhaps there are other  
5 companies such as BASF who says we're a big player. We want  
6 that market. We can do it. We will do it. Even, you know,  
7 they probably don't view this as a loss but more as an  
8 investment, or premarketing cost. So we can't answer for  
9 BASF but that's what I suspect.

10 CHAIRMAN SCHMIDTLEIN: Okay, I appreciate that.  
11 And I apologize, we've gone past--Vice Chairman Johanson.

12 VICE CHAIRMAN JOHANSON: Thank you, Chairman  
13 Schmidtlein. I would like to thank all of you for appearing  
14 here today.

15 At pages 8 to 9 of Respondent's brief, you state  
16 that DOTP and DINP are substitutes, and that a fall in the  
17 prices of DINP would contribute to a fall in the prices of  
18 DOTP. In order for that to happen, wouldn't purchasers need  
19 to or be willing to substitute away from DOTP and toward  
20 DINP?

21 The Staff Report in Chapter 2 suggests that the  
22 opposite is occurring. Could you please address this issue?

23

24 MR. WINTON: I will start and you guys fix what I  
25 say after I'm done. You don't actually need anybody to

1 switch. What you need is people to make a credible threat  
2 of switching. And we heard today that Eastman said no one's  
3 ever switched back from DINP to DOTP. But we never heard  
4 from them, did you have to cut your price to keep them from  
5 switching back?

6 What we know is, technically you can use DINP  
7 most of the places where you can use DOTP, or maybe I should  
8 say it the other way. You can use DOTP most of the places  
9 you can use DINP. I'm learning this. I think artificial  
10 leather, right? DOTP is not good for artificial leather.

11 But mostly, you know, they can be technically  
12 substituted, and the question is to what extent does this  
13 regulatory pressure, which everyone calls it a pressure  
14 because there's no actual regulation. Does that prevent  
15 people from switching in response to prices? But  
16 technically there's nothing that stops you from switching as  
17 a matter of production technology.

18 MS. FRISHMAN: I agree.

19 MR. WINTON: Lily agrees with me, but I have a  
20 feeling I didn't answer your question satisfactorily.

21 VICE CHAIRMAN JOHANSON: Oh, no, you did. But  
22 still there is, as you mention, there might not be  
23 regulatory pressure but there is consumer pressure.

24 We saw the slides put on this morning by the  
25 Petitioners noting some of the vinyl producers, and I think

1       Lowe's and another company who are switching to DOTP. And  
2       so I would assume that would command a price premium in that  
3       situation?

4               MR. WINTON: You know, I don't know. It goes to  
5       something you said. Until I started working on this case, I  
6       had never--unlike you, I had never heard of phthalates. I  
7       didn't know that--you know, I go into the store and I look  
8       at the lowest price, and, you know, there's a warning label  
9       on everything. There's a warning label on Diet Coke. You  
10      know, I drink a lot of that.

11              You know, there are customers who care. There  
12      are customers who read the labels. There are customers who  
13      would prefer the phthalate-free. But most of us--and then  
14      you have the problem, as well, you know, from personal  
15      experience, I am the least handy human being on the face of  
16      the planet. If you give me a hammer and a nail, you don't  
17      want to know where that nail is going to end up, but it's  
18      not going to be where it belongs. So I hire people to do--  
19      -when things need to be done, I hire people. And I say,  
20      "what's the price?" And they go out and they buy the  
21      flooring or whatever--you know, we had a floor put in--i  
22      didn't even--I don't even know to this day what floor I  
23      have. I'm the opposite of an educated consumer.

24              There are a lot of people like me out there.  
25      There are a lot of people who care about these things. The

1 question is, you know, are you going to be able to get a  
2 price premium? Can you segregate those markets? So I don't  
3 think that you can say there's no substitution.

4           You know, I thought the Staff Report made an  
5 assumption about the elasticity of supply in response to  
6 price, but I think it doesn't take into account the fact  
7 that people can and will and have switched between the two.  
8 And a lot of the end consumers like me are just oblivious.

9           VICE CHAIRMAN JOHANSON: That just reminds me what  
10 might have happened in the U.S. market with the concern of  
11 consumers with the Consumer Product Safety Liability  
12 Commission, I forget the exact name, and the whole issue of  
13 toys.

14           And when you start--when a law comes out and  
15 states that this product is banned for children, that  
16 everybody gets concerned about it. So that's what I think  
17 might have happened. And that would of course impact sales  
18 of a product, right? And thus drive up prices? Or at least  
19 it should, economically?

20           MR. WINTON: Well, maybe. You know, if people--I  
21 don't know how much concern there is. I do know--you know,  
22 I'm cynical, but the willingness of people to take moral  
23 stands is inverse to the cost of taking a moral stand. It  
24 costs you nothing? We're all on it. If it costs you  
25 something, all of a sudden we find excuses not to be so

1 caring.

2 VICE CHAIRMAN JOHANSON: Okay, Ms. Frishman?

3 MS. FRISHMAN: Yes, if I may. I think we should  
4 also not forget about, I think we're focusing of course a  
5 lot on the DINP and DOTP because that was a big battle for  
6 flooring industry to switch from DINP to DOTP, which is the  
7 largest plasticizer users. But in the meantime, there were  
8 several other U.S. producers who came up in this innovation  
9 with bioplasticizers, or other plasticizers that also  
10 considered nonphthalates.

11 So they also tried to persuade customers, or  
12 introduce their products to help customers to use their  
13 products. For example, we have one customer and he's able  
14 to switch from DINP to bioplasticizers and the DOTP. It  
15 depends which price is more--is better.

16 VICE CHAIRMAN JOHANSON: Okay, thank you, Ms.  
17 Frishman, and Mr. Winston also.

18 In Respondent's brief you assert that with BASF  
19 emerging as a new U.S. competitor, Korean producers are  
20 unlikely to increase their U.S. market share. And this was  
21 explained at page 15 of your brief.

22 Two years ago, BASF publicly announced plans to  
23 begin production of DOTP in 2017. But BASF has already  
24 delayed starting this production a couple of times this  
25 year. What indication do we have that we can rely on BASF's

1 production going forward and starting during the period that  
2 we have to consider?

3 MR. WEI: I think I was taking a train from New  
4 York to D.C. this morning. I read this Platt's News Flash  
5 basically confirming the startup of their 2EH conversion  
6 from 2PH. So that to me is a clear indication that they are  
7 about ready to launch.

8 And we also hear from many purchasers. As the  
9 other Commissioner mentioned, there are other purchasers who  
10 are very aware of these costs of feedstocks. They are  
11 always on top of it. A lot of them tell us how the  
12 plasticizer market pricing are trailing with the propylene  
13 or other feedstock. So to me this is an indication where I  
14 think they're ready to launch, and then these customers come  
15 from the same that BASF is being basically advising them  
16 that Q-3 is when they will have material available.

17 VICE CHAIRMAN JOHANSON: Okay. Thank you, Mr.  
18 Wei, for your timely response, or your timely reading of an  
19 article today.

20 Do purchasers face price competition from imports  
21 of downstream products made with DOTP?

22 MS. FRISHMAN: Yes. A lot of--many customers,  
23 they use a product to make finished products. But the  
24 finished products, many of the finished products are also  
25 imported from overseas.

1           For example, for flooring, this LVT Luxury Vinyl  
2     Tile, which is the flooring industry's revolutionary  
3     product, and big flooring U.S. producers had been importing  
4     from China, Europe, and Korea. Then they put on their own  
5     label to sell the products.

6           Even though now they announced to have produced  
7     in U.S., but the foreign producers, they do not want to--  
8     willing to give up their market share. And we actually saw  
9     one of the largest flooring producer in Korea had  
10    established factory here in U.S. to produce product so that  
11    they can continue to have U.S. market share.

12           So, yes, they do compete with foreign products.

13           VICE CHAIRMAN JOHANSON: Alright. Thank you, Ms.  
14     Frishman. My time has expired.

15           CHAIRMAN SCHMIDTLEIN: Commissioner Williamson?

16           COMMISSIONER WILLIAMSON: Thank you.

17           Thank you very much for coming today to present  
18     testimony. Following up on Vice Chairman Johanson's  
19     question, are this dynamic of this luxury tile and the  
20     foreign producers maintaining this market share, is that  
21     having any impact on the price of DOTP in the U.S. because  
22     of the imports of the finished product?

23           MR. WEI: Commissioner, I believe so. I think,  
24     contrary to all the industry experts' predictions based on  
25     these announcements, that LBT production in this country

1 hasn't really taken off as they were forecasted, due to some  
2 technical difficulties of starting up or slow startup. But  
3 at the same time, it's probably also pressure from those  
4 finished LBT products from Europe, Korea, China, being  
5 three I think big producer region countries of that product.

