

THE UNITED STATES INTERNATIONAL TRADE COMMISSION

In the Matter of:)	
)	Investigation Nos.:
CITRIC ACID AND CERTAIN)	701-TA-456 and
CITRATE SALTS FROM)	731-TA-1151-1152
CANADA AND CHINA)	(Final)

Tuesday,
April 7, 2009

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

The hearing commenced, pursuant to notice, at 9:30 a.m., before the Commissioners of the United States International Trade Commission, the Honorable DANIEL R. PEARSON, Vice Chairman, presiding.

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

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Countervailing Duty Orders:

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I N D E X

	PAGE
OPENING STATEMENT OF NEIL R. ELLIS, ESQUIRE, SIDLEY AUSTIN LLP	12
OPENING STATEMENT OF DONALD B. CAMERON, ESQUIRE, TROUTMAN SANDERS LLP	17
TESTIMONY OF NEIL R. ELLIS, ESQUIRE, SIDLEY AUSTIN LLP	21
TESTIMONY OF MICHAEL R. BARONI, PRESIDENT, SPECIALTY FOOD INGREDIENTS, ARCHER DANIELS MIDLAND COMPANY	22
TESTIMONY OF ERIC S. WARNER, JR., PLANT MANAGER, ARCHER DANIELS MIDLAND COMPANY	28
TESTIMONY OF LARRY RICHARDSON, STAFF REPRESENTATIVE, UNITED STEEL WORKERS	30
TESTIMONY OF ANDREW A. SZAMOSSZEGI, MANAGING CONSULTANT, CAPITAL TRADE, INC.	40
TESTIMONY OF MARK CHRISTIANSEN, ACIDULANTS SALES MANAGER, CORN MILLING, CARGILL, INCORPORATED	43
TESTIMONY OF JACK STALOGH, VICE PRESIDENT, ACIDULANTS PRODUCT LINE MANAGER, R&D DIRECTOR, BIOTECHNOLOGY DEVELOPMENT CENTER, CARGILL, INCORPORATED	47

I N D E X

	PAGE
TESTIMONY OF PETER G. LORUSSO, VICE PRESIDENT, SALES AND MARKETING, TLC INGREDIENTS	52
TESTIMONY OF CHARLES L. ANDERSON, PRINCIPAL, CAPITAL TRADE, INC.	57
TESTIMONY OF JOHN OAKLEY, BUSINESS DIRECTOR - FOOD ADDITIVES, SPECIALTY FOOD INGREDIENTS, ARCHER DANIELS MIDLAND COMPANY	81
TESTIMONY OF DONALD B. CAMERON, ESQUIRE, TROUTMAN SANDERS LLP	161
TESTIMONY OF ERIC SHAO, GENERAL MANAGER, RZBC CO., LTD.	163
TESTIMONY OF DAN RAINVILLE, PRESIDENT, JBL INC.	167
TESTIMONY OF KENNETH BUTTON, SENIOR VICE PRESIDENT, ECONOMIC CONSULTING SERVICES LLC	171
TESTIMONY OF A. MATT SMITH, SENIOR PURCHASING MANAGER, P&G	175
TESTIMONY OF BARRY TAYLOR, PURCHASING DIRECTOR, PEPSICO	188
TESTIMONY OF KLAUS HOFMANN, SENIOR VICE PRESIDENT, GLOBAL PURCHASING, RECKITT BENCKISER GROUP PLC	192

I N D E X

	PAGE
TESTIMONY OF TOM PENSAK, DIRECTOR, SALES AND MARKETING, VERTELLUS PERFORMANCE MATERIALS, INC.	197
TESTIMONY OF ROBERT W. BLOOM, PRESIDENT AND CEO, FBC INDUSTRIES, INC.	202
TESTIMONY OF ARTHUR J. LAFAVE III, ESQUIRE, LAFAVE ASSOCIATES	211
TESTIMONY OF MICHAEL T. SHOR, ESQUIRE, ARNOLD & PORTER LLP	211
TESTIMONY OF JULIE C. MENDOZA, ESQUIRE, TROUTMAN SANDERS LLP	216
TESTIMONY OF JENNIFER LUTZ, SENIOR ECONOMIST, ECONOMIC CONSULTING SERVICES LLC	222
TESTIMONY OF JAMES HODGES, PURCHASING GROUP MANAGER, P&G	226
TESTIMONY OF FREDERICK P. WAITE, ESQUIRE, VORYS, SATER, SEYMOUR AND PEASE LLP	251
TESTIMONY OF LAWRENCE R. WALDERS, ESQUIRE, SIDLEY AUSTIN LLP	258
TESTIMONY OF PATRICK MAGRATH, ECONOMIST, GEORGETOWN ECONOMIC SERVICES	282

I N D E X

	PAGE
TESTIMONY OF GEORGE THOMPSON, ESQUIRE, NEVILLE PETERSON LLP	302
CLOSING STATEMENT OF NEIL R. ELLIS, ESQUIRE, SIDLEY AUSTIN LLP	312
CLOSING STATEMENT OF FREDERICK P. WAITE, ESQUIRE, VORYS, SATER, SEYMOUR AND PEASE LLP	318

1 Finally, if you will be submitting documents
2 you wish classified as business confidential your
3 requests should comply with Commission Rule 201.6.

4 Madam Secretary, I have a couple preliminary
5 matters. First, both Chairman Aranoff and
6 Commissioner Okun asked me to express their regrets
7 that they're unable to be here today.

8 Now, I know them both very well. They're
9 extremely thorough in their preparation for the votes.
10 I know that both of them are going to read the hearing
11 transcript today. Unfortunately, that has the effect
12 of putting me under even greater pressure to try to
13 speak in complete sentences because I come across even
14 more inarticulate on paper than I do in person.

15 The second item. I'd like to welcome
16 Professor Williams and his students in International
17 Business Law who are here with us today from
18 Elizabethtown College in Elizabethtown, Pennsylvania.
19 I'm very glad to have you here.

20 We practice a relatively small slice of
21 international business law, but take a good look at
22 it. We have a very interesting hearing for you today.
23 I think that you'll enjoy it.

24 Madam Secretary, are there any other
25 preliminary matters?

1 MS. ABBOTT: Yes. Yes, Mr. Chairman. With
2 your permission, we will add Brian Tschosik, Division
3 Controller for Archer Daniels Midland Company, to page
4 2 of the hearing.

5 VICE CHAIRMAN PEARSON: Without objection.
6 Let's then proceed to the opening remarks.

7 MS. ABBOTT: Opening remarks on behalf of
8 Petitioners will be by Neil R. Ellis of Sidley Austin.

9 VICE CHAIRMAN PEARSON: Welcome, Mr. Ellis.
10 Please proceed.

11 MR. ELLIS: Thank you. Good morning, Mr.
12 Vice Chairman, members of the Commission and staff and
13 also the absent members.

14 In 2000, the Commission voted negative in
15 the previous investigation of citric acid from China.
16 Since that time, conditions in the U.S. industry have
17 declined to an unsustainable degree. In every quarter
18 of every year from 2001 until the time that this
19 investigation was initiated, the U.S. industry lost
20 money. The operating losses have been large and
21 consistent, threatening the very viability of the
22 industry.

23 There has been virtually no investment in
24 new capacity by the industry since then. In fact, the
25 minimal investment has not kept pace with

1 depreciation, meaning that the companies are running
2 their assets into the ground.

3 So what has caused this severe and long-term
4 injury? The nexus with unfairly traded imports from
5 China and Canada is clear. Imports from China began
6 to grow rapidly in 2002, and in the same year the
7 Austrian manufacturer, Jungbunzlauer, completed a
8 large greenfield plant in Canada right on the U.S.
9 border with capacity far greater than Canadian demand.

10 The intent was obvious from the outset that
11 JBL would grow its market share in the U.S. with
12 citric acid produced at its Canadian plant, and this
13 in fact is exactly what has occurred. The result has
14 been a correlation over time between the financial
15 harm suffered by the U.S. industry and the flood of
16 aggressively priced imports from China and Canada.

17 Imports reached a level of 2007 that was
18 several times larger than the first quarter of '02.
19 The market share captured by subject imports is very
20 large, almost 40 percent of American apparent
21 consumption.

22 Looking at a graph we have prepared, it
23 shows operating losses against import market share for
24 all of the Commission investigations since 2000 for
25 which such information is available. The further to

1 the upper right corner a case appears the greater the
2 losses and the higher the import penetration.

3 You can see where this case lies on the
4 graph. It is one of the most severe combinations of
5 those two factors confronted by the Commission. For
6 reasons that we will be discussing with you this
7 morning, this correlation is not a coincidence.

8 Importantly, the Chinese and Canadian
9 imports serve the entire range of U.S. end uses and
10 markets. The questionnaire responses have shown that
11 Chinese product is heavily involved in food and
12 beverage parts of the U.S. market. That alone is
13 proof of an important factor in this case that quality
14 differentials among the citric acid producers in the
15 U.S. and the subject countries are insignificant.

16 The Chinese exporters compete directly with
17 the U.S. producers in this key part of the U.S.
18 market. Thus, factors that may have appeared
19 important in the preliminary determination have been
20 laid to rest, we submit.

21 The fact that Chinese imports are sold
22 throughout the full range of end uses belies the
23 argument that caking of the product somehow makes it
24 unsuitable for food and beverage applications.
25 Likewise, evidence of overselling that appeared in the

1 preliminary data has been replaced in large part by
2 substantial underselling.

3 Further, as to the price effect of subject
4 imports, the causal connection is shown by what has
5 happened since the unfairly traded imports were
6 restrained by the Commerce Department's preliminary
7 determination in late '08. Imports plummeted from
8 China, and prices rose significantly.

9 In the annual negotiations at the end of
10 2008, for the first time in many years the U.S.
11 industry was able to negotiate prices that enabled
12 them to obtain a reasonable return. The only change
13 as compared to the negotiations the previous year was
14 the restriction on unfair imports, demonstrating the
15 connection.

16 Nor can the fact that there has been only a
17 flicker of life in the U.S. industry in '08 lead to a
18 conclusion that there's no injury. This recent
19 development is clearly the result of the effects of
20 the filing of our petition and the preliminary
21 determination. The data you gathered in the
22 preliminary phase of this investigation show that the
23 trends from three years before '08 were relentlessly
24 negative. That is the real story of this industry, a
25 story that stretches back for years.

1 One last point. Turning to threat, let's
2 look to the imminent future in light of the staggering
3 growth in capacity and inventories of the Chinese
4 industry. The increasing capacity over the past three
5 years alone is almost sufficient to serve the entire
6 U.S. apparent consumption and, like Canada, Chinese
7 capacity far exceeds domestic demand.

8 Further, the clarity of the threat is
9 revealed in the recent experience around the globe.
10 Two of the U.S. producers before us today have plants
11 shut down in Europe in the face of massive growth of
12 imports from China as to which the EC recently found
13 injurious dumping. The same is true as to other
14 production facilities around the globe such as India,
15 Egypt and the Czech Republic.

16 The threat of what will occur in the United
17 States is not conjecture, not supposition. It is
18 before our eyes. Thank you.

19 VICE CHAIRMAN PEARSON: Thank you, Mr.
20 Ellis.

21 MS. ABBOTT: Opening remarks on behalf of
22 Respondents will be by Donald B. Cameron, Troutman
23 Sanders.

24 VICE CHAIRMAN PEARSON: Good morning, Mr.
25 Cameron. Good to have you here, even if you seem to

1 be moving just a bit slowly.

2 MR. CAMERON: It was utter stupidity, and
3 that's not counting on my time.

4 VICE CHAIRMAN PEARSON: Please begin when
5 you're ready.

6 MR. CAMERON: It's nice to see you all
7 actually, and I'm feeling great.

8 Look, Petitioners have posed to you a rather
9 simple case. Citric acid is a commodity product.
10 Imports are massively underselling domestic producers
11 in increasing quantities and driving them out of the
12 market.

13 But the record compiled by the Commission
14 doesn't support this argument, so we ask you to listen
15 carefully to their testimony and compare it to the
16 record. The law and the Commission's own practice are
17 clear. The Commission may not simply assume causation
18 based on asserted global overcapacity and the fact
19 that imports are present in the market.

20 The Commission has never bought into that
21 approach, and it's developed its own analytical tools
22 over time. Nowhere in the Petitioners' brief do you
23 find any serious attempt to use those tools to
24 establish causation.

25 This is the problem with the volume and the

1 price arguments of the Petitioners. Their arguments
2 cannot be squared with imports' overselling, domestic
3 producers' refusal or inability to supply or the
4 nonprice factors that make U.S. producers the
5 preferred source of supply.

6 Petitioners have been given a full
7 opportunity to shape the record in this final
8 investigation. All of their requests to change the
9 pricing categories and add freight to the prices were
10 accommodated, yet the final record continues to
11 conclusively demonstrate that subject imports are not
12 having a material volume or price effect on the U.S.
13 industry, just like the preliminary record did.

14 Petitioners' arguments transparently reveal
15 their concern with the final record. They argue that
16 the Commission should base its determination on the
17 mere existence of subject imports in the market
18 regardless of whether they are having a material
19 volume or price effect. Don't think so? Look at that
20 Exhibit No. 1 that you're going to hear about in their
21 testimony.

22 They also appear to advocate a POI
23 stretching back about eight years. Look at their
24 argument on meager confirmed lost sales data. They
25 can't reconcile their arguments with the law because

1 the fact is that subject imports have played a
2 positive role in the U.S. market to fill in structural
3 supply shortfall, and those subject imports have
4 entered at market prices that are set by the price
5 leaders in the market, the U.S. industry.

6 Let's look at the facts. U.S. capacity is
7 incapable of supplying citric acid demand in this
8 market, and the U.S. market continues to grow. The
9 U.S. industry has participated fully in this growing
10 market.

11 The U.S. industry appears to be operating at
12 full effective capacity, but the total domestic
13 capacity is far below domestic demand, yet U.S.
14 producers consistently export 25 percent of their
15 production at AUVs that are lower than the AUVs for
16 domestic shipments.

17 We have all heard about industries like
18 steel where the economic slowdown has reduced capacity
19 utilization as demand has evaporated, but not this
20 industry where they are still turning away purchasers
21 who have growing demand needs, not less. All evidence
22 is that the U.S. industry is already fully booked for
23 2009 and purchasers were turned away. So much for
24 threat.

25 Subject imports operate at high capacity

1 utilization, and there are a limited number of Chinese
2 producers permitted to export any product. Citric
3 acid is a product where the domestic industry sells
4 out its capacity, and imports generally oversell
5 domestic producers.

6 It's strange. Petitioners call citric acid
7 a simple commodity, yet purchasers overwhelmingly
8 state that quality, availability, reliability of
9 supply are more important than price. Now, why is
10 that if this is a simple commodity?

11 When asked about price leadership,
12 purchasers overwhelmingly responded that price leaders
13 were domestic producers. In response to the price
14 leadership question, Petitioners cite to evidence that
15 Chinese producers are the price leaders in the spot
16 market. We ask the Commission to look carefully at
17 who is competing at meaningful commercial levels in
18 the spot market. Is that really evidence of anything?

19 As for sales to distributors, we ask the
20 Commission to look carefully at who is competing
21 meaningfully at commercial levels in this segment.
22 When the Commission looks at the areas where U.S.
23 producers compete with subject imports it's clear that
24 imports generally oversold domestic producers
25 throughout the POI.

1 Imports supplemented domestic supply that
2 was incapable of serving the market. Big purchasers
3 have relied on imports as backup supply to account for
4 the inevitable breakdowns that occur in a relatively
5 fragile domestic supply chain. The cause of problems
6 faced by individual producers lies with the structure
7 of the domestic producers themselves.

8 The final record confirms there's no
9 material injury or threat by reason of subject
10 imports. Thank you very much for your time.

11 VICE CHAIRMAN PEARSON: Thank you, Mr.
12 Cameron.

13 MS. ABBOTT: Will the first panel in support
14 of the imposition of antidumping and countervailing
15 duty orders please come forward and be seated?

16 Mr. Chairman, all witnesses have been sworn.
17 (Witnesses sworn.)

18 VICE CHAIRMAN PEARSON: Mr. Ellis, are you
19 ready to begin?

20 MR. ELLIS: We are ready.

21 VICE CHAIRMAN PEARSON: Okay. Please
22 proceed.

23 MR. ELLIS: Thank you, Mr. Chairman and
24 members of the Commission. Our first witness this
25 morning is Michael Baroni, President of Specialty Food

1 Ingredients of the Archer Daniels Midland Company.

2 Michael, take it away.

3 MR. BARONI: Good morning. At ADM my
4 responsibilities include the citric acid product line,
5 along with some other product areas within the group.
6 ADM has been in the citric acid business since 1990.
7 That was when our company purchased the business from
8 Pfizer.

9 That purchase included two world class
10 citric acid plants, one in Ireland and the other in
11 Southport, North Carolina. We have since closed the
12 plant in Ireland. It was a victim of low-priced
13 Chinese acid that flooded Europe from the mid 1990s
14 onward. And, as Eric Warner, our plant manager in
15 Southport, will tell you, our plant there is barely
16 hanging on for dear life.

17 Let me begin by stating something that
18 really everyone in this industry knows very well.
19 Citric acid and salts are a true commodity. This
20 petition covers citric acid, sodium citrate and
21 potassium citrate, but almost all of the product sold
22 in the U.S. is citric acid.

23 As shown in the chart before you, it is sold
24 to manufacturers and distributors in very few forms
25 and types. Everyone that sells citric acid in the

1 United States sells according to the same grade, the
2 same granulation and even in the same packaging forms.

3 This chart actually exaggerates the degree
4 of product differentiation because the vast majority
5 of products sold in the United States, whether
6 produced by the three U.S. companies, Jungbunzlauer in
7 Canada or importers of products manufactured in China,
8 is anhydrous citric acid sold in bags.

9 We've brought samples of citric acid
10 granular and fine granular from all three producers
11 and from a Chinese producer. As you can see, they all
12 look the same, and if you look a little closer you'll
13 see they all pour exactly the same. There's really no
14 difference between them.

15 Although citric acid requires technical
16 expertise to produce, from a marketing standpoint it's
17 a very simple product. It's much like sugar. It
18 varies primarily in terms of particle size and the
19 level of moisture, and in most cases even the
20 different types of citric acid -- anhydrous,
21 monohydrate or solution -- are highly interchangeable.
22 This is not surprising because citric acid is
23 typically used in aqueous solution, and the only
24 difference among these three types of citric acid is
25 the amount of water that they contain.

1 Since citric acid is a true commodity
2 product you would expect price to be a paramount
3 factor in sales negotiations, and it is. Some of our
4 valued customers who are here today, global companies
5 with sophisticated worldwide purchasing networks,
6 negotiate fiercely to lower our bids by a penny or two
7 per pound. They do not haggle about special grades or
8 particle sizes or bag sizes. The only real issue to
9 work out in our annual negotiations with our customers
10 is price.

11 In this situation, to claim that the
12 presence of Chinese and Canadian citric acid plays no
13 role in these negotiations is, quite frankly,
14 unfounded. It would be naive to believe that Canadian
15 and Chinese importers could gain the dominant market
16 share that they have so quickly by any other means
17 than competing very hard on price.

18 With an estimated 40 percent of the U.S.
19 market, we know that our best customers have also
20 purchased substantial quantities of Canadian and
21 Chinese citric acid. If we had not responded to the
22 presence of that large quantity of lower priced
23 imported product in the marketplace by also lowering
24 our prices, ADM would have been left with so few
25 orders that our plant would have closed down long ago.

1 From the perspective of those in the U.S.
2 industry who work in the citric acid market on a daily
3 basis, there's just no question that unchecked imports
4 from Canada and China have severely suppressed our
5 prices and our industry profit. The last time that
6 ADM earned a positive operating income from its citric
7 acid operations was in 2001. That was the year before
8 Jungbunzlauer started production at their brand new,
9 large scale plant in Canada, and it was also the year
10 before imports from China began to increase
11 substantially.

12 As the chart before you shows, Chart 3, this
13 is not just true for ADM. It's also true for the
14 industry as a whole. Over the past several years, ADM
15 has been squeezed between the pressures of increasing
16 imports and rising production costs. One of these
17 costs is corn. ADM and other U.S. producers, however,
18 have been unable to offset rising corn costs with
19 changes in prices, as the next graph before you shows.

20 This graph shows corn costs in green and
21 citric acid prices in blue. Not only have our corn
22 derived substrate costs increased, but ADM has also
23 been hit with rapidly increasing costs for two
24 important chemicals used in our production process:
25 Calcium carbonate and sulfuric acid.

1 Our Chinese competitors who use the same
2 production process as ADM also had to pay these higher
3 prices for chemicals, and Jungbunzlauer with its new
4 plant has high costs of its own. In addition, every
5 producer in the world has been saddled with increasing
6 costs for energy.

7 You would think that if there were shortages
8 in the U.S. market as some here have stated and
9 undoubtedly will state later today and if costs were
10 increasing for every producer, we would have been able
11 to pass those increased costs along to our customers
12 and our customers would have been able to afford such
13 price increases because citric acid is a minor
14 component of the total cost of the end use products
15 that they produce.

16 But this just didn't happen. Until we filed
17 the petition in this case, prices failed to keep up
18 with cost. The reason is simple. The abundant supply
19 of citric acid available in the United States at least
20 until 2008 made it a buyer's market. Supply greatly
21 exceeded demand.

22 ADM is keenly aware that some of its large
23 customers may oppose the remedy that we seek. They
24 want continued access to low-priced Chinese and
25 Canadian citric acid.

1 We didn't take the steps to file these
2 petitions lightly, but the truth is that without
3 protection from unfairly traded imports it's only a
4 matter of time before one or more of us sitting at
5 this table will be forced to close our U.S plant, and
6 then citric acid will become like too many other
7 products.

8 Ascorbic acid, for example, a market in
9 which no U.S. producer remains, a market in which some
10 major multi-national companies have recently
11 approached former U.S. producers asking them to
12 reenter the market because prices from China, where
13 now nearly 90 percent of the world's ascorbic acid is
14 produced, have escalated uncontrollably since the U.S.
15 and western producers were forced out of business.

16 We're not seeking to force the Chinese and
17 Canadian producers out of the U.S. market. We're only
18 asking for prices that would naturally be obtained in
19 a fairly traded market, prices that will sustain a
20 healthy domestic industry. However, the reality of
21 the citric acid market today is that the pricing
22 levels are not set by natural market forces, but
23 rather by the unfair dumping of gross excess capacity
24 built in foreign markets.

25 The reality of the citric acid market today

1 is that we simply cannot continue to incur operating
2 losses year after year and expect that the senior
3 levels of our management will green light the
4 investment needed to maintain our plants and to
5 continue production.

6 Thank you very much.

7 MR. ELLIS: Thank you, Mike.

8 We're now going to hear from Eric Warner,
9 who is the plant manager at ADM's plant in Southport,
10 North Carolina. Thank you, Eric.

11 MR. WARNER: Good morning. I would like to
12 spend a few minutes explaining the impact that the
13 low-priced imports from Canada and China have had on
14 our production in Southport.

15 As many of you may know, ADM is a global
16 processor and marketer of agricultural products.
17 Admittedly, citric acid is a very small part of the
18 company's total business. However, for the 140 plus
19 people who work in the plant in Southport and for the
20 people who work in ADM's corn milling facilities in
21 Iowa and Illinois where the substrate for our citric
22 acid is produced, the citric acid business is their
23 livelihood.

24 We and our families depend on this work. We
25 are here today to try to protect that livelihood by

1 asking you to find that imports from Canada and China
2 have injured our industry. ADM's plant in Southport
3 is an extremely efficient and environmentally friendly
4 operation. The jobs at the ADM plant are among the
5 best and most sought after in southeastern North
6 Carolina.

7 In 2006, ADM had to lay off some employees,
8 as well as contract maintenance workers, who had
9 worked full-time at the Southport plant. Although the
10 specific number of individuals who we laid off is
11 confidential, you will find it in the declaration of
12 my colleague, Mike Baroni, that we submitted last
13 week. It is a large number compared to the total
14 number of employees at the plant.

15 In the past few years, ADM has also taken
16 additional cost cutting steps to try to stay in
17 business. We have modified our storage tanks in
18 Southport, which have allowed us to change our
19 principal substrate from molasses to a corn-derived
20 sugar.

21 We have had to reduce fermenter output in
22 order to prevent the buildup of inventories, and ADM
23 has had to defer all but the most critical
24 expenditures on plant and equipment or those that have
25 been legally required, such as installations required

1 to meet stricter environmental standards.

2 But although our plant is urgently in need
3 of investment, the company cannot justify such
4 expenditures in light of the unfavorable returns we
5 have earned for many years, a direct result of the
6 import competition we have faced from Canada and
7 China.

8 At some point, however, there is no more
9 room for productivity gains or cost savings. I
10 believe that we've reached that stage. The choices
11 that we now face are far more severe. Thank you very
12 much for allowing me the opportunity to deliver this
13 urgent message.

14 MR. ELLIS: Thank you, Eric.

15 Our next speaker is Larry Richardson, staff
16 representative of the United Steel Workers. His
17 district covers Ohio, which includes Dayton where Tate
18 & Lyle's citric acid plant is located. Thank you,
19 Larry.

20 MR. RICHARDSON: Thank you. Good morning.
21 As part of my role as a staff representative, I serve
22 on a team that has been working on the USW's economic
23 recovery plan, which includes the goal of saving
24 membership jobs and reinvigorating a recovery built on
25 American made products.

1 The USW is the largest manufacturing union
2 in North America with 850,000 active members. My
3 district includes the citric acid production facility
4 owned by Tate & Lyle Americas located in Dayton. The
5 USW represents the workers employed at Tate & Lyle's
6 facility in Dayton.

7 Three of those workers have joined me here
8 today: Mark Ford, Tim Bush and Bob Rausch. I'd like
9 to ask them to please stand to be recognized. Thank
10 you.

11 USW strongly supports the efforts by the
12 U.S. industry to obtain relief from unfairly traded
13 imports of citric acid and citrate salts from China
14 and Canada. U.S. workers are the most productive and
15 efficient in the world, but the U.S. industry needs a
16 level playing field to compete fairly.

17 Looking first at China, imports have
18 increased dramatically. Adding to the woes of the
19 U.S. industry and our workers, a major new citric acid
20 facility in Ontario, Canada, was built and brought on
21 line in 2002 by an Austrian company, Jungbunzlauer.

22 The resulting impact of the unfairly traded
23 imports on employment, wages and plant operations in
24 the United States has been significant. In just the
25 last three years, employment in the U.S. industry has

1 fallen by approximately five percent. Overall wages
2 paid have decreased by 3.6 percent. The jobs that
3 have been lost are good, high paying jobs.

4 Citric acid production facilities are
5 capital intensive and highly automated. As a result,
6 they require skilled technicians to operate the plant.
7 I have had the opportunity to work with many of our
8 members in Dayton, and I have to tell you times are
9 tough, as bad as I've seen in my lifetime.

10 Dayton used to have a solid manufacturing
11 base. Those jobs have almost entirely disappeared.
12 Just across the street from Tate & Lyle's citric acid
13 facility now sits the dormant shell of what used to be
14 Adelphi Factory producing auto parts.

15 All three citric acid production facilities
16 are located in rural and economically depressed areas.
17 These areas are particularly vulnerable in the current
18 economic crisis. I tell you all this because I
19 honestly believe that right now those jobs at Tate &
20 Lyle's citric acid facility are among the best jobs in
21 Dayton. Just a few months ago they had an opening for
22 a single position of process operator for which over
23 300 applications were received. Economic conditions
24 in this market are very grim indeed.

25 And of even greater concern, the U.S. citric

1 acid industry will continue its downward trend if the
2 Commission were to decline to provide relief from the
3 unfairly traded imports under investigation. If Tate
4 & Lyle's plant were to continue to lose jobs it would
5 have a devastating effect on the workers and their
6 families and a negative impact on the economy in
7 Dayton as a whole.

8 Our members need these jobs, and they need
9 relief from the unfairly traded imports from China and
10 Canada. We ask that you help stop unfair imports from
11 destroying high quality, high paying jobs in Dayton
12 and in the other locations of America where citric
13 acid is produced.

14 Thank you very much for the opportunity to
15 appear before you and to share the reasons why the
16 United Steel Workers supports this petition.

17 MR. ELLIS: Thank you very much, Larry.

18 Our next speaker is Curtis Poulos, the
19 Commercial Director of Food Ingredients and Acidulants
20 at Tate & Lyle Americas, Inc.

21 MR. POULOS: Tate & Lyle, like the other
22 U.S. producers, is a global company producing and
23 selling agricultural-based products like sugar and
24 citric acid in many different countries around the
25 world. We currently produce citric acid at our plants

1 in Dayton, Ohio, Brazil and Colombia.

2 We previously operated citric acid plants in
3 Selby, England, and Cuernavaca, Mexico. In 2007, we
4 were forced to close our plant in the U.K. due to
5 competition from unfairly traded Chinese citric acid
6 imports into the European market.

7 Today, I will focus on the U.S. industry and
8 how it fits into the global market. Citric acid is a
9 commodity which is globally produced and traded. One
10 well-regarded study estimates that at least half of
11 the world's citric acid crosses international borders
12 between the time it is produced and the time it is
13 consumed.

14 The demand side of the equation is also
15 global. The largest citric acid companies are
16 likewise global in nature and scope. They have
17 offices and buying agents in foreign countries and
18 purchase citric acid from non U.S. producers for
19 consumption in many different markets, including the
20 United States. They are well aware of the world's
21 supply and demand balance.

22 That balance is illustrated in the bar graph
23 on the screen, which indicates that the world's citric
24 acid markets can be divided into two: Those that
25 produce more than they consume and those that consume

1 more than they produce. China and Canada are the main
2 countries located in regions where production far
3 exceeds consumption.

4 Europe is by far the largest net importing
5 region for citric acid, a result of history of
6 aggressive Chinese pricing and plant closures. As the
7 graph shows, the only other major importing region is
8 the United States. What is remarkable about the two
9 net exporters, Canada and China, is that the major
10 capacity expansions undertaken in these countries are
11 in no way justified by the size of their domestic
12 markets.

13 The next graph shows the Chinese capacity
14 and domestic consumption data collected by the
15 Commission in the 2000 investigation and the current
16 investigation. As this slide shows, the ramp up of
17 Chinese capacity is targeted toward export markets.

18 The same export strategy is true for
19 Jungbunzlauer, an Austrian company which has a citric
20 acid production facility located in Austria and built
21 a major production facility in Port Colborne, Canada,
22 just over the border from the United States.

23 Tate & Lyle sells into the Canadian market,
24 and we know that compared to the United States it is a
25 tiny market. Further, the Canadian capacity and the

1 subsequent shipments to the U.S. are far greater than
2 what was imported into the United States from JBL's
3 plant in Austria prior to the opening of the Port
4 Colborne plant.

5 Because JBL had to run its brand new, high
6 fixed cost plant at full capacity, it had to employ
7 aggressive pricing that severely depressed prices in
8 the United States' market. Exacerbating the market
9 effect of imports from Canada was the fact that
10 Chinese imports were also increasing each year in the
11 time period since 2002. In fact, as the next table
12 before you shows, the growth in Chinese capacity
13 between 2006 and 2008 almost equals the total U.S.
14 consumption in 2008.