6 So I do believe that has pressure on the demand  
7 of DOTP in this country, and therefore the slower demand  
8 growth should have some pressure on the pricing of the  
9 product as well.

10 COMMISSIONER WILLIAMSON: Okay. I guess it'[s  
11 pretty hard to measure how much of an impact.

12 MR. WEI: Yeah. To me, it's quite significant  
13 because I think, I mean Eastman is here so they probably can  
14 have more accurate answers, but part of the bringing on the  
15 Texas facility is, I suspect, to anticipate those growth in  
16 that big area of fabrications.

17 And we've seen it. All the announcements by all  
18 your foreign producers, you name it, they're all announcing  
19 to be in that business. But today, I would take a guess  
20 that's probably less than half, if not a third has actually  
21 materialized.

22 COMMISSIONER WILLIAMSON: Of the predictions, the  
23 forecasts for production?

24 MR. WEI: In this country.

25 COMMISSIONER WILLIAMSON: In this country.

1           MR. WEI: Which would have a demand for DOTP,  
2           rather than they continue to buy from. For the European  
3           producers that are also producing here, they have advantage  
4           of bringing products they produce in Europe into this  
5           market. But for the other true U.S. domestic producers of  
6           foreign products, in lieu of their own production here in  
7           this country, the majority in the State of Georgia I  
8           believe, they will continue to bring information. I heard  
9           huge numbers of imports of single company will buy over 100  
10          containers a month to bring their products. You can call  
11          them importing, or you can call them contra manufacturing,  
12          because a lot of them, when we go to the Home Depot, Lowe's,  
13          we see the familiar labels. So they're probably just having  
14          the produced in the different factories overseas.

15          COMMISSIONER WILLIAMSON: Okay. Thank you. I  
16          asked this question this morning, and I don't know whether  
17          you can, either now or posthearing, can you provide an  
18          approximate share of the DOTP market broken out by end use  
19          shares? And then I wanted to ask a question about the  
20          conditions of competition for each of the different markets.

21          MR. WEI: Commissioner, I'm not as expert in the  
22          plasticizer specifically as perhaps the Eastman experts, but  
23          to use a reference I have from my PVC resin days at the  
24          Formosa, who is a major domestic producer supplier global  
25          for PVC resin. Typically it goes hand-to-hand, the PVC

1 resin with plasticizer for those flexible applications.

2 So I would say flooring is by far the largest.  
3 Probably if you include all the--I'm going to say close to  
4 40 percent for flooring. And then I'm going to say 15 to 20  
5 percent automotive. And I'm going to say toys are really  
6 small, probably single digit on the low end. And you have a  
7 lot of other printing inks for printing T-shirts.

8 COMMISSIONER WILLIAMSON: Oh?

9 MR. WEI: Yes, very interesting applications. One  
10 of my favorites, because I get samples for my customers.

11 (Laughter.)

12 MR. WEI: But the big ones is, we call it  
13 construction and automotive. Construction could be  
14 flooring, but I don't believe in this country anymore, but  
15 when I first joined this industry--I'm giving away my age--  
16 over 20 years ago, wall covering was also a major  
17 application. So wall paper. We don't use wall paper as  
18 much in this country, but in Europe or Asia they still use  
19 quite a lot of wall paper. So wall paper used to be a big  
20 part of that construction material use, but not so much now  
21 in this country.

22 COMMISSIONER WILLIAMSON: Now is there a  
23 difference in conditions of competition between say the  
24 flooring segment and the, I think you said, automotive use?

25 MR. WEI: In terms of just--

1                   COMMISSIONER WILLIAMSON: I guess in the sense of  
2 the flooring, DINP is not really, you know, that's less and  
3 less of an acceptable input.

4                   MR. WEI: Right.

5                   COMMISSIONER WILLIAMSON: But I take it in  
6 automotive it is still?

7                   MR. WEI: Yes. And I would agree with the  
8 testimony this morning that for automotive and the body  
9 coating and sealants, it's primarily still DINP. I believe  
10 it's now only because of lack of pressure, but also it would  
11 have to do with performance as well. As we all know, for  
12 automotive industry, for car manufacturers we all want cars  
13 to consume less energy, less--more fuel efficient, which  
14 means lighter vehicles, which means everything needs to be  
15 faster fusion at a lower temperature. I believe DINP is  
16 more efficient in those areas. And for automotive interior,  
17 as Mr. Winton mentioned earlier, there is a little bit of a  
18 technical issue or challenges still that again the experts  
19 from Eastman can probably better explain than me, but from  
20 what I understand from some of our customers there's this  
21 migration typically, or you call it oxidation. In other  
22 words, it was surface to the face of the material.

23                   So what you feel is, I think my partner Lily  
24 tried to say, yoga mats, is same thing. That you want the  
25 mats to not feel oily. But that, the oxidation is what this

1 issue is. So I think there's slightly less use in  
2 automotive.

3 COMMISSIONER WILLIAMSON: Okay. Thanks. What  
4 about in terms of competition between the domestic product  
5 and subject imports? Is it more intense in certain  
6 segments? Is it more intense in the flooring segment? Or  
7 more intense in the automotive?

8 MR. WEI: To my knowledge, I don't think the  
9 imports are really that competitive in flooring markets  
10 because, again, they consume such large quantities. And  
11 then a lot of them, based on what we have been told, is  
12 their purchase agreements are linked to index pricing, which  
13 is very competitive.

14 Perhaps it works well with the major producers  
15 because it should follow the market up and down with the  
16 feedstock.

17 COMMISSIONER WILLIAMSON: So you say the  
18 competition was less in the flooring? Or more intense in  
19 the flooring?

20 MS. FRISHMAN: I think maybe Aaron partly  
21 misunderstood the question.

22 COMMISSIONER WILLIAMSON: Okay.

23 MS. FRISHMAN: So I guess your question, if I may  
24 answer, if I understand correctly, for our understanding for  
25 flooring industry it's more competitive and price sensitive

1 because they have to compete with imported products.

2 COMMISSIONER WILLIAMSON: Okay.

3 MS. FRISHMAN: But for automotive industry,  
4 probably less sensitive. And we also have DOTP customers  
5 who make other applications. Like some customers, they only  
6 use half truckload per month, or one container per month, in  
7 the middle of nowhere. And they make this unique product  
8 for color, or certain--they're not very price sensitive.

9 COMMISSIONER WILLIAMSON: Okay, so you would say  
10 the competition is less intense in those areas?

11 MS. FRISHMAN: Yes.

12 COMMISSIONER WILLIAMSON: Okay, thank you. In the  
13 final phase the Commission collected pricing data on  
14 different--on a delivered basis and in metric tons. This  
15 change was intended to reflect the way DOTP is sold in the  
16 U.S. market.

17 Do you agree that delivery is typically included  
18 in the pricing of DOTP products?

19 MS. FRISHMAN: Yes. When we sell to customers,  
20 most of the time, it's delivered price.

21 COMMISSIONER WILLIAMSON: Okay. Thank you.  
22 Thank you for those answers.

23 CHAIRMAN SCHMIDTLEIN: Commissioner Broadbent.

24 COMMISSIONER BROADBENT: Ms. Frishman, in your  
25 testimony, you mentioned that Eastman has lower prices.

1 Based on your experience in the U.S. market, did Eastman  
2 lower prices before imports from Korea started increasing?  
3 I can say it again if --

4 MS. FRISHMAN: Yes, please.

5 COMMISSIONER BROADBENT: Sure. You mentioned in  
6 your testimony that Eastman has lower prices. Based on your  
7 experience, did Eastman lower prices before imports of Korea  
8 started increasing?

9 MR. WINTON: Let me start and then have Lily --  
10 you know, Eastman was saying imports from Korea started in  
11 2012 or something, which is outside of the period that the  
12 Commission looks at, and I have, in the past, tried to get  
13 the Commission to look beyond three years, and I've never  
14 been successful. But if you would like us to talk about  
15 things that happened in the past --

16 We are at a little disadvantage at ALAC, because  
17 ALAC's imports have not actually increased over the 2014,  
18 '15, '16 time period. And so, you know, from ALAC's point  
19 of view and Lily can confirm me, they've been supplying a  
20 set of customers, you know, switching people from DINP to  
21 DOTP, the volumes haven't changed, and so to be told, "Hey,  
22 Eastman had to lower their prices because you were  
23 increasing sales" in this 2014-16 period, I don't think  
24 reflects anything about ALAC.

25 Now, there are other, you know, there's BASF and

1 other importers and I don't think we can speak to what's  
2 going on with them, but I think, from just an ALAC  
3 perspective, if you look at their imports over time, really,  
4 over this period, there's no increase to talk about.