15 The Chinese producers have expanded their
16 citric acid production capacity to a staggering
17 degree. Another way of looking at this is that
18 Chinese capacity now stands at nearly one million
19 metric tons per year, which is more capacity than the
20 rest of the world combined and well over half of the
21 total estimated global demand.

22 Given the global nature of the citric acid
23 market, this large capacity has an impact on the
24 negotiation behavior of both the major purchasers and
25 the sellers in all markets, including the United

1 States. Without unfair trade restraints, we are very
2 concerned that the global supply/demand imbalance will
3 force the United States price further downward.
4 Chinese capacity is projected to increase for the next
5 few years.

6 From my knowledge of the market, Chinese
7 domestic demand is not growing nearly as rapidly as
8 its production capacity, and there is virtually
9 nowhere else for this additional product to go except
10 the United States market.

11 China's ability to supply the only other
12 major export market, the European Union, has been
13 curtailed by the imposition of trade remedies and
14 price undertakings last year. Other markets, such as
15 the Middle East, South America and Africa, are just
16 not as big, and, in any event, Chinese exports have
17 already captured a large percentage of their demand.

18 Moreover, because of the current global
19 economic contraction, citric acid demand in many of
20 these alternative developing markets is likely to
21 stagnate or even decline. The hoped for increase in
22 per capita consumption in these countries is tied
23 directly to their economic development.

24 However, the economies of many of the
25 countries where an increase in citric acid consumption

1 was anticipated depend on the production and export of
2 commodities. These countries' economies are suffering
3 more than the economies of countries that already have
4 high citric acid per capita consumption.

5 We see this contraction in the data already.
6 In 2008, Chinese domestic consumption of citric acid
7 has fallen substantially, and their year end 2008
8 inventories have increased dramatically. If final
9 antidumping and countervailing duty orders are not
10 imposed, we can expect to see the market flooded with
11 these inventories, threatening the very existence of
12 the domestic industry.

13 And I should emphasize that this is not an
14 irrational fear. I'm not crying wolf. My prediction
15 follows a pattern that we have already seen repeatedly
16 around the globe. Tate & Lyle was forced to close its
17 facility in England due to the large volumes of
18 unfairly traded Chinese imports that flooded into that
19 market. Producers in other countries have been forced
20 to do the same, including India, Egypt and the Czech
21 Republic.

22 The market impact posed by Chinese and
23 Canadian imports is not lost on our customers. As you
24 know, this industry is characterized by a few large,
25 multi-national customers with significant market

1 power. They enjoy a clear view of what is happening
2 in China and Canada because they actively participate
3 in these countries.

4 They purchase on a global basis from
5 multiple qualified suppliers, and they are aware of
6 prices available in the major markets. As a result,
7 they have an intimate understanding of their input
8 markets. These colleagues are professional, well
9 educated, tough, price sensitive negotiators, and they
10 leverage their knowledge of the global market in their
11 discussions with Tate & Lyle.

12 Before I finish, I would like to say a few
13 words specifically about Tate & Lyle's citric acid
14 business. I am proud to be part of an extremely well
15 run part of our company with a dedicated, skilled
16 workforce that makes a high quality product.

17 You have already heard from Larry Richardson
18 from the United Steel Workers Union, who explained the
19 importance of the highly skilled, well paying jobs our
20 plant offers. All these factors demonstrate what I
21 believe; that is, that Tate & Lyle's citric acid
22 business is valuable to all its stakeholders, its
23 community, its workers, its customers and its
24 shareholders.

25 Of this I am sure: With the relief provided

1 by the Commission against unfairly traded imports I
2 know that Tate & Lyle, like the rest of the U.S.
3 industry, can recover and will continue to compete
4 against other world class suppliers that respect our
5 trade laws.

6 Thank you.

7 MR. ELLIS: Thank you, Curt.

8 Our next speaker is Andrew Szamosszegi, the
9 managing consultant of Capital Trade, Inc., who will
10 discuss the threat issue.

11 MR. SZAMOSSZEGI: Good morning. I'm here to
12 talk about threat. The case for threat is pretty
13 straightforward if one follows the statutory factors.
14 Nevertheless, it is useful to put the issue of threat
15 in perspective.

16 Within the past eight years, China and
17 Canada have added more capacity than they can consume.
18 In the case of China, this increase was funded by
19 government support. This massive capacity expansion
20 has depressed prices worldwide. Except for a brief
21 respite caused by transitory factors such as the
22 snowstorms and trade actions in the U.S. and Europe,
23 the factors threatening the U.S. industry with injury
24 remain.

25 The Department of Commerce found that

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1 Chinese producers supplying the U.S. market received
2 certain prohibited subsidies related to capacity
3 expansion by two of the major suppliers to the U.S.
4 market. China is awash in capacity and is adding
5 more. China alone has enough excess capacity to
6 supply a large portion of annual U.S. market demand.

7 In fact, as shown in Slide 7, the capacity
8 added in China from 2006 to 2008 is almost as much as
9 U.S. consumption. The world is simply not big enough
10 to absorb China's excess. The excess can no longer be
11 dumped in the EU because of the price undertaking.
12 According to Respondents' data, monthly volumes would
13 have to rise almost 82 percent to reach the
14 preundertaking peak. This excess cannot be absorbed
15 by the home market either.

16 Much may be said this afternoon about rising
17 demand in China. Please view these analyses with the
18 following data in mind:

19 1) Chinese producers' domestic shipments
20 actually declined in 2008. You couldn't even see them
21 behind Curt's head in the graph earlier; 2) Chinese
22 inventories doubled as a share of shipments in 2008 to
23 the level that represents a large portion of total
24 U.S. annual demand; 3) Chinese exports to the United
25 States actually rose in 2008 relative to home market

1 shipments.

2 Each of these indicators, real data
3 collected by the Commission, contradicts the theory
4 that exploding Chinese demand for citric acid will
5 eliminate China's excess capacity, and any excess that
6 is absorbed in China or elsewhere must come at the
7 expense of other producers such as the export reliant
8 JBL.

9 Already public data show that Canadian
10 citric acid is being pushed out of its markets in
11 Mexico and Canada. Thus, Canadian citric acid has
12 nowhere to go but to the U.S. market.

13 I would like to leave you with the picture
14 before you in Slide 8, which summarizes the threat
15 faced by the U.S. industry. The first two columns
16 represent U.S. consumption and capacity respectively.
17 There is a gap between the two representing
18 approximately 200 million pounds.

19 This gap is more than filled by the last
20 column, which sums together excess capacity in China,
21 U.S. imports from China, China's massive inventories
22 and Canada's capacity, a total of about 900 million
23 pounds. This volume is hanging over the heads of U.S.
24 producers, and in the absence of an order portends an
25 import surge that returns the U.S. industry to ruinous

1 prices of 2006 and 2007.

2 For these reasons and others explained in
3 our brief, the U.S. industry is threatened with
4 material injury by reason of the subject imports from
5 China and Canada. Thank you.

6 MR. ELLIS: Thank you, Andrew.

7 Our next speaker is Mark Christiansen, who
8 is the Acidulants Sales Manager, Corn Milling, at
9 Cargill, Inc. Mark?

10 MR. CHRISTIANSEN: Good morning. At the
11 preliminary staff conference last May, I described the
12 annual contract cycle for citric acid, which
13 culminates at the end of the calendar year in a series
14 of agreements between producers and major end users
15 and distributor customers which establish prices and
16 approximate volumes for the following year.

17 I would like to take a few minutes to return
18 to this aspect of the market. Some customers have
19 characterized this annual negotiating cycle as
20 something that has been forced on them by the U.S.
21 producers, the implication being that it somehow
22 benefitted us at the purchaser's expense. That is not
23 correct.

24 But the important issue is not who started
25 the tradition of year-end negotiation for annual

1 contracts, but rather what role capacity and supply in
2 Canada and China play in these annual discussions.

3 In a commodity market where there are a few
4 major buyers and a few major sellers and where the
5 sellers are trying to sell out their available supply
6 all at the same time, the balance of power will depend
7 upon the supply that is available in the market. This
8 is a key aspect of the conditions in the citric acid
9 market.

10 As Curt Poulos has explained, there is
11 substantial capacity in excess of domestic
12 requirements in only two regions of the world: Canada
13 and China. That capacity can be and has been engaged
14 to serve the U.S. market.

15 Our major customers negotiate with Canadian
16 and Chinese producers, and many purchase from them or
17 use their prices as leverage in the negotiations. I
18 cannot ignore this fact in my negotiation strategy.
19 In light of this market situation, the European
20 antidumping case had an important impact on the U.S.
21 market.

22 When the EC case was commenced in 2007,
23 speculation started that a petition would be filed in
24 the United States as well. The European filing
25 coincided with substantial increases in corn, energy

1 and chemical costs. In addition, we may have
2 forgotten, but the global economy was at its peak at
3 the end of 2007, and companies worldwide were more
4 receptive to price increases in commodities.

5 Also because of the European case, more
6 product was diverted to Europe to beat the duties, as
7 you can see in the slide before you. At the same
8 time, shipments to the U.S. dropped. All of those
9 factors contributed to a modest price increase for
10 2008 contracts.

11 Ever since the end of 2007, the U.S. market
12 has been in flux. In the early part of 2008, the
13 availability of Chinese product for the U.S. was
14 further constrained by weather problems. Then, in mid
15 summer, many customers fearing that Chinese product
16 would disappear because of the upcoming preliminary
17 Commerce determination began asking us for extra
18 product and to accelerate delivery.

19 This is particularly true of industrial
20 users who relied on low-cost Chinese and Canadian
21 imports. It wasn't that there were shortages. It's
22 that there were shortages of cheap Chinese and
23 Canadian product as they increased their prices.

24 As you can see from the slide before you,
25 Chinese product was pouring in to beat the duties.

1 It's just that it was priced higher. Some of the
2 shortages that you will hear about today are directly
3 attributable to changes in customer behavior resulting
4 from the filing of our petition and the pendency of
5 this investigation.

6 The dumping case had an even larger impact
7 on contract negotiations this past fall. The
8 preliminary duties had an enormous impact on the
9 annual negotiations in late 2008 for 2009 deliveries.

10 Existing customers began approaching Cargill
11 early, asking to lock in prices and volumes, and many
12 customers that had written Cargill off years ago
13 started finding us once again. Overall, our 2009
14 prices negotiated at the end of 2008 increased at a
15 significantly faster rate than Cargill's costs for the
16 first time in years.

17 What goes up, however, can also come down.
18 I believe that if provisional antidumping and
19 countervailing duties are allowed to expire then the
20 market will return to pre 2008 conditions. This just
21 happened in Mexico. In October of last year, the
22 Mexican antidumping order on citric acid from China
23 was lifted. The very next month, Chinese exports to
24 Mexico increased by 25-fold.

25 China went from being the number eight

1 supplier to the number four supplier in one month, and
2 I am sure that the other U.S. producers, as well as
3 Jungbunzlauer, who also sells substantial amounts into
4 the Mexican market, will tell you that Mexican prices
5 have plummeted since the termination of the Mexican
6 antidumping order.

7 Prices at last are up in the United States
8 to the point where Cargill can make a reasonable rate
9 of return for the first time in years, but those rates
10 of return, as Jack Staloch will tell you, must extend
11 over more than a few months before the injury we have
12 suffered can begin to heal. This is why we need those
13 restraints in order to survive.

14 Thank you very much.

15 MR. ELLIS: Thank you, Mark.

16 The next witness on this panel is Jack
17 Staloch, who is the Vice President, Acidulants Product
18 Line Manager, and the Research and Development
19 Director of the Biotechnology Development Center at
20 Cargill, Inc. Jack?

21 MR. STALOCH: Good morning. Today I'm going
22 to address three issues:

23 First, I will try to provide an overview
24 about how a modern citric acid facility operates and
25 why we try to operate at 100 percent capacity

1 utilization. Second, I'll explain why capacity
2 expansion in a modern citric acid facility is lumpy.
3 Third, I'd like to address the short production outage
4 at our facility in Eddyville last year.

5 All citric acid facilities have two main
6 processing areas, which we refer to as the front end
7 and the back end. As you can see from the slide
8 before you, the front end is where fermentation
9 occurs.

10 Basically we place substrate, in our case
11 dextrose from corn, in large vats and add the organism
12 that ferments the product. The vats are large, often
13 many stories high and holding hundreds of thousands of
14 gallons.

15 The front end is operated in batch mode.
16 That is, we're able to have defined stat production
17 cycles so we can send one vat's worth of product at a
18 time to the back end. Each batch is subjected to the
19 same production conditions and adheres to the same
20 cycle time.

21 Disruption in these conditions in cycle time
22 can impair production efficiency. For example, if the
23 batch is left in a fermentation vat for too long the
24 yield would decrease significantly. You cannot slow
25 the plant down or shut it down without serious losses

1 in productivity.

2 Shutting down production completely also
3 creates serious problems. Any time a shutdown occurs
4 we need to flush and sterilize all fermentation
5 equipment. Once production resumes, it takes several
6 days to achieve full production levels because the
7 front end process is staggered.

8 Thus, producers seek to run their plants
9 without interruption not only to spread out fixed
10 costs, but also because of the very nature of the
11 production process. That is why all citric acid
12 producers in the world -- U.S., Canada, China and
13 elsewhere -- seek to run their plants at a 100 percent
14 effective capacity. Any level below that represents
15 less than optimal performance.

16 Let me turn now and talk briefly about
17 constraints on adding to production capacity. For the
18 reasons that I've just explained, the design of a
19 modern citric acid production facility makes it
20 difficult to expand capacity.

21 The back end of the citric acid production
22 facility is where the refining and recovery takes
23 place. Unlike the front end, the back end runs in a
24 continuous process mode. Putting the two together,
25 the design of a citric acid facility is intended to

1 achieve uninterrupted production.

2 Therefore, in order to increase total
3 capacity a producer must increase both the front end
4 and the back end simultaneously. In addition to being
5 expensive, it is often difficult to find the floor
6 space in an existing facility to add this equipment.
7 This may require construction of an addition to an
8 existing facility, particularly to house a new
9 refining and recovery back end area.

10 Because capacity additions are only
11 economically feasible if they are large, they add
12 greatly to total capacity in the market. For example,
13 based on published numbers as the graph shows, we
14 believe that JBL's new plant in Canada increased North
15 American capacity by about 25 percent.

16 Because an addition to capacity is so
17 expensive because it represents several years at least
18 of expected growth and demand, a company will only
19 decide to make the investment if the case can be made
20 for an adequate rate of return over an extended period
21 of time.

22 As the data on investments and returns in
23 our prehearing brief show, Cargill has not been able
24 to make this case for a very long time. We suspect
25 that it is the same for other U.S. producers. Given

1 the existence of substantial capacity in Canada and
2 China that is available to serve the U.S. market, it
3 would be completely illogical for one of us to sink
4 substantial funds into a new citric acid plant.

5 Finally, I'd like to talk about the brief
6 shutdown that we had at Cargill last year. In April
7 2008, as the result of a power surge to our facility,
8 we were forced to shut down citric acid production.
9 This meant that we needed to dump all fermentation in
10 process at the time and flush and sterilize our
11 equipment.

12 Cargill prides itself on its honest and
13 transparent customer service. Because the shutdown
14 occurred right before the busy summer months, we knew
15 that we needed to tell our customers right away. We
16 wanted to be up front with them about the possible
17 effect that this might have on the availability of
18 citric in the coming months.

19 We sent a letter to our customers that
20 outlined the worst case scenario. That worst case
21 never occurred. We took immediate steps to mitigate
22 the impact of the outage. We worked tirelessly in
23 order to get the facility back on line and were able
24 to be back in production within hours of the shutdown
25 and were able to ramp up production quickly.

1 To prevent such damaging power surges in the
2 future, the power company spent \$15 million in
3 equipment modifications, and Cargill also spent
4 significant sums.

5 When it was over, we calculated that we had
6 lost only about one week of production. In the end,
7 for all but one major customer we were able to meet
8 our contractual requirements for the year. The total
9 amount of lost production was an insignificant
10 percentage of the total consumption in the U.S.
11 market.

12 Our outage simply had no bearing on the
13 long-term health of the U.S. industry or the impact
14 that the low-priced imports have had on the financial
15 condition of Cargill's Citric Acid Division. Thank
16 you.

17 MR. ELLIS: Thank you, Jack.

18 Our next speaker is Peter Lorusso, Vice
19 President, Sales and Marketing, of TLC Ingredients.
20 Peter?

21 MR. LORUSSO: Thank you. Good morning.
22 I've been working in the food ingredient distribution
23 and manufacturing business for 38 years beginning with
24 Stauffer Chemical, manufacturer; Unicolor Chemical,
25 distributor; formerly FPC Industries, manufacturer;

1 Tab Chemicals, distributor; and now TLC Ingredients.

2 VICE CHAIRMAN PEARSON: Mr. Lorusso, just be
3 close to the microphone, if you please.

4 MR. LORUSSO: Okay. Do you want me to
5 repeat?

6 VICE CHAIRMAN PEARSON: I think you're okay.

7 MR. LORUSSO: Okay. Thank you. TLC started
8 its business in August 2001, focusing in the food
9 ingredient distribution. TLC is a regional
10 distributor for a number of different food
11 ingredients, including acidulants, phosphates,
12 nutritional glycerine and other products.

13 Regional distributors play an important role
14 in the market for our products because we service many
15 small and medium local food processors with a number
16 of different ingredients in a timely fashion.

17 Going to each manufacturer to purchase
18 direct would be an extremely expensive option for a
19 local bakery chain or beverage producer or a regional
20 cheese maker. In essence, we purchase in quantity
21 from a range of ingredient manufacturers, and we sell
22 multiple products to many customers in smaller lots
23 offering value added service.

24 One of the products that we handle is citric
25 acid. While we principally stock and sell U.S.

1 produced citric acid, we occasionally have purchased
2 and supplied Chinese citric acid to our customers when
3 they have demanded it.

4 I would like to explain how Chinese and
5 Canadian citric acid compete with our U.S. source
6 citric in the regional distribution market. Our
7 customers principally are small local or regional
8 producers of processed foods, including the dairy,
9 confectionery and processed cheese manufacturers.

10 As in any market, price is paramount for
11 some food processors, whereas nonprice factors such as
12 service, rapid turnaround of orders, reputation are
13 more important for others. The price sensitive
14 portion of the market is substantial. After all,
15 everyone is in business to make a profit, and if a
16 commodity ingredient like citric acid can be obtained
17 from a foreign source at a lower cost many purchasers
18 will choose it over domestic source product.

19 And, as you have heard this morning from
20 Mike Baroni, there is no doubt that citric acid is a
21 commodity product. Most importantly, all major citric
22 acid producers in the world, including the Chinese,
23 offer a product of comparable quality.

24 If packaged and stored properly, citric acid
25 has a long shelf life. Although citric acid may cake

1 over time or it may clump if the product is exposed to
2 excessive moisture, most manufacturers and
3 distributors have developed packaging and
4 environmental controls that have reduced the incidence
5 of caking. If it does cake, it is relatively easy for
6 a distributor or purchaser to deal with it, or it can
7 be resold to a purchaser that doesn't mind caked
8 product.

9 As I mentioned, TLC mainly sells U.S.
10 produced citric acid. This does not mean that we are
11 immune from competition with imports from China and
12 Canada. On the contrary, we are always monitoring the
13 market price for Chinese citric acid, and based on
14 many years in the business I can tell you that since
15 the start of TLC until the filing of these cases the
16 Chinese product has always been the lower priced
17 product available in the market. The Canadian citric
18 acid pricing is also difficult to compete with, but
19 not to the degree of the Chinese product.

20 As a distributor of U.S. product, we have to
21 respond to these price pressures. Our customers often
22 seek quotes from more than one distributor. We
23 regularly hear from our customers that they have
24 received quotes from distributors of Chinese citric
25 acid that are as much as 20 to 30 percent below what

1 we are quoting for U.S. citric acid.

2 Faced with these market prices, a
3 distributor such as TLC has four options: 1) We can
4 purchase Chinese material and offer it to our
5 customers at prices comparable to quoted prices; 2) We
6 can go back to the U.S. supplier and ask for a
7 discount known as price support so that we can offer
8 U.S. source citric at a competitive price; 3) We can
9 walk away from the sale; or 4) We can sell citric acid
10 at a loss.

11 As you can imagine, we try to avoid Option 4
12 as much as possible. Option 2 is our preferred
13 choice. When asked to meet a price that is below our
14 purchase cost and overhead, we will contact our U.S.
15 supplier and ask them if they're willing to offer us
16 price support. Sometimes our U.S. supplier will agree
17 and sometimes they won't, depending on how badly they
18 want to maintain the business.

19 Many other distributors choose Option 1, and
20 that is why Chinese and Canadian citric acid is so
21 readily available today.

22 I would like to conclude by saying a few
23 words about availability of citric acid in the United
24 States. Prior to the filing of the antidumping case
25 in 2008, plenty of citric acid was available. It was

1 only after the case was filed that we began to see
2 consumers of Chinese and Canadian product coming to us
3 asking for U.S. source product.

4 Last summer and fall, because of the rumors
5 of possible high dumping liabilities, I think that
6 some U.S. customers tried to accelerate deliveries and
7 increase their on-site inventories. This had an
8 effect on tightening supply in the marketplace.

9 This concludes my testimony. Thank you.

10 MR. ELLIS: Thank you, Peter.

11 The last speaker on this panel this morning
12 is Charles Anderson, principal of Capital Trade, Inc.

13 MR. ANDERSON: I would like to touch on a
14 few of the economic issues in this case and I'll start
15 with injury. There is no question we think that the
16 U.S. industry is hurting here. Injury manifests
17 itself in many ways: consistent, widespread in large
18 operating losses, an almost complete lack of
19 investment in new capacity, reductions in employment
20 and hours worked and a horrendous level of return on
21 assets.

22 Though the industry does show some feeble
23 signs of improvement in 2008, the earnings of the U.S.
24 industry as a whole, and very importantly, as well as
25 each individual company are still inadequate to

1 support the large amounts of fixed investment needed
2 for an ongoing high fixed-cost business, and the one
3 year improvement certainly is not sufficient to
4 overcome the adverse affects from the prior two years
5 of the POI, not to mention the previous six or seven
6 years.

7 The real debate in this case we think is not
8 over injury, but causation. We think that in the
9 final phase of these investigations the evidence
10 showing a causal connection between subject imports
11 and the poor state of the U.S. industry is
12 overwhelming. One of the big changes since the
13 preliminary determination is the quarterly pricing
14 comparisons.

15 Obviously, there's been a fee change in the
16 result. In the prelim you had an illusion of large
17 and consistent overselling in virtually every product.
18 That pattern has disappeared completely, replaced by
19 an overall pattern of underselling. The major change
20 is a function of two principal revisions to the data.
21 First, for some products the Commission asked the
22 pricing to be broken out separately for spot versus
23 contract sales.

24 The data in the responses show that prices
25 for spot versus contract are very different. Second,

1 the Commission has gathered prices on the delivered
2 basis in the final phase rather than U.S. point of
3 shipment. It is now perfectly clear from the record
4 that in the preliminary phase virtually all of the
5 subject import pricing was reported on a delivered
6 basis, whereas the U.S. producers followed the
7 questionnaire instructions and reported X factory
8 prices. This skewed the results.

9 While the quality of the data and
10 comparisons is much improved, we still think there are
11 some problems that should be taken into account.
12 There are problems for the data for Products 4 and 5
13 because spot and contract prices are still lumped
14 together, which is the same problem that masked the
15 underselling in the preliminary phase.

16 We also believe that the 2008 data is not
17 terribly instructive because it has been skewed by
18 petition affect. We believe that the results for
19 certain products, markets and customer types are so
20 close that it is hard to draw conclusions as to who is
21 underselling whom. However, I will admit our
22 colleagues on the other side of the room also spent a
23 lot of time sifting through the pricing data to try to
24 find threads to spin in their favor.

25 When you have a case where both they and we

1 are arguing about the pricing data, I think what you
2 have at worst is a mixed pattern of underselling and
3 overselling, which is what you would expect to find in
4 a price sensitive commodity product. In the final
5 phase, the Commission has another important source of
6 information on price competition that was not
7 available in the preliminary, namely, the purchaser
8 questionnaire data.

9 These responses account for a very high
10 percentage of total U.S. consumption. Not the 20 or
11 30 percent that you sometimes get, but a very high
12 percentage. We have spent a great deal of time with
13 these responses, not just cherrypicking the best
14 quotes, we sometimes do that, but aggregating them to
15 get an accurate market-wide picture of key issues.

16 Taking the purchaser questionnaire responses
17 as a whole, a remarkably consistent picture emerges:
18 1) the only three major factors in purchasing
19 decisions are price, quality and availability; no
20 other factor comes even close to those three.

21 2) purchasers consider quality differences
22 among the major U.S., Canadian and Chinese producers
23 to be minimal.

24 3) the claims of shortages are
25 overwhelmingly related to 2008 and are indicative of

1 petition affects. In general, during the POI
2 availability was not an issue, thus, quality and
3 availability being comparable, price is the paramount
4 factor in purchasing decisions. Many purchasers
5 stated that subject imports led by China applied
6 downward pressure on both spot and contract prices in
7 the U.S. market.

8 Besides the evidence of pricing and
9 purchaser data, the Commission has access to other
10 information that is extremely valuable for assessing
11 causation. We start here with a high fixed-cost
12 industry with a high degree of concentration of both
13 producers and purchasers operating within this
14 tradition of annual year end contracts.

15 Given these conditions of competition, the
16 real question is not whose prices are higher or lower
17 in this particular pricing box. No. The real
18 question is whether U.S. prices would have been
19 materially higher absent the presence of dumped and
20 subsidized imports.

21 In this case, the challenge in limiting the
22 causation analysis to the standards for your POI is
23 that subject imports have been at very high levels,
24 around an estimated 40 percent, and operating losses
25 have been substantial for all three years. These

1 absolute levels are extremely important. In a
2 commodity market they tell a story of injury from
3 imports.

4 However, in the face of such high volumes
5 and levels it is hard to discern clear trends,
6 especially because in the last year of the POI, 2008,
7 the market was subject to all sorts of exogenous
8 shocks, not the least of which were the filing of the
9 antidumping cases first in the EU and later in the
10 United States.

11 To cast some further light on causation, it
12 is useful to look outside the three year window both
13 forwards and backwards to consider data in periods
14 where unrestrained subject imports were at lower
15 levels. There are data related to causation for three
16 additional time periods that the Commission can
17 consider.

18 First, the Commission can give weight to the
19 2005 data in its trend analysis and discount the data
20 for 2008. The critical data for 2005 is complete. It
21 was either included in the preliminary phase of this
22 investigation or has been provided by the U.S.
23 producers in their final questionnaire. With the
24 documented exogenous market shocks in 2008 you have to
25 ask yourself, is the data for 2005 more probative in

1 terms of trends analysis than the data for 2008? We
2 think that it is.

3 The second additional temporal data
4 available to the Commission is the 10 year series data
5 provided in Exhibit 10 of our prehearing briefs. We
6 are not asking that this data be considered in the
7 context of a business cycle argument or we're not
8 asking for an expanded POI; rather, the information
9 can be used as additional corroboration of the
10 causation finding that can be drawn from the POI data
11 alone.

12 The longer term data allows the Commission
13 to compare current levels of prices and profits over a
14 much longer period including years in which the levels
15 of subject imports had a much smaller presence in the
16 U.S. market. You have seen the grass before you now,
17 but it's worth showing again because it shows the
18 relationship very clearly and it holds up over time.

19 As the subject imports increase, operating
20 losses increase. There is no other factor, neither
21 changes in corn prices, nor differences in hedging
22 practices, nor plant shut-downs, nor inter-U.S.
23 producer competition, nor changing demand conditions,
24 that can explain the sustained operating losses of the
25 U.S. citric acid industry. As the grass clearly

1 shows, subject imports can.

2 The third additional temporal evidence is
3 the contract pricing data for 2009. These prices were
4 negotiated in late 2008 when subject imports were
5 under preliminary unfair trade restraint. The 2009
6 contract prices are significantly higher than the 2008
7 contract prices even though at the times both were
8 negotiated corn and energy costs were at about the
9 same level.

10 As the detail data we provided in our
11 prehearing briefs show, these price increases are
12 across the board: all three U.S. producers selling to
13 all customers large and small, distributor and end
14 user, liquid and dry form. What is particularly
15 evident is that prices have increased for the large
16 customers, the ones that Respondents would have you
17 believe play only one U.S. producer off the other with
18 subject import supply playing absolutely no role in
19 the determination of prices and volume.

20 While I think that the large customer
21 analysis that was presented in our prehearing briefs
22 should lay to rest the question of whether subject
23 imports affects U.S. sales to these customers, the
24 2009 contract prices surely prove the historic nexus
25 between unrestrained Canadian and Chinese import

1 volumes and the inability of U.S. producers to earn
2 adequate prices in their core markets.

3 This data demonstrates that subject imports
4 prevented price increases in 2006, 2007 and even in
5 2008 to a significant degree. Thank you.

6 MR. ELLIS: Thank you, Mr. Anderson. That
7 concludes our panel. We appreciate your attention
8 during this presentation. Thank you.

9 VICE CHAIRMAN PEARSON: Well, good morning.
10 I would like to welcome all of you to the Commission.
11 It's something that we appreciate very much that
12 people will take time to get prepared to come before
13 us and explain the business to them. We especially
14 appreciate that you would come to Washington at this
15 time of year for a reason other than to see the cherry
16 blossoms. Maybe it's in addition to seeing the cherry
17 blossoms. We will begin the questioning this morning
18 with Commissioner Lane.

19 COMMISSIONER LANE: Good morning. I, too,
20 want to welcome you to Washington, and I want to
21 express again my appreciation for the tour that some
22 of us had at the Southport facility. It provided a
23 better understanding of how the product is made. I'm
24 surprised in your graph when you were talking about
25 the inputs you didn't talk about the molasses from

1 Poland. I find that very fascinating, and it's the
2 one thing that I remember from the tour.

3 I have a question maybe starting with Mr.
4 Anderson, I'm not sure. Some of you talked about the
5 difference between the data that we had in the prelim
6 and the data now. Are you saying that the data is
7 different or are you saying that we have just divided
8 it up differently so that it can be analyzed in
9 different categories than what we did in the prelim?

10 MR. ANDERSON: I think that the data is
11 refined in the sense that we split up spot and
12 contract pricing, distributor, end user. I believe we
13 may have swapped out one pricing product for another.
14 It's essentially the same other than that but it's at
15 a more refined level.

16 COMMISSIONER LANE: Okay. Thank you.

17 MR. ELLIS: I'm sorry. Madam Commissioner,
18 another point, though, I think is that we believe that
19 the confusion that may have existed in the preliminary
20 phase where some of the Respondents may have submitted
21 delivered data, thereby showing overselling, had been
22 cured by clearer instructions in the final data.

23 COMMISSIONER LANE: Okay. Thank you. I
24 have a number of questions on hedging strategies;
25 however, as a preliminary matter, I understand that

1 hedging strategies for producers of corn and dextrose
2 may be significantly different than hedging strategies
3 for someone who must buy corn or dextrose on the open
4 market, so could you indicate whether all or any of
5 the domestic producers transfer their corn or dextrose
6 to their citric acid production facilities from
7 internal sources?