5 COMMISSIONER BROADBENT: In testimony this  
6 morning, Dr. Cullen from Eastman suggested that the reason  
7 for minimal nonsubject import is just because the pricing in  
8 the U.S. market is unattractive. Can you respond to this,  
9 please?

10 MR. WINTON: Again, we can't speak overall. But  
11 I've talked with Lily about this and what she told me is,  
12 she likes to deal with Aekyung. Why? Well, because they're  
13 easier to deal with logistically. For ALAC, their business  
14 is, they get, not containers, not a tank, they get a bulk  
15 vessel, which has, you know, it's a liquid-containing bulk  
16 vessel, comes up to the port, unloads into their terminal,  
17 and then they supply customers.

18 So they need somebody who can logistically  
19 handle that kind of way of doing business. And they've  
20 found, Lily told me, that there are few producers in the  
21 world who are set up to handle that kind of shipment.  
22 Aekyung in Korea has a terminal at the port where they take  
23 their product from the factory, put it in a terminal at the  
24 port, fill up the vessel, send it to New Jersey, where it's  
25 unloaded at ALAC.

1                   So from their point of view, this is the way  
2 they wanna do business. The other suppliers, you have to  
3 barge it or truck it. It just gets complicated  
4 logistically. And so that's--from their point of view--why.  
5 But for other importers or why other people don't -- we are  
6 not, I think, in a position to say.

7                   COMMISSIONER BROADBENT: But you -- I mean --  
8 these folks know the industry, and it is pretty curious that  
9 all the imports are really coming predominantly from Korea.  
10 You know, is it just Korea is the only country with this  
11 capability? It can't be true.

12                   MS. FRISHMAN: DOTP was emerging product. And  
13 Aekyung has been in plasticizer manufacturing for many, many  
14 years. Their product is very consistent and we're very  
15 comfortable with the quality of their product. And we, in  
16 fact, tried to work with Chinese DOTP producers and we  
17 shipped some cargo to Mexico, which is less quality  
18 demanding, and we received complaints from customers about  
19 inconsistency of Chinese DOTP.

20                   And there was, back then, there was no  
21 availability found in other regions, so Aekyung is -- we  
22 feel very comfortable that they can produce consistent  
23 quality. That's one of also major reason we buy from  
24 Aekyung. Because supplying customers is big liability. If  
25 any problem they have in their production, and that's a huge

1 liability. We didn't feel comfortable to work with any  
2 Chinese or Indian producers.

3 COMMISSIONER BROADBENT: Okay. Did you mention  
4 that DOTP can't be -- the tanks that you hold it in at the  
5 terminals, you can't switch between producers of DOTP?

6 MS. FRISHMAN: Correct.

7 MR. WINTON: You can't mix, or you can't have  
8 half the tank from one producer and half the tank of  
9 another.

10 COMMISSIONER BROADBENT: Even though it's the  
11 same chemical composition.

12 MR. WEI: Commissioner, I don't think it's that  
13 we cannot, but we rather not. I think it's traceability,  
14 quality assurance purposes.

15 COMMISSIONER BROADBENT: Right.

16 MR. WEI: Again, we supply to a lot of  
17 automotive customers, so we want clear traceability, going  
18 back to when the product was manufactured, if it's a  
19 continued process, if not, batch process, what batch number  
20 and so on, so forth. So I think it's by choice that we  
21 never comingle product.

22 COMMISSIONER BROADBENT: Yeah, that makes sense.  
23 How should the Commission analyze the impact of the Korea  
24 Free Trade Agreement? On the increase in imports from  
25 Korea?

1 MR. WINTON: A legal question.

2 COMMISSIONER BROADBENT: Don't try to get out of  
3 it.

4 MR. WINTON: Can I answer this in a post-hearing  
5 brief?

6 MS. FRISHMAN: I think it's a really interesting  
7 question. And if we don't separate DINP or DOTP, it's  
8 plasticizer. Before Free Trade Agreement, plasticizer has  
9 to be imported into U.S. for over a decade. But it was from  
10 a different region.

11 COMMISSIONER BROADBENT: From where?

12 MS. FRISHMAN: From a different region.

13 COMMISSIONER BROADBENT: Where?

14 MS. FRISHMAN: Taiwan. But the Free Trade  
15 Agreement gave Korea advantage over other countries to --  
16 therefore, you see almost zero, little bit from Taiwan and  
17 China, but basically more Korean products to replace other  
18 region plasticizers.

19 MR. WINTON: But I think -- again, this  
20 goes--and I'll try to be more serious about the legal  
21 question--it goes to what period you're looking at. I  
22 Googled this, I couldn't remember the Korean FTA took  
23 effect, I believe, in March of 2012, and looks like it was  
24 signed, was effective start of 2013. It's really before the  
25 period that you're looking at.

1                   And, you know, I have my stubborn view of what's  
2 going on with the imports here. And what I see going on in  
3 the imports is ALAC very level. BASF going up according to  
4 Aekyung for reasons that are not about dumping, not about  
5 pricing, but about BASF's corporate plans and what they're  
6 planning to do, and Aaron has been speculating.

7                   That's what we see going on with imports. We  
8 don't see this as, you know, somebody in 2015 all of a  
9 sudden said, "Oh, my God, there's a free trade agreement, we  
10 don't have to pay duties, what were we thinking?" That's  
11 not our understanding of the market.

12                   COMMISSIONER BROADBENT: But it should have some  
13 impact, I mean, and it should probably be not an immediate  
14 impact in the sense that suddenly you have a 6.5% price  
15 advantage that hurt the Taiwanese.

16                   MS. FRISHMAN: Yes. I think that's why Korean  
17 plasticizer became a major imported product, rather than  
18 Taiwanese processors.

19                   MR. WEI: I would like to add --

20                   COMMISSIONER BROADBENT: So you guys are kind of  
21 disagreeing a little bit?

22                   MR. WEI: If I could offer my observation, I  
23 heard that from the preliminary testimony by a lawyer that  
24 bilateral free trade agreement by design is to increase the  
25 trade between these two parties. But that's just a legal

1 interpretation to me.

2 But if you look at our little industry  
3 specifically, beyond maybe plasticizer, if we look at PVC  
4 resin, I believe the PVC resin pouring into this country  
5 from Korea has reduced, even after the free trade agreement  
6 went into effect.

7 COMMISSIONER BROADBENT: Mm-hmm.

8 MR. WEI: So the six and a half percent or for  
9 PVC might've been just 5.3, but it was not significant  
10 enough for it to alter that train. For PVC, it's because  
11 the major domestic producer, which today happens to be  
12 Formosa and Mexichem have more than adequate amount of  
13 products.

14 They're priced very competitively where the  
15 Korean products, even without duty, are not competitive,  
16 based on their product. So the free trade agreement did not  
17 give them any advantage where at least PVC resins are  
18 concerned.

19 COMMISSIONER BROADBENT: Okay. All right. My  
20 time is expired. Thank you.

21 CHAIRMAN SCHMIDTLEIN: Okay. Thank you. I  
22 wanted to follow up with a couple questions about the  
23 exhibit that you passed out at the beginning of your  
24 statement this afternoon, which shows the crude oil prices  
25 compared to DOTP and DINP prices. I was just looking to

1 see--Okay--where you got these.

2 So one question we have is, do you think this  
3 source of crude oil prices is the best publicly available  
4 information on raw material costs? For trying to measure or  
5 compare prices of DOTP and DINP with raw materials?

6 MR. WINTON: I'm not sure it's the best. Since  
7 I put together this graph. And I was sort of driven by a  
8 couple of concerns. One was information that we could share  
9 publicly with the Commission at the hearing. We have other  
10 pricing data for DOTP, for example, it's in the staff report  
11 that's Eastman-specific, but we can't use that here.

12 For raw materials, I just used crude oil because  
13 it's indicative -- all of this is petroleum-based -- crude  
14 oil is indicative. Now what are the actual inputs for  
15 making DOTP? It's a little different for -- I know Aekyung  
16 makes it a little differently than Eastman makes it.

17 But we can see if there are other publicly  
18 available sources. This just seemed -- this is not meant to  
19 be, you know, let's take a ruler and measure the difference.  
20 It's just to give you an indication, and what you see is the  
21 crude oil prices, when we started in April of 2014, 'cuz  
22 that's when crude oil prices were at their prices, crude oil  
23 prices fell 70% to the low in the first quarter of 2016.

24 Prices for DINP and DOTP fell roughly 30% up  
25 until July of 2015, and then a little bit more as crude oil

1 prices went down. So this is meant to be indicative. I  
2 think we have better information we can put in a  
3 post-hearing brief.