8 MR. BARONI: This is Mike Baroni with ADM.
9 I believe that most of the U.S. producers will
10 transfer some part of their substrates internally from
11 other operating groups. The difficulty of answering
12 questions about hedging obviously in this forum is
13 that we're all rather large processors of corn and our
14 hedging strategies really are, they could impact
15 markets so they're fairly confidential, so I think
16 questions about hedging would be something better
17 answered confidentially in the posthearing brief.

18 COMMISSIONER LANE: Okay. Thank you. If
19 the raw materials are obtained from affiliated or
20 internal operations are the values reflected in the
21 financial statements which you filed at cost of
22 production?

23 MR. ANDERSON: I can answer for all three
24 since I assisted all three in preparing it. We
25 followed the Commission's instructions. We valued all

1 transfers of substrate at cost.

2 COMMISSIONER LANE: Okay. So it's all cost
3 of production.

4 MR. ANDERSON: It's all cost of production.
5 That's correct.

6 COMMISSIONER LANE: Okay. If a domestic
7 producer grows corn and mills its own corn, it would
8 not be subject to fluctuations to market prices of
9 corn. Why would such a producer use hedging
10 strategies, and what would those strategies be
11 designed to accomplish?

12 MR. ANDERSON: Well, first, I'm not aware of
13 any producer of citric acid that actually grows corn.
14 They typically purchase the corn.

15 COMMISSIONER LANE: Okay. So Cargill, or
16 ADM, or Tate & Lyle do not grow corn?

17 MR. BARONI: Speaking for ADM, Commissioner,
18 no, we do not grow any corn.

19 COMMISSIONER LANE: Okay. Thank you. Mr.
20 Christiansen and Mr. Szamos --

21 MR. ELLIS: We call him Andrew.

22 COMMISSIONER LANE: Okay. Andrew. I
23 believe in your prepared remarks you indicated that
24 Cargill may currently be able to make a rate of
25 return. I'm not sure if you indicated that you could

1 make a reasonable rate of return or simply a positive
2 rate of return.

3 MR. STALOCH: If you don't mind, I'll answer
4 that one. This is Jack Staloch from Cargill. In
5 order for us to do a reasonable rate of return it has
6 to be a sustained rate of return, so we just haven't
7 seen that yet. So the prices are up in 2009 and we're
8 grateful for that, but it needs to be a sustained and
9 then we'd consider investment.

10 COMMISSIONER LANE: Okay. What would you
11 consider to be a reasonable rate of return?

12 MR. STALOCH: If you could, we'd like to
13 answer that in our postbrief.

14 COMMISSIONER LANE: Okay. Thank you.

15 MR. BARONI: Commissioner, this is Mike
16 Baroni. If I could add to that, too, is that, you
17 know, any corporation would have to have a return that
18 at least somewhat exceeded their weighted average cost
19 of capital, and that will differ for obviously each of
20 the three companies here. The amount that it would
21 have to exceed it would be somewhat related to risk of
22 the investment, the length of time to return the
23 investment, et cetera.

24 COMMISSIONER LANE: So in your posthearing
25 you can provide what you think ADM would consider a

1 reasonable rate of return?

2 MR. BARONI: Yes, I believe we could.

3 COMMISSIONER LANE: Okay. Thank you. Now,
4 going to conditions of the U.S. industry, why are
5 there disparities among the domestic producers'
6 reported performances, and particularly, reported
7 costs and cost trends? That probably will need to be
8 answered in the posthearing.

9 MR. ANDERSON: If I could, I could summarize
10 a couple of issues. One is there may be some
11 differences but the long-term data shows a very
12 consistent pattern that all three U.S. producers
13 basically lost money over time in this industry.
14 That's one reason why you might want to use that long-
15 term data, because if there are some differences in
16 this year or that year between one producer or the
17 other because of differences in hedging practices or
18 they have different raw materials, that would even
19 itself out over a longer period of time.

20 With regard to some specific differences in
21 costs, there are producers who have different
22 production processes and they do use different inputs.
23 I don't want to go into anymore detail in a public
24 forum, but we would be happy to provide you with more
25 detailed information in the posthearing brief.

1 COMMISSIONER LANE: Okay. I would like
2 specifically to have addressed in the posthearing
3 brief why there are differences in the costs during
4 the period of investigation between the three
5 producers.

6 MR. ELLIS: We'll be able to provide that.
7 That's fine.

8 COMMISSIONER LANE: Okay, because sometimes
9 I ask questions and when I read the answers, the
10 answers aren't specific to what I asked, but I think
11 this is particularly important.

12 MR. ELLIS: And you're making the
13 requirement that it be specific pretty clear so we
14 will do that.

15 COMMISSIONER LANE: Okay. Thanks.

16 MR. ANDERSON: There was one issue on that,
17 Commissioner, that I think I should clarify right now,
18 and that is for all three producers we reported raw
19 material costs a little bit separately at the
20 preliminary phase of this investigation and the final
21 phase.

22 That is, in the prelim we just included the
23 substrate costs, and then for all three producers for
24 the final we took a look at it and we thought, well,
25 probably chemicals should be considered a raw material

1 cost as well, so we put the chemical costs in the raw
2 material line for all three producers.

3 COMMISSIONER LANE: So in the posthearing,
4 though, you will break that out so that I can
5 understand what you've done.

6 MR. ANDERSON: Yes.

7 COMMISSIONER LANE: Okay. Thank you. Mr.
8 Chairman, I'll wait until my next round. Mr. Vice
9 Chairman. I'm sorry.

10 VICE CHAIRMAN PEARSON: Not a problem.
11 Commissioner Williamson?

12 COMMISSIONER WILLIAMSON: Okay. Thank you,
13 Mr. Vice Chairman. I do want to express my
14 appreciation to the witnesses for taking the time to
15 come today, and also express appreciation for the
16 opportunity to visit the plant in Southport. I found
17 it very helpful.

18 I wanted to get your perspectives on the
19 impact of the recession on demand in the future. We
20 get the impression from the Respondents that, you
21 know, this industry, demand is not really adversely
22 affected by it, so what is your perspective on that?

23 MR. CHRISTIANSEN: Commissioner, this is
24 Mark Christiansen with Cargill. I believe we are
25 starting to see the affects of a slowdown in the

1 economy with the recent sales numbers.

2 COMMISSIONER WILLIAMSON: Okay. Go ahead,
3 Mr. Baroni.

4 MR. BARONI: I was just going to add to it
5 that ADM as well is beginning to see some slowdown in
6 demand that we believe is attributed to the economic
7 slowdown.

8 COMMISSIONER WILLIAMSON: Okay. Is there
9 anything about the nature of the industry that you
10 would say that maybe you've seen the slowdown has
11 taken longer for you to see it than it may have been
12 in other industries?

13 MR. BARONI: It's a little bit difficult to
14 assess the cause of the slowdown. What we try to do
15 is compare to the same period in previous years
16 because there is some seasonality in the business so
17 to make sure you're not looking at a seasonal trough,
18 you know, versus just a normal slowdown. When we
19 compare the same periods against last year against a
20 very similar customer base, we're seeing the total
21 take of product lower this year than last year.

22 COMMISSIONER WILLIAMSON: Okay. Mr.
23 Anderson?

24 MR. ANDERSON: Sorry, Commissioner
25 Williamson. If I might add, we included some investor

1 reports in our brief which showed even in the fourth
2 quarter of 2008 some of the principal users of citric
3 acid were showing substantial drops in volumes,
4 including Proctor & Gamble. It wasn't just switching
5 from like high brand to low brand, but there was an
6 overall decline in their shipments.

7 The other issue with respect to the economic
8 contraction is that it affects not only the U.S.
9 market, but it affects third country markets as well.
10 We think it affects third country markets even more
11 than it does the United States. That essentially just
12 makes more Chinese product available for the U.S.
13 market.

14 MR. SZAMOSSZEGI: And one other point that
15 I'd like to make. This is Andrew Szamosszegi. I know
16 the Respondents say that we've been in recession for a
17 year and that 2008 was the recessionary year. While
18 technically that's the case, 2008 real GDP is actually
19 higher than it was in 2007, but what happened was we
20 had a sharp slowdown at the end of 2008, and so that's
21 why you see in the investor reports that we submitted
22 that discuss the fourth quarter of 2008 that they
23 start to see a decline in their fabric care businesses
24 and things like that.

25 So even though we've been in recession for

1 well over a year, the real pain started in the fourth
2 quarter of 2008. Thanks.

3 COMMISSIONER WILLIAMSON: Do you expect to
4 see a bigger drop in any particular segment, I mean,
5 in the industrial versus food or is it too early to
6 say?

7 MR. POULOS: From my opinion, I think it is
8 too early to say. Our products go in a broad array of
9 applications from food to industrial applications, and
10 as this recession sees itself I think each individual
11 consumer will have its own idiosyncracies of growth or
12 decline. In general, you would predict there to be
13 some decline.

14 COMMISSIONER WILLIAMSON: Okay. Thank you.
15 I would like to return now to price comparisons.
16 Respondents asked the Commission to focus on its
17 underselling analysis on the sale to end users, i.e.,
18 the contract price, because the quantity of domestic
19 spot sales was low. What is your position on this?

20 MR. ANDERSON: We think you should take into
21 account all of the quarterly pricing comparisons.
22 We'll have something to say about the contract to end
23 user prices. If you look at the data and look at your
24 own graph on those, you'll see that the lines are so
25 close that it's really hard to tell, you know, who is

1 underselling whom in those particular segments that
2 the Respondents focus on. It's extremely close
3 pricing in those segments, as you would expect in a
4 commodity market.

5 COMMISSIONER WILLIAMSON: Well, are the
6 differences significant enough to have an impact?

7 MR. ANDERSON: The level of pricing is
8 significant to have an impact. Given that you've got
9 differences in timing and differences in the contracts
10 that might be in one quadrant versus the other, I
11 don't think they're significant enough to draw
12 conclusions.

13 MR. ELLIS: If I may add, the key point with
14 some of the biggest comparisons where they're pointing
15 out there is overselling is that the overselling is
16 insignificant, it's tiny, the lines are almost on top
17 of one another in your graphs, and so I would answer
18 your question that the answer is no, the differences
19 are not significant. Basically, you're seeing a
20 commodity product driven down to a low price and
21 everybody's selling at that same low price.

22 MR. ANDERSON: And I would just like to add
23 that I think you also have to look at those documents,
24 look at those particular quadrants in light of what
25 the purchaser questionnaire responses are saying about

1 who depresses prices in the market, where the cheapest
2 supply is available. You also have a whole other
3 additional source of information that you can use to
4 assess whether or not price is really an issue in this
5 investigation.

6 MR. BARONI: It also may be a little bit
7 enlightening when you put this in the context of how
8 these contracts are negotiated. In a product like
9 citric acid, although it is a commodity product, it's
10 not like soybeans or soybean meals where the price is
11 determined by traders at the Board of Trade and we
12 know what the spot price is at any given point in
13 time.

14 Price discovery is one of the arts of
15 working in these markets, and price discovery
16 generally comes from conversations with our customers.
17 When you have a situation, often, if market and supply
18 demands are in balance, the supplier will sit down
19 with the customer and the customer will tell him, you
20 know, you have to be at X price to keep your business.

21 If we have a pretty good idea that supply
22 and demand is in balance, our reaction may be to "call
23 their bluff" and say, no, we're going to hold firm,
24 you know, this is our price. When you're staring at a
25 huge overhang of capacity, you don't have the courage,

1 you don't have the luxury of being able to do that, so
2 you become in a lot of ways a price taker.

3 We know that the relationships with many of
4 our customers is that they're conveying, you know,
5 fairly honest price discovery to us. It's probably
6 not in all the cases. They may be telling us that our
7 prices have to be lower than the prices that they've
8 actually been given from other competitors. When you
9 have that fear of that very real threat of the
10 capacity being there to take your business away,
11 you're just not in a position, you know, to hold tough
12 and try and get the best price you can.

13 COMMISSIONER WILLIAMSON: Okay. What affect
14 do the spot market prices have on the contract price?

15 MR. BARONI: Pricing information is
16 disseminated, you know, around the industry in a lot
17 of different ways. We target pretty much all
18 customers in the market but we'll use different
19 channels to reach them. Obviously it's very efficient
20 for us to work with the large end users directly. We
21 have, you know, limited sales forces.

22 When you get into some of the smaller users
23 that typically play in the spot markets the most
24 efficient channel for us is through distribution,
25 local and national distributors, such as Pete. They

1 play directly in the spot market and then convey back
2 to us.

3 We'll generally work with them and say this
4 is the type of pricing that we would, you know, give
5 to you, they'll go out in the market, and as they run
6 into spot prices that are lower to that, they come
7 back to us and then we have to adjust through what
8 Pete described as price support.

9 So we do operate in a spot market but
10 somewhat indirectly through our distributors. Also
11 having, you know, that's another area of knowledge for
12 us, of price discovery, is the information that our
13 distributors bring back to us as to what's happening
14 in the spot market.

15 MR. LORUSSO: Yes. Pete Lorusso. Just want
16 to add to that that I concur with Mike Baroni. Being
17 a U.S. producer/distributor, we are an extension of
18 the manufacturer, in this case, ADM, so it's vital
19 information that they give us market information. We
20 then in turn provide that market information to our
21 customers.

22 We do a price discovery at that point and if
23 there's a price support situation we bring that
24 information back. Even though we're in a small
25 market, it's still a vital market because overall

1 there's a large piece of business that is sold on a
2 spot basis.

3 COMMISSIONER WILLIAMSON: Okay. Thank you
4 for those answers.

5 VICE CHAIRMAN PEARSON: Commissioner
6 Pinkert?

7 COMMISSIONER PINKERT: Thank you, Mr. Vice
8 Chairman. I'd like to thank all of you once again for
9 coming to this hearing and helping us to understand
10 what's going on in this industry. I'd also like to
11 thank you for the opportunity to visit the plant in
12 Southport. I want to begin with a question about the
13 soft drink segment of the market. In particular, is
14 the Chinese product less preferred in that segment of
15 the market than other kinds of the product?

16 MR. ANDERSON: I'll start out by saying that
17 I believe that the major purchaser data that we
18 provide indicates that the Chinese are present in the
19 soft drinks segment of the market. There are sales to
20 soft drinks manufacturers, definitely.

21 MR. CHRISTIANSEN: Hello, Commissioner.
22 This is Mark Christiansen with Cargill. I would just
23 like to state that in my experience in the industry in
24 the negotiation practices that the soft drink users do
25 not discriminate versus taking prices from the

1 Chinese, or the domestic users, or the Canadian
2 suppliers of citric acid. They all bring us in to the
3 negotiation process and treat us equally.

4 COMMISSIONER PINKERT: Okay. So assuming
5 that the Chinese product is in the soft drink segment,
6 you're saying that it's not discriminated against by
7 the purchasers. Does anybody else want to comment on
8 the question of whether it's less preferred than other
9 sources of the product?

10 MR. OAKLEY: Mr. Commissioner, this is John
11 Oakley with ADM. I have to echo some of Mr.
12 Christiansen's comments. I guess the feedback that we
13 receive as we go through the price discovery process
14 that's been explained is we don't get that feedback
15 from the customers that there's really any
16 differentiation. We're asked to kind of play in the
17 same ballpark as the import material.

18 MR. ANDERSON: Commissioner Pinkert, another
19 important aspect of this whole issue is that the major
20 soft drink manufacturers, as you know, are
21 multinationals who are purchasing citric acid in other
22 markets that are clients believe are basically
23 foreign-produced products, so they are very familiar
24 with the Chinese product and the Canadian product.

25 COMMISSIONER PINKERT: Thank you. Now, I'd

1 like to ask the company witnesses whether they agree
2 with the argument that this industry has chronic
3 supply problems that cause the purchasers to seek
4 multiple sources of supply.

5 MR. BARONI: This is Mike Baroni with ADM
6 and I cannot recall the last time that we had any
7 supply issues. I think Eric can confirm that. We do
8 occasionally have a maintenance shut down but we plan
9 for those well in advance, build up inventory ahead of
10 it, and I don't know of a time that it's caused a
11 disruption in our supply of the fair customers.

12 MR. CHRISTIANSEN: Commissioner, I would
13 just like to add that even prior to the period of
14 investigation or during the period of investigation
15 the customers typically have policies that would
16 require them to buy from multiple sources and there
17 are three very large producers in the United States
18 that I think would fit the needs of providing them a
19 secure source of material.

20 COMMISSIONER PINKERT: What's your
21 understanding about why they need the multiple sources
22 of supply?

23 MR. CHRISTIANSEN: I think it's probably a
24 combination of things, but in my experience, it's also
25 added to the competitive mix in the negotiation

1 process to where it gets to increase the leverage of
2 their purchasing power versus one supplier to the
3 next.

4 MR. BARONI: If I may add, too. Many large
5 companies actually have policies that they'll have
6 multiple suppliers for major ingredients or major
7 commodities just for supply chain security.

8 MR. STALOCH: I think in addition they have
9 uses all over the country and in multiple countries so
10 one supplier in the U.S. may be able to service like
11 the northeast part better than maybe another supplier
12 out on the west coast, so there's issues around that
13 as well.

14 COMMISSIONER PINKERT: Mr. Poulos?

15 MR. POULOS: From a security of supply
16 standpoint, I think each of our customers has their
17 own strategy in to how they want to buy and be assured
18 of supply. From a Tate & Lyle standpoint, we
19 certainly keep stocks of our product in inventory.
20 We'll hold varying amounts specific for customers as
21 well as just general stock.

22 But as of to my remembrance, we have not had
23 outages at our facilities to any great extent, and as
24 other plants, through maintenance shut downs and what
25 have you, we'll build inventories to maintain those

1 supplies.

2 COMMISSIONER PINKERT: Thank you. Now, this
3 next question may be a question that has to be
4 answered only in the posthearing but I want to give
5 you an opportunity to try to answer it here. Is there
6 a difference among U.S. producers in terms of their
7 focus on contract sales to larger end users?

8 MR. ANDERSON: Could you elaborate on that?
9 Do you mean different customers or just different
10 focus on large end users versus others?

11 COMMISSIONER PINKERT: Well, you'll recall
12 in all of the briefs, or in many of the briefs that
13 have been filed in this case there is an argument
14 about how the U.S. industry is really focused only on
15 the contract sales to the larger end users, so I'm
16 wondering whether that focus varies from U.S. producer
17 to U.S. producer.

18 MR. BARONI: Commissioner Pinkert, as I
19 mentioned earlier, too, we do focus on all possible
20 customers in the market. What differs may be just the
21 channels and the way we reach those customers. It's
22 very efficient to work with the large end users
23 directly with our direct sales forces. It's also much
24 more efficient then to work with distributors to hit
25 some of the smaller customers.

1 So our focus really, and we count on volume
2 and business from all of those segments, not just the
3 large users. We just focus on them in different ways.
4 But they are all very important pieces of business for
5 us.

6 MR. ANDERSON: And, Commissioner Pinkert, I
7 might direct you, too, to one of the exhibits in our
8 prehearing briefs where we actually provided the
9 complete customer lists for all three producers.
10 You'll see that they number into the hundreds, so they
11 can't all be large.

12 In addition, you will also see from the data
13 that the absolute volume of U.S. product that goes
14 into the distribution market as opposed to the
15 contract is actually quite significantly, too, in
16 comparison to the Chinese and Canadian. So even
17 though the percentage shares might be different, the
18 absolute volumes are pretty comparable.

19 COMMISSIONER PINKERT: Any other comments on
20 that issue from the company witnesses?

21 MR. POULOS: Commissioner, I would just echo
22 the statements from Mr. Baroni that we also distribute
23 our product to multiple channels in the marketplace.
24 We service large customers and small customers. We
25 have a customer list of approaching close to 200

1 clients, so, as Chuck indicated, I think that shows
2 that we do service a greater need at the marketplace.

3 COMMISSIONER PINKERT: Okay. Now, there is
4 also an allegation or at least an argument that the
5 U.S. Industry has not been willing to divert export
6 sales or products going to export markets back to the
7 domestic market, which is allegedly supply starved.

8 I would like to get the response of the
9 various witnesses, as well as Mr. Anderson, to that
10 allegation. Go ahead.

11 MR. ANDERSON: Well, now that the AUV number
12 is out of the bag, I think we will have to address
13 that in the post-conference brief. But essentially
14 for all three companies, it is an issue of a transfer
15 price to an affiliated distributor overseas.

16 So outward it may appear to be a lower
17 price, in actuality, that is not the market price that
18 all three companies are receiving. So we will provide
19 more information on that.

20 With respect to whether or not the three
21 companies would return that product to the United
22 States, I think it is best to hear from them.

23 MR. BARONI: This is Mike Baroni again, and
24 I can say since the imposition of the preliminary
25 duties, and in our contract negotiations for 2009, we

1 have brought significant amounts of product into the
2 U.S. market that had been exported.

3 MR. CHRISTIANSEN: Yes, Commissioner, this
4 is from Cargill's perspective, and we have also done
5 the same at the end of 2008, when 2009 contract
6 negotiations were taking place, and we have brought
7 more product into the U.S.

8 MR. POULOS: And the same is true for Tate
9 and Lyle, but certainly it is all related to our
10 customer portfolios and after the proceedings of a
11 year or so ago, we have reevaluated our customers, and
12 began to refocus our business for the United States.

13 COMMISSIONER PINKERT: Thank you. Thank
14 you, Mr. Vice Chairman.

15 VICE CHAIRMAN PEARSON: Commissioner Lane
16 began with some questions about corn, and since I so
17 seldom get an opportunity to talk about corn these
18 days, I can't resist going back there.

19 I also don't know exactly where the
20 boundaries are between what might be publicly known
21 information within your industry, and what might be
22 business confidential. So ask I ask these questions,
23 please understand that I am not trying to push you
24 into an area that you shouldn't go.

25 Rather, tell me what you can on the record,

1 and then provide further background in the post-
2 hearing report. Our managers of citric acid
3 businesses actually dealing directly with the pricing
4 of corn, or are they instead negotiating with related
5 business units regarding the pricing of dextrose or
6 glucose derived from corn? Mr. Baroni.

7 MR. BARONI: I can answer for ADM, and the
8 latter is exactly correct. We negotiate with our corn
9 processing division for pricing on high protose corn
10 syrup and other inputs, with the exception of molasses
11 that we continue to use.

12 We negotiate those directly with traders and
13 importers of Polish, and Ukrainian, and Russian
14 molasses.

15 VICE CHAIRMAN PEARSON: Mr. Staloch?

16 MR. STALOCH: Yes, thank you. For Cargill,
17 we go out and go into the marketplace with the idea of
18 what the corn price is. so then we look at that from
19 a hedging strategy, but also from a perspective of we
20 have multiple product lines within Cargill, and we
21 have to provide a return on our product use of
22 dextrose. So we compete with the other product lines
23 in order to get substrate.

24 VICE CHAIRMAN PEARSON: Okay. Let me make
25 sure I understand. The head of the product line are

1 not directly pricing corn, but rather you are
2 negotiating for dextrose or glucose?

3 MR. STALOCH: No, the price is set
4 internally, and so it is a straight transfer price.
5 So we can cover that in our briefs on how we do that,
6 but it is fairly standard. And then the price of corn
7 is out in the marketplace, and so it would just be
8 that approach.

9 VICE CHAIRMAN PEARSON: Okay. Mr. Poulos.

10 MR. POULOS: Yes. Certainly for Tate and
11 Lyle, we trade corn. We have a group within our
12 company that buys corn, not only for the citric acid
13 business, but for our other businesses.

14 Internally, then through a transfer price
15 mechanism, we essentially buy from another division of
16 our company the dextrose that goes into our process.

17 MR. STALOCH: Just to set the record
18 straight, I mean, I do buy the corn.

19 VICE CHAIRMAN PEARSON: So you are directly
20 involved in buying corn?

21 MR. STALOCH: Correct.

22 VICE CHAIRMAN PEARSON: And then the other
23 folks toll process it? Maybe that's not the right way
24 of looking at it, and then you are getting the
25 substrate that comes from the corn?

1 MR. STALOCH: Correct.

2 MR. POULOS: Again, just to clarify, when an
3 order is placed on our trading group to buy corn, it
4 is set aside for the citric acid group. Another
5 division of our company, essentially as you are
6 describing it, toll processes it for us.

7 And through the post-hearing briefs, you can
8 see the mechanism of that transfer price, and we
9 essentially buy it from our own company.

10 VICE CHAIRMAN PEARSON: Okay. Good. Well,
11 to me, going through the materials pre-hearing, and I
12 did not read every piece of paper. I apologize. But
13 I read a good chunk of it, and this was an issue that
14 was not clear to me.

15 So for the post-hearing, if it is not
16 already on the record, I would like to get some sense
17 of the relationship between the price of corn that was
18 prevailing in the marketplace in some representative
19 period of time, and the price that you actually had to
20 pay for our substrate, because we have been talking a
21 lot about corn.

22 And there may be a very direct pass through
23 of what is going on in corn to what is happening to
24 your cost structure, or there may not be, and right
25 now I simply don't know.

1 MR. ELLIS: We will try to clarify that in
2 the post-hearing, and get a clearer picture for you,
3 because I am afraid that it is both complicated and
4 confidential, or company specific.

5 VICE CHAIRMAN PEARSON: No, I appreciate
6 that. It is both complicated and confidential, but do
7 you understand why I am trying to --

8 MR. ELLIS: Very good.

9 VICE CHAIRMAN PEARSON: Okay. Because we
10 wouldn't want to find material injury by reason of
11 inept corn or substrate pricing. The statute doesn't
12 allow us to do that, but that could be an issue that
13 plays a role in what we are seeing in some of the
14 data.

15 MR. ELLIS: We will certainly work on that,
16 and I can assure you though that inept corn hedging is
17 not the cause of injury in this case.

18 VICE CHAIRMAN PEARSON: Well, it has been
19 the cause of some ulcers for people in the industry.
20 Maybe folks here can relate to that. Are you able to
21 say anything about the percentage of the coming year's
22 corn needs that would have been priced at the time
23 that you are engaged in negotiations for the year long
24 contracts with major users?

25 So this would be looking at the fall period,

1 October or September through December, when you might
2 be involved in those negotiations. What is the
3 knowledge of corn pricing or the degree of corn
4 pricing that is locked in, Mr. Ellis?

5 MR. ELLIS: I am afraid that is confidential
6 and company specific. So we are happy to address that
7 in the post-hearing. I am a little reluctant to have
8 them talk about it here in public.

9 VICE CHAIRMAN PEARSON: If there is anything
10 that you would care to say, I would be happy to hear
11 it, but I appreciate the sensitivity.

12 MR. BARONI: Well, in the case of ADM, since
13 we actually negotiate a price with our sister division
14 for a finished product, we will buy our molasses ahead
15 of time, and we will contract with our corn processing
16 division for the other substrates.

17 We generally do know what those costs are at
18 the time we begin contracting.

19 VICE CHAIRMAN PEARSON: And will that go
20 through the full year that is coming, or is it by
21 quarter, or by half-year, or --

22 MR. BARONI: Generally, we will negotiate it
23 for the year.

24 VICE CHAIRMAN PEARSON: Okay. So there is
25 some considerable degree of certainty on the cost

1 side?

2 MR. BARONI: We do, yes. Then on the corn
3 portion of it, that is over on the other side.

4 VICE CHAIRMAN PEARSON: Okay. Mr. Staloch.

5 MR. STALOCH: Yeah, and that is similar to
6 how we do it at Cargill as far as the processing
7 costs. That is normally contracted in at the time
8 that we sell, and then the corn hedging, we will
9 address in the brief.

10 VICE CHAIRMAN PEARSON: Okay. Mr. Poulos.

11 MR. POULOS: Yes. From Tate and Lyle's
12 standpoint, we have very specific rules given to us by
13 our financial departments, which dictate to us our
14 limitations on speculation in the corn market.

15 So as we see contracts coming in, there is
16 an obligation, which you will see in the post hearing
17 briefs, as to how much we have to cover, and how much
18 we are able to leave float so to speak.

19 VICE CHAIRMAN PEARSON: Okay. I understand
20 the risk of open positions. I have told other groups
21 that I have been involved with businesses that were
22 making money, and businesses that were losing money,
23 and it is a lot more fun to be working for ones that
24 are making money.

25 So I have a lot of empathy for the situation

1 that you have been in here during the period of
2 investigation. Okay. Shifting gears then away from
3 corn. I think I am hearing a difference of views
4 between Respondents and this panel regarding
5 underselling.

6 And so my question is do instances of
7 underselling account for a relatively modest
8 percentage of the total sales volume for U.S.
9 producers of pricing products 1 and 3? Underselling
10 by Canadian or Chinese imports?

11 MR. ANDERSON: Let me take a shot at that.
12 There are some categories where there is clear
13 underselling, and there are underselling margins that
14 are substantial. Then there are some categories where
15 there is mixed underselling and overselling, and
16 slight overselling.

17 But those particular categories, the margins
18 of underselling and overselling are tiny. We are
19 talking within a penny for most of these, and for
20 those, the volumes are large, but those are the ones
21 where you are talking about the most sophisticated
22 multi-national purchasers, who have incredible market
23 power.

24 And to the point where they may even be able
25 to take the cost savings that U.S. producers might

1 otherwise have because they are closer, because they
2 are selling liquid, and essentially take that and put
3 it in their pocket.

4 We are so close here that I think that is
5 why looking at the 2009 data is very instructive,
6 because it shows substantial increases in prices to
7 the major customers, and the only difference is that
8 imports have been restrained.

9 VICE CHAIRMAN PEARSON: Okay. Well, my
10 light is changing, and I may come back to this topic,
11 but in the meantime, I turn to Commissioner Lane.

12 COMMISSIONER LANE: Thank you. I want to go
13 back to how you price your inputs. For internal
14 accounting purposes do the producers that obtain their
15 inputs from affiliated operations normally record the
16 inputs at cost of production, or at a fair market
17 value?

18 MR. STALOCH: At Cargill, as far as inputs
19 such as dextrose, or steam, or electricity that may be
20 generated --

21 COMMISSIONER LANE: Could you get a little
22 bit closer to your microphone.

23 MR. STALOCH: I'm sorry. So at Cargill,
24 where inputs such as steam, which may be generated by
25 another division, or electricity, or dextrose, those

1 are priced at costs. Plus, we have to make a return
2 on those.

3 COMMISSIONER LANE: And that is how you do
4 it internally. I'm not talking about how you do it
5 here for the Commission, but internally you do it at
6 cost?

7 MR. STALOCH: Cost, plus a return.

8 COMMISSIONER LANE: Okay.

9 MR. BARONI: Well, for an internally
10 generated utility, such as electricity, and steam, and
11 waste water treatment within ADM, that is done at
12 cost. For things like high protose corn syrup, and
13 some of the other inputs, those are done at market.

14 COMMISSIONER LANE: Okay. So for the
15 dextrose and the corn, have you provided numbers in
16 your questionnaire responses that show the differences
17 between the market value of the affiliated inputs and
18 the cost basis for those inputs?

19 MR. BARONI: My understanding is that in the
20 briefs it was all done at cost. They were all
21 converted to cost. All of those inputs.

22 COMMISSIONER LANE: Okay. What about Tate
23 and Lyle?

24 MR. POULOS: From a Tate and Lyle
25 standpoint, I think I would prefer to have it

1 discussed in the post-hearing briefs if that would be
2 okay.

3 COMMISSIONER LANE: Okay. Thank you.

4 MR. POULOS: We will be very specific.

5 COMMISSIONER LANE: Okay. Thank you. Mr.
6 Richardson. The data in this case indicates that the
7 number of employees has dropped and the hours worked
8 have likewise dropped. Yet, productivity has improved
9 significantly.

10 Do you have any comments or insights
11 regarding how increased productivity has been
12 achieved?

13 MR. RICHARDSON: Quite honestly, Ma'am
14 Commissioner, I do not. However, I will tell you that
15 in our broad based union, all employers, since as
16 early as the '70s and early '80s, have been doing more
17 with less.

18 It is no secret that capacities and
19 productions have increased while workers have been
20 decreased. There has been combinations,
21 consolidations, and job eliminations, since that time,
22 but capacity has increased. It would only be my
23 estimate through technology and capital improvements.

24 VICE CHAIRMAN PEARSON: Okay. Do any of the
25 producers wish to comment on that question?

1 MR. BARONI: I think in ADM's case it is
2 just a greater burden has fallen on the remaining
3 employees. We are still operating the plant at the
4 same rates, but the people that are left are doing a
5 lot more. We even have plant management cleaning
6 offices.

7 MR. STALOCH: I would like to comment. In
8 Cargill, we have cut research and so we are not doing
9 the research in the future for future efficiencies.
10 We have cut our maintenance to just bare bones, and
11 just do the minimum that we can.

12 We have cut staff, and so we don't have an
13 extra person that would be training to get further
14 development. We are just bare bones.

15 MR. POULOS: And certainly the same is true
16 for Tate and Lyle. I think it is one of the
17 disappointments in an industry that is growing like
18 the biotechnology industry that we are put in a
19 position to reduce our research, and to cut back our
20 business as much as we have had to.

21 COMMISSIONER LANE: So would you say this is
22 an industry where jobs are being lost, or the number
23 of hours are being cut?

24 MR. STALOCH: I can answer that for Cargill.
25 We have had job cuts, and overtime is strictly

1 limited.

2 COMMISSIONER LANE: Okay.

3 MR. BARONI: At ADM as well, we have had job
4 cuts. The problem with that though, as Jack had
5 mentioned, is that a lot of maintenance is going
6 undone, and at the levels of employment that we have
7 now, and with the cuts that we have now, we don't know
8 how sustainable that is, but we have cuts.

9 COMMISSIONER LANE: Okay. Did you --

10 MR. POULOS: And the same for Tate and Lyle.
11 We are in constant review of positions and ways to
12 reduce the cost of producing this product.

13 COMMISSIONER LANE: Okay. Thank you. Now,
14 the Canadian Respondent contends that there is market
15 segmentation, in terms of end-user markets, and
16 customer sizes, and types, such that there is
17 attenuated competition between the Canadian product
18 and the U.S. product, and between the Canadian product
19 and the Chinese product.

20 Would you please comment on that.

21 MR. ANDERSON: I think the data shows
22 otherwise. I think the data shows that the -- and
23 particularly the Canadian product and the U.S.
24 product, serve the same markets, the same types of
25 customers, the same end-users.

1 There is a particular problem as we pointed
2 out in our pre-hearing brief in the Canadian market
3 segmentation data that should be corrected.

4 There are substantial quantities in unknown,
5 which we know goes into another particular category,
6 and once those are corrected, I think the Canadian
7 end-user profile looks very similar to the U.S.
8 profile.

9 COMMISSIONER LANE: Okay. And you responded
10 to that in your pre-hearing brief?

11 MR. ANDERSON: Yes.

12 COMMISSIONER LANE: Okay. Thank you. If
13 the domestic industry's market share has not changed
14 more than a few percentage points during the period of
15 investigation, and if there has been underselling --
16 or, I'm sorry, and if there has been overselling in
17 the main segment where there is competition among
18 subject imports, and the domestic like product, and
19 prices rose during the period of investigation as
20 contended by the Respondents, what does that tell us
21 about any injury the domestic industry may be
22 suffering?

23 MR. ANDERSON: Well, again, a lot of the
24 trend analysis are based on the fact that you put 2008
25 in, and then you see prices increasing, and you do see

1 a higher sales to cost of goods sold ratios, but we
2 think the 2008 data shows a lot of petition effect.

3 Having said that, even in 2008, we still had
4 substantial price depression because the ratio of
5 sales to cost of goods sold just simply is not enough
6 to make an adequate investment for the U.S. Industry
7 to invest, and to even maintain their current plan.
8 That's where the injury really lies.

9 MR. SZAMOSSZEGI: And also just quickly.
10 I'm sorry, Andrew Szamosszegi here. I think it is
11 constructive to consider the prices in 2006 and 2007.
12 If you look at the underselling prices and the
13 difference imagined between overselling and
14 underselling, if all prices were at the overselling
15 prices, it wouldn't have made much difference to the
16 domestic industry.

17 They still would not have been very
18 profitable, because the overall price level was low,
19 and the overall price level was low because they were
20 competing with imports in this important segment to
21 them.

22 MR. ELLIS: I can't resist chiming in also.
23 The key point or one of the key points with what Mr.
24 Anderson said is that 2008 data shows an improvement
25 in some small ways, but there are obviously cause

1 divided, the filing of the petition, and the
2 dependency of this very investigation.

3 So you are getting noise if you will, and
4 the '05, '06, and '07 data that you had collected at
5 the prelim provides a clear review of what really was
6 going on in the marketplace before the petition took
7 effect.

8 And there you saw really severe losses and
9 unsustainable ratios of cost of goods sold to sales,
10 but you also saw a downward trend from '05 and '06 to
11 '07. It is really off the cliff. Now it came up a
12 little bit in '08, but again that is because of the
13 petition.

14 COMMISSIONER LANE: Okay. Thank you.

15 VICE CHAIRMAN PEARSON: Commissioner
16 Williamson.

17 COMMISSIONER WILLIAMSON: Thank you, Mr.
18 Vice Chairman. Mr. Anderson, to follow up a question
19 that the Vice Chairman asked you earlier. You had
20 sort of indicated that you thought the major
21 purchasers had significant market power because there
22 is so few of them in this market.

23 But I was wondering if there is relatively a
24 limited number of U.S. suppliers, do they have market
25 power, too?

1 MR. ANDERSON: Good question. Okay. Let's
2 talk about a hypothetical. We have one, two, three,
3 four commissioners, okay? Let's say you have four
4 commissioners, and you each want to buy a car.

5 Now, there are only four dealers as well.
6 So you have got concentrations on the supply side, and
7 you have got concentration on the demand side, but the
8 dealers have six cars in total. Two dealers have two
9 cars, and the other ones have one car each.

10 You have got concentration in both, all
11 right? Now you are all negotiating at the same time.
12 It is the same car by the way. You all want exactly
13 the same car, okay? Now, here is the \$25 thousand
14 question. How would you negotiate?

15 Who has the power in that negotiation? Is
16 it the seller, or is it the buyer? And I think it is
17 pretty clear with you being a smart consumer would go
18 out and seek at least two price quotes, and you
19 wouldn't even have to seek the second one, because the
20 dealer would probably come to you, because if they
21 don't sell those cars, the cars that are for sale is
22 lost.

23 So it is true that there is concentration in
24 both supply and demand, and so the critical question
25 becomes who has the market power, and the answer to

1 that is it depends upon the supply and demand
2 equation.

3 And in this case, given the enormous excess
4 capacity in China, and the capacity in Canada, all
5 available to serve the U.S. market, it is the
6 purchasers who definitely have the power.

7 MR. ELLIS: If I may, we have debated long
8 and hard whether or not you would use that car analogy
9 today.

10 (Laughter.)

11 COMMISSIONER WILLIAMSON: I'm glad I gave
12 him a chance.

13 MR. ELLIS: Okay. Well, I list that debate.

14 (Laughter.)

15 MR. ELLIS: But I wanted to make clear one
16 thing in his analogy, and that analogy does make clear
17 that it is different from your question, which is that
18 the key part about the market power in this industry
19 is that it is not limited to the three producers
20 sitting before you here.

21 In other words, it is a globally traded
22 commodity, and there is a lot of movement across
23 borders. There is a huge, huge capacity in China, a
24 significant capacity in Canada right on the border,
25 and that changes the market power perspective.

1 You just don't have three guys here with
2 market power. So if there is an educational benefit
3 to his analogy, it is that you have not just three car
4 salesmen, but maybe four, five, or six, and they are
5 abroad, but their cars can come to be sold to you
6 folks.

7 COMMISSIONER WILLIAMSON: So you are saying
8 that there is six cars on a lot, but there are a whole
9 lot more out there someplace else, too?

10 MR. ELLIS: Right. Right. There is
11 actually 20 cars waiting to come in and service you.

12 COMMISSIONER WILLIAMSON: Okay. Thank you.
13 Maybe we could relate this to -- well, my question
14 about the role of the spot prices and how they affect
15 the contract prices, I am not sure I got a clear
16 indication. It sounded like it was a rather murky
17 relationship.

18 I was wondering if there is any further
19 edification that you can give on that, and what
20 evidence there is as to what role the spot prices play
21 with respect to the contract prices?

22 MR. POULOS: If I can make a comment. From
23 Take and Lyle's standpoint, and I can certainly only
24 speak for ourselves, the spot market is one that we
25 don't extensively participate in directly as my other

1 colleagues here have distribution outlets that
2 generally participate in that market.

3 Part of that is strategic. Since we have
4 obligations for sustained profitability, we look for
5 hedging strategies, and we look for long term
6 contracts. The spot market is one that we don't
7 participate extensively in.

8 However, we lack a knowledge of that, and
9 that is where our distributors are a very important
10 part of the link with what is going on in the market
11 through our intelligence. The spot market is often an
12 indicator of oversupply, and uncomfortably the spot
13 market may tell us whether the price is going to be
14 coming up or down in the coming period.

15 In an oversupply situation spot prices may
16 be lower than contract prices, or the other way
17 around.

18 COMMISSIONER WILLIAMSON: Okay. Thank you.
19 Mr. Anderson, did you want to respond?

20 MR. ANDERSON: Just a bit. I think if you
21 look at the data, it will show that the spot prices
22 are substantially higher than the contract prices, and
23 I think there is a couple of reasons why.

24 One is that spot customers tend to be much
25 smaller. Customers who are just buying in much

1 smaller volumes, that has a tendency to raise the spot
2 price above the contract price. But in some respects,
3 as Kurt had suggested, the spot market does act as
4 kind of a futures market for the contract.

5 And you just this vividly in the middle of
6 2008, when the spot pricing shot up, and it wasn't so
7 much because there was a shortage at that time. In
8 fact, if you look at the import data, there are
9 massive volumes of imports coming in during 2008, but
10 the price is increasing at the same time.

11 And you have to ask yourself why. Well, the
12 reason is that spot price reflected anticipations of
13 future shortages, and so nobody was going to sell the
14 imported product cheaply and knowing that there was
15 going to be a dumping order in place and a drying up.

16 So in some sense the spot market, it acts in
17 some ways as a futures market price.

18 MR. LORUSSO: I would like to add to that if
19 I may. Pete Lorusso with TLC Ingredients. Being a
20 regional distributor, we service the spot market in
21 smaller customers. We offer value added service as we
22 are an extension of the manufacturer as far as
23 providing services and products.

24 Obviously to carry those costs, it costs us
25 a little more money to warehouse these products, and

1 redistribute out in combination with other items. So
2 typically the spot pricing is higher than the
3 contracted prices.

4 However, that is not to say that the spot
5 market is not keen or aware of what the total market
6 pricing is in the marketplace, whether you are a
7 regional distributor or a national distributor, and so
8 it does play an important role as far as providing
9 discovery and information that is channeled through
10 distribution.

11 COMMISSIONER WILLIAMSON: To what extent
12 does the spot market place play that role? Maybe the
13 impact on the contract prices, the amplification, is
14 not very great, but to what extent is a tiny
15 amplification to the contract price or raising it have
16 a bigger impact on these companies?

17 MR. BARONI: Well, as I mentioned before,
18 what has the biggest impact on pricing with the larger
19 contract customers really is the overhang of capacity,
20 because as I said, it is a little bit of a back and
21 forth game as you are negotiating the price.

22 You may go in with a price, and the customer
23 will come back and say, no, you are way too high. I
24 can get it elsewhere less expensively. And it is that
25 back and forth that really sets the pricing in those

1 contract markets.

2 The problem is that knowing that the
3 capacity is there, knowing that the imports are there,
4 we are just not in a position to risk losing
5 substantial volumes by holding firms on our prices.
6 In effect, if they tell us that you have to be at "X",
7 we have to go to "X", or really be at risk of losing
8 all that volume.

9 And the fact that the volume is available
10 makes that risk very, very real for us. An
11 interesting illustration in this, too, is that if you
12 look at the three Petitioners, we compete in other
13 product lines and other markets.

14 We are all in the high protose corn syrup
15 business. We are all in the corn syrup business. We
16 compete very hard against each other in those
17 businesses, but in all of those businesses, there is a
18 healthy domestic industry, and in citric acid, there
19 is not.

20 And the only difference between those
21 industries is this huge overhang of Chinese and
22 Canadian excess capacity. So to me it is obvious that
23 it is not the three of us beating each other up,
24 because that is not the way that the other markets
25 work, where we compete head-to-head just like we do in

1 citric.

2 It is that excess capacity from China and
3 Canada, and that is the only difference.

4 COMMISSIONER WILLIAMSON: Thank you for
5 those answers.

6 VICE CHAIRMAN PEARSON: Commissioner
7 Pinkert.

8 COMMISSIONER PINKERT: Thank you, Mr. Vice
9 Chairman. I would like to frame a question for Mr.
10 Anderson that arises from the opening statements of
11 the Chinese Respondent. What is your response to the
12 argument that you are asking us to infer causation
13 from world over supply, subject import market
14 presence, and poor performance by the domestic
15 industry?

16 MR. ANDERSON: I thought I would get that
17 one. We are not asking you to infer causation. We
18 are asking you to sort of understand the dynamics of
19 the market. If the capacity and supply were only
20 theoretical, then I think you might have a problem.

21 But that supply and capacity has been
22 realized by virtue of substantial imports into the
23 U.S. market, and not just in the segments of the
24 market where the U.S. producers are less present, but
25 in their core market.

1 That is, the large customers. There is a
2 substantial supply of Canadian and Chinese products
3 within the top 10 customers that the U.S. producers
4 sell to in the United States. You don't need to infer
5 it just based on the supply alone.

6 That's why the 2009 contract pricing data is
7 so terribly instructive, because you have a classic
8 social science experiment, which is that you want to
9 control for one factor, which is unfairly traded
10 imports.

11 You take that one factor out of the picture,
12 and then what happens to prices? The prices increase
13 dramatically. That information I think is much, much
14 more probative than underselling and overselling,
15 because you don't have as many variables actually that
16 you have to deal with, like differences in contract
17 time, and differences in transportation, and all the
18 rest.

19 We are just simply looking at what had
20 happened in the market once the imports were
21 restrained. So I don't think it is a pure volume
22 argument, and that the mere presence of imports have
23 injured. That is certainly not the case here.

24 I think that outside the three year POI data
25 that we have provided you, provide very compelling

1 evidence that there is causation, and injury within
2 the three year period.

3 COMMISSIONER PINKERT: Now looking
4 specifically as far as suppression as an issue, how
5 should we think of what the COGS to sales would have
6 been in this industry absent the dumped or subsidized
7 imports?

8 MR. ANDERSON: Well, you do have now the
9 pricing for 2009. We have given you the corn costs
10 and the energy costs at the end of 2008 when they were
11 contracted as well. You can see that they are
12 essentially the same, and so you can infer that the
13 COGS from 2008 would be pretty much equal to the COGS
14 in 2009.

15 If you want more detailed data, we can
16 provide that information in the post-hearing brief,
17 but I think it will show you that there is a
18 substantial improvement in the sale to COGS ratio.

19 MR. ELLIS: If I may add, you would also I
20 think look for a return as described by Mr. Baroni
21 that would give you an adequate return on your
22 capital, and you will cover any risk attributable to a
23 particular investment.

24 And you would not have this kind of long
25 term stream of negative returns that you have had over

1 the past several years. It is longer than just the
2 three years, suggesting as you said that it is not
3 just the three guys here going head-to-head against
4 each other.

5 COMMISSIONER PINKERT: Thank you. Now,
6 specifically on your -- I think it is Exhibit 10 to
7 your prehearing, as well as your Graph Number 3, and I
8 believe also Graph Number 11 today, would that look
9 any different if instead of -- I'm sorry, Graph Number
10 12 and Graph Number 3.

11 Would that look any different if you were
12 plotting the subject import volumes against U.S.
13 producers operating income, as opposed to net income?

14 MR. ANDERSON: There may be a -- we will
15 have to take a look at that. There may be a problem
16 in the labeling. This may have been operating income,
17 as opposed to net income. I have to take a look at
18 that.

19 But the answer I think will be no. I mean,
20 if you look at the data where we do have differences
21 in -- where we do have the operating income in that
22 income, with the exception of some hedging gains and
23 losses that some people book in the non-operating
24 income and expense, I think the data is fairly
25 consistent.

1 COMMISSIONER PINKERT: Thank you. Andrew,
2 what role does the impact of the petition play in your
3 threat argument?

4 MR. SZAMOSSZEGI: Well, the impact of the
5 petition has to be seen in the broader context of what
6 was going on, and not just here, but worldwide. And
7 so the role of the petition as we have just discussed
8 here was a factor that has, one, resulted in higher
9 price levels in the U.S. currently.

10 But also resulted in lower volumes, which is
11 what one would expect from economic theory. Now as a
12 result of trade action in the EU, and trade action
13 here, and demand trends ongoing now because of the
14 economic difficulties ongoing all over the world, we
15 have a situation where there are large inventories
16 building up in China.

17 This is something by the way that was
18 totally not anticipated at the preliminary stage of
19 the investigation, when inventories were expected to
20 go down. So, what role does the petition play?

21 The petition has really kept volumes off the
22 market from coming here in the recently concluded
23 month, and I believe that without the threat of an
24 order in place, what we are going to see is a lot of
25 volume coming out of China into the U.S., and as it is

1 done in Mexico, and as it has done in the EU, though
2 not to the extent that it had before the peak there.

3 So the petition has played a role, but it
4 has to be seen in the broader context of what has been
5 going on in the overall market.

6 COMMISSIONER PINKERT: Thank you. Now,
7 staying with this threat issue, I believe that Mr.
8 Ellis might be the person to answer this next
9 question. For purposes of accumulation in the context
10 of a threat analysis, are there differences in the
11 volume trends or the price trends in the two countries
12 that might be relevant?

13 MR. ELLIS: I may ask Mr. Anderson to chime
14 in, but I don't think we have seen any differences.
15 In other words, we think that this case is suitable to
16 you through a prior discretion to accumulate the
17 threat circumstance.

18 COMMISSIONER PINKERT: Thank you.

19 MR. ANDERSON: The Canadian data is
20 confidential because there is only one producer, but
21 you can glean certain information that you can use in
22 a public forum, from like U.N. trade data, which is
23 not confidential.

24 But the volumes coming in from China and the
25 volumes coming in from Canada are fairly comparable.

1 The pricing is fairly comparable, and the segment that
2 the product from the two countries compete in are also
3 fairly comparable.

4 So in terms of the normal factors that you
5 consider for accumulation, I think that it is really
6 difficult for either the Chinese or the Canadians to
7 make a de-accumulation argument.

8 COMMISSIONER PINKERT: Thank you. Turning
9 to Mr. Richardson, does your union represent the
10 employees in Canada as well as the United States?

11 MR. RICHARDSON: That is a question I do not
12 know, Mr. Commissioner, but I will be happy to find
13 out for you and provide that information for you.

14 COMMISSIONER PINKERT: I would appreciate
15 that, and also whether or not the answer to that
16 question is yes, how do you view the relationship
17 between the Canadian industry and the U.S. industry?

18 MR. RICHARDSON: From a union perspective,
19 we are an international union, and we view it as one
20 where the Canadians have their economy, and their
21 industry, and we have our industry, and our economy,
22 and those areas where we are cognizant of it, but the
23 injury and the harm that has been caused to the
24 American worker is prevalent enough for us to be here
25 supporting this petition.

1 COMMISSIONER PINKERT: Thank you. Thank
2 you, Mr. Vice Chairman.

3 VICE CHAIRMAN PEARSON: Going back to where
4 I left off a little while ago, are the Respondents
5 correct that a substantial portion of U.S. sales are
6 made to customers where our quarterly pricing data
7 shows that imports, subject imports, sold at higher
8 prices?

9 I think that they will elaborate on that
10 this afternoon, and so I just wanted to hear your
11 response. Mr. Anderson.

12 MR. ANDERSON: That's the way they are
13 slicing and spinning the data. A lot of their
14 analysis again relies on including 2008 in their
15 count, which we think should be excluded.

16 A lot of it relies on including products
17 four and five, which we think should be excluded or
18 discounted because you did not break out pricing.

19 VICE CHAIRMAN PEARSON: Those are relatively
20 lower.

21 MR. ANDERSON: They are relatively lower.
22 So are these core products, where there are large
23 volumes, but again we would point out the fact that
24 the margins, the apparent margins for overselling are
25 razor thin in those products.

1 And to the point where it is hard to really
2 draw conclusions as to who is underselling whom.

3 VICE CHAIRMAN PEARSON: Okay. We may have
4 seen thinner razors. Mr. Szamosszegi.

5 MR. SZAMOSSZEGI: Yes, but even if we take
6 those numbers at face value, the prices there are not
7 consistent with industry profitability in 2006 and
8 2007.

9 VICE CHAIRMAN PEARSON: Okay. How do you
10 respond to the view likely to be expressed by the
11 Respondent that the real price competition in this
12 industry takes place among domestic producers bidding
13 against each other for long term contracts?

14 MR. ELLIS: Yeah. We obviously have a very
15 different view of the world. There is competition
16 among these companies, and Mr. Baroni expressed it,
17 but that is not what is causing the injuries to the
18 U.S. industry.

19 And the problem here is that the competition
20 of the unfairly traded imports from China and Canada,
21 although --

22 VICE CHAIRMAN PEARSON: Well, can you
23 provide some substantiation of your earlier comments
24 that the competition among members of the domestic
25 industry is not what is causing the injury? Can you

1 substantiate that?

2 MR. ELLIS: Let me put it this way, and
3 respond in this way. As we stated in our brief in
4 several places, there is a lot of antidotal
5 descriptions or a lot of explanations from the
6 purchasers in the staff report, and in the
7 questionnaire responses that you have received that
8 talk about China being the price leader, and China
9 being the price leader downward.

10 The evidence there is pretty clear, and so
11 trying to polish the underselling graph, where the
12 lines are almost on top of one another, for example,
13 is not necessarily indicative of how the prices are
14 being set, and the prices that these folks then have
15 to deal with in the market place are being driven,
16 because a lot of that is coming from China. And if
17 anybody else wants to chime in. Chuck.

18 MR. ANDERSON: Vice Chairman Pearson, I
19 believe that the 2009 contract data absolutely
20 confirms that it is not the three U.S. producers who
21 are beating each other up, because the only difference
22 between the 2009 contract cycle and the 2008 is that
23 the subject imports were restrained.

24 All three U.S. producers were competing for
25 those contracts to the large users. Look at what

1 happened to the prices between the 2008 contracting
2 cycle and the 2009. I don't know if there is any
3 better way of proving the causal connections than to
4 take the imports out of the picture, and you still
5 have the three U.S. producers competing as fearlessly
6 as they ever did, and look at what happened to prices.

7 VICE CHAIRMAN PEARSON: So you don't
8 attribute any of the change just through a shift in
9 market psychology, for instance?

10 MR. ANDERSON: What would be the shift in
11 market psychology? It would be a fact that the
12 supplier is not available.

13 VICE CHAIRMAN PEARSON: Changing corn price
14 would be one possibility.

15 MR. ANDERSON: But the corn prices didn't
16 change.

17 VICE CHAIRMAN PEARSON: Further growth in
18 demand could be another?

19 MR. ANDERSON: Did it grow fast or at that
20 level?

21 MR. RICHARDSON: I hear what you are saying,
22 but I am just concerned. I would not want you to
23 ignore other possible factors that we should consider.

24 MR. ANDERSON: We will certainly look at
25 those other factors and will put them in the analysis

1 and see if they can explain the difference.

2 VICE CHAIRMAN PEARSON: Okay.

3 MR. ELLIS: I'm sorry, but just to be clear.
4 Although we are trying to present a position, we did
5 try to consider -- or we did consider the idea of
6 possible corn prices or other increase in demand if
7 there was any, and so on, and tried to filter those
8 away and see the impact.

9 And it happens that we have the '08
10 negotiating cycle versus the '09 negotiating cycle as
11 another factual opportunity for us to evaluate, and
12 that's why we are talking about that a great deal.

13 VICE CHAIRMAN PEARSON: Okay.

14 MR. CHRISTIANSEN: I would also like to add
15 that in the previous years where we had tried to
16 increase prices when we were faced with such factors
17 as corn prices going up, demand going up, we were
18 rejected on all of those fronts.

19 And at the same time period, you could see
20 the siege of imports coming into the United States.
21 So I think there is also a direct correlation that our
22 efforts have failed and the amount of imports coming
23 in at that time or during that period of time.

24 VICE CHAIRMAN PEARSON: Okay. Directly to
25 that point, I would like to bring to the attention of

1 those who have the confidential version of the staff
2 report to page V-47.

3 And you will have to respond in the post-
4 hearing, because this is entirely confidential, okay?
5 But it follows up on the points being made by Mr.
6 Christiansen, and there is a paragraph -- and even
7 though it is entirely bracketed, it is in the middle
8 of the page, and the first word is "Further", which I
9 trust will not violate any confidentiality. Counsel
10 advises that I am safe. Okay.

11 I would appreciate it if you for purposes of
12 the post-hearing could elaborate in some detail on the
13 statements made in that paragraph, and in the two
14 preceding paragraphs, that constitute a subheading in
15 that section of the report.

16 MR. ELLIS: I'm sorry, Mr. Commissioner, but
17 could you say which page that is again?

18 VICE CHAIRMAN PEARSON: V-47.

19 MR. ELLIS: Okay. That's fine. We will be
20 happy to do so, other than we will have to further
21 delve into this.

22 VICE CHAIRMAN PEARSON: Thank you very much.
23 Not a confidential question now. Each of your
24 companies deals with some products that are throughout
25 North America, and sold within the national market

1 with little or no regard for national borders. Maybe
2 not citric acid, but some other product, okay?

3 In this case why do you see the JBL plant as
4 fundamentally a foreign entity, rather than simply as
5 the newest firm in an integrated North American
6 market?

7 MR. POULOS: I think you will hear from JBL
8 this afternoon that they are kind of wishing that they
9 were U.S., or envisioning themselves as a part of the
10 U.S. industry, and clearly they expressed the view
11 that there is a single unified North American
12 industry.

13 The fact of the matter is that this was
14 established in 2002 in Canada rather than the United
15 States, and Canada is a separate country, and it was
16 established by a European producer who was clearly
17 planning on producing a substantial amount of citric
18 acid for the U.S. market, but he didn't base the plant
19 in the United States.

20 So he has got this negative impact of this
21 large amount of capacity that is coming to the United
22 States at low prices and challenging these folks'
23 production.

24 VICE CHAIRMAN PEARSON: Well, I understand
25 all of that, but the reality is that each of the three

1 companies, the producing companies represented here,
2 have other businesses, other product lines, that
3 compete quite comfortably across the borders between
4 Mexico and the United States, with product coming in
5 or going out.

6 And there isn't in those product lines the
7 sense of nationality that seems to be here, and I am
8 wondering if any of the company managers who are here
9 would be prepared to address that? Why is this
10 different? Mr. Poulos.

11 MR. POULOS: I think one of the things again
12 from a Tate and Lyle perspective is we certainly don't
13 fear competition, and we have facilities scattered
14 around the world competing on a global basis in many
15 products.

16 Citric acid is a key product for us, and we
17 welcome competition in that area traded fairly. When
18 someone comes in and undercuts your price repeatedly,
19 it is difficult for us to understand their tactic, for
20 one.

21 The other is that we try to do the best that
22 we can in the haze of negotiations to understand who
23 is doing what to whom, and that is very difficult
24 sometimes.

25 VICE CHAIRMAN PEARSON: Did you have

1 something to add, Mr. Baroni?

2 MR. BARONI: I do. Thank you, Commissioner.
3 I think fundamentally what makes them different really
4 are their pricing strategies. Obviously their
5 capacity is way beyond what the Canadian market can
6 bear, and they seem to be willing to sell product in
7 the United States at prices well below the market
8 prices that would exist if it was a fairly traded
9 market, meaning prices that would sustain a healthy
10 industry.

11 So really what differentiates them is the
12 pricing that they are willing to sell on the market.

13 VICE CHAIRMAN PEARSON: Okay. Thank you
14 very much. My time has expired. Commissioner Lane.

15 COMMISSIONER LANE: I don't want to sound
16 like a broken record, but I want to go back to your
17 input costs again. For those affiliated inputs that
18 you book with a profit adder could you provide a
19 specific schedule that shows for each year of the
20 period of investigation the volume and value of each
21 affiliated or internal inputs with the profit adder
22 that you use for internal accounting purposes.

23 And then also for each input show the cost
24 of production basis that you reported in your
25 questionnaire responses.

1 MR. BARONI: Well, in the case of ADM, the
2 data that we supplied was based upon costs, and so
3 there was no profit addition in there.

4 COMMISSIONER LANE: Well, I think that you
5 said that for internal purposes that you account for
6 those at costs with a profit adder, and I just want to
7 make sure that you distinguish between this so we
8 could tell what the profit adder is.

9 MR. BARONI: Okay. That wasn't the case in
10 ours.

11 COMMISSIONER LANE: Okay. I guess I must
12 have misunderstood that.

13 MR. STALOCH: We didn't have that either.
14 We put in there at cost, and then --

15 COMMISSIONER LANE: Now, one of you said
16 cost, with a price adder. I don't think I dreamed
17 that up.

18 MR. ANDERSON: I think what you are asking
19 for is you would like us to supply the input costs
20 based on our internal financial records, which for
21 some companies may include a profit, and for others
22 they may do costs.

23 Then you would like us to show what our
24 input costs are based upon our responses to the
25 Commission's questionnaire.

1 COMMISSIONER LANE: Well, I want to make
2 sure that I know that you distinguish between the
3 value with the profit adder, and how you reported just
4 the pure cost.

5 MR. ANDERSON: Right.

6 COMMISSIONER LANE: Okay. Okay. All right.
7 Thank you. Maybe I should just go back to buying cars
8 or something. Okay. Let's continue with pricing
9 data. How are the prices of subject imports for
10 contract sales affecting domestic producers' prices
11 during the POI?

12 MR. BARONI: Well, in our experience, we
13 believe that they have greatly depressed prices. In
14 our negotiations with our customers, they are often
15 cited as we quote our prices, they are often cited
16 that we have better prices from Chinese or Canadian
17 producers.