4 CHAIRMAN SCHMIDTLEIN: Okay. That would be  
5 helpful. When I look at this chart, I'm struck by the fact  
6 that there are periods where crude oil is going up, and that  
7 doesn't seem to have an effect on the price of DOTP and  
8 DINP. So from March 2015 through June 2015, you know, you  
9 see that jump up in crude oil, and doesn't have any impact  
10 on either of the two plasticizers.

11 And the same is true a year later, really.  
12 March '16 through June '16, you see crude oil then go up  
13 again and, and especially DINP seems to just continue to  
14 track down, even though crude is coming back up. So, I  
15 guess my question is, I mean, what is the correlation  
16 between crude oil and these two products?

17 MR. WINTON: What we've heard is, there are  
18 formulas that are used to set prices in contrast. ALAC  
19 doesn't price this way, but we understand other people do.  
20 And they reference materials used --

21 MS. FRISHMAN: Propylene.

22 MR. WINTON: -- propylene and --

23 MS. FRISHMAN: Pyrazylene, I think.

24 MR. WINTON: -- propylene and pyrazylene. So  
25 that, if you -- to the extent that they're contract-based

1 prices, and I'd have to check for DINP. Do we know if  
2 they're contract prices?

3 MR. WEI: And I also believe that there's also  
4 the element of supply-demand.

5 CHAIRMAN SCHMIDTLEIN: So you would agree that  
6 supply and demand affects the price of both of these  
7 products?

8 MR. WEI: If the DINP demand is at a risk of  
9 losing market share to an alternative, I believe the  
10 producers of DINP will price their product differently just  
11 to be more competitive. Maybe to reduce their margin a  
12 little bit? And I suspect that that will be part of the  
13 reason that the chart does not match perfectly with the feed  
14 stock alone.

15 CHAIRMAN SCHMIDTLEIN: Right. Well, if you  
16 could supply that information in the post-hearing, it would  
17 be helpful. Are you aware that your -- do your customers  
18 raise the concept of raw material costs with you in terms of  
19 negotiating prices?

20 MS. FRISHMAN: Almost all flooring customers,  
21 they negotiate annual contract with domestic producer based  
22 on certain formulas. And my understanding is, most of the  
23 producers' flooring customers, they also have plants in  
24 Europe or Asia and they sometimes do use -- but I believe  
25 for U.S. producers, they probably -- Eastman probably no

1 better -- use a domestic benchmark price for feed stocks to  
2 determine each month price.

3 CHAIRMAN SCHMIDTLEIN: Well, do your customers  
4 though, or for Korean producers, are they aware of the price  
5 of the feed stocks and raw materials? And they're raising  
6 this in negotiations for the sale of --

7 MS. FRISHMAN: Not all of them.

8 CHAIRMAN SCHMIDTLEIN: Not all of them?

9 MS. FRISHMAN: No.

10 MR. WEI: I think that again, as I mentioned  
11 earlier, Commissioner, they look at more of their feed stock  
12 cost into Asia, and also the Asian price. They're not here,  
13 so they don't necessarily -- well, with exception of the  
14 folks that are actually here -- so I don't think that when  
15 they price, when we discussed, they focus everything on how  
16 much you are charging in the U.S. market.

17 What is a competitive pricing of that product?  
18 Rather, I think they're looking at, first of all, their  
19 cost. Second, their domestic market. And, uh, this is how  
20 they price. I don't believe they're looking at, how you are  
21 pricing over there, because they sell to Europe same way as  
22 they, I suspect, they sell to us.

23 CHAIRMAN SCHMIDTLEIN: So I'm not sure I'm  
24 following you. So are you saying that, as an importer, are  
25 you saying your price is mostly determined on the supply and

1 demand in the U.S. market and not because customers are  
2 pressuring you or indirectly, the Korean producers, to lower  
3 prices because the price of raw materials are dropping?

4 MR. WEI: I'm sorry. I thought you were  
5 referring to how our buying cost is determined from --

6 CHAIRMAN SCHMIDTLEIN: No, I'm trying to get a  
7 sense of how prices are set in this market. And my  
8 understanding was, the argument is that this is all  
9 attributable to raw material price. That the price of DOTP  
10 is falling because -- and I thought that's what this chart  
11 was meant to demonstrate -- that crude oil prices have  
12 fallen.

13 Well, okay. That would make sense to me if  
14 customers are aware of these raw material prices. And if  
15 they are, then they must be quoting them or raising it in  
16 negotiations with you or either indirectly with the Korean  
17 producers. I understand you're only just one importer here.

18 MS. FRISHMAN: Right.

19 MR. WINTON: Right.

20 CHAIRMAN SCHMIDTLEIN: That's what I'm trying to  
21 get a sense of, is if -- are they in fact doing that?

22 MR. WINTON: Sure. Let me, first of all,  
23 restate what our theory is, 'cuz I don't think you have it  
24 exactly correct, and then --

25 CHAIRMAN SCHMIDTLEIN: Okay.

1                   MR. WINTON:  -- let Lily talk about what  
2                   customers do and don't do.  Our view is, in order to sell  
3                   DOTP, you have to be competitive with other plasticizers,  
4                   primarily DINP, but others as well.  And customers know what  
5                   those prices are, for the most part.

6                   DINP is produced by ExxonMobil which certainly  
7                   knows what oil prices are and things like that, and takes  
8                   into account in setting their prices.  Although, as Aaron  
9                   said, if somebody's threatening to switch from DINP to DOTP,  
10                  ExxonMobil will suck it up and see if they can get the price  
11                  lower to prevent people from switching.

12                  What Lily is saying is, is it every customer who  
13                  comes to 'em and says, "Hey, here's the propylene price for  
14                  this week.  I want a discount."  No, it's not every  
15                  customer.  Are there customers who are aware of what's going  
16                  on, who say, you know, your costs should be coming down, and  
17                  my price should be coming down.  I think there certainly are  
18                  some.

19                  CHAIRMAN SCHMIDTLEIN:  So why were the prices of  
20                  subject imports falling in the pricing products?  Why were  
21                  they going down?  Across the POI?

22                  MR. WINTON:  Well, they don't go down -- I don't  
23                  want to get into confidential information -- if you look at  
24                  the price trends, there's some interesting things in who's  
25                  underselling at what times and what the prices are doing,

1 and when the injury is alleged to have occurred. But that's  
2 apart from the find.

3 Our theory of the case -- I put crude oil on  
4 here to be indicative. But our theory of the case is, DINP  
5 and DOTP were competing for market share, especially in the  
6 flooring market, especially in the period as we've heard,  
7 certainly through July of 2015, people were debating, do we  
8 switch from DINP to DOTP, and there was a price competition  
9 between them. DINP prices were lower because of raw  
10 material costs, as DINP prices were lower, if DOTP was gonna  
11 be sold, it had to go lower as well.

12 Eastman had invested on the theory that people  
13 were gonna switch from DINP to DOTP. And to get people to  
14 switch, they had to meet the price of DINP and so we had a  
15 price competition between DINP and DOTP as Eastman was  
16 trying to get people to switch, you know, with the  
17 regulatory pressure and all of that.

18 And if raw material costs had stayed the same,  
19 DINP prices wouldn't have fallen as sharply as they did.  
20 DOTP prices wouldn't have fallen as sharply as they did.  
21 But the key thing is, you couldn't get DOTP prices out of  
22 line with DINP prices. Because those products were  
23 competing in the market, head-to-head, had customers who  
24 were debating whether to switch or not.

25 MS. FRISHMAN: If I may? I think your

1 investigation period there's two things that happened that  
2 attributed to the price plasticizer price kept dropping.

3 One was it was a battlefield between the IMG and the DOTP.

4 Two -- November 2014 oil price dropped sharply  
5 and I have this customer -- we visited this customer in  
6 either 2015 -- and his word was you know he think he was  
7 negotiating price with us and his word was you think the oil  
8 price now -- this is the bottom?

9 And you see the chair, that's the bottom, you see  
10 the floor that's the bottom -- so no one knows how low the  
11 oil price would keep dropping. And during this period the  
12 price for plasticizer falling definitely was oil price -- a  
13 decrease in oil price was a big factor.

14 CHAIRMAN SCHMIDTLEIN: Okay, alright my time has  
15 expired thank you very much. Vice Chairman Johanson?

16 VICE CHAIRMAN JOHANSON: Thank you Chairman  
17 Schmidtlein. I'm going to ask you a question that I asked  
18 the Petitioners this morning and it regarded something in  
19 the Petitioner's Brief.

20 In its Brief at page 22, Petitioners argued that  
21 Korean imports were virtually non-existent in the United  
22 States in 2010 and have shown an incredible growth  
23 trajectory in recent years. Why is 2010 important? What  
24 happened then to cause the large growth in imports from  
25 Korea?

1           MR. WINTON: Why is 2010 important in the market  
2           or why is 2010 important to the Petitioners? You know 2010  
3           is important to Petitioners because then they get to see the  
4           imports were very low in 2010 and they are much higher now.

5           We all play these games. The Commission has said  
6           we look at three years -- 2014, 2015, 2016 but whether there  
7           were things going on in the market in 2010 I don't know.  
8           Maybe Lily or Aaron could describe it.

9           MR. WEI: Nothing in particular that comes to  
10          mind to be honest.

11          MS. FRISHMAN: We can look into this and then  
12          perhaps submit in our post-conference.

13          VICE CHAIRMAN JOHANSON: Yes that would be  
14          helpful.

15          MR. WINTON: But if I may and you know as we have  
16          described until 2010 nobody was thinking about DOTP as I  
17          understand it. 2010 everybody was happy with DINP right?  
18          ALAC's customers were all using DINP.

19          There was no -- there were the toys but toys are  
20          not made in the United States, flooring -- things like that.  
21          Everybody was happy using DINP. The regulatory pressure  
22          starts up I think Eastman said one of the customers in  
23          2010-2011 was the first one to say we are going to be  
24          Terephthalate free, that's really when people started in a  
25          bigger way switching.

1                   And so when you say you know, why is 2010  
2                   important it is because up until 2010 nobody was thinking  
3                   about DOTP really. You know the acquisition of the Sterling  
4                   plant by Eastman is 2012. You know everybody after 2010 is  
5                   saying you know if this pressure continues we all better  
6                   have something that's not DINP.

7                   But in 2010 as far as I know nobody was thinking,  
8                   "Oh my gosh if we don't have an Terephthalate free  
9                   alternative we are going to be out of business."

10                  VICE CHAIRMAN JOHANSON: Maybe you can jog my  
11                  memory but when did Korea begin producing DOTP? I mean it  
12                  is a fairly new product correct?

13                  MR. WINTON: We'll have to go back and check.

14                  VICE CHAIRMAN JOHANSON: Okay that's fine.  
15                  Alright I'm going to ask another question which I raised  
16                  with the Petitioners this morning. Petitioners mentioned on  
17                  page 42 of their Brief in their threat section that China is  
18                  a key destination for the Korean industry but that capacity  
19                  increases in China may mean more competition in that market  
20                  for Korean exports.

21                  Can you comment on the magnitude of that affect?  
22                  What have been the trends in Korea in exports to China?

23                  MR. WEI: Well I could offer some of my  
24                  understanding. I know both -- are we allowed to name names  
25                  of producers?

1 MR. WINTON: If it is not confidential.

2 MR. WEI: LG or Aekyung?..1 because I know both  
3 of them have manufacturing plants of plasticizer in China so  
4 it is a significant market for them to participate to the  
5 extent where they are actually vested in producing in China,  
6 not just to ship products from Korea.

7 And I know as we said earlier that Europe is also  
8 a very important market and India has become an increasingly  
9 important market for them as well. So I don't know if that  
10 answers the question.

11 VICE CHAIRMAN JOHANSON: It touches on it. Miss  
12 Frishman?

13 MS. FRISHMAN: Yes, so China still exports a lot  
14 of finished products and China itself has become an  
15 important consuming market for many products. But today the  
16 majority of plasticizer used in China is still Terephthalate  
17 plasticizer including DOTP and DINP.

18 And of course people in China they also probably  
19 are looking at environmental friendly, greener so the  
20 markets in China -- potential market for DOTP still the  
21 demand is much greater than potential supply.

22 VICE CHAIRMAN JOHANSON: Yes, Mr. Wei?

23 MR. WEI: We don't participate in selling the  
24 products but we do know that on a monthly basis most of  
25 these producers also ship DOTP from Korea to China, because

1 the bulk shipments are easier to handle between Korea and  
2 China -- it's a much shorter distance.

3 It does not require large vessels -- there are  
4 more regional vessels that can easily handle those  
5 shipments.

6 VICE CHAIRMAN JOHANSON: Do you know if there are  
7 any regulatory aspects with using Terephthalates in China?

8 MR. WEI: We believe it is increasing because  
9 China did sign the Paris Treaty and they are trying to do  
10 everything to reduce the emission so all of these  
11 environmental issues are being looked at.

12 Existing laws are being strictly enforced,  
13 particularly if those manufacturers are exporters of their  
14 finished product so they need to meet the regulatory or  
15 environmental regulations of those finished products. So  
16 yes there is an increased emphasis on that.

17 VICE CHAIRMAN JOHANSON: And what is the  
18 situation in Korea? Are there regulations that restrict the  
19 use of Terephthalates and also are there consumer concerns  
20 there which apparently are present in the U.S. market? Are  
21 you all aware of anything along those lines?

22 MR. WEI: Not really.

23 VICE CHAIRMAN JOHANSON: Okay I understand you're  
24 an importer, so I could see that -- that you might not know.  
25 Finally, do you all know if there are any Korean producers

1 who have not responded to questionnaires and these would be  
2 producers of DOTP?

3 MR. WINTON: I don't think the ALAC people know  
4 who has responded to the questionnaires.

5 VICE CHAIRMAN JOHANSON: Oh okay, then.

6 MR. WINTON: We heard earlier today about Hanwha  
7 right?

8 MS. FRISHMAN: Yes we heard earlier today about  
9 Hanwha did not participate. In fact we work with Hanwha and  
10 Hanwha produced very small quantity of DOTP and Hanwha had no  
11 intention to export.

12 And if you look at import data there was a very  
13 small quantity that came in in a very short period because  
14 there was -- some sort of shortage. I don't remember exact  
15 reason and we asked Hanwha to help so that we can fulfill  
16 our commitment to customers but I don't believe there was --  
17 they had any intention to supply U.S. market or of an  
18 availability.

19 That's perhaps the reason they didn't respond.

20 VICE CHAIRMAN JOHANSON: Alright well thank you  
21 for your responses. The yellow light is on so I am going to  
22 stop there. That concludes my questions. I would like to  
23 thank the three of you for appearing here today.

24 CHAIRMAN SCHMIDTLEIN: Thank you, Commissioner  
25 Williamson?

1                   COMMISSIONER WILLIAMSON: Thank you. I just have  
2 one final question actually and it is for you post-hearing.  
3 And again going back to the chart and the gap between the  
4 DOPT and DINP price I guess in late 2016 and it would seem  
5 to me that there was some sort of understanding -- to be  
6 helped by our understanding what is the relative size of the  
7 demand for DOTP and DINP in the U.S.?

8                   Because I assume that it has something to do with  
9 maybe the size of the gaps and all. So I was wondering if  
10 you had anything on that post-hearing it would be helpful to  
11 try to give us a little bit more context about the argument  
12 that you are making.

13                  MR. WINTON: We'd be happy to but I should warn  
14 you that the price trends here are a little different than  
15 price trends we have seen with the confidential data so I am  
16 not sure how much you can read into the gaps.

17                  COMMISSIONER WILLIAMSON: Okay well tell us is  
18 there something that -- what's relevant for our  
19 understanding of this case here and does the volume have --

20                  MR. WINTON: Because we argued about this you  
21 know when we started -- as Lily and I sat down what should  
22 she say to you and we started with the testimony that Lily  
23 hadn't given but her product manager had given at the  
24 Preliminary Conference.

25                  And at that time he said, "DINP is the dominant

1 plasticizer."

2 COMMISSIONER WILLIAMSON: Yes.

3 MR. WINTON: In the U.S. market and so we  
4 discussed can you still say that DINP is the dominant  
5 plasticizer in the U.S. market and to be honest I think the  
6 conclusion we reached was we didn't know if it still is  
7 dominant whatever dominant means. But we will see if we can  
8 find something more helpful but we took out the word  
9 dominant on purpose because we weren't sure whereas the  
10 product manager last fall was confident that we weren't  
11 confident with it now.

12 COMMISSIONER WILLIAMSON: Okay so what relevance  
13 does that understanding -- knowing the difference make?  
14 Help us understand it.

15 MR. WINTON: I don't know if it matters what you  
16 know -- I think the story we all put emphasis on different  
17 points but the story everybody is telling you is until  
18 recently almost everyone was using DINP.

19 At some point in 2013, '14, '15 people switched  
20 over from DINP to DOTP especially in the flooring market.  
21 Not everyone has switched. There are some people who still  
22 -- but that is the story of this case is that switch over  
23 from DINP to DOTP. And as Eastman has also said the reason  
24 people switched to DOTP is because it was economically  
25 efficient which is another way of saying it met the prices

1 that they needed, it was cost competitive.