18 And if we want to maintain our business, we
19 have to drop our prices to those levels. So our
20 experience is that they have greatly suppressed prices
21 over the POI.

22 COMMISSIONER LANE: Okay. Given your
23 capacity and your practice of contracting next year's
24 output, what capability do you have to compete for
25 sales in the spot markets, and can you provide any

1 evidence of attempts to compete heavily in the spot
2 sales markets?

3 MR. CHRISTIANSEN: From Cargill's point of
4 view, obviously we have a large fixed asset that
5 financially will perform much better when you are
6 running at a higher utilization rate. Typically
7 during your annual negotiations that is where you can
8 secure that type of volume.

9 But a producer may wish or not wish to save
10 some volume to play in the spot markets, but over the
11 years as the imports have been surging in, that has
12 been a very risky bet as prices in those spot markets
13 in the early part of the investigation were very
14 aggressive and opportunistic.

15 COMMISSIONER LANE: Okay. Thank you. Did
16 anybody else want to respond?

17 MR. BARONI: In ADM's case, a fairly large
18 percentage of our sales go through distribution
19 networks. I would rather not publicly state what that
20 is, but we can give that to you in the post-brief
21 hearings.

22 But it is a large percentage of our sales,
23 and most of those, or a very large percentage of
24 those, are sold in the spot market, and we do
25 participate in that spot market through the price

1 support mechanism that Pete talked about.

2 COMMISSIONER LANE: Okay. Thank you. Now,
3 one of you said that you were diverting what used to
4 be your exports to the domestic market. Could you
5 provide post-hearing if you can't give it here in the
6 hearing on what percentage of what used to be your
7 export market that you have diverted now to your
8 domestic markets?

9 MR. BARONI: Yes, we can, but just to give
10 you the caveat that it is based upon kind of
11 contracted volume, which aren't always realized. So
12 what those actual numbers end up being in the 2009
13 contracts here aren't certain, but we can give you
14 kind of a percentage based upon contract or expected
15 volume.

16 COMMISSIONER LANE: Okay. Thank you. And I
17 think that in our staff report that we do not have
18 your energy costs broken down by company. Could that
19 be provided post-hearing for each company?

20 MR. ANDERSON: Do you want it for all three
21 years, or --

22 COMMISSIONER LANE: Yes.

23 MR. ANDERSON: Yes, it can be provided.

24 COMMISSIONER LANE: Okay. Thank you. In
25 your long term contracts do you have a raw material

1 price escalator?

2 MR. BARONI: ADM does not.

3 MR. CHRISTIANSEN: No, we do not from
4 Cargill.

5 MR. POULOS: I think that will be addressed
6 in the post-hearing brief.

7 COMMISSIONER LANE: Okay. Could the
8 companies that don't have price escalators has that
9 been a problem?

10 MR. BARONI: In what regard?

11 COMMISSIONER LANE: Well, are you having to
12 pay more for your raw material costs than your
13 contracts provide?

14 MR. BARONI: Again, some of that goes back
15 to the hedging strategies, which we will address
16 separately in the post-hearing briefs.

17 COMMISSIONER LANE: Okay. Thank you. In
18 Procter and Gamble's prehearing brief the accuracy of
19 the domestic industry's reported capacity utilization
20 levels for 2008, contending that it was really
21 operating at 100 percent capacity utilization because
22 of the widely reported shortages that occurred that
23 year, and so they have questioned that. Is that
24 accurate?

25 MR. ELLIS: Commissioner Lane, can we

1 address it in our post-hearing brief? It is
2 confidential information.

3 COMMISSIONER LANE: Yes. Okay. Mr. Ellis,
4 I think this is for you. The record does not reflect
5 that the Petitioners filed a critical circumstances
6 allegation. Is that correct?

7 MR. ELLIS: That's correct.

8 COMMISSIONER LANE: Mr. Vice Chairman, that
9 is all that I have.

10 VICE CHAIRMAN PEARSON: Commissioner
11 Williamson.

12 COMMISSIONER WILLIAMSON: Thank you, Vice
13 Chairman. The Petitioners argue that Chinese spiking
14 in the fall of 2007 was affected by the EU case and
15 rumors of a U.S. filing, and therefore we should give
16 less weight to the price increases that occurred in
17 2008 contracts.

18 And this happened before the filing of the
19 petition. Are you asking the Commission to extend the
20 issue of the effects of the petition to cover a period
21 before the petition was filed? This petition wasn't
22 filed until I guess April of 2008, and if so, is this
23 consistent with the statute which says that we should
24 give less weight to what happened after the petition
25 was filed?

1 MR. ELLIS: Whether or not you formally
2 apply the statutory provision that says that you can
3 take in account the petition and facts, we think that
4 you should be aware of, and you should take into
5 consideration the fact that as of late 2007 the market
6 was already feeling the impact of the EU case and
7 rumors that there was going to be a case in the United
8 States.

9 And clearly prices started increasing in
10 late 2007 for contract year 2008 because of those
11 effects. So again whether or not it is formally part
12 of your statutory analysis, that is one factor that
13 you should be considering in doing your analysis.

14 COMMISSIONER WILLIAMSON: Okay. Thank you
15 for that response. Lost sales and revenues. At page
16 58, you state that the existence of subject import
17 purchases in some sense is evidence of lost sales or
18 lost revenues.

19 Are you claiming that whether or not the
20 sales were lost on the basis of price, that that is
21 irrelevant? Mr. Anderson.

22 MR. ANDERSON: Let me take a shot at that
23 one. Lost sales and lost revenue allegations are
24 imprecise, works of art if nothing else, and it is
25 just so easy to check disagree because you disagree on

1 the exact date, the exact quantity, the exact price.

2 So one of the ways to figure out whether or
3 not there is an impact in terms of volume that are
4 related to the lost sales allegations, as you can
5 simply look at which of the purchasers basically
6 disagreed with the allegations, but nevertheless
7 purchased subject imports.

8 It is just a factor I think that you can
9 consider and how much weight you should give to the
10 lost sales, lost revenue, allegations.

11 COMMISSIONER WILLIAMSON: And you should
12 take into account the price it was being purchased to?

13 MR. ANDERSON: Well, and take into account
14 the fact whether or not they made purchases.

15 COMMISSIONER WILLIAMSON: Okay.

16 MR. ANDERSON: You may not have the actual
17 information on the prices. They could just disagree
18 without telling you, well, this was the price.

19 COMMISSIONER WILLIAMSON: Okay.

20 MR. ELLIS: I'm sorry. And the worst
21 example is the cases where they disagree, but
22 nonetheless certain things did happen and it made it
23 look like sales were lost. So they were disagreeing
24 on factors other than the key factor, which is were
25 sales lost to the subject import. I don't know if

1 that helps explain it.

2 Let me go back to the other point that we
3 just discussed. The reason why we are saying that you
4 should be looking carefully at data from late 2007 and
5 especially the first quarter of 2008, even though it
6 was before the petition, is that exogenous factors
7 were at play there.

8 There were things happening, including, for
9 example, the effort of the Chinese to shift their
10 sales, their shipments, to the EU in order to beat the
11 prelim there the way they did here six months later.

12 Another factor is the snow storms in China
13 that shut down production there. We have heard a lot
14 of talk about production shutdowns in the United
15 States, but this industry has had shutdowns elsewhere
16 on occasion.

17 One of them was in China in February of '08.
18 It was an almost complete shutdown of plants for a
19 while, and the destruction of transportation because
20 of these huge snow storms that they had in February.

21 And as a result there was some effect on
22 both the volume and prices, and we are saying that is
23 -- that you should be aware of these exogenous factors
24 that impacted the volume and pricing in the United
25 States even before the petition was filed.

1 So it is not just a simple factor that the
2 petition was filed and therefore things happened. I
3 hope that clarifies it a little bit better.

4 COMMISSIONER WILLIAMSON: Thank you. Please
5 discuss the extent to which your U.S. citric acid
6 sales are part of a larger negotiation process that
7 involves sales or purchases in other markets or that
8 involve sales or purchases for products in addition to
9 the citric acid and certain citrate salts?

10 MR. BARONI: Mike Baroni from ADM. In our
11 case, our negotiations for citric acid are for citric
12 acid. We don't combine other product lines in those
13 negotiations.

14 COMMISSIONER WILLIAMSON: So even though we
15 have one global company selling to another global
16 company --

17 MR. BARONI: That's correct, yes, and some
18 of our other products, like the corn syrups, and some
19 of those products, it is a different sales force, and
20 it is a different division. They operate separately.

21 COMMISSIONER WILLIAMSON: Mr. Poulos.

22 MR. POULOS: From Tate and Lyle's
23 standpoint, we do have a single selling group in the
24 United States that sells a broad range of range of
25 Tate and Lyle products. Citric acid is a product line

1 that our sales people will sell to multi-national
2 customers who do buy a broad range of products from
3 Tate and Lyle.

4 The influence of one product to another is
5 minimum, and my responsibility for our company, and
6 for the product line that I am responsible for, is to
7 make sure that we are making fair returns as best we
8 can for the citric acid product line.

9 MR. CHRISTIANSEN: And for Cargill, we focus
10 solely on citric acid and would not factor in the sale
11 of other ingredients that Cargill may produce.

12 COMMISSIONER WILLIAMSON: Thank you. Do any
13 of you know of instances in which firms have chosen
14 formulations not using citric acid because of
15 difficulties in obtaining citric acid, or the higher
16 prices of citric acid, or other reasons not related to
17 quality?

18 MR. POULOS: I think the question as I hear
19 it is one of substitution, and there are few
20 substitutes in the food industry for citric acid.
21 There are other acidulants, but not traded anywhere in
22 the same volumes.

23 On the industrial applications of citric
24 acid, there are some substitutes, and I think some of
25 the Respondents can make better comments than we can.

1 But there are some substitutes as I understand them.

2 MR. BARONI: I am aware of one instance
3 recently where citric acid was formulated out of an
4 application, most likely from what we were told based
5 upon higher pricing for the 2009 contracts.
6 Other than that, it seems to be fairly rare.

7 COMMISSIONER WILLIAMSON: Okay. Thank you.
8 At page 23 of your brief, you contend that U.S.
9 purchasers are attempting to accelerate deliveries and
10 stockpiling of citric acid, anticipating dramatic
11 reduction of availability because of imports.

12 We do have monthly import data. Would the
13 producers be willing to submit monthly U.S. shipments
14 for 2007 and 2008 so we could assess the impact on the
15 domestic industry of such acceleration of imports
16 prior to the prelim?

17 MR. ELLIS: Yes, we would be happy to do
18 that in the post-hearing briefs.

19 COMMISSIONER WILLIAMSON: Thank you. Vice
20 Chairman, I have no further questions at this point.

21 VICE CHAIRMAN PEARSON: Commissioner
22 Pinkert.

23 COMMISSIONER PINKERT: Thank you, Mr. Vice
24 Chairman. Going back to the question about the impact
25 of the petition even before the petition was filed, I

1 am wondering is there a tight relationship between
2 changes in pricing and the filing of the European
3 petition?

4 MR. CHRISTIANSEN: I believe you are
5 referring to the period of 2007, when the European
6 Commission started to file their case. It was clear
7 in the marketplace from information that I gathered
8 from customers that they would expect that a similar
9 type of case may be filed in the U.S.

10 And it appeared that they were seeing that
11 the Chinese were also expecting this, and may have
12 influenced the prices upwards in their next round of
13 negotiations to avoid something like this taking place
14 in the U.S.

15 MR. ANDERSON: I'm not sure if the petition
16 in Europe was anticipated and prices began to react
17 prior to the filing of the petition in Europe. We can
18 look to see if we can get some data on that.

19 We should be able to look at the import
20 data. However, I do know that after the petition was
21 filed in Europe, and you saw the spike in the graph
22 which showed that there were enormous volumes that
23 were shipped into the market, normally you would
24 expect the price to drop.

25 But in fact European pricing was increasing

1 in citric acid during that time period when the supply
2 was being rushed in to beat the duties. It is one of
3 the reasons that we think there is fairly strong
4 evidence that there was stockpiling going on in both
5 the EU prior to the preliminary determination, and
6 also in the United States, because in the summer of
7 2008, you actually had substantial increases in
8 imports.

9 But at the same time prices were increasing,
10 and given the fact that this is a fairly stable
11 product that you can store it, and given the fact that
12 the potential dumping margins were large, and to be
13 honest, given the fact that there was a 3-3 vote in
14 the preliminary, so that there was the potential that
15 there would only be a four or five month window, where
16 the Chinese product would not need to be imported, it
17 made complete sense for people to import that product,
18 and ask for much higher prices.

19 And the spot market price goes way up, even
20 though the import prices are increasing, and it is not
21 because there was some gigantic increase in demand at
22 that time.

23 COMMISSIONER PINKERT: Let me clarify my
24 question. What I meant to ask was did we see an
25 immediate reaction in the U.S. market to the filing of

1 the European case?

2 MR. CHRISTIANSEN: I don't know if the
3 correct word is immediate, but soon after as we were
4 approaching contract negotiations in the U.S., that's
5 when I experienced the previous statements that I
6 mentioned earlier.

7 COMMISSIONER PINKERT: Thank you. If there
8 is anything that could help elucidate that connection
9 in the post-hearings that would be helpful. I also
10 wanted to ask a couple of questions about customer
11 allocation, or allocations that might affect
12 customers.

13 Do any of the witnesses here have any
14 testimony to offer about whether they ever put their
15 customers in the United States on allocation during
16 the period that we are looking at?

17 MR. OAKLEY: This is John Oakley with ADM.
18 I can speak for ADM in saying that we consistently
19 over the period of investigation last year met all of
20 our contractual obligations.

21 COMMISSIONER PINKERT: Thank you.

22 MR. CHRISTIANSEN: And from Cargill's
23 perspective, I would say over the period of
24 investigation, typically it is more the matter in the
25 negotiation process the customer tells you how much

1 they are going to buy from you.

2 So it is not that we set the allocation in
3 the previous years. It is by them telling us that
4 they are going to buy "X" from us, and as we
5 experienced a change in the marketplace in late 2008,
6 and in 2009, we basically followed a strategy that
7 would stay within those guidelines that they had
8 allocated to us over the past few years.

9 MR. POULOS: And certainly for Tate and
10 Lyle, our U.S. contractual obligations have been met,
11 and we work hard to sustain those contracts over the
12 contracting time.

13 MR. STALOCH: I was just wondering, and just
14 to go back to the list, and we did have a power outage
15 in 2008, but I just wanted to reiterate that we did
16 work very hard to bring that plant back up.

17 We brought material in from another
18 producer, and we brought material in from our plant in
19 Brazil. We actually brought in more material than we
20 actually lost in order to really rectify that as
21 quickly as possible, and that is the only outage that
22 I can remember.

23 We worked extremely hard and we really
24 worked with our company to make sure that they had the
25 investment to make sure that doesn't happen again.

1 COMMISSIONER PINKERT: Thank you. Thank
2 you, Mr. Vice Chairman. That completes my questions
3 for this round.

4 VICE CHAIRMAN PEARSON: In the last round, I
5 was asking about JBL, and why we should see this as
6 part of a unified North American market, but let me
7 set that aside and ask this.

8 Would JBL be competing differently in the
9 U.S. market if the plant had been built on the U.S.
10 side of the border? And I ask that with full
11 knowledge that as a legal matter the Department of
12 Commerce has found these imports to be dumped and
13 assigned a margin of 20.88 percent.

14 The Commission does not look behind that,
15 and we accept that as a fact of life. I am just
16 interested in the reactions of the business managers
17 to that question, because you did not allege a subsidy
18 on the part of the Canadians that was assisting JBL.

19 Rather, it is something intrinsic to their
20 business process that allows them to dump that 20.88
21 percent. So if the plant was on the U.S. side of the
22 border would they still be doing that?

23 MR. BARONI: I couldn't speculate. I don't
24 know what their business strategy is, and why they are
25 selling it at the prices that they are. So I couldn't

1 begin to guess whether they would do that if they were
2 located in the States or not.

3 VICE CHAIRMAN PEARSON: Mr. Poulos.

4 MR. POULOS: Yes. I think Jack spoke of the
5 lumpy nature of bringing on new supply. It is very
6 difficult, and you have seen in the records that we
7 have not expanded our capacities for the sheer fact
8 that if it comes on lumpy, the market would not
9 sustain it to our knowledge, and not have negative
10 effect on the price.

11 That said, Jungbunzlauer chose to enter into
12 the North American market, and has had negative
13 impact. So once -- and I said it in my testimony,
14 that once you have made that commitment to capital,
15 you really have to sell it out, and there is little
16 recourse to affect the market by doing so.

17 MR. ELLIS: I just wanted to add something.
18 Obviously I don't know much about the facts of the
19 situation, and it may be better ultimately to ask JBL,
20 which I suspect you will. But I would point out that
21 I am from Buffalo, New York, and we would have
22 preferred that they had built the plant over the
23 border as you say.

24 (Laughter.)

25 MR. ELLIS: Because that would have improved

1 employment at least in Buffalo, which sadly needs it,
2 but I suspect that there were a range of financial
3 decision making that went into their plan to build it
4 over the border, where you can almost see the plant
5 from Buffalo, New York.

6 And that may have led them to the pricing
7 strategies that we see today.

8 VICE CHAIRMAN PEARSON: Okay. Well, I
9 appreciate your thoughts. I understand that it is
10 perhaps somewhat speculative, but you guys are in this
11 business, and you know more about it than I do. So
12 that's why I asked. Question for counsel. Could you
13 please respond to the arguments made by P&G -- and
14 this is really for post-hearing more than now.

15 But arguments made by P&G in their brief at
16 page 5, 64 to 70. Oh, perhaps on both page 5, and
17 then pages 64 to 70. Thank you. Excuse me. And
18 JBL's argument in their brief at pages 20 to 30, and
19 this regards cumulation.

20 And if you recall what they said, and want
21 to comment now, that would be fine. I am most
22 interested in cumulation for purposes of threat. They
23 did make arguments both for present injury and for
24 threat, but I am most interested in threat.

25 MR. ELLIS: We will be happy to address that

1 in post-hearing, but for threat, and for present
2 material injury, you look at very similar factors, and
3 as I think Mr. Anderson described earlier, we see
4 those factors as being satisfied for the Canadians, as
5 well as for the Chinese.

6 In other words, they are in all end-use
7 markets. They are simultaneously in the United States
8 throughout the POI, all quarters of the POI. Their
9 sold product goes throughout the geographic area of
10 the United States.

11 So your major criteria that you have used in
12 past cases for cumulation in threat, as well as in
13 material injury, I believe are satisfied here. But we
14 would be happy to address that in more detail.

15 VICE CHAIRMAN PEARSON: Okay. Thank you.
16 Again for you, Mr. Ellis, is the case for an
17 affirmative stronger when we look at this in industry
18 in a threat context rather than looking at present
19 injury?

20 MR. ELLIS: Well, we think we have a pretty
21 strong personal injury case, but the threat, as
22 described in our brief and as Andrew mentioned
23 earlier, the threat is very compelling we think. And
24 not just as a legal point but as a real factual
25 condition of the marketplace that these folks are

1 dealing with everyday. You do have -- and I'm not
2 going to go through all the factors because you've
3 read the brief and we can talk about it more in the
4 posthearing. But there are a couple points just to
5 keep in mind.

6 One is that contrary to the prelim the
7 inventories in China have grown massively, and you now
8 have an overhang of a couple hundred million pounds I
9 believe, which in itself is equivalent to a
10 substantial part of U.S. apparent consumption. That
11 alone is a very scary fact of life that these folks
12 had to deal with when they were negotiating their
13 sales.

14 And another one is the sheer increase in
15 capacity in China, where we had the chart that showed
16 over the past three years how much capacity has
17 increased compared to total U.S. consumption. And
18 again that also is a scary picture because it shows
19 that the mere increase in capacity, never mind the
20 total capacity, is just about equivalent to U.S.
21 apparent consumption. We think those are factors that
22 are appropriate to consider in the threat
23 determination in particular, and therefore lead to a
24 pretty strong outcome.

25 VICE CHAIRMAN PEARSON: Okay. Well Mr.

1 Ellis, you are well aware that the Commission is going
2 to vote here in a few weeks, and one side will be
3 pleased and the other side will be displeased. And we
4 have the obligation of writing an opinion that if this
5 is appealed to the Court of International Trade, we
6 would want an opinion that could be sustained by that
7 Court. And so, I mean you've thought a lot about
8 these things. Let me just walk through you some of
9 the issues I see here relating to causation. Because,
10 you know, we're going to have to know how to address
11 this.

12 Just looking at some indicators, a few of
13 these are public. I think I'll treat them all as
14 private because when I try to go back and forth I just
15 get myself in trouble. We have in this investigation
16 an increase in demand. We have had subject imports
17 rising both in absolute terms and relative to
18 consumption, okay? We have U.S. production also going
19 up, U.S. capacity utilization going up. U.S.
20 shipments by the domestic industry are up. Export
21 shipments by the domestic industry are up. U.S.
22 inventories are down.

23 Employment declined slightly while
24 productivity rose. Prices rose both for our five
25 pricing products and for average unit values. Cogs to

1 sales ratio fell only slightly, but it's hard to see
2 much suppression looking over the 3-year period of
3 investigation. Operating income for the domestic
4 industry rose, and the operating income to sales ratio
5 rose albeit not to a very high level, okay? So how do
6 we take those realities and write an affirmative
7 present injury opinion that could be sustained at the
8 CIT?

9 MR. ELLIS: It sounds like you've already
10 written your opinion.

11 VICE CHAIRMAN PEARSON: Well I'm asking
12 yours because I mean it's a vexing problem. I mean,
13 you know, you get to present your case, we have to
14 figure out what to do about it.

15 MR. ELLIS: Of course.

16 VICE CHAIRMAN PEARSON: And the question of
17 what arguments are legally sound and going to be
18 sustainable is something I've learned about a lot over
19 my five years here. Because as my Commissioners love
20 to hear me say, I have no previous experience in the
21 law, okay?

22 MR. ELLIS: Well let me provide this
23 thought. Many of the statistics you mentioned, the
24 improvements in the U.S. industry are in 2008. In
25 other words, were affected if not entirely through the

1 year then at least starting in April because of this
2 petition. And yes, I would expect things to have
3 improved because of this petition, because it did have
4 an impact in the market.

5 To me, if you look at '06 and '07, or as
6 we're proposing if you look at the preliminary data
7 from '05, '06, '07, your complete data, you see a very
8 different picture. You see none of those
9 improvements. You see negative, really severely
10 negative operating losses, you see very bad ratios of
11 cogs to sales. You do see declines in employment even
12 through 2008.

13 On and on, the factors are negative. This
14 industry as you know is at the point where they are
15 not investing sufficiently even to keep their plants
16 running. I don't know how much more obvious we've got
17 on the injury. So the question purely is one of
18 causation. And there we've provided you the data that
19 we think shows a long term trend over the past several
20 years of a overlay of steep increase in imports and a
21 steep decline in the operating conditions of the
22 industry.

23 We think that's not purely coincidence, and
24 as Mr. Anderson has said the evidence it's not purely
25 coincidental is that in 2008 negotiating period for

1 the first time for 2009 we have an improvement in the
2 prices and therefore in the cogs to sales ratio we
3 assume, suggesting that removal of the unfairly traded
4 imports is having an impact in the market place,
5 suggesting then in turn that when those are there,
6 they are the cause or at least a cause of the material
7 injury that is undoubtedly being suffered by this
8 industry. So if you want I'd be happy to write you a
9 contrary opinion that you could look over.

10 VICE CHAIRMAN PEARSON: I would welcome
11 that. I would like to see how one addresses these
12 issues. Because what I've pointed out are to some
13 degree some vulnerabilities in an opinion. So how
14 they are addressed is important.

15 MR. ELLIS: Well more seriously we would be
16 happy to sketch out the main points that I just
17 mentioned orally as like an addendum to the
18 posthearing so you can see if you accept the logic and
19 the factors that we've gone through.

20 VICE CHAIRMAN PEARSON: Okay, thank you. My
21 time has expired.

22 MR. ELLIS: Okay, thank you.

23 VICE CHAIRMAN PEARSON: I appreciate the
24 indulgence of my fellow Commissioners. Commissioner
25 Lane.

1 COMMISSIONER LANE: I would like for you to
2 respond to Respondent's assertion at p. 20 of the
3 Chinese brief that the domestic industry has 'had a
4 long history of intense domestic competition that has
5 in the past manifested itself in the price fixing
6 conspiracy that took place in the 1990s.' Please
7 explain how this should play into the Commission's
8 injury analysis, and posthearing could you provide any
9 relevant documentation on this issue?

10 MR. ELLIS: I would like to at least address
11 that momentarily. The price fixing thing is a little
12 offensive to even talk about. That was in the mid-
13 1990s, the companies were severely chastened for that,
14 it was in a different industry I believe, and these
15 folks do compete vigorously and have for the past many
16 years. As Mr. Baroni said earlier, you know, they do
17 compete head to head vigorously in other product
18 areas.

19 That competition has not lead to the kind of
20 ruinous economic conditions that we see in citric
21 acid. It's the unfairly traded citric acid imports
22 from China and Canada that are the only difference
23 between the conditions in this industry and in
24 neighboring industries. So we think that it's that
25 condition rather than this stiff competition among

1 these companies that's causing the injury that you see
2 today.

3 COMMISSIONER LANE: Okay, thank you. Why do
4 the U.S. producers seem to prefer one-year contracts?

5 MR. BARONI: Commissioner, I can answer that
6 for ADM, and it's just very simply customers want a
7 firm price contract over that year. We can't
8 necessarily understand or know what our input costs
9 will be for much longer periods than that. So we feel
10 it's much too risky to go out beyond one year.

11 MR. CHRISTIANSEN: From Cargill's
12 perspective I would add to that that in addition to
13 going out longer than one year puts you at risk as far
14 as your cost, in the early part of the period of
15 investigation you can see that the financial impact
16 that we were receiving was very painful and it was
17 just a matter of not being able to sustain those type
18 of losses longer than one year.

19 COMMISSIONER LANE: Okay --

20 MR. POULOS: And certainly from a Tate &
21 Lyle perspective, we have had multi-year contracts and
22 have not always had good experience with them in the
23 past. And as a result we've been careful with how we
24 go forward with contracting.

25 COMMISSIONER LANE: Okay, did such contracts

1 create a cost price squeeze in 2007 or 2008?

2 MR. BARONI: We did not have multi-year
3 contracts during that period.

4 COMMISSIONER LANE: No, I mean did the
5 contracts in 2007 or the contracts in 2008 create a
6 cost price squeeze?

7 MR. BARONI: Well absolutely. The data I
8 think clearly shows that. Our financial results were
9 abysmal.

10 COMMISSIONER LANE: Okay, what about for
11 Cargill?

12 MR. STALOCH: That would be the same.

13 COMMISSIONER LANE: And Tate & Lyle?

14 MR. POULOS: And the same.

15 COMMISSIONER LANE: Okay, thank you. Okay,
16 then why do you tend to sell such a large share of
17 your product using contracts when contract prices are
18 lower than other prices?

19 MR. ANDERSON: If I might jump in, the spot
20 market prices are substantially higher than the
21 contract prices, but there's a volume effect going on
22 here. The spot market is much smaller in size than
23 the contract market and people who are buying spot
24 often are small regional customers like the customers
25 of Mr. Lorusso who want to buy many different

1 ingredients from a sole source so they're willing to
2 pay a higher price. But the U.S. producers aren't
3 really geared as producers to basically sell at that
4 level of trade which would require them to carry all
5 sorts of different products and to sell in much
6 smaller lots.

7 COMMISSIONER LANE: Okay, the Chinese
8 Respondent's prehearing brief states that there is no
9 meaningful competition between the United States and
10 imported product on the spot market because of the
11 U.S. firms' focus on contract prices. Would you
12 comment on that please?

13 MR. BARONI: Yes, Commissioner Lane. As we
14 stated before we do compete in all segments of the
15 market and seek business in all segments of the
16 market. The difference really is the channels that we
17 use to reach those markets. Again we use for the
18 smaller users, because they do like to buy small
19 quantities often shipped on the same truck with a
20 number of other different products, we find it more
21 efficient to use channels such as regional
22 distributors to serve that market. But we do seek
23 that business and we do compete for it.

24 COMMISSIONER LANE: Okay, and you may have
25 answered this before but it won't hurt to answer it

1 again. How do spot prices affect contract prices and
2 vice versa? And how do the distributor prices affect
3 end user prices and vice versa?

4 MR. BARONI: Well again the spot market
5 prices are in the market, they're known in the market,
6 and when you're negotiating on your contract prices,
7 you know, those are part of the price discovery. They
8 can help to give some credence to what your customers
9 are telling you or give you maybe some ammunition to
10 dispute that. But they do play a role, you know,
11 their presence plays a role in those negotiations.

12 You will see a difference between the
13 pricing that we sell to a distributor versus what the
14 distributor sells to that end user, and really that
15 difference is primarily additional costs that they
16 incur to service that channel, they have warehousing
17 costs, they carry other products, they have financing
18 costs to do that. Generally shipping smaller
19 quantities results in higher distribution costs. So
20 when you look at end user pricing for the smaller
21 users who often buy in the spot market, they will be
22 higher than the prices that we would contract with a
23 distributor for.

24 COMMISSIONER LANE: Okay, well what about
25 how do your prices to distributors affect your prices

1 to end users?

2 MR. BARONI: They're negotiated in the same
3 manner with our distributors. The difference being
4 that we'll establish say a base price with our
5 distributor, but as they operate in the spot market
6 they come back to us for price supports. So if
7 they're at risk of losing a piece of business because
8 of lower competitive price, they come back to us and
9 we generally then will give them support on that
10 particular price.

11 COMMISSIONER LANE: Okay, when the vast
12 majority of prices are set in annual contracts, what
13 causes quarter to quarter changes in prices?

14 MR. BARONI: In our particular case, it
15 depends on how you're looking at the data. It could
16 be product mix, it could be customer mix. But again
17 it could be the effects of the spot market and price
18 supports as we indicated before to our distributors.

19 COMMISSIONER LANE: Okay, did either one of
20 the other producers want to take a shot at that?

21 MR. LORUSSO: Well as a distributor, excuse
22 me, I'm sorry, Curtis. But as a distributor speaking
23 on behalf of what Mr. Baroni has given you, I concur
24 with what he's saying. And I can also tell you that
25 as a distributor that we compete heavily with the

1 Chinese distributors that are offering prices in the
2 spot market, which we in turn provide in information
3 to ADM so they in turn could make decisions best
4 suited for their company as far as their strategic
5 operations are concerned in the marketplace with
6 citric acid and the citrate salts.

7 COMMISSIONER LANE: Okay, thank you.

8 MR. CHRISTIANSEN: I would just also comment
9 from Cargill's perspective, even though we negotiate
10 on annual basis throughout the quarters you may see
11 some fluctuations on pricing based on product mix and
12 customer mix.

13 COMMISSIONER LANE: Okay, thank you. A
14 number of purchasers reported contracts that were
15 longer than a year in length. Do you enter into
16 contracts that are longer than a year in length?

17 MR. BARONI: ADM does not typically do that
18 for citric acid.

19 MR. POULOS: We have in the past.

20 MR. CHRISTIANSEN: We have in the past but
21 typically our practice is to focus on one-year annual
22 agreements.

23 COMMISSIONER LANE: Okay, thank you.

24 Respondents contend that the 2008 pricing data are not
25 affected by the filing of the petitions in these

1 investigations because prices for a large portion of
2 purchasers were negotiated in the fall of 2007, well
3 prior to the April, 2008 filing of the petitions.

4 Could you please comment on this argument?

5 MR. ANDERSON: Let me take a shot at it. I
6 think that you'll see for our contract pricing there
7 is a jump between the fourth quarter of 2007 and the
8 first quarter of 2008, and we've described why we
9 think that is the case. It was a combination of the
10 actual case in the E.U., the threat of the case in the
11 United States, and rapidly increasing commodity prices
12 in a period of robust economic growth. Our contract
13 pricing for the most part remained flat through 2008,
14 that may not be the case for the Chinese and
15 Canadians, but that may reflect differences in
16 contracting practices.

17 COMMISSIONER LANE: Okay, thank you. Thank
18 you.

19 VICE CHAIRMAN PEARSON: Commissioner
20 Williamson.

21 COMMISSIONER WILLIAMSON: Commissioner, I
22 have no further questions and I want to thank the
23 witnesses for their testimony.

24 VICE CHAIRMAN PEARSON: Commissioner Pinker.

25 COMMISSIONER PINKER: I too would like to

1 thank the witnesses for their testimony, and I look
2 forward to the additional information in the
3 posthearing.

4 VICE CHAIRMAN PEARSON: Commissioner Lane,
5 any further questions? Okay. Mr. Deyman, do members
6 of the Staff have questions for this panel?

7 MS. ALVES: Thank you, Mr. Vice Chairman.
8 Mary Jane Alves from the general counsel's office. I
9 have two questions, both of them can be answered in
10 the posthearing brief. The first question goes to the
11 effect of the price undertaking that the European
12 Union recently accepted to resolve the antidumping
13 investigation of citric acid from China. It's
14 difficult to understand what the impact of this
15 agreement is going to be.

16 And in particular I'd like you to address
17 PepsiCo's argument on pp. 17-18 of its brief that it
18 does not impose quantitative restrictions on Chinese
19 imports into the European Union and does not require a
20 price increase for Chinese products. Also, in the
21 Chinese Respondent's briefs on pp. 5 and 79-82 they
22 assert that the effect of the E.U. price undertaking
23 will be that exports from China will serve the E.U.
24 market rather than the U.S. market.

25 MR. ELLIS: Ms. Alves, we'd be glad to

1 address that. I believe my client's understanding is
2 that in fact it already has affected the shipment
3 export of Chinese product to the E.U., so we believe
4 we're seeing the effect even though it's a price
5 undertaking rather than a duty amount. But we can
6 discuss that more in the posthearing.

7 MS. ALVES: Thank you. If you could also
8 discuss in the context of threat, there appears to be
9 a disconnect between the briefs in terms of what
10 Commerce found in its subsidy determination. For
11 example, in footnote 229 on p. 72 of the Chinese
12 Respondent's brief they contend that Commerce has
13 preliminarily not found any prohibited export
14 subsidies to the Chinese companies that were
15 investigated and verified that would make it likely
16 that imports of the subject merchandise from China
17 would increase. On p. 89 of Petitioner's brief you
18 assert that the Department has confirmed that some of
19 the subsidies conferred by the Chinese government are
20 prohibited subsidies falling under Article 3 of the
21 subsidies agreement.

22 MR. ELLIS: Okay, we'll discuss that also in
23 our posthearing. I would note that as of 55 minutes
24 ago the Department of Commerce presumably issued its
25 final result, so it may be more relevant for us to

1 discuss the final results in our posthearing brief.

2 MS. ALVES: That would be helpful. I don't
3 know what the final results are yet myself.

4 MR. ELLIS: We don't know.

5 MS. ALVES: Thank you.

6 MR. ELLIS: Thank you.

7 MS. ALVES: Mr. Vice Chairman, Staff has no
8 further questions at this time.

9 VICE CHAIRMAN PEARSON: Mr. Cameron, do
10 Respondents have questions for this panel?

11 MR. CAMERON: No, Mr. Vice Chairman. Thank
12 you.

13 VICE CHAIRMAN PEARSON: Well then permit me
14 to add my appreciation to the expressions of the other
15 Commissioners. This has been a very helpful morning
16 and I'm just thankful that you've all been here and
17 been able to participate so fully in this questioning.
18 We need to take a lunch break. I propose that we
19 return here at 10 minutes to 2. Be mindful that the
20 room is not secured, so if you have information or
21 materials that you would like to be sure you have this
22 afternoon, please take them with you. This hearing
23 stands in recess.

24 //

25 //

1 (Whereupon, at 12:54 p.m., the hearing in
2 the above-entitled matter was recessed, to reconvene
3 at 1:50 p.m. this same day, Tuesday, April 7, 2009.)
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1 Petitioners brought this case there were over 100
2 producers of citric acid in China. However, since
3 2002 there has been a great amount of consolidation in
4 our industry and the number of producers has been
5 greatly reduced until now there are less than 20
6 producers of citric acid still in business in China.

7 One of the driving factors behind this
8 consolidation in our industry is China's tight
9 environmental regulations. Citric acid production
10 causes serious pollution in the form of waste water
11 and solid wastes. In 2003, the Chinese government
12 implemented a series of strict environmental
13 regulations which limited the right to produce citric
14 acid for export to entities which comply with
15 standards regarding wastewater discharge and air
16 pollution.

17 Since 2006, the number of Chinese companies
18 in compliance with these standards and approved to
19 produce citric acid for export dropped from 21 to only
20 15 in 2008. Building and operating facilities which
21 are in compliance with these tough environmental
22 standards is very costly which means that it is
23 increasingly difficult to create or add citric acid
24 capacity without incurring costly measures to ensure
25 compliance.

1 While the Chinese citric acid market has
2 traditionally been somewhat export oriented, the most
3 important market for Chinese producers is the E.U.,
4 not the United States. The E.U. countries have always
5 been the number one export market for Chinese export
6 of citric acid. Even after our antidumping case was
7 filed in the E.U. and provisional duty rates were put
8 in place the E.U. remains our top export market.

9 The E.U. market is attractive for a number
10 of reasons. First, the E.U. does not allow the
11 importation of genetically modified organisms or GMOs.
12 Corn, one of the primary imports to citric acid, is
13 genetically modified in the U.S. but not in China.
14 Therefore, China has a competitive advantage when
15 selling to the E.U. markets since China produces GMO-
16 free citric acid. There is also supply set forth in
17 the E.U. market which ensures that Chinese imports
18 will maintain their presence in this market for the
19 foreseeable future.

20 Indeed, after definitive duties were imposed
21 in the E.U. antidumping case, the E.U. accepted price
22 undertakes from 60 Chinese exporters. These reopened
23 the E.U. market to these exporters with guaranteed
24 minimum price but with new volume restrictions or
25 monetary price level other than the guaranteed

1 minimum. The European Commission noted that the E.U.
2 required imports from China and elsewhere to meet the
3 amount and that even if operating at full capacity,
4 the U.S. citric acid industry would only be able to
5 meet about 75 percent of European demand.

6 The price undertaking ensures that Chinese
7 exports will continue to meet this demand. In fact
8 Chinese exports to the E.U. have increased every month
9 since the price undertakings were accepted. Citric
10 acid producers in China have also satisfied supplies
11 set forth in the U.S. market. Demand in China and our
12 other export markets has been strong, and we believe
13 it's likely to remain so even in the face of the
14 global economic slowdown.

15 First, the amount is growing in the Chinese
16 market. The beverage industry in China is believed to
17 consume the greatest share of citric acid production,
18 and the Chinese beverage market is expected to grow.
19 Chinese people consume per capita less than a third of
20 the quantity of beverages of people in other
21 countries. The popularity of beverages such as sodas,
22 fruit juice, sports drinks, and tea drinks is growing
23 in China with the consumer market. For instance, two
24 major beverage manufacturers in China have increased
25 their orders for citric acid by 13 percent in 2009.

1 Thank you, and I will be happy to answer any question
2 you may have. Thank you.

3 MR. RAINVILLE: Good afternoon. My name is
4 Dan Rainville, and I am president of Jungbunzlauer
5 located in Newton Center, Massachusetts.
6 Jungbunzlauer Incorporated is the dedicated sales
7 office of Jungbunzlauer in North America. I became
8 the president of Jungbunzlauer Incorporated in 2006.
9 Prior to that time I was director of finance at
10 Jungbunzlauer, and before that I was a financial
11 consultant to the company. In total I have worked for
12 Jungbunzlauer for 20 years.

13 Jungbunzlauer is a privately held company,
14 family owned, which dates back to 1867. Today it has
15 manufacturing operations in Austria, France, Germany,
16 and Canada. Citric acid is produced only by the
17 plants in Austria and Canada. Jungbunzlauer has been
18 selling citric acid to customers in the United States
19 since the 1970s, and at first it supplied this market
20 from our plant in Austria.

21 In 1999, JBL decided to construct a plant in
22 North America in order to better serve customers
23 throughout the western hemisphere. The company saw
24 increasing global demand for citric acid and decided
25 it was the right time to make such an investment.

1 Since the U.S. was the largest export market for our
2 product from Austria and North America was the largest
3 market for citric acid, it only made sense for us to
4 construct this plant in North America.

5 The citric acid plant in Port Colburn,
6 Ontario was built with the following objectives in
7 mind: 1) supply security, 2) supply flexibility, 3)
8 shorter lead time, 4) logistical simplification, 5)
9 nearby technical advice and services. These
10 objectives are embodied in our company motto, Better,
11 Faster, Closer. I should note that JBL Canada is the
12 sole producer of citric acid in Canada.

13 Our plant, which is located very close to
14 Niagara Falls, is also the most modern facility in the
15 world for the production of citric acid. The plant in
16 Canada operated at or near 100 percent capacity
17 throughout the period under consideration in this
18 investigation, and it continues to operate at full
19 capacity today. As we reported in our questionnaire
20 response, Jungbunzlauer has no current plans to
21 increase capacity in Canada by adding equipment or
22 through expansion.

23 Jungbunzlauer Canada produces only citric
24 acid. Citrate salts and other products are produced
25 by our other JBL facilities located in Europe. All of

1 the citric acid produced by Jungbunzlauer Canada is
2 anhydrous. In addition to granular citric, the plant
3 in Canada also supplies citric acid in solution and
4 liquid form. As you probably know, the highest
5 quality of citric acid is the food grade product which
6 is required by the food and beverage segment of the
7 market.

8 One hundred percent of Jungbunzlauer's
9 production of citric acid in Canada is food grade. We
10 ensure that our product has consistent purity, color,
11 and quality, and our customers recognize that we
12 supply a premium product to the market. Jungbunzlauer
13 ships directly from our plant in Canada to our
14 customers in the United States. Given the plant's
15 close proximity to the border, we are able to make
16 truckload deliveries of citric, as well as deliveries
17 in solution by railway tanker car.

18 With one exception all of the citric acid
19 shipped to the United States is imported by
20 Jungbunzlauer Incorporated. The food and beverage
21 segment of the market is the most significant part of
22 our business. This should not be surprising since the
23 largest U.S. producers are in this segment of the
24 market. However we also supply key customers in the
25 pharmaceutical segment including producers of beauty

1 and oral hygiene products.

2 We have only limited sales to the industrial
3 segment of the market, which generally prefers the
4 lower quality product. We sell most citric acid on
5 the basis of annual and multi-year contracts, and we
6 also supply some customers pursuant to short term
7 contracts. Spot sales are a small percentage of our
8 total sales. We negotiate most long term contracts at
9 the end of the year to meet customers' requirements
10 for the following year. Short term contracts and spot
11 sales are made throughout the year. For most of our
12 distributor customers we sell on the basis of a price
13 that we issue and revise periodically.

14 Finally I want to emphasize that citric acid
15 from Jungbunzlauer Canada is a premium product that is
16 sold at a premium price. Our customers regularly tell
17 us that our prices are higher than other suppliers in
18 the market, including the U.S. producers' prices.
19 This is fine with us. We do not mind being the
20 highest priced product in the market, and in fact we
21 expect to be the highest priced supplier in the U.S.
22 market. Why? You may ask. Because we do offer a
23 premium product. But we also offer the shortest lead
24 times in the market, dependable delivery service, and
25 the most reliable customer service to the market.

1 In addition our focus is on citric acid as
2 this is our primary product that we offer to our
3 customers. We are not interested in lowering our
4 price in order to beat the competition. In fact when
5 I saw the Commission found instances of overselling by
6 Jungbunzlauer I consider that to be evidence that at
7 JBL Inc. we are doing our job. That concludes my
8 statement. I'll be happy to answer any questions that
9 you may have. Thank you.

10 MR. BUTTON: Good afternoon. I'm Kenneth
11 Button of Economic Consulting Services, LLC. There
12 are certain economic conditions that are very
13 important in shaping competition in the U.S. citric
14 acid market. First, as you will hear U.S. demand for
15 citric acid is durable and even countercyclical, and
16 is not likely to decline significantly during the
17 current recession. Second, the U.S. producers lack
18 sufficient capacity to supply all of the U.S. demand
19 for citric acid and have been chronically unwilling or
20 unable to provide the volumes requested by U.S.
21 purchasers.

22 Third, the U.S. producers seek to sell their
23 output through contracts with the smallest possible
24 number of large volume purchasers. Fourth, there is
25 intense intra-U.S. industry competition in the fourth

1 quarter negotiation of annual fixed price contracts
2 for delivery of citric acid during a following year.
3 Fifth, as you will hear, the purchasers as a matter of
4 important corporate policy seek multiple sources for
5 their citric acid supply.

6 The U.S. industry is not suffering volume
7 related injury. Over the POI capacity was steady,
8 production increased by 7 percent, capacity
9 utilization increased by 6 percentage points and is at
10 effective full capacity. U.S. shipments rose by 9
11 percent and the U.S. producers' inventories fell by 43
12 percent to low levels. With respect to prices, there
13 was clearly no price depression as the U.S. producers'
14 prices increased consistently over the POI as
15 indicated by the increase in shipment AUVs and
16 quarterly pricing data.

17 As a group the U.S. producers did have weak
18 financial performance during the POI. The sources of
19 that weakness are to be found both with respect to the
20 industry costs and the industry revenues. First, the
21 predominant cost development over the POI was the
22 increase in corn prices in 2007 and the first half of
23 2008. Both the U.S. producers and purchasers are
24 acutely aware of corn price volatility.

25 That is why when the U.S. producers and

1 purchasers agree to fixed price contract terms in the
2 fourth quarter negotiations the purchasers assume that
3 the U.S. producers will be economically prudent and
4 will hedge properly and fully the cost of corn
5 necessary to make the citric acid that will be
6 delivered over the next 12 months. For the U.S.
7 producers not to do so would be taking a gamble that
8 market corn prices would not increase.

9 Anyone not hedging properly and fully for
10 2007 and 2008 deliveries would have suffered a major
11 cost increase that could have been avoided. This
12 appears to be exactly what happened. On the revenue
13 side of the U.S. industry's financial performance, the
14 central factor was the fixed price nature of the
15 delivery contracts which prevented U.S. producers from
16 increasing prices during the course of the delivery
17 year. Thus, the U.S. producers have locked in fixed
18 revenues. But if they fail to properly and fully
19 hedge their corn costs they were faced with an
20 unpredictable and rising raw material cost.

21 Furthermore, in the fourth quarter contract
22 negotiations each U.S. producer makes its fixed price
23 commitments based on its view of the market situation
24 and its particular cost structure. There are
25 important APO aspects to that issue which I cannot

1 recite here, but are discussed in detail in the
2 Respondent's confidential briefs. I can say however
3 that there is voluminous evidence of intense intra-
4 U.S. industry competition during those negotiations
5 that has been the most powerful factor setting the
6 price level for the vast majority of the U.S.
7 producers' volume.

8 What has been the effect of the subject
9 imports in setting the level of these contract prices?
10 The Commission should keep two points clearly in mind.
11 First, the subject imports have overwhelmingly
12 oversold the U.S. producers in such contract sales and
13 in all of the other quarterly pricing categories
14 involving more than a de minimis volume of the U.S.
15 producers' shipment. As shown in my exhibit imports
16 from Canada oversold the U.S. producers in 35 of the
17 total 48 such quarters. Imports from China oversold
18 the U.S. producers in 45 of the total 60 such
19 quarters.

20 I emphasize that this overselling covers
21 virtually all of the U.S. industry's volume. Clearly
22 the subject imports are not suppressing the U.S.
23 producers' prices. This conclusion is supported by
24 the purchasers' responses to the domestic industry's
25 lost sales and revenue allegations. First, despite

1 the large number of U.S. producer allegations, the
2 confirmed allegations account for only an extremely
3 small portion of total U.S. producers' shipments. In
4 other words there is no evidence of significant lost
5 sales or revenues due to the subject imports.

6 Second, very frequently it appears that the
7 U.S. producers believe that they are competing with
8 subject imports when in fact they are competing
9 against each other. In effect the price suppression
10 that the U.S. producers report is fundamentally due to
11 the intra-U.S. industry competition, not due to the
12 subject imports which have been overselling the U.S.
13 producers by substantial overselling margins. Thank
14 you.

15 MR. SMITH: Good afternoon. My name is Matt
16 Smith. I'm a Senior Purchasing Manager at Proctor &
17 Gamble responsible for all of P&G's purchases of
18 citric acid for consumption in North America. With me
19 today is Jim Hodges, who is the Purchase and Group
20 Manager of P&G responsible for global citric acid
21 purchases. P&G is a major U.S. and international
22 industrial user of citric acid. P&G purchases citric
23 acid globally for use in plants located in the United
24 States, Europe, Asia, and Latin America.

25 We estimate that P&G accounts for more than

1 10 percent of the citric acid consumed in the United
2 States and that P&G is one of the top two purchasers
3 of this product globally. We use citric acid in
4 liquid detergents including Tide, Gain, and Cheer,
5 beauty care products including Head and Shoulders and
6 Pantene, and oral care products including Crest and
7 Scope. Detergents for fabric care account for more
8 than 90 percent of the citric acid that we purchase on
9 an annual basis.

10 P&G purchases citric acid from the three
11 domestic producers, from JBL Canada, and from three
12 producers in China. All the suppliers of citric acid
13 to P&G must be qualified to supply the product. That
14 process can require six to nine months for the citric
15 acid used in detergents and much longer for oral care
16 and beauty care products. Qualification process
17 involves inquiry into the input, producing the final
18 product, and testing the final product for a period of
19 time to ensure stability and effectiveness.

20 No Chinese supplier is qualified to supply
21 our oral care or beauty care products. Given our very
22 large annual requirements, in order to ensure
23 reliability of supply and to minimize the very real
24 risk of plant disruptions, P&G has learned that it
25 must diversify its source of supply to a number of

1 different producers both inside and outside the United
2 States. Shutting down one of P&G's plants even for a
3 day due to a shortage of this important ingredient
4 could cost the company millions of dollars in sales.

5 In addition to our U.S. business P&G also
6 has global supply relationships with a number of the
7 U.S. and foreign citric acid suppliers that it seeks
8 to maintain over the long term. P&G has two major
9 plants making detergents for fabric care in the United
10 States, one at Lima, Ohio and the other at Alexandria,
11 Louisiana. One hundred percent of the citric acid
12 used in detergents is fed into our production process
13 as a solution.

14 P&G purchases citric acid in three forms,
15 citric acid in solution, monohydrate, and anhydrous.
16 Both the monohydrate and anhydrous forms must be
17 converted to a solution prior to entering our
18 production process. There is significant different in
19 the citric acid that is available to us from Canada
20 and the citric acid that is available to us from
21 China. The vast majority of the citric acid we buy
22 from Canada is purchased in solution form. There is a
23 direct rail connection between JBL's plant in Canada
24 and our plants in Ohio and Louisiana, enabling us to
25 purchase citric acid in solution from JBL in specially

1 lined tank rail cars.

2 In addition, the lead time on purchases from
3 JBL is typically two weeks or less. This allows
4 minimization of the inventory at our detergent
5 producing plants. In the cases of our purchases from
6 China on the other hand the product is shipped to P&G
7 in monohydrate or anhydrous dry form. This product
8 must then be dissolved in a liquid before it enters
9 our process, adding cost and complexity to the use of
10 the Chinese product.

11 In addition the lead time between order and
12 delivery is a minimum of 60 days, and the lengthy
13 supply chain makes the possibility of delays even more
14 likely. The product from China must also be
15 warehoused in the United States, increasing its cost.
16 Because P&G takes citric acid in solution some of the
17 U.S. manufacturers can minimize their cost and the
18 price to P&G by shipping solution to P&G and thereby
19 eliminating the energy cost necessary to fully dry the
20 product.

21 Other U.S. manufacturers can increase output
22 and reduce scrap by dissolving the anhydrous citric
23 that does not meet mandated particle sizes. They then
24 ship the solution. This allows them to dry batches of
25 citric acid faster, lowering the overall cost of

1 production, knowing that the offspent particles
2 produced in this way can be dissolved and sold to P&G.
3 Otherwise these particles would have to be dissolved
4 and redried for sale to markets requiring the
5 stringent particle sized powder.

6 Some companies take advantage of this
7 processing flexibility more than others, allowing them
8 to offer lower prices in the market. During the
9 period of investigation, P&G typically agreed to
10 annual contracts with its U.S. suppliers before
11 contracting with import sources to fill out the volume
12 we could not place with the U.S. suppliers. The
13 contracts with the U.S. producers are normally
14 negotiated between the October to December timeframe.

15 Contracts specify a fixed price and a fixed
16 quantity that can be ordered by P&G at that price.
17 P&G then issues purchase orders against the contract
18 for supply to its manufacturing plants. P&G prefers
19 to fill its needs with the annual contracts and will
20 only go to the spot market if emergencies arise.
21 P&G's preference for annual contracts stems from the
22 fact that its volume requirements are stable or
23 increasing from year to year, and short term
24 purchasing opens the door for short term,
25 opportunistic higher pricing by suppliers.

1 It is our understanding that one of the
2 reasons why domestic producers like to engage in
3 annual contracts and not in contracts for longer
4 periods of time is that they are able to lock their
5 physical forward purchasing of corn at a reasonable
6 overhaul cost for a period of one year. We understand
7 that the domestic producers engage in ward physical
8 delivery contracts in order to ensure that the annual
9 pricing that they agree with us is certain to produce
10 a profit.

11 All three of the domestic suppliers have
12 told us at one time or another that they lock in corn
13 costs associated with our annual contracts at the time
14 of fourth quarter negotiations. More than one
15 domestic producer has told us that we can lock in the
16 cost of corn for a year for purposes of a cost plus
17 contract if we wish to go that route. All three have
18 told us that they have separate buying groups outside
19 of their citric division that manage their forward
20 purchase and risk management positions for corn.

21 None of the producers come to us during the
22 course of a year and told us that they made a mistake
23 and the price they locked with us was giving them
24 trouble because of cost increases. We understand this
25 is the case because the cost of corn is locked in at

1 the time of fourth quarter negotiation. We've
2 reviewed the public version of the Staff report from
3 the preliminary determination and noted with
4 considerable surprise that the domestic industry is
5 reporting operating losses from 2005 to 2007.

6 We are concerned that some aspect for the
7 domestic industry's true cost of corn is not being
8 reflected in these data. For example, is it possible
9 that the corn purchase through the physical forward
10 purchasing contracts in other divisions of the three
11 domestic manufacturers is not being passed through to
12 the citric acid division for some reason? Or that the
13 financial hedging gains are not being passed through?

14 We are also aware that 30 to 40 percent of
15 the cost of corn is recovered by the corn processor as
16 a byproduct credit, and we are concerned that these
17 netbacks are not reflected in the domestic producers'
18 reported raw material cost in the citric acid
19 divisions. In the middle of 2007 one U.S. producer
20 requested that P&G take more citric acid solution at
21 the contract price previously established during the
22 fourth quarter of 2006. This request is not
23 consistent with a supplier that is losing money on
24 sales to P&G.

25 P&G has found that it is the U.S. suppliers

1 that are offering the lowest prices in the
2 marketplace. Between 2005 and 2008 the average
3 delivered price of our domestic suppliers was lower
4 than the average delivered price for citric acid from
5 Canada and China in every year. Furthermore there was
6 a significant difference in the price being offered by
7 suppliers in the market.

8 In each year of the period of investigation
9 at least one U.S. supplier was the clear price leader
10 in the market. Partly for this reason, and because of
11 the U.S. suppliers' ability to deliver solution to our
12 plants, P&G would have liked to increased its
13 purchases of domestic citric acid but is unable to do
14 so because the volume constraints imposed on P&G by
15 the domestic industry.

16 There are a higher risks inherent in the
17 longer supply chain from the plants in China as
18 opposed to the plants in the United States. More and
19 more difficult communication is necessary, there is
20 more risk of delayed shipments, there is more
21 difficulty in returning the product that does not meet
22 our specification. If P&G were able to source all of
23 its requirements from the domestic market I would say
24 that the price the Chinese imports would have to be at
25 least 10-15 percent lower than the price charged by

1 the U.S. producers to make the Chinese product more
2 attractive on a commercial basis.

3 P&G takes citric acid solution at its plants
4 in Lima, Ohio. P&G does not have any dissolving
5 equipment at this plant. As a result, as a practical
6 matter we cannot take anhydrous or monohydrate dried
7 citric acid into production at Lima. While we could
8 take dry powder and have it dissolved at a separate
9 location, the cost of doing so would be prohibitive.
10 For this reason most of the competition for the Lima
11 is between the three domestic producers.

12 While we can take material from JBL, JBL
13 material is always higher priced than the domestic
14 product, and so the primary competition is between the
15 domestic producers. As I mentioned, P&G's policy is
16 to source from multiple suppliers to ensure stability
17 of supply and minimize the risk of plant disruption.
18 We are very fortunate to have done so given the
19 disruptions to the domestic supply that took place in
20 2008.

21 First from January to June, 2008 one
22 domestic producer reported that it faced challenges in
23 building inventory that it needed to satisfy the
24 demand in the beverage industry during the summer
25 months. As a result that producer asked us to reduce

1 our offtake of our annual contract by up to 50
2 percent. While we could not meet that request we did
3 agree to a temporary reduction in shipments of at
4 least 30 percent.

5 Another domestic producer had a critical
6 situation at their plant in the spring resulting in an
7 outage. It is our understanding that this producer
8 experienced similar outages both in 2004 and most
9 recently in January of 2009. That producer ended up
10 supplying less than half of their agreed to volume for
11 2008. We went to the third domestic producer and
12 asked them to meet this volume shortfall, and they
13 informed us they had no material available.

14 In the middle of the year, moreover, we
15 changed the formula of one of our products and went to
16 the domestic industry to ask it to increase supply to
17 us in order to meet the added demand. None of the
18 U.S. suppliers would agree to this increase above
19 their contracted volumes. We understood from these
20 conversations that the domestic industry was entirely
21 sold out in 2008. Therefore we had no choice but to
22 increase our purchases of subject imports.

23 Without those import P&G would have had to
24 shut down one of its plants. After the shortfalls in
25 2008 it was P&G's goal to increase purchases from the

1 domestic industry in 2009. However one U.S. producer
2 would not even quote on 2009 business and one would
3 only quote on volume higher than volume in the
4 previous year if P&G would agree to accept material
5 supplied by a foreign plant. The third company
6 offered a extraordinary price increase on a take it or
7 leave it basis with just a two-week period to accept
8 or reject the offer.

9 P&G publicly reported a 4 percent decline in
10 our sales in our fabric and household care business
11 during October to December, 2008 due to a reduction in
12 our Tide detergent shipments. This reduction was
13 primarily caused by P&G's customers reducing their
14 inventories in an attempt to lower their working
15 capital, thus conserving cash. This reduction in
16 inventory is expected to only be temporary. In fact
17 P&G has already begun to see increases in orders from
18 our customers, and we are working to get our liquid
19 laundry detergents business back to the normal
20 historical growth rates of 8-10 percent year on year.

21 P&G is or has contemplated additional uses
22 of citric acid such as replacing phosphates with
23 citric acid in dishwasher detergent. However the lack
24 of available domestic supply is a major concern as P&G
25 makes its decisions about these new initiatives. If

1 P&G concludes that there will not be adequate domestic
2 supply it will force P&G to look at other formulations
3 or technologies to solve these problems.

4 As I mentioned before, P&G is also active in
5 purchasing citric acid for use in its plants in E.U.,
6 including plants in Italy, Spain, United Kingdom,
7 Czech Republic, Belgium, France, and Germany. As such
8 we are familiar with the effect of the antidumping
9 petitions filed by JBL in the E.U. on the trade
10 volumes from China. As the Commission is no doubt
11 aware, the E.U. is a major market for Chinese citric
12 acid, accounting for more than 300,000 tons of Chinese
13 exports per year.

14 In the E.U. antidumping investigation the
15 preliminary determination on June 3rd, 2008 assessed a
16 antidumping duty in the amount of 13-49 percent. In a
17 decision announced on December 2nd, 2008, Commission
18 accepted price undertakings from Chinese producers and
19 permitted entry of goods duty free as long as they
20 were priced above the minimum import price set by the
21 Commission. In our experience, after the undertaking
22 Chinese imports as a whole are entering the E.U. in
23 the same volumes as previously but at higher prices.

24 There has been no volume effect because
25 there is insufficient capacity in the E.U. or from

1 third country suppliers to meet the E.U. demand. P&G
2 itself is continuing to buy from Chinese producers at
3 the same volume it purchased before the provisional
4 measures were announced. P&G to use the global supply
5 demand position is balanced to tight. We estimate
6 global demand to be between 92-95 percent of the
7 global producers' effective capacity to produce citric
8 acid.

9 It is for this reason that P&G has entered
10 into discussions with several suppliers, including two
11 in North America, regarding capacity expansions to
12 supply product dedicated to P&G's use. In one case
13 involving a North American producer the talks are
14 still ongoing. If we had considered global capacity
15 to be in an oversupply position we would not have
16 entered into these talks in the first place.

17 In addition we've been independently
18 approached by other parties who are interested in
19 building citric acid facilities. These actions
20 support P&G's view that global citric acid capacity is
21 not in an oversupply situation as we believe these
22 companies involved would not be interested in
23 investing in the markets that are already
24 oversupplied. Thank you for the opportunity to
25 testify here today. I'd be pleased to answer any

1 questions you may have.

2 MR. TAYLOR: Good afternoon. For the record
3 my name is Barry Taylor, and I'm the Purchasing
4 Director for Pepsi Worldwide Flavors representing
5 PepsiCo. Although I'm based in Ireland I have global
6 responsibility for PepsiCo's purchases of certain
7 materials used in its beverage production in the
8 United States as well as Europe. I've been working
9 with PepsiCo for more than 20 years and moved into my
10 current role during a restructuring of the company in
11 2006.

12 Because PepsiCo is such a large purchaser of
13 citric acid, we thought you would be interested in the
14 company's purchasing practices. My experience with
15 the company has also given me insights into the
16 overall market for citric acid globally. Citric acid
17 is a hugely important ingredient to PepsiCo and is
18 used in many of its core important brands. First,
19 PepsiCo has a strong policy of obtaining its materials
20 from multiple sources.