2 And so that's the story we are telling. When you  
3 look at the confidential data -- I can't go into how it  
4 differs from this but I think you know as you look at the  
5 confidential data, as you look at this data, what you see is  
6 the prices are moving generally together.

7 This data -- this is from a group called the ICIS  
8 and it is based, you know they sort of get a price -- they  
9 don't distinguish between who's price is that, is that the  
10 Eastman price versus an import price, whose price is it --  
11 at least as they have released the data.

12 So you know for your purposes I think you might  
13 want to disaggregate it but leaving all of that aside when  
14 you look at the data I think what you will see is over the  
15 period -- absolutely uncontested the story is customers  
16 moving from DINP to DOTP and where we disagree with  
17 Petitioners is we are saying customers only change if they  
18 feel comfortable that they are getting a price that doesn't  
19 put them at a disadvantage for DOTP.

20 And what Petitioners are saying is it didn't  
21 matter right? It was just done for health reasons. Once  
22 they decided for health reasons they didn't care what the  
23 price -- what they were giving up in terms of dollars to  
24 switch from DINP to DOTP, so that's --

25 COMMISSIONER WILLIAMSON: But aren't you also

1 saying that Eastman tried to encourage this friend and that  
2 had something to do with the price that they were selling  
3 DOTP? Did I understand that correctly?

4 MR. WINTON: I think our understanding of the  
5 market is Eastman was selling DOP and they got basically  
6 taken out of the market by DINP except for there are few  
7 applications where DOP is still considered preferable and  
8 Lily mentioned the blood bath.

9 So Eastman -- and Eastman doesn't produce DINP as  
10 they said they can't produce DINP, they don't have the right  
11 feedstock, whatever. The story is what they told you today  
12 they don't produce DINP.

13 So they look at this and they say you know there  
14 are rumblings about Terephthalates, there are consumer --  
15 whatever the toys and people putting pressure on it and  
16 Eastman goes all in on that and they say this is where the  
17 market is going to go.

18 Whether because they are noble good Samaritans or  
19 whether they are just hard-headed businessmen but they go  
20 all in on this notion that you have to go Terephthalate-free  
21 and they go on the notion that DOTP is Terephthalate-free  
22 which maybe it is, maybe it isn't.

23 But the science of this is -- there are a lot of  
24 disputes about the science of this but as a marketing point  
25 of view Eastman is out at the shows as Lily and Aaron have

1 told me and I think told you, they are at the shows telling  
2 people you have to get out of this Terephthalate thing --  
3 you know it is a health problem.

4 And so that's how they see -- they see that as  
5 they are going to get this plasticizer market back by  
6 pushing the green DOTP product. If they can do it for a  
7 higher price great. But that's not what they are about.  
8 They are about we had the plasticizer -- general plasticizer  
9 market, we have lost it. This is our way back in.

10 And so they go into it and they think you know  
11 people are going to -- sure why not? It doesn't cost more  
12 we are going to switch. But Exxon Mobile says we are not  
13 giving up our market without a fight you know and so there  
14 are the California regulations and you know what Exxon  
15 Mobile appeals it and ties it up in court and it gets it  
16 reversed and then it is reinstated.

17 This is not you know people looking at this and  
18 saying oh my God our children, we have got to stop this.  
19 There is not one person in here who thinks that way.  
20 Everybody is looking at this in terms of you know here's my  
21 market, here's where I can make money, here's where I can  
22 produce efficiently, the customers are looking at this, year  
23 out if it is not going to cost me anything why wouldn't I do  
24 this?

25 If it costs me something then I have to balance

1 do I put the label on it? Do I not put the label on it and  
2 pay the higher price? It's all business decisions. That's  
3 my understanding of what's going on in the market.

4 But to say that you could sell DOTP into that  
5 market that nobody would care what the difference was  
6 between DOTP and DINP prices -- the customers were simply  
7 going to say, "God you are right. I don't care what it  
8 costs me I have got to get out of DINP." That to me is just  
9 economically irrational.

10 COMMISSIONER WILLIAMSON: And some information  
11 about what was actually happening in terms of the relative  
12 volumes by how would we understand that story that you just  
13 told but thank you for the testimony. I have no further  
14 questions.

15 CHAIRMAN SCHMIDTLEIN: Okay, alright Petitioner  
16 Broadbent stepped out. So I guess I have a question. We  
17 don't have any information on the record on DINP prices and  
18 volume I don't think. Did you request the Commission gather  
19 that type of information?

20 MR. WINTON: We did not request that you gather  
21 -- we have submitted not this was indexed -- we submitted  
22 the actual pricing information from ICIS for DINP. You know  
23 and this goes to the question I'm surprised nobody has asked  
24 me this because I always get asked this question.

25 In the preliminary stage there was an argument

1 made by ALAC's previous counsel who has since retired which  
2 is why I am here today, that you should consider DINP and  
3 DOTP to be one like product. The Commission concluded that  
4 that didn't make sense and we are not contesting that at  
5 this stage certainly but you didn't collect -- if you were  
6 at this moment all of a sudden to say, "Oh my God it's one  
7 like product", there's no information on the record that  
8 would let you do that.

9 The issue was raised in the prelim and I think it  
10 was addressed.

11 CHAIRMAN SCHMIDTLEIN: It is an attribution issue  
12 isn't it?

13 MR. WINTON: Yeah so that's our thinking so we  
14 have submitted to you the pricing information we could get  
15 which was the ICIS pricing information and that's in our  
16 pre-hearing Brief.

17 CHAIRMAN SCHMIDTLEIN: Okay, okay, alright I  
18 don't have any further questions. Vice Chairman Johanson?  
19 No -- okay, alright well that brings us to the end of  
20 Commissioner questions do staff have any questions for this  
21 panel?

22 MS. HAINES: Elizabeth Haines, staff has no  
23 questions.

24 CHAIRMAN SCHMIDTLEIN: Do Petitioners have any  
25 questions for this panel?

1 MR. O'BRIEN: No questions.

2 CHAIRMAN SCHMIDTLEIN: Okay thank you. We will  
3 now move to closing statements. Petitioners have 8 minutes  
4 from their direct presentation and 5 minutes for closing for  
5 a total of 13 minutes. Respondents have 28 from direct and  
6 5 for a total of 33 minutes so you do not have to take all  
7 of your time of course. So we will begin with those in  
8 support of the Petition.

9 CLOSING REMARKS OF KEVIN M. O'BRIEN

10 MR. O'BRIEN: Thank you, Madame Chairman, and  
11 Commissioners for your time and attention today. I would  
12 like to briefly address some of the testimony that you've  
13 just heard from the ALAC panel, and then briefly summarize  
14 how we see the investigation.

15 The issue of whether or not DOTP is a commodity,  
16 and whether it is interchangeable among suppliers, whether  
17 the domestic producer or the Korean exporters, is not in  
18 dispute. The evidence overwhelmingly shows that this is a  
19 commodity product and that domestic and subject merchandise  
20 are interchangeable. We've also heard both the Eastman and  
21 ALAC witnesses that it is a particularly price-sensitive  
22 product.

23 Now, on the issue of DINP, the record's clear  
24 that customers are moving away from phthalate products. But  
25 there are a couple of key points, I think, that need to be

1 observed. One is the DINP and DOTP co-existed in the U.S.  
2 market for many decades, and this movement is relatively  
3 recent and it is due to the health hazards associated with  
4 phthalates.

5 So DINP and DOTP are not interchangeable. There  
6 is a one-way change going on, notwithstanding some testimony  
7 from the ALAC witnesses that perhaps some customers have  
8 varied, the overwhelming evidence, including the entire  
9 evidence in the staff report, is that this is a one-way  
10 switch.

11 You heard testimony from Eastman that they are  
12 not aware of a single incident of a customer that switched  
13 from DINP to DOTP, switching back, nor a customer from DOTP  
14 switching to DINP. It simply doesn't happen.

15 So we're dealing with a commodity product, and  
16 the question was asked, "well, what is unusual about this  
17 particular product?" And there are at least the following  
18 three things.

19 During the period of investigation, raw material  
20 prices went down, and raw material prices went up. When  
21 pricing went down, it is true that the price of DOTP also  
22 fell, but it fell by a much greater amount than the drop in  
23 raw materials.

24 But of even greater concern, when the raw  
25 material prices rose, Eastman was not able to pass any price

1 increases along to its customers. So this is not acting  
2 like a commodity market. It's acting like a one-way spiral  
3 to the bottom.

4 Also, we're dealing with a market, because of  
5 the sharp growth in demand, where prices should have  
6 increased, profits should be healthy and strong. Instead,  
7 as the Eastman financial information shows, the opposite  
8 occurred. Such that, by the end of the period of  
9 investigation, there was virtually no profit left in the  
10 business. From a rather strong situation just a few years  
11 earlier. This is due to unfair pricing. This is not due to  
12 any other reason.

13 Now, the degree of the margin is, of course, a  
14 matter for the Commerce Department to sort out. But the  
15 evidence of the inability to pass on price increases to the  
16 market until after the petition was filed and near the time  
17 that Commerce issued its preliminary determination, speaks  
18 very loudly as to what has happened in the market during the  
19 period of investigation.

20 There was simply no availability to pass price  
21 increases onto customers. And that was due to the presence  
22 of the Korean products in the market, the subject  
23 merchandise.

24 Now, there was mention of the expansion plans by  
25 Eastman, and certainly capacity has expanded. But further

1 expansion plans have been moth-balled. There's no business  
2 commercial justification for continuing to increase capacity  
3 where the profitability has simply been removed.

4 I'd like to address some of the points that were  
5 brought out by the ALAC testimony, and particularly the  
6 question and answer. There is, of course, a separate  
7 narrative that ALAC is presenting to the Commission;  
8 however, we believe our narrative is firmly grounded in the  
9 facts.

10 ALAC says more or less that Eastman is doing  
11 great. But Slide 12 of our presentation show that profits  
12 are down, net sales values are down, net cash flow, prices,  
13 market share is flat, and return on assets are down. This  
14 is not a sign of a healthy industry.

15 On the issue of lost sales and lost revenue,  
16 ALAC says that they're not material, but that's hardly the  
17 case. We have tens of millions of dollars documented in  
18 lost sales and lost revenue. And it is indicative that in  
19 order to keep or maintain market share, Eastman had to lower  
20 its price in the typical horns of a dilemma, to  
21 maintain our price and lose the sale outright or lower the  
22 price and try and keep the business. There are repeated  
23 evidence of both situations going on, too, and millions of  
24 dollars being lost.

25 The record says that twenty of twenty-four

1       quarters, Korean product undersold domestic product. ALAC  
2       says that's not pervasive. I leave it to the Commission to  
3       assess whether or not it is. Any way you look at it, the  
4       Korean product undersold the domestic product by, in some  
5       cases, by very large percentages, and at the time, the  
6       Korean product was gaining market share.

7               Now, on the issue of whether to include freight  
8       or not, the Commission has collected data consistently now  
9       from both the Korean exporters and from the importers and  
10      from the domestic producers. The vast majority of customers  
11      pay for product delivered. So freight is appropriate to  
12      include, and that gives you the true point of price  
13      competition.

14             The point was also made that, the questionnaire,  
15      the staff report notes that seven in ten importers say the  
16      price of DINP does not affect the price of DOTP. Now that's  
17      what the questionnaire responses themselves say, and there's  
18      simply no evidence. There's a narrative without factual  
19      grounding that's being used to replace hard evidence.

20             The point was made by ALAC that some customers  
21      want a second source. Certainly. That's one of the reasons  
22      Eastman set up the Texas facility was as a secure second  
23      source, such that it can supply product either from  
24      Tennessee or from Texas. In the event of an outage in one,  
25      the other one would continue.

1                   Now, the other points worth making, about the  
2 chart that was handed out by ALAC, showing the DOTP and DINP  
3 and crude oil prices, first of all, basing it on ICIS data  
4 is not what the Commission should be resting its conclusions  
5 on.

6                   The Commission sent out questionnaires, got  
7 detailed responses back, very reliable data, and coming in  
8 with ICIS data, which frankly is unclear and unreliable in  
9 terms of what's in it and what's not in it, and who was  
10 surveyed and who responded over which time period, is not  
11 the way the Commission should be basing its decisions.

12                   But to the extent the Commission wants to look  
13 at the chart, it will see that during long periods of time,  
14 the pricing of DOTP was moving in the opposite direction of  
15 DINP. In fact, they cross during June/July of 2016. They  
16 are not following one another. They're diverging. And  
17 they're also diverging with respect to the price of crude  
18 oil.

19                   So the idea that these are closely tracking one  
20 another is more a function of the scale that's being used on  
21 the chart than the actual behavior. So what's much more  
22 important is the actual responses that the Commission has  
23 received. And to the extent any weight is given to this  
24 chart for the purpose of saying that they correlate,  
25 correlation is not causation.

1           You need to show a linkage between the pricing  
2           of these products and the effect on the domestic industry.  
3           And there simply is no cause and effect that's been shown.  
4           At best, you see lines that are moving sometimes in the same  
5           direction, sometimes in the opposite direction.

6           So the conclusion by the -- on this point -- by  
7           the purchasers is clear. Fifteen of nineteen responding  
8           purchasers reported that DINP prices do not affect DOTP.  
9           That's the meaningful data that the Commission should rely  
10          on.

11          With respect to competition between the Korean  
12          and domestic product, the Commission got responses from ten  
13          U.S. purchasers. Nine of ten U.S. purchasers said the  
14          Korean product was priced lower. Nine of ten. And seven  
15          said that price was the primary reason for their purchase.  
16          Eight said that Eastman reduced its product in order to  
17          compete with the lower Korean imported product. This is  
18          compelling evidence and it is right in the staff report for  
19          the Commission to ground its determination on.

20          A final point of this topic. On the competition  
21          between DINP and DOTP. I believe it's been explained that  
22          this is a competition that's driven by much more than  
23          pricing, or I shouldn't say competition. These are  
24          decisions that are made. When a company decides it's not  
25          going to use a toxic product in favor of a nontoxic product,

1       there are many more factors that go into the  
2       decision-making. That's what we heard again and again.

3                       And that's what the flooring industry did  
4       uniformly with Home Depot, Lowe's, Menard's, etcetera. And  
5       this decision was made with the consumer in mind, with the  
6       brand integrity in mind, and with many other factors in  
7       mind. And it's to simply reduce it to a factor of price, is  
8       simply to miss the point and to miss the reason for the  
9       movement.

10                      On the issue of BASF, the Commission heard no  
11       first-hand evidence today. Eastman properly said we don't  
12       know what BASF is doing. They're not in the room. Not even  
13       a customer of BASF was in the room to give secondhand  
14       information.

15                      What you have heard is speculation. BASF is, of  
16       course, a world-class company, but we don't know when  
17       they're gonna start. We don't know what their capacity is.  
18       We don't know what their expected production is going to be,  
19       what their ramp-up timeline's gonna be.

20                      The record doesn't include that information, nor  
21       has the Commission heard any of that today. Why BASF has  
22       not come to the hearing room? Would again be more  
23       speculation. BASF is not part of the domestic industry, and  
24       they should not factor into the Commission's determination  
25       on any threat level.

1                   So in conclusion, I would say that the material  
2                   injury does not need to be the primary cause of injury. It  
3                   simply has to be a not-insignificant cause of injury. And  
4                   we believe that the record compellingly makes that  
5                   demonstration. Thank you very much.

6                   CHAIRMAN SCHMIDTLEIN: Thank you.

7                   MS. BELLAMY: Closing remarks on behalf of  
8                   Respondent, Jeffrey M. Winton, Law Offices of Jeffrey M.  
9                   Winton, PLLC. You have 33 minutes.

10                   CLOSING REMARKS OF JEFFREY M. WINTON

11                   MR. WINTON: 33 minutes. God, I wanna save  
12                   this for the next steel hearing, so I can actually get a  
13                   chance to talk. I've been doing these cases for a very long  
14                   time. I actually -- I saw a picture of the old ITC building  
15                   and I think I was at the last hearing held in the old ITC  
16                   building.

17                   And in those days, the main issue that all the  
18                   Commissioners -- there's a terrible fight, actually, among  
19                   the Commissioner over what they called elasticity analysis.  
20                   I don't know if any of you remember the debates -- I feel  
21                   old for remembering this.

22                   But there was a Commissioner who had been an  
23                   Economics professor, and he thought you should address these  
24                   cases using a sort of Econ 101 model, you know, you had to  
25                   measure elasticity -- and the legacy of that is that your

1 staff report still has elasticity estimates in the report,  
2 although I don't think anyone in the Commission uses the  
3 model, and the courts have said elasticities are great but  
4 the statute tells you how to look at cases, and that's what  
5 you have to do.

6 But I was reminded of this because a lot of what  
7 we're talking about today comes down to how you understand  
8 markets work. And without suggesting that you need to get  
9 into econometrics, I think still there are issues about how  
10 markets work, and there's a fundamental disagreement, I  
11 think, that underlies why--apart from the fact that Mr.  
12 O'Brien and I are paid to disagree--why we actually  
13 disagree.