21 We absolutely have to maintain a continuous
22 supply of materials meeting our strict quality
23 requirements to maintain our production of beverages.
24 Any supply interruption or the procurement of below-
25 standard materials would be disastrous. Citric acid

1 is no exception to this rule. As with all our
2 materials we require our citric acid suppliers to
3 undergo an extensive qualification process. This is
4 crucial for PepsiCo for our own quality requirements
5 as well as food safety reasons.

6 We qualify both the supplier and the
7 product. This qualification process is no mere
8 formality. It typically takes 6 to 9 months and
9 involves detailed documentation and multiple audits of
10 prospective suppliers' facilities. In most cases this
11 results in the supplier changing its process in some
12 way. Not all suppliers pass this process and qualify
13 for PepsiCo's business.

14 As reflected in our questionnaire responses
15 we purchase citric acid from domestic producers, we
16 purchase subject imports, and we purchase nonsubject
17 imports. We purchase from all of these multiple
18 sources to make certain that we have sufficient supply
19 for our beverage production both in the short term and
20 long term. While the domestic producers make up a
21 large portion of the PepsiCo volume, in some cases
22 there has been reluctance to grow their position
23 substantially.

24 In the negotiations completed in 2008 for
25 2009 purchases, we faced a number of challenges in

1 getting some of the domestic producers to agree to
2 sell us additional amounts of citric acid. Continuity
3 of supply is of paramount importance to PepsiCo. The
4 citric acid market has been increasing in the last
5 number of years and with no domestic increases in
6 capacity coming downstream, the domestic producers do
7 not have sufficient capacity to support market needs.
8 For that reason PepsiCo has turned to imports as a
9 supplemental supply source.

10 From our perspective there are several
11 drawbacks to imports, particularly from China.
12 There's a long lead time from order to delivery, there
13 is a much longer distance to travel which can
14 contribute to issues such as caking. However, the
15 imports have one overarching virtue. They are
16 available to meet shortfalls in domestic citric acid
17 supply.

18 So to be certain that our supply
19 requirements are achieved we purchase imported citric
20 acid in addition to our domestic purchases. We really
21 have no other choice if we want to ensure an
22 uninterrupted, stable supply of citric acid required
23 for our production operations. We heard the domestic
24 industry this morning assert that the imports are
25 responsible for undercutting domestic prices. I

1 disagree with this position as a factual matter.

2 PepsiCo's experience has been that the
3 domestic producers are so competitive with each other
4 that they push prices down, not necessarily the
5 imports. We provided confidential pricing details in
6 our purchaser's questionnaire response that
7 corroborates this point. Of course PepsiCo takes
8 price into account in its purchasing decisions, but
9 not in the way we heard in this morning's testimony
10 concerning purchasing decisions.

11 As I mentioned, product quality and
12 availability are the paramount concern. Of course
13 PepsiCo seeks a competitive price, but we also seek
14 price stability, which is why we endeavor to enter
15 into long term contracts with suppliers where
16 possible. For 2009 PepsiCo is purchasing citric acid
17 from subject countries, which demonstrates that while
18 price is important it is not the only consideration.

19 I would like to comment on several points
20 relating to the supposed threat of material injury.
21 First, PepsiCo does anticipate flatter, slightly
22 declining volume for its beverage products in the
23 current economic environment. But longer term we
24 expect demand for our beverages, and hence our demand
25 for citric acid, to resume its rise. Second, the

1 recent antidumping price undertaking entered into
2 between Chinese exports and the European Union will
3 not deflect any Chinese product to the United States.

4 The flow of price that the Chinese exports
5 agreed to is below current price levels for the E.U.
6 source product. It has been a nonfactor in
7 negotiating our citric acid purchases for Europe.
8 Moreover, as in the United States, the domestic citric
9 acid industry in Europe lacks sufficient productive
10 capacity to meet demand. Chinese and Canadian imports
11 make up the difference.

12 Indeed the reason the European Union agreed
13 to the price undertaking was to make certain that
14 these necessary imports from China could continue. As
15 your investigation has shown Europe is a far larger
16 market for Chinese citric acid than the United States.
17 I fully expect that relationship to continue. Thank
18 you.

19 MR. HOFMANN: Good afternoon. My name is
20 Klaus Hofmann, I am Senior Vice President for Global
21 Procurement of Reckitt Benckiser. We are the global
22 market leader in household cleaning products excluding
23 laundry detergents with annual sales of over \$12
24 billion. Our brands include Electrosol, Lysol,
25 Woolite, Spray n' Wash, Easy Off, and Resolve. Citric

1 acid and citrates are major components in our
2 automatic dishwashing detergents and are also used in
3 lower dosage in laundry detergents and surface
4 cleaning products.

5 Reckitt's U.S. operations currently use
6 these inputs at its plants in Mississippi and
7 Missouri. Our primary concern in sourcing citric acid
8 and citrates are first, reliability and security of
9 supply, and secondly, quality and product
10 specifications. All potential suppliers must undergo
11 an internal qualification process that takes roughly
12 six months. To ensure that our factory is supplied on
13 a regular and reliable basis we only purchase through
14 medium and long term contracts. We avoid spot
15 purchases.

16 The U.S. market for automatic dishwashing
17 detergents has move toward the highly concentrated
18 monodose tablets. These concentrated powders use more
19 citric acid, increasing our demand. From 2006 to 2008
20 our purchases of citric acid for our U.S. operations
21 have increased by almost 80 percent. In 2005 and 2006
22 we purchased citric acid exclusively from Tate & Lyle.
23 We prefer to purchase domestically for security and
24 planning reasons.

25 In 2007 we began to purchase small volumes

1 of citric acid from Jungbunzlauer in Canada only after
2 U.S. producers refused to offer sufficient quantities
3 to us. We purchased trisodium citrate from Israeli
4 producer as we had not been able to qualify a U.S.
5 producer yet. It is critical that the Commission
6 understand that the short supply situation that has
7 existed in the United States and that continues now
8 even during the economic slowdown installed U.S.
9 production capacities insufficient to meet demand and
10 remain so today.

11 Under these supply conditions U.S. producers
12 have shown little interest in meeting the needs of
13 small to mid-size purchasers like Rickett, preferring
14 instead to focus on large food and beverage
15 purchasers. Citric acid and citrate supply was
16 extremely tight worldwide in 2008, and prices were
17 increasing dramatically. We estimate the global
18 operating capacity rate at above 90 percent and market
19 growth at 6-8 percent annually even in today's adverse
20 economy.

21 Although we had an annual supply contract
22 with Tate & Lyle, they approached us in the summer of
23 2008 and proposed to buy out our contract. We
24 refused. They were our dominant supplier for citric
25 acid. However, Tate & Lyle's sales director, Curtis

1 Poulos, told us that they would not be able to meet
2 our volume requirements in the 2009 contract year. We
3 were told explicitly that they expected demand to
4 exceed their supply, they wanted to give priority to
5 larger customers in the food and beverage sector.

6 When we solicited offers for our 2009
7 contracts, Tate & Lyle reiterated that they would be
8 unlikely to offer us any volumes and encouraged us to
9 look elsewhere. ADM told us they were oversold for
10 2009 but would provide a proposal for whatever volumes
11 they could. Cargill refused outright to present any
12 offer. Only at the 11th hour, in mid-January, 2009,
13 did Tate & Lyle and ADM provide offers, but for
14 insufficient volumes of citric acid.

15 We concluded contracts with both companies
16 at the inadequate volumes offered and scrounged to
17 meet our additional requirements from distributors for
18 the U.S. producers that refused to meet our needs
19 directly. We are now paying some two to three times
20 the prices we paid just last year. We also were able
21 to qualify ADM for trisodium citrate and began
22 purchasing that material from them, reducing our
23 imports from Israel. Our already tenuous supply
24 situation however is about to get much much worse.

25 Some seven states have enacted laws

1 requiring us to eliminate the use of phosphates in our
2 dishwashing detergents. Due to the geographic
3 diversity of these states and the nature of our
4 distribution system, the effect is to create a
5 nationwide requirement. After July 1, 2010, we will
6 no longer be permitted to stock our current electrical
7 powder products.

8 We have a new formulation which largely
9 eliminates elemental phosphorous but instead uses
10 relatively large volumes of trisodium citrate in
11 addition to citric acid, representing roughly 20
12 percent of the material cost. We need to increase
13 dramatically our purchase of trisodium citrate over
14 elevenfold while our purchase of citric acid will
15 continue unchanged. Overall the total volume of our
16 purchase of citric acid and citrates will increase
17 roughly fourfold.

18 We have been trying to sign up suppliers
19 willing to meet this incremental demand but have been
20 unable to line up any offers from U.S. producers. I'm
21 not talking about last year. I'm talking about the
22 first quarter of this year. We cannot get any offers
23 from U.S. producers at any price. Tate & Lyle does
24 not produce citrates at all. That leaves just ADM and
25 Cargill. Most companies have told us they do not have

1 the capacity to supply us. Our only option is
2 imports.

3 The global supply situation remains tight
4 and could worsen considerably. Restrictions or the
5 complete ban on phosphates in dishwashing detergents
6 are under active consideration in the European
7 community. This would have an enormous impact on
8 worldwide demand. Our estimate is that if an EC
9 phosphate ban were implemented, automatic dishwashing
10 applications alone would require in Europe additional
11 volumes of citrus acid and citrates equal to 10
12 percent of current global capacity.

13 Given the dire supply situation in the
14 United States, I urge the Commission to reach a
15 negative determination. Thank you.

16 MR. PENSAK: Good afternoon. My name is Tom
17 Pensak, and I am a business director for Vertellus
18 Specialty Materials. Vertellus is a mid-sized
19 specialty chemical company that has five domestic and
20 four foreign production facilities. We make about 500
21 chemical products, and we are the sole U.S. supplier
22 for many of them.

23 A good example is our production of citrate
24 esters which our plant in Greensboro, North Carolina,
25 is the only significant domestic supplier. Indeed,

1 there are only a few suppliers of citrate esters in
2 the world.

3 Citrate esters are principally used as
4 plasticizers to soften and add flexibility to a wide
5 range of plastic products, from toys to very
6 sophisticated medical tubing.

7 Because most toys today are made in Asia, we
8 have exported many of our citrate esters to those
9 markets. Citrate esters are acceptable substitutes
10 for phthalates which have been widely used as
11 plasticisers.

12 Because of the recent health and safety
13 restrictions on the use of some phthalates, demand for
14 citrate esters have increased, thus the future of
15 Vertellus' citrate esters business should be quite
16 promising.

17 Instead, this year we have been forced to
18 reduce our production of esters. This is because each
19 of the three domestic producers of citric acid, which
20 is the essential material input for citrate esters,
21 has refused to sell under contract to Vertellus for
22 2009.

23 Over the years, Vertellus has mainly relied
24 on the petitioners to meet our citric acid needs. In
25 2006, we purchased 76 percent of our needs from Tate &

1 Lyle and ADM under separate one-year contracts
2 negotiated in the fall of 2005.

3 That year, as we sourced only eight percent
4 of our needs from China under a similar one-year
5 contract which was the last such contract we have
6 entered for citric acid imports from any foreign
7 country, we sourced the remaining 16 percent on a spot
8 market during the course of 2006 with product from
9 China, Thailand, and Columbia. Of course, none of
10 these spot sales had any influence on the volume or
11 price we contracted for in the fall of 05.

12 In the fall of 06, Tate & Lyle and ADM were
13 the only two suppliers that bid for our 07 citric acid
14 business. We received no contract bids for imports
15 from China or any other country. We ultimately
16 accepted a two-year contract with Tate & Lyle which
17 supplied 94 percent of our 07 needs.

18 We sourced less than one percent in 07 from
19 China and the remainder from Thailand and Columbia,
20 all on a spot basis well after we negotiated the Tate
21 & Lyle contract.

22 In 2008, Tate & Lyle met 90 percent of our
23 citric acid needs under the second year of our
24 contract, but by July, the company's normal one-week
25 delivery lead time had grown to ten weeks which forced

1 us to substitute spot purchases of citric acid imports
2 to meet some of our orders. Still our spot purchases
3 from China accounted for less than two percent of our
4 08 needs.

5 On October 8th of last year, I met with two
6 Tate & Lyle representatives including Mr. Poulos who
7 testified earlier today for the petitioners. I had
8 expected that we would be negotiating the price and
9 quantity terms for a new contract for 2009.

10 I was aware that in recent months the spot
11 price for citric acid had sharply increased. It was
12 significantly higher than our soon to expire two-year
13 contract. Nevertheless, I was prepared to renew with
14 Tate & Lyle at the prevailing prices.

15 But I never had the chance for Mr. Poulos
16 announced that his company no longer viewed Vertellus
17 as a strategic customer and, thus, was unwilling to
18 provide Vertellus with any citric acid in 2009
19 regardless of the price that Vertellus might pay.

20 I was stunned by Mr. Poulos' statement. We
21 had enjoyed a 20-year relationship with Tate & Lyle.
22 I asked whether he understood that his refusal to
23 supply Vertellus would put our entire esters business
24 at risk, and he acknowledged that it did.

25 Mr. Poulos also predicted that neither

1 Cargill nor ADM would provide us with any citric acid
2 for 2009. When we later contacted those companies, we
3 learned that he was right. None of the petitioners
4 would sell to us in 2009.

5 Tate & Lyle did allow us to take delivery in
6 the first quarter of 09 of our unshipped contract
7 quantity for 08 that had built up due to its shipment
8 delays last year.

9 In January, we agreed to purchase from Tate
10 & Lyle at the going market rate a significant amount
11 of food grade citric acid that had been rejected by
12 its customer in Mexico but which Tate & Lyle could no
13 longer sell in the U.S. to its preferred food and
14 beverage customers. But otherwise, Tate & Lyle has
15 completely cut off Vertellus for 2009, as have the
16 other two petitioners.

17 The petitioners' boycott did not result from
18 their inability to supply Vertellus for Petitioners
19 admit at page 84 of their pre-hearing brief that they
20 have been unable to achieve full capacity utilization.

21 So the petitioners do, in fact, have the
22 ability to supply Vertellus' relatively small needs.
23 As Mr. Poulos made clear, Tate & Lyle cut us off
24 because Vertellus is unimportant relative to its large
25 food and beverage customers. ADM and Cargill

1 apparently share this view of Vertellus.

2 But if this is truly the case, why are the
3 petitioners demanding that market closing duties be
4 imposed on Chinese and Canadian imports, Vertellus'
5 only viable alternative sources for citric acid?

6 These imports clearly had nothing to do with
7 the Petitioners' decision to abandon Vertellus and
8 apparently many other small industrial users of citric
9 acid.

10 The petitioners, thus, will gain nothing if
11 Vertellus and other similarly situated companies which
12 depend on stable citric acid supplies are denied
13 access to those imports.

14 Viewed in this context, the petitioners'
15 abandonment of Vertellus and the other relatively
16 small citric acid users shows that there is something
17 very wrong with their case. Thank you.

18 MR. BLOOM: Good afternoon. I'm Robert
19 Bloom, president and CEO of FBC Industries. FBC is a
20 manufacturer of liquid food ingredients headquartered
21 in Schaumburg, Illinois. FBC employs more than 25
22 people.

23 Among the products FBC manufactures is
24 liquid sodium citrate. The principal raw material for
25 producing liquid sodium citrate is citric acid. FBC

1 pioneered the development and manufacture of liquid
2 sodium citrate which we sell to food manufacturers.

3 All sodium citrate starts out in a liquid
4 form. Most U.S. producers have invested in expensive
5 drying and crystallization equipment to produce dry
6 sodium citrate. By avoiding this step, we can sell
7 our liquid sodium citrate at competitive prices even
8 after accounting for the higher cost of
9 transportation.

10 The liquid form also offers advantages of
11 ease of handling, stable concentration, and precise
12 metering. There is no substitute for citric acid in
13 the production of sodium citrate therefore the
14 security and reliability of supply is the most
15 important consideration in selecting a citric acid
16 supplier.

17 Because we sell to food manufacturers, the
18 quality, purity, and safety of the product are
19 essential. Cost is important but only after the first
20 two criteria have been satisfied.

21 In addition, FBC insists on having multiple
22 qualified sources of supply and in order to protect
23 itself against supply disruptions. During the
24 2006/2008 time frame, FBC purchased citric acid from
25 U.S. domestic producers, Chinese importers, and from

1 Canada.

2 Given the opportunity, FBC would prefer to
3 purchase most of its citric acid supply domestically.
4 The domestic producers are well known long-established
5 suppliers who are easy to qualify.

6 FBC before we buy citric acid we first have
7 to qualify the producer which in most cases is an on-
8 site inspection and audit of their manufacturing
9 facilities and laboratories.

10 The qualification for us takes roughly 30
11 days. We examine all aspects of their operation,
12 including cleanliness, equipment size, age,
13 qualifications of the operators and technicians.

14 A supplier must also have sufficient energy
15 resources, a sufficient volume of output to service
16 our requirements, and be a reliable supplier and must
17 meet ISO, FCC, Kosher, and other requirements.

18 From 1999 to 2008, I personally inspected
19 between 15 and 20 plants in China, and we only
20 approved four or five. Currently only three producers
21 are approved to supply us.

22 A second advantage of domestic suppliers is
23 a much shorter supply chain meaning our inventory
24 costs are much lower. For Chinese suppliers, we have
25 to assume at least eight weeks lead time compared with

1 two weeks at the most for domestic manufacturers.

2 This means we need to have at least eight
3 weeks worth of inventory in our warehouse. Given the
4 quantities of citric acid we need for our
5 manufacturing operation, the incremental cost of
6 keeping an eight-week inventory versus a two-week
7 inventory is substantial.

8 Despite these advantages of domestic supply,
9 during the past three years we have been forced to
10 increase our dependence on imported citric acid from
11 China.

12 ADM and Cargill both produce and sell dry
13 sodium citrate that competes with liquid sodium
14 citrate that we are producing. These two companies,
15 therefore, have no interest in supplying us. When we
16 have contacted them in the past with requests for
17 quotations, they did not even bother to respond.

18 Tate & Lyle did supply us with some of our
19 citric acid needs in the past including the year 2008.
20 Tate & Lyle prices have always been competitive and in
21 many cases lower than the price of Chinese suppliers.

22 In 2008, Tate & Lyle was by far the lowest
23 cost supplier to FBC. Tate & Lyle agreed to a
24 contract at a very competitive price in November of
25 2007 and held that price for 2008 despite the fact

1 that our Chinese suppliers were demanding price
2 increases in 2008 to account for higher raw material
3 costs.

4 Our plan in 2009 was to increase our
5 purchases from Tate & Lyle, however, when we contacted
6 Tate & Lyle in late 2008 to request pricing and
7 available volumes for 2009, they kept putting us off.
8 Eventually, Tate & Lyle told us they would not sell us
9 any citric acid in 2009 because they had determined as
10 a matter of corporate strategy to focus on supplying
11 end-users in the food and beverage section.

12 As a result, FBC has been scrambling to
13 locate additional supply. As in the past years, AdM
14 and Cargill have not even responded to our request for
15 quotations. We therefore have no choice but to rely
16 completely on imports for our supply.

17 Please understand, the domestic producers
18 have every right to operate their business as they see
19 fit and to direct their available capacity to the
20 market segments that they regard as the most
21 advantageous.

22 Because the U.S. demand for citric acid far
23 outstrips domestic supply capacity, they have the
24 ability to pick and choose their customers in this
25 manner.

1 It is fundamentally unreasonable, however,
2 for the domestic producers to then come before this
3 Commission demanding duties on imports that the rest
4 of the market depends on.

5 The domestic market targets the largest food
6 and beverage end-users for large annual supply
7 contracts each year. To get this business, they offer
8 attractive prices and agree to hold prices fixed for
9 the year.

10 It is the competition for annual contracts
11 among the three U.S. producers that sets the price
12 level in the market. Imposing tariffs on imports from
13 China and Canada will needlessly penalize FBC, a U.S.
14 manufacturer, by denying us access to the citric acid
15 we need to run our business of which the domestic
16 producers refuse to sell to us. Thank you, and I'll be
17 happy to respond to questions.

18 MR. CAMERON: Thank you, Mr. Vice Chairman.
19 That concludes our testimony.

20 VICE CHAIRMAN PEARSON: Well, permit me to
21 extend my welcome to the Respondents' panel. It's
22 good to have all of you here representing a diverse
23 cross section of users of citric acid.

24 We will begin the questioning this afternoon
25 with Commissioner Williamson.

1 COMMISSIONER WILLIAMSON: Thank you, Mr.
2 Vice Chairman. I too want to express my appreciation
3 to the witnesses for taking time from their businesses
4 to come here to give us their testimony today.

5 The parties, I mean the petitioners and now
6 the respondents have all given us conflicting
7 arguments and information about whether the current
8 economic turmoil will have a negative impact on demand
9 for citric acid.

10 Any suggestions on how the Commission should
11 resolve this issue?

12 MR. CAMERON: Well, I think initially before
13 these guys start, I would observe that I'm not sure
14 there is as much conflict as you would expect. First
15 of all, we are not predicting anything very severe,
16 but if you heard the testimony of the petitioners,
17 they're booked up for this year.

18 As you've heard from the witnesses here,
19 there are witnesses here who are unable to get supply
20 from the domestic industry. So for an economic
21 downturn in which there is dire consequences that have
22 been predicted, they're operating at full capacity.

23 So that seems to be antithetical to what
24 much of the economy is going through. I heard some of
25 the words, but when you really got down to the bottom

1 of it, they've already done their contracts for 2009.
2 That's in the book. So I'm not sure that they are
3 predicting that -- I'm not sure that they can sustain
4 a prediction that somehow the economy is killing them.

5 MR. BUTTON: Commissioner, I believe you've
6 heard the purchaser witnesses talk a little bit about
7 their expectations for demand including a view that
8 there may be a flat market in 2009, perhaps a slight
9 decline in some aspects of it, but with continued
10 growth in 2010.

11 You've also heard some indications, and
12 you've read in the brief indications, that citric acid
13 is used in products whose demand tends to be at least
14 mildly counter-cyclical in terms of the food and
15 beverage side.

16 Additional instructive examples can be found
17 from history. In the prior recessions -- and we
18 provided some data to you in our briefs on that --
19 citric acid demand has remained durable even in prior
20 economic softenings.

21 MR. HOFMANN: Speaking for our business, we
22 definitely don't see a downturn in the use of citric
23 acid or citrates. As a business, we are growing
24 double digits in the areas where we compete. We use
25 citric acid mainly in Europe. We definitely do not

1 see a downturn in the usage of citric or citric acid
2 or citrates.

3 COMMISSIONER WILLIAMSON: Have there been
4 any predictions about this re-shifting from the citric
5 acid because of the getting rid of phosphates in a lot
6 of the detergents? I just heard a story this morning
7 on NPR about people being unhappy that it doesn't
8 clean as well, but it seems that the laws are going
9 into effect.

10 MR. HOFMANN: Indeed, there are two things
11 to take into account. In North America, and I'm not
12 speaking for Reckitt Benckiser alone. I know that our
13 competitors are in exactly the same situation. We
14 will have to move out of phosphates to ordinary
15 dishwashing, and there aren't many options we are
16 aware of, and citrate is probably the lead one.

17 It is very easy to calculate what sort of
18 volumes will be needed because we know what our market
19 shares are, and if you go to Europe, which is a far
20 bigger market for us, as I said, we estimate that it's
21 roughly 10 percent of the total global capacity which
22 will be needed in Europe alone once a decision is
23 taken. And I'm sure both P&G and others are building
24 up to this.

25 COMMISSIONER WILLIAMSON: Okay. Sure, go

1 ahead.

2 MR. SMITH: We are their competition in the
3 United States, and I confirm that July 1 we have to
4 exit out of phosphates, so all our products that we
5 have -- or July 1, 2010, we have to have all our
6 products with phosphates in them off the shelves.

7 So we're going to start seeing a reduction
8 in the phosphate usage beginning early 2010 if not
9 late 2009. The next best formulation strategy would
10 be citrates in the formulas.

11 The phosphate market and the other dish
12 business is about 100,000 tons a year. We're not
13 saying it would be a one-to-one replacement, but that
14 is a significant volume that we have to replace with
15 other materials.

16 MR. LAFAVE: I'd just point out that 100,000
17 tons is 200 million pounds, so it is a very
18 significant portion of current consumption.

19 COMMISSIONER WILLIAMSON: What, we have to
20 wash our clothes more often because they don't get as
21 clean as often? We take that into effect.

22 MR. SHOR: Keep in mind we're not talking
23 about clothes. We're talking about automatic
24 dishwashing detergents because the clothes shipped out
25 of phosphates in the 1970's.

1 COMMISSIONER WILLIAMSON: So it's just
2 dishwashing detergent?

3 MR. SHOR: Just dishwashing detergent.

4 COMMISSIONER WILLIAMSON: Okay. Thank you
5 for that clarification. Anything else on this demand?

6 MR. TAYLOR: I think from a PepsiCo point of
7 view and beverage, we are and I'm predicting it will
8 stay flat to slightly decrease in demand, but again,
9 we're hoping that that will start to rise again in the
10 long term. And you know, if we've got a good summer
11 this year, despite the recession, that would turn
12 around this year.

13 COMMISSIONER WILLIAMSON: Okay. Thank you.

14 MR. PENSAK: Tom Pensak for Vertellus. As I
15 indicated in my testimony, our business -- we serve a
16 broad array of end uses. Some are relatively
17 insensitive to recessionary climate such as medical
18 applications, however other applications like the toy
19 market does have sensitivity to economic downturn.

20 However, our business is actually growing
21 and we project will continue to do so for the long
22 haul. That's part of our issue in terms of the
23 constraint, but that's because of the substitution
24 of chemistries for phthalates, some grades of which
25 have been regulated out or there are sensitivities for

1 their continued use.

2 And our citrate esters derived from citric
3 acid represent low toxicity profile materials that are
4 looked upon very favorably for substitution. So
5 directionally, our business should grow despite
6 economic pressures.

7 COMMISSIONER WILLIAMSON: Okay. Thank you
8 for all of those answers. It's very helpful.

9 A specific question for P&G. It may have to
10 be for counsel in post-hearing -- either now or in
11 post-hearing, please respond to the information
12 contained at page 81 of Petitioners' brief. And then
13 let your counsels aware of that.

14 MR. LAFAVE: Yes, we will to the extent that
15 we can without -- I haven't looked at the material,
16 but there was a question this morning that raised a
17 question in my mind as to how they were going to
18 answer that question without breaching the APO, but
19 assuming that we can find an answer without breaching
20 the APO, we will.

21 COMMISSIONER WILLIAMSON: Or if counsel can
22 help in terms of giving me something post-hearing,
23 that would be appreciated.

24 MR. LAFAVE: Yes. I'm counsel to P&G, and
25 we will respond.

1 COMMISSIONER WILLIAMSON: Oh, excuse me.
2 I'm sorry. Okay.

3 MR. LAFAVE: We will respond in a post-
4 hearing brief.

5 COMMISSIONER WILLIAMSON: Okay. Thank you.
6 Sorry. It's hard to see all the names here. Okay.

7 VICE CHAIRMAN PEARSON: The court reporter
8 should know that that's Mr. Lafave who's been
9 speaking.

10 COMMISSIONER WILLIAMSON: Thank you. This
11 may also have to be for post-hearing, so if each of
12 the purchasers could indicate which, if any, producers
13 it is currently in the process of qualifying as a
14 supplier. That may be something that's most
15 appropriate by post-hearing.

16 MR. CAMERON: You want to know if there's
17 anybody that they are doing so in the future, right
18 now, that they are not qualified right now, right?

19 COMMISSIONER WILLIAMSON: Correct.

20 MR. CAMERON: Okay. I don't think that
21 should be a problem. I'm sure they'll do that. I
22 would note that I think all of the purchasers on this
23 panel have responded to questionnaires.

24 COMMISSIONER WILLIAMSON: Okay.

25 MR. CAMERON: Purchaser questionnaires, so

1 that I think that a lot of the detail is in the
2 purchaser questionnaires, and to the extent that it
3 isn't we will do that.

4 COMMISSIONER WILLIAMSON: Okay. Thank you.

5 Approximately what share of the market
6 demand does a non-GMO citric acid account for? Does
7 anyone have an idea?

8 MR. CAMERON: How about if we try and find
9 an answer for you. If we can find one, we'll put it
10 in our post-hearing brief.

11 COMMISSIONER WILLIAMSON: Good. Thank you.

12 MR. CAMERON: Does that work for you?

13 COMMISSIONER WILLIAMSON: That'll be fine.

14 MR. CAMERON: Thank you.

15 COMMISSIONER WILLIAMSON: Lastly for JBL, do
16 you know the ultimate use of the products you sell to
17 U.S. distributors? What extent do you know when you
18 sell it to a U.S. distributor how the product is going
19 to be used.

20 MR. RAINVILLE: In many cases, no we do not.
21 In estimates, we may have a general idea, and we
22 believe they sell to the market in consistent
23 percentages as the direct customers. But no, we don't
24 know in a complete picture of what our distributor,
25 what market that distributors sell into.

1 MS. MENDOZA: This is Julie Mendoza.

2 COMMISSIONER WILLIAMSON: Yes, sure.

3 MS. MENDOZA: I consulted with our witnesses
4 from China, and they had the exact same answer. They
5 often know who the distributor's end-user market is,
6 but they wouldn't necessarily know what the exact use
7 is.

8 COMMISSIONER WILLIAMSON: Okay. Thank you.

9 MR. CAMERON: Commissioner Pinkert.

10 COMMISSIONER PINKERT: Thank you, Mr. Vice
11 Chairman, and I'd like to thank the panel for being
12 here and for helping us understand what's going on in
13 this industry.

14 I'd like to begin with Mr. Shao. In your
15 statement, you said that the EU's own citric acid
16 industry under the arrangement that's been arrived at
17 would only be able to meet about 75 percent of
18 European demand if operating at full capacity.

19 I'm wondering, do you know if they've been
20 able to meet 75 percent of European demand?

21 MR. SHAO: So I want to know that to the EU
22 and the local, the producer, and the only kind of
23 supply is 75 percent of due to demand in the local
24 market.

25 MS. MENDOZA: And basically their

1 experience, they've explained to us, has been in the
2 past that in fact they've not been able to supply even
3 up to the 75 percent of the market.

4 MR. CAMERON: Commissioner, I'm sure you're
5 aware of this, but the 75 percent figure was taken
6 straight out of the EU notice, so that was part of
7 their fact finding.

8 COMMISSIONER PINKERT: Well, do you regard
9 that as some sort of a cap, or is that a prediction,
10 or how should I understand that?

11 MR. CAMERON: No, actually -- oh, no. Not
12 at all. Oh, if that was your question, I apologize.
13 No. What we looked at it is was evidence of why it
14 was.

15 As it was explained to us, the fact that the
16 EU would actually enter into price undertaking
17 arrangements with the Chinese was actually somewhat
18 unusual, and the motivation for their doing so was
19 that the EC commission had recognized the structural
20 shortfall within the market.

21 Now, the price undertakings have no volume
22 limits, so it's not like they're saying well, okay, so
23 you have up to 25 percent and after that you're cut
24 off. There's no limitations like that at all.