14 He told you -- what is the number? Fifteen out  
15 of nineteen? I don't remember. Eleven out of fifteen.  
16 Sorry. I don't mean to -- I'm getting old and I can't keep  
17 numbers in my head. Some number of purchasers said "doesn't  
18 matter, DINP prices are irrelevant." But there are a number  
19 of producers, a large minority who say it does matter.  
20 Right?

21 So you have some customers, it does matter.  
22 Some customers are saying, "Wait a second. I'm not paying  
23 more for DOTP than I'm paying for DINP." That's in the  
24 record. Mr. O'Brien says, "Well, but it's not that many."

25 And the answer, at least when I learned

1 economics, and I think it's still taught this way, prices  
2 are determined, not by every customer, but by the marginal  
3 customer. There are always customers who are willing to pay  
4 more, but the market price is determined by that last  
5 customer who you get to make the purchase. That's the one  
6 you have to persuade.

7           And then that sets the market price and  
8 everybody pays the market price, and you have consumer  
9 surplus. The guy who would've paid more, but gets a lower  
10 price because he benefits from that last marginal purchaser.  
11 That's standard economic theory, and it's a standard  
12 understanding of how markets work.

13           Now there could be market imperfections, but we  
14 haven't heard about that. We haven't heard that this -- no  
15 customer ever knows what any other customer pays. We  
16 haven't heard anything like that, right? We haven't heard  
17 anything about "we keep our customers, you know, they're all  
18 --

19           Well, you know, we did hear -- Lily said she has  
20 one customer who actually doesn't care what the price is, he  
21 just cares about quality, but most of the customers -- they  
22 all say "we care about price," right? They all care about  
23 price.

24           And there are a number of them that care about  
25 the price competition, and they're not gonna pay more for

1 DOTP than DINP. And it's my understanding that that sets  
2 the market price. But even if you don't believe that,  
3 there's another aspect -- there's a couple of aspects of  
4 this case that I think should worry you.

5           One is the testimony -- and it's not, well, you  
6 know, certainly in ALAC's case they said, "How do we sell  
7 DOTP? We sell it pretty much just to the people who used to  
8 buy DINP from us." Right? It's secondhand, but according  
9 to what we've heard through BASF, that's what BASF is doing.  
10 They're selling DOTP to customers that used to buy DPHP?  
11 Sorry. This is a touch case for me. Numbers and acronyms.  
12 But that's who BASF is saying.

13           And if you want to understand what BASF is  
14 doing, why they imported, who they sell to, I'd suggest you  
15 look at their questionnaire response because they tell you  
16 in their questionnaire response what they were doing. I  
17 can't tell you. Aekyung tells you in its questionnaire  
18 response, why it expects its future sales to be based on  
19 what it's been told by BASF. All part of the record.

20           Why isn't BASF here? Well, I assume that BASF,  
21 you know, they're gonna be a U.S. producer, we understand,  
22 according to the alert today. They're gonna be a U.S.  
23 producer soon and I imagine that they're not gonna come here  
24 and help me at all in this case, 'cuz why should they?

25           And if I were Aekyung and I was really planning

1 to take over the U.S. market, I wouldn't have sold to BASF.  
2 Why would I help a competitor in the U.S. market if it's my  
3 goal to take over the U.S. market?

4 The stories you're hearing don't make sense.  
5 The point of competition in this case, according to all of  
6 the testimony, is people switching from DINP to DOTP.  
7 That's where the competition has happened. And people  
8 wondering, "Does it make sense for me to switch?" That's  
9 what we hear. We don't hear a lot about, you know, somebody  
10 buying, really switching suppliers, at least from ALAC.  
11 There's some anecdotal evidence, but it's not most of what's  
12 going on in this case.

13 And so the final, not final, the almost-final  
14 point. Have I used up my 33 minutes? All right. My  
15 almost-final point is, while you have this -- the point of  
16 competition is this swap from DOTP to DINP, and there was a  
17 very telling discussion -- and I think it was -- I don't  
18 remember which of the Commissioners asked, I think it was  
19 Commissioner Williamson, but I apologize if I'm blaming you  
20 incorrectly -- said, "If you look at this plasticizer  
21 market, is it growing, is it shrinking?" And the answer is  
22 plasticizers are very stable.

23 The overall market, they're switching within the  
24 plasticizer market, but if you look at plasticizers as a  
25 whole, it's very stable. And what I found really

1 interesting as I was listening to the answers by Eastman, by  
2 my client, none of the witnesses could seem to keep  
3 straight, whether they were talking about DOTP or  
4 plasticizers in general.

5 It just, they kept switching back and forth and,  
6 you know, you had to sort of redirect them, because the  
7 answer, and that's because everybody really looks at this as  
8 a plasticizer market. And so when Eastman says to you,  
9 "goodness, the market's taking off, we oughta have pricing  
10 power," that's not true.

11 Because the market as a whole is very stable and  
12 they're competing within that general broader market to take  
13 shares from another supplier in the same market and because  
14 of the demand isn't increasing, there's no reason to expect  
15 prices to be going up. On the other hand, cost, pressure,  
16 competition, all of those things, you'd expect prices to go  
17 down.

18 One almost-final point, when prices are going  
19 down, there's an interesting accounting issue, which we  
20 touched on in our brief, but I won't say why. Which is,  
21 most companies value their materials at historical cost.  
22 All right? And when you use them, you assume that you use  
23 the ones that you purchased earlier.

24 So as raw material costs go down, your costs  
25 don't go down as quickly as an accounting matter, your costs

1 don't go down as quickly. Because you're using, in account  
2 sense, the stuff you bought in the past when raw materials  
3 cost more. But if you're selling in a market where people  
4 have contracts based on public index, published indexes for  
5 raw material feed stocks, where people know what's going on  
6 with crude oil and say, you know, the floor is not the  
7 chair, it's the floor. If I did that wrong? Sorry.

8           Your prices move much more quickly than your  
9 costs do, right? Because your costs have this historical,  
10 from accounting purposes, even though every day when you  
11 purchase new materials, your cost is much lower, but from an  
12 account sense, when you use FIFO accounting, so it's not  
13 surprising when prices of raw materials are dropping  
14 quickly, when sales prices for the finished product are  
15 based on market indexes, to see that companies look like  
16 they're losing money.

17           But it just means that in the future, if prices  
18 go up and raw material costs go up, their accounting costs  
19 will go up more slowly, and they make money. This is, you  
20 know, the classic issue in accounting. Do you use FIFO, do  
21 you use LIFO, replacement costs, all these things?

22           And I think that's an issue in this case, the  
23 Commission, you know, should look into and try to understand  
24 it, but in the end, it comes down to this, how do you get  
25 people to switch from DINP to DOTP and the answer according

1 to Eastman is very simple. You offer something that is  
2 economically efficient, right?

3 That's what they said. You can't sell DINCH,  
4 'cuz that's not economically efficient. But you can sell  
5 DOTP in place of DINP 'cuz that's economically efficient.  
6 That's what Eastman said and it's what I've been telling you  
7 as well. This is a case about price competition, leading to  
8 people to switch from one plasticizer to a different one.  
9 For good reasons, for bad reasons, that's all this case is  
10 about. Thank you very much.

11 CHAIRMAN SCHMIDTLEIN: All right, thank you, Mr.  
12 Winton. So this brings us to the end of our hearing.  
13 Post-hearing briefs, statements responsive to questions and  
14 requests of the Commission and corrections to the transcript  
15 must be filed by June 20th, 2017.

16 Closing of the record and final release of data  
17 to parties is July 14th, 2017, and final comments are due  
18 July 18th, 2017. I'd like to thank all the witnesses again  
19 for appearing here today and helping us understand this  
20 case. And with that, this hearing is adjourned.

21 (Whereupon, at 3:26 p.m., the hearing was  
22 adjourned.)

23  
24  
25

## CERTIFICATE OF REPORTER

TITLE: In The Matter Of: Dioctyl Terephthalate (DOTP) from Korea

INVESTIGATION NOS.: 731-TA-1330

HEARING DATE: 6-13-17

LOCATION: Washington, D.C.

NATURE OF HEARING: Final

I hereby certify that the foregoing/attached transcript is a true, correct and complete record of the above-referenced proceeding(s) of the U.S. International Trade Commission.

DATE: 6-13-17

SIGNED: Mark A. Jagan

Signature of the Contractor or the  
Authorized Contractor's Representative

I hereby certify that I am not the Court Reporter and that I have proofread the above-referenced transcript of the proceedings of the U.S. International Trade Commission, against the aforementioned Court Reporter's notes and recordings, for accuracy in transcription in the spelling, hyphenation, punctuation and speaker identification and did not make any changes of a substantive nature. The foregoing/attached transcript is a true, correct and complete transcription of the proceedings.

SIGNED: Christopher Weiskircher  
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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.

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