25 It was part of the reasoning process. When

1 you read their notice that, if you read through it,
2 they say, well, one of the reasons that we're entering
3 into this is that there's a structural shortfall in
4 the market.

5 Our consumers need the citric acid and,
6 therefore, we're entering into this. It sets a
7 minimum price level, and that's it. So that's the
8 reason that -- but that's the reason that we said
9 that, and we cited their thing.

10 But there is absolutely no volume limitation
11 which I believe is why the witnesses are saying, you
12 know, there's not going to be a diversion of former EU
13 supply, the largest market for the Chinese. That's
14 not all of a sudden going to change.

15 The EU has insured that, in fact, they can
16 get all the supply they need of Chinese citric acid
17 because that market is going to continue to grow, as I
18 think that Reckitt is testifying.

19 MR. HOFMANN: Let me respond. What we are
20 seeing is the capacity shortfall in Europe is
21 significantly higher than what it is in North America,
22 so we still see similar to our competitors, similar
23 volumes of Chinese material coming into the EU.

24 COMMISSIONER PINKERT: Well, the reason I
25 asked the question is because if one assumes that

1 looking to the future there is a lot of Chinese
2 capacity that has to go somewhere, is there a de facto
3 limit on how much of that capacity can go into the
4 European market?

5 I understand that you're saying there's no
6 de jour rate limit, but I'm wondering whether there's
7 some sort of de facto limit on that.

8 MR. CAMERON: We are not aware of any, but
9 anybody else have a view on that? You know the EU.

10 MR. TAYLOR: Yes. There is no limit as to
11 what portion of the Chinese material can go into
12 limit. It's as if the 75 percent is a notional
13 capacity that the European suppliers can actually run
14 at.

15 So you could have the Chinese, you know,
16 entering after 50 percent of the market at some stage
17 in the future.

18 MS. MENDOZA: My understanding, just to
19 clarify, is that the 75 percent figure is a finding
20 from their investigation about the nominal ability to
21 even supply the market let alone, you know, what the
22 actual ability to supply is.

23 I think given the testimony about growth in
24 the European market, I don't think there is any de
25 facto limit.

1 COMMISSIONER PINKERT: Thank you.

2 Now, I'd like to ask a question to the
3 purchasers who testified about various limitations
4 that were expressed to them by the domestic industry.

5 You heard the testimony of various companies
6 in the domestic industry this morning about
7 allocations, and I think the response I got was, well,
8 we met all of our legal requirements, all of our
9 contractual requirements.

10 Is that inconsistent with the testimony that
11 you all have given today about limits that were,
12 perhaps, de facto limits on how much the domestic
13 industry would supply you?

14 MR. SMITH: Matt Smith from P&G. One of the
15 U.S. producers met their contractual requirements.
16 The other two did not from both a timing period
17 standpoint and volume standpoint, and the one that met
18 had the smallest volume allocation.

19 MR. PENSAK: Tom Pensak, Vertellus. When
20 you're pushed back from normal one-week lead time to a
21 10-week lead time, most people in my industry would
22 consider that an allocation of sorts.

23 Certainly your normal rate of take of
24 product is significantly cut back, and that really put
25 us in a position where we had to go out in the spot

1 market to supplement that missing supply. Now, as I
2 also testified, that was made up by spilling over into
3 the first quarter of 09.

4 But how we define allocation in the chemical
5 business, I would say that we were put on an
6 allocation for that period, unofficially, but
7 certainly practically speaking.

8 MR. HOFMANN: On our side, as I've said in
9 the testimony, we have been asked whether we will be
10 willing to effectively serve back existing contracts.
11 We had to say no. So following this, the supplier
12 shipped all the volumes in the -- however, for 2009
13 onwards, we had this issue that we just could not get
14 the volumes.

15 MR. SHOR: Maybe there's a bit of a semantic
16 issue here from the purchasers' perspective at least
17 for Reckitt. It's clear that in 2009 we were offered
18 less volumes than our 2008 contracts. Is that an
19 allocation, or is that meeting contractual terms?

20 Yes, they met their contractual terms, but
21 they wouldn't continue them into the next year. So,
22 we are not able to secure the volumes we wanted this
23 year.

24 MR. CAMERON: Commissioner, if I may, with
25 all due respect, I think they limited their response

1 to you with -- and they cut that off with respect to
2 2008.

3 They didn't say anything about 2009, and
4 what they were saying is that they had met all their
5 contractual obligations for 2008 which also was not
6 true.

7 But putting that part aside, a lot of this
8 testimony is with respect to what happened in the
9 price negotiations for 2009. In other words, the
10 threat period that we're looking at and what you're
11 hearing is people who said what allocation? I didn't
12 get any allocation. Then some did get a lesser
13 allocation.

14 I don't believe we heard any testimony about
15 what they did or didn't do with respect to allocations
16 in 2009. I think they kind of dodged the issue.

17 MS. LUTZ: If I can just add -- Jennifer
18 Lutz with ECS. The issue -- P&G certainly did not get
19 its full volume, so there were shortages there. But
20 as the representative from Vertellus noted, a delay is
21 just as bad.

22 If we're going back to you're buying a car
23 example, well, what if you're buying gas to drive your
24 car and you can't get any this week. You can get it
25 next month, but that doesn't help you if you need to

1 go somewhere now.

2 And these companies need to keep their
3 production operating consistently, so if they don't
4 have supply when they expect it, that's a shortfall.

5 MR. SMITH: And just looking beyond what
6 happened in 2008 with the one production outage that
7 was addressed, we did get confirmation there was
8 another supplier that had production issues in 2008.

9 But then also if you looked at 2004, and
10 most recently in January of 2009, the Petitioners had
11 communicated to P&G that there were also production
12 outages at those times too.

13 COMMISSIONER PINKERT: Thank you. I just
14 wanted to follow up on Ms. Lutz's testimony for a
15 moment.

16 You said that if you're not able to get the
17 material when you expect it, is there some sort of a
18 standard expectation, or is there some sort of a
19 contractual expectation that was not able to be met?

20 MS. LUTZ: Well, I think the witness from
21 Vertellus said their normal one-week time frame went
22 to 10 weeks, so I don't know -- I've never seen their
23 contract so I don't know what the expectation is or
24 what's in the contract. But clearly their
25 expectations, what they had come to expect given past

1 performance, was not met.

2 COMMISSIONER PINKERT: Thank you.

3 MR. PENSAK: I'd just like to add that, I
4 mean, typically when you enter into these supply
5 contracts, lead time is a primary consideration, and
6 it's discussed and agreed upon between the supplier
7 and the purchaser. And in our case, a normal one-week
8 lead time is considered and agreed to be the normal
9 lead time from order placement to delivery. Clearly
10 when it goes 10 times that amount, that's outside the
11 scope of the agreement.

12 COMMISSIONER PINKERT: Thank you.

13 Thank you, Mr. Vice Chairman.

14 VICE CHAIRMAN PEARSON: Most of your firms,
15 those of you who purchase citric acid, also purchase
16 multiple other inputs for use in the manufacture of
17 various products, so you know things about other than
18 citric acid or if not you, others in your firms do.

19 My question is whether citric acid is
20 uniquely difficult to come by or rather has there been
21 a unique track record of lack of reliability with
22 citric acid compared to some other products. Can you
23 give me a sense for that, please?

24 MR. BLOOM: Bob Bloom with FBC. We buy a
25 number of chemicals in fairly sizable quantities, and

1 it's my sense that until maybe October of last year,
2 citric acid -- we knew where it was coming from. We
3 could get it. There wasn't really a problem.

4 We were able to pass some price increases
5 along as they came to us to our customers, the food
6 industry. And it really didn't get -- and with this,
7 we're buying other products that are somewhat on
8 allocation, but nevertheless available.

9 And all of a sudden just out of the clear
10 blue, we wind up with one of our major suppliers and a
11 domestic supplier just cutting us off with no
12 preamble.

13 VICE CHAIRMAN PEARSON: Okay, but you have
14 had experience with some other inputs that at times
15 were difficult to obtain for one reason or another?

16 MR. BLOOM: Over the 50 years I've been in
17 this business, yes. But there's been a lot of -- it's
18 a cyclical -- you know, particularly core alkali
19 industry which we buy a lot of caustic soda and soda
20 ash, things of that sort.

21 COMMISSIONER PINKERT: Other comments,
22 comparisons that purchasers can make?

23 MR. HOFMANN: Klaus Hofmann, Reckitt
24 Benckiser.

25 We are familiar with these situations, and

1 as most of us we will be prepared. So we've got what
2 we call an active mono-sourcing program in place where
3 we identify critical commodities or critical
4 materials.

5 And on this one, we have alternative supply
6 options in place so should something happen in one
7 part of the world, we can move very quickly under
8 normal circumstances to another supplier.

9 Is citric acid seen or has citric acid been
10 seen as highly critical in the past if I go more than
11 two or three years back? No because the capacity is
12 there.

13 However, it's for the first time. But we --
14 and also for the future that we are faced with a
15 situation where we just can't get the material in
16 North America or India specifically.

17 VICE CHAIRMAN PEARSON: Mr. Lafave? Mr?

18 MR. HODGES: Jim Hodges, Proctor and Gamble.

19 I would answer the question very similar to
20 Klaus. Part of the problems we've had with citric
21 acid in the past have formed our policy with the
22 number of qualified suppliers and sources that we have
23 globally.

24 P&G has a very large number of citric acid
25 suppliers approved, probably more than most, because

1 of some of the issues we have. We balance those
2 issues with our inventory position and other tactics.

3 One of the things you'll see on the order
4 pattern from 2008. Once we had some of the challenges
5 in 2008, we increased our orders of subject imports.
6 This is pure supply.

7 What that also causes us to do is based on
8 the lead time. Once you make those commitments, you
9 put material in route, so then you'll see a ripple
10 affect of inventories going up and down as we place
11 those orders to cover any short-term issues that we
12 see.

13 I would say in late 2007/2008, we saw more
14 issues with having the flexibility inside our North
15 American supply chain where we had to rely more on
16 imports.

17 Prior to 2007, if we had an issue with one
18 supply chain, we could typically go to another North
19 America producer to relieve that. We've lost that
20 flexibility in 2007 and 08.

21 COMMISSIONER PINKERT: Does anyone else have
22 any thoughts about the challenge of obtaining citric
23 acid compared to other inputs that you might use in
24 your production processes?

25 Mr. Cameron?

1 MR. CAMERON: Vice Chairman, I would just
2 like to note that this discussion that we've had about
3 lead times, whether it be from P&G or from the other
4 witnesses gets to a critical issue that was noted
5 repeatedly in the purchaser questionnaires as one of
6 the reasons that people like -- why purchasers prefer,
7 if they can get it, domestic supply.

8 Lead times are a very useful thing. It's
9 not useful if you're expecting a week and it goes out
10 to ten weeks, but certainly lead times is a critical
11 non-price factor. It is one of the reasons that you
12 see overwhelmingly U.S. purchasers preferring U.S.
13 supply. It's because it's generally considered more
14 secure. That's the reason they go there first.

15 VICE CHAIRMAN PEARSON: Ms. Lutz?

16 MS. LUTZ: I think the petitioners
17 acknowledged this in their pre-hearing brief. It
18 thought they put it kind of poetically when they
19 talked about the mysteries of the biological process
20 in manufacturing citric acid that there are things
21 they just can't control.

22 So I think they acknowledge that this might
23 be a potentially riskier supply chain.

24 VICE CHAIRMAN PEARSON: Okay. I'm still not
25 sure, based on what I'm hearing, whether you think

1 that there's fundamentally more of a challenge
2 obtaining a regular supply of citric acid than some
3 other products.

4 I think part of what I'm hearing is that as
5 long as there is access to imports that it's possible
6 to deal with the uncertainties that might exist
7 regarding domestic supplies of citric acid.

8 Mr. Taylor?

9 MR. TAYLOR: I think it certainly makes our
10 life a lot easier. I mean, we haven't had any
11 situations in the last few years where we've had
12 outages.

13 We have, however, had situations where we've
14 had a tightness, and because of the fact that we're
15 working with products that are very, very heavily
16 weather dependent that you can't really forecast, that
17 tightness does create supply chain issues for us and
18 has done so.

19 You know, we need to do things like
20 build/invent really and use multiple sources so that
21 if we are having a tightness from one that we can use
22 a second, or a third, or a fourth as the case may be.

23 VICE CHAIRMAN PEARSON: Have you had any
24 experience at PepsiCo with shortages of or tightness
25 of supply of high fructose corn syrup, for instance?

1 MR. TAYLOR: I can't answer that because I'm
2 not involved in the purchase of high fructose corn
3 syrup, so.

4 VICE CHAIRMAN PEARSON: Mr. Smith?

5 MR. SMITH: I'd just like to confirm your
6 question that, yes, we do buy subject imports because
7 of the issues we have with North American supply of
8 citric acid and our lack of flexibility when it comes
9 to our formulations.

10 VICE CHAIRMAN PEARSON: Mr. McGrath?

11 MR. McGRATH: Vice Chairman, yes, I think
12 you've hit on a point here. I mean, a lot of -- maybe
13 none of us would be here today if there were adequate
14 capacity of the U.S. producers in this market.

15 But the fact is that a good portion of the
16 market is served by imports and has to be served by
17 imports because of the not just marginally inadequate
18 capacity but great inadequate capacity that the U.S.
19 producers have out there currently.

20 VICE CHAIRMAN PEARSON: Okay.

21 MR. SMITH: So you have a situation where,
22 you know, one of three producers has some kind an
23 outage, an accident, that only lasted for a couple of
24 days, a week, but in this industry it's a major crisis
25 and all of a sudden everybody is on allocation, and

1 people are scrambling in the spot market to pay prices
2 at two or three times what they're used to being paid.

3 VICE CHAIRMAN PEARSON: Okay, but if the
4 petitioners in their post-hearing brief make an
5 argument that, hey, some supply disruptions are just
6 endemic with life itself. It's there. You're going
7 to have it in all products.

8 What we're seeing now in citric acid or at
9 least what Respondents are seeing because I don't
10 think the petitioners were seeing much of it -- but
11 what's being seen now is fairly normal, it's a short-
12 term hiccup, get over it and ignore the grousing that
13 we're hearing here this afternoon.

14 How do you respond to that, Mr. Button?

15 MR. BUTTON: Well, I believe Mr. Vice
16 Chairman what you're seeing here is a pattern. You're
17 seeing a pattern of the inability to supply both in
18 the sense of a shortage -- you heard about disruptions
19 in 2004, 2008, 2009.

20 But in addition, there have been
21 allocations, refusals to supply promised amounts or to
22 provide them when they're needed, or to simply stop
23 being a provider at all.

24 It is this pattern which makes it unusual
25 and difficult to bear for the purchasers here, and

1 that's why you see a story that -- perhaps of
2 different flavors but all of which is the inability to
3 get supply when they need it that they can't do
4 without.

5 VICE CHAIRMAN PEARSON: Okay, but in
6 fairness, most of the pattern I'm seeing is in
7 relatively recent months. I don't see it clearly
8 throughout the POI, and that's kind of why I'm asking
9 about it.

10 But my light has turned red, so I probably
11 should pass. Did you have something quick to add, Mr.
12 Smith?

13 MR. SMITH: Just what I commented before.
14 Previous to the POI though, there was a major outage
15 in 2004, and we had to scramble to get supply in order
16 to ensure our plant stayed operational at that point.

17 So there has been a history of outages.
18 It's not just the outages though. It's the allocation
19 that also impacts our business because our business --
20 we have to respond quickly to our customers like Wal-
21 Mart and Target when they drop unannounced orders on
22 us.

23 So we need that from our customers, that
24 kind of support, and one-twelfth of our annual
25 allocation does not provide that support.

1 VICE CHAIRMAN PEARSON: Okay, and so within
2 the memory of people here, there have been other
3 issues. I hear you.

4 Commissioner Lane?

5 COMMISSIONER LANE: Dr. Button, I'd like to
6 start with you. On your exhibit number 3, exactly
7 what percent of the total volume of U.S. producers,
8 U.S. shipments, is represented in the price
9 comparisons you discussed in Exhibit 3?

10 MR. BUTTON: I believe it's going to be
11 coming on in a moment. In exhibit 3 is a presentation
12 as described in it of the volume in all pricing
13 categories were -- each intervals where pricing
14 category is greater than a de minimis amount, greater
15 than approximately one percent.

16 COMMISSIONER LANE: I'm sorry. What was
17 that percent?

18 MR. BUTTON: Greater than one percent. This
19 is the under or over selling occurring in any of the
20 16 pricing categories. The pricing categories as you
21 might recall would be, for example, product number
22 one, end-user contract, end-user distributor,
23 distributor contract, distributor spot, and so forth.
24 There's 16.

25 So of those 16, what are the ones that had a

1 volume of U.S. producers total shipments greater than
2 one percent?

3 Now, when we showed this to the staff to get
4 approval to show at this point, there were certain
5 restrictions on us in terms of APO data. We will be
6 pleased to give you an exact figure in the post-
7 hearing brief, but I can tell you it is the
8 overwhelming majority of the volume of the U.S.
9 producers.

10 COMMISSIONER LANE: Okay. I would like to
11 have that in the post-hearing.

12 Yes, Mr. Cameron?

13 MR. CAMERON: Commissioner, if you would
14 refer to page 35 of the Chinese Respondent's brief, in
15 the top paragraph you will see that number, and it is
16 well over 90 percent.

17 MS. MENDOZA: If I could just add,
18 Commissioner, also that it's actually an exhibit to
19 our brief with the complete data.

20 COMMISSIONER LANE: It is in exhibit? Okay.
21 Thank you. Thank you.

22 MR. BUTTON: Madam Commissioner?

23 COMMISSIONER LANE: Yes?

24 MR. BUTTON: As you point out this exhibit,
25 perhaps you recall that it was the topic of comment by

1 the petitioners' economist, and notice the overselling
2 margins.

3 If you recall, the comment was is the
4 overselling margins here are so small -- they were
5 razor thin, I think was the commentary -- that they
6 should be ignored by you or discounted by you.

7 I would point out that the overselling
8 margins of three percent and 14 percent for Canada and
9 China, respectively, are indeed larger than the
10 underselling margins at that same period of time and
11 for those same countries.

12 And if you look at the public staff report,
13 the public staff report says the average underselling
14 margin for China and any of those cases where China
15 did undersell was 15 percent, approximately the same
16 order of magnitude here as the overselling margin.

17 These seem to be substantial. It would be
18 hard to say that you should place emphasis on the
19 underselling margins and ignore overselling margins of
20 the same magnitude.

21 COMMISSIONER LANE: Okay. Thank you.

22 MR. LAFAVE: If I might just add,
23 Commissioner?

24 COMMISSIONER LANE: Yes.

25 MR. LAFAVE: This is Art Lafave.

1 In Mr. Smith's testimony this afternoon, he
2 mentioned that due to the supply chain complexity of
3 imports from China that they would really have to be
4 priced at 10 to 15 percent below the domestic market
5 price in order to be commercially attractive.

6 So when you're seeing overselling margins of
7 14.3 percent on average in the high-volume categories,
8 that's really quite a dramatic swing from there to
9 where they'd have to be in order to be commercially
10 attractive aside from the necessity to buy the product
11 since it's not available from the domestic industry.

12 COMMISSIONER LANE: Okay. Thank you.

13 Dr. Button, maybe I'll stay with you. Would
14 you please respond to the petitioners' allegations at
15 page 49 of their brief that the data for pricing
16 products four and five, which are sodium citrate and
17 potassium citrate are anomalous because they are not
18 broken out between spot and contract prices.

19 MR. BUTTON: I disagree with that
20 perspective. And let me just direct you to the
21 preliminary investigation and when that type of
22 division was not made in the pricing data. And the
23 record showed there was significant overselling, major
24 overselling, by the subject imports.

25 And it, we believe, did give an accurate

1 indicator of a meaningful commercial activity in it.
2 Those pricing data have been split up for products
3 one, two, and three, and what is the message that you
4 get?

5 As Mr. Cameron has mentioned with respect to
6 over 90 percent of the volume of the U.S. producers is
7 facing situations where the imports have oversold
8 them.

9 Products four and five are situations where
10 there is, you know, great overselling. And it's my
11 expectation that the conclusion you would get would be
12 no different if you did split it between contracting
13 spot.

14 I would let individual purchasers describe
15 their circumstances, but I see no reason for ignoring
16 what appears to be important and valid data.

17 MR. CAMERON: Commissioner?

18 COMMISSIONER LANE: Yes.

19 MR. CAMERON: Two things. First I think the
20 observation was made this morning that one of the
21 reason that they did not split it up which I think is
22 correct is that the volumes involved in aggregate are
23 not all that great.

24 So you know, you're trying to avoid spurious
25 comparisons which, in fact, is what happens with a lot

1 of the comparisons that came out in the spot market.
2 I mean, you have nominal underselling. Do you have
3 any meaningful commercial competition? And that's the
4 whole point.

5 And I think that actually the data that you
6 have for four and five stands on its own, and I don't
7 think -- actually, I think that they sliced and diced
8 the data in order to carve out the spot prices.

9 I think the results are the same by and
10 large with respect to the pricing data for the end-
11 user contract market, and the only thing that they
12 have done is taken out volumes of imports which
13 actually weren't competing in a market in which the
14 domestic industry is not meaningfully participating.

15 So I think that the Commission has done a
16 yeoman's job in actually trying to get the pricing
17 data, to answer the questions that have been raised,
18 and now after having gotten virtually everything that
19 they requested, they see the data and now they're
20 still running away from the data.

21 Well, this is the database that they helped
22 create. I mean, I as stunned. I wasn't sure that
23 there was any more slicing and dicing that the
24 commission could have done. Thank you.

25 COMMISSIONER LANE: Okay. Thank you.

1 I'll just stick with you, Mr. Cameron.

2 MR. CAMERON: Oh-oh.

3 COMMISSIONER LANE: No, this is -- would you
4 discuss any significant differences that you see in
5 the data between the preliminary phase and the final
6 phase of these investigations?

7 MR. CAMERON: Hold on for a second.

8 COMMISSIONER LANE: Other than the pricing
9 products.

10 MR. CAMERON: You know, we don't really see
11 very much in terms of differences. The most critical
12 thing that happened in the preliminary that we had
13 seen was that there was uniform overselling.

14 Now what comes out as well, it's strong
15 overselling. It's not total, but it's still strong in
16 those categories. And I think that is really about
17 the only thing that we have seen.

18 But if the Commission has seen other things
19 that you would like us to discuss, we're more than
20 happy to do that.

21 COMMISSIONER LANE: Okay, thank you. I have
22 one real quick question of Mr. Hodges.

23 Does Proctor and Gamble, and I'm sure you
24 said this and maybe my mind was just wandering a
25 little bit. Do you source your product from both the

1 domestic industry and the subject imports?

2 MR. HODGES: Yes, ma'am, we do.

3 COMMISSIONER LANE: Has that changed over
4 the period of investigation? Have you always sourced
5 from both the domestic and the Chinese and the
6 Canadian?

7 MR. HODGES: Over the period of
8 investigation, we increased our production, our
9 purchases, from North American producers. We
10 originally were two of the North America plants with
11 subject imports. In 2008 we purchased from all three
12 producers in North America and subject imports.

13 COMMISSIONER LANE: Okay. Thank you.

14 MS. MENDOZA: Commissioner Lane, can I just
15 add one remark to your previous question?

16 COMMISSIONER LANE: Yes.

17 MS. MENDOZA: And that is that it's detailed
18 in our brief, and we really can't go into it here, but
19 another distinct difference that we noted between the
20 preliminary and the final record related to the raw
21 material costs reported by the domestic industry.

22 COMMISSIONER LANE: Okay, thank you.

23 VICE CHAIRMAN PEARSON: Commissioner
24 Williamson.

25 COMMISSIONER WILLIAMSON: Thank you, Mr.

1 Vice Chairman.

2 Mr. Hodges, you seem to indicate in your
3 testimony that -- first that the market was -- shall
4 we say -- fine in terms of availability up until 2007,
5 that things seemed to change in 2007 and 2008.

6 And I was particularly wondering what was
7 happening in 2007. There's been a lot of talk about
8 what was going on in 2008. Did I get that impression
9 right?

10 MR. HODGES: I don't know if it's
11 necessarily market change or behavior change. In the
12 past, and as Mr. Smith alluded to the outage in 2004,
13 we were able to cover that outage with North American
14 Supply. I won't use the word "outage". We see
15 availability issues on the spot period of time basis;
16 so is an order available this month that we need or
17 next month that we need?

18 We've typically been able to juggle our
19 North America plants because of their proximity to
20 allow that to cover the short term need. In late 2007
21 and 2008, we haven't had the ability to use North
22 American producer's material to cover issues. We
23 either had to rely on inventory or subject imports to
24 cover those outages.

25 COMMISSIONER WILLIAMSON: What was the cause

1 of the shortage in 2004, and how long did it last?

2 MR. SMITH: We don't have specifics on the
3 actual outage. Actually, in our pre-hearing brief, we
4 do have communications that discuss the outage.
5 Nothing was formally announced, although we did ask
6 for it at that time.

7 We have been recently told that the outage
8 in 2008 was very similar to the outage in 2004, as far
9 as a power issue. But we don't have formal
10 communication documenting that, beyond emails.

11 COMMISSIONER WILLIAMSON: The signs you saw
12 in early 2007 or late 2007, can you detail more? What
13 I'm trying to get an understanding on is, did people
14 anticipate that there was going to be short supply in
15 the U.S., or what people are alleging is really a
16 short supply?

17 MR. HODGES: I think one of the things
18 that's hard to understand -- and this is what we
19 hypothesize back in Cincinnati is -- was the
20 availability issue driven by market tightness or by
21 certain customers trying to get ahead of the
22 increasing corn prices that you saw during that
23 period, where they were building their inventories to
24 cover some of their 2008 needs in advance.

25 So I can't point to the exact reason why

1 things were tight in late 2007. But I do know that it
2 was difficult to go to North America producers, when
3 we either had short term needs or new initiative
4 demands. The availability was just not there.

5 COMMISSIONER WILLIAMSON: Mr. Smith?

6 MR. SMITH: Specific to the negotiations for
7 2008 that were had at the end of 2007, we heard this
8 morning how rumors of potential anti-dumping in the
9 U.S. came into those negotiations. I can confirm that
10 at no point in our negotiations with the Petitioners
11 were we talking anti-dumping for the U.S. market on
12 citric acid on subject imports.

13 So that was a non-event in our negotiations;
14 and most of the discussions that we have in our
15 negotiations are around cost and cost changes versus
16 previous years.

17 COMMISSIONER WILLIAMSON: You said you did
18 not do anything about anti-dumping?

19 MR. SMITH: No, there was no indications
20 from U.S. producers, Canadian, or even Chinese
21 producers of anti-dumping in the United States.

22 COMMISSIONER WILLIAMSON: Thank you; Mr.
23 Button, do you want to add something?

24 MR. BUTTON: Commissioner Williamson, the
25 point you raise is, I think, a very important economic

1 issue for the case; and it goes to what was the most
2 important thing shaping prices, going into 2008, about
3 which there is much discussion. The answer is, the
4 fixed price, one year contract negotiations that
5 occurred in the fourth quarter of 2007.

6 Now there are a couple of explanations that
7 have been offered. You've heard this morning the
8 discussion by the Petitioners that had to do with
9 similar knowledge or rumors that a case in the United
10 States would be filed. What was the basis for that?
11 Well, on September 4th, a case was filed in Europe.
12 It wasn't decided. Margins were issued. No order was
13 in place. There was a filing. That's the only fact.

14 What was going on in the United States?
15 What do the Petitioners say in public portions of
16 their brief? How far do they go, on page 61, in
17 describing it?

18 What they say is, the producers "began to
19 study the possibility of a case." They go on to say,
20 "A case was being seriously considered." That's not
21 very definitive on their side. They didn't know what
22 they were doing. There's nothing in the purchaser
23 questionnaires suggesting any knowledge by the
24 domestic purchasers that a case was out there.

25 What was happening? In 2007 -- beginning in

1 2006, but extending into 2007 -- there was a
2 substantial increase in the basic raw material to make
3 the product. So at the fourth quarter of 2007, as
4 they looked to negotiate 2008 prices, that was what
5 was on the minds of both the producers and the
6 consumers; how do get a price that would cover
7 increased raw material costs, and that's what they
8 did. They all negotiated that price.

9 So the price going into first quarter 2008
10 was a higher price; not because the U.S. consumers,
11 the purchasers, became any less vigilant in their
12 negotiations. Rather, they were recognizing the real
13 raw material cost increase. It was not because the
14 Chinese had decided to be, I think the phase was,
15 "more moderate" in their behavior. This had to do
16 with the commercial realities of price and revenue.

17 In 2008, as shown for the first quarter, as
18 shown by the Petitioner's Exhibit Number 1, you'll see
19 that they moved into a profit position; and they
20 stayed in that profit position for another quarter.
21 The most important price for the largest piece of
22 their volume was that contract price negotiated in the
23 last quarter of 2007. That's the fundamentals of the
24 economics that shaped the profitability in early 2008.

25 COMMISSIONER WILLIAMSON: And you're saying

1 that what drove their ability to get that price was
2 the anticipated prices?

3 MR. BUTTON: Well, it was the higher raw
4 material prices; and from what you've heard here
5 around the table, the general tightness of the market.

6 Now one of the Commissioners this morning
7 raised another question concerning spot prices; and
8 the producers said, you know, one of the things about
9 spot prices is that it's an indicator of market price
10 trends. When spot prices are higher, then it's likely
11 that there's a tightness in the market. When spot
12 prices are lower, then there's over-supply.

13 Well, if you look at the quarterly pricing
14 data, what do you find in this period? Uniformly, the
15 spot prices are higher than the contract prices. The
16 message there is the market is tight; and thus, the
17 contract negotiations resulted in a higher contract
18 price reflecting the economic realities.

19 COMMISSIONER WILLIAMSON: Thank you; you
20 just anticipated my next question. Because I was
21 about to ask about your view on the spot prices in
22 relationship to the contract prices; the question I
23 asked this morning.

24 MR. BUTTON: Yes, sir, right.

25 COMMISSIONER WILLIAMSON: Is there anything

1 more you want to add to that?

2 MR. CAMERON: Did you get an answer this
3 morning? Because I didn't hear it.

4 (Laughter.)

5 COMMISSIONER WILLIAMSON: Well, I did raise
6 it.

7 MR. CAMERON: No, it's a good question. I
8 think that the answer is quite clear. They are
9 separate markets; and try as they might, I mean, the
10 witness from Tate & Lyle was honest enough to say,
11 look, we play in the contract market.

12 They did hint that it had to do with pricing
13 discovery and pricing intelligence; which I believe,
14 if you look at the descriptions of what happened in
15 the lost sales, you will see that they need to work on
16 that. There is no real relationship. The spot market
17 is a separate market. You can't say, as has been
18 implied, well, the spot market is taking business away
19 from our contract sales.

20 Now how is that, if the contract sales are
21 being negotiated six months to a year ahead, and the
22 spot prices are higher, and that's clear from the
23 record? So exactly what is it? I think that that's
24 what you got in the story this morning.

25 COMMISSIONER WILLIAMSON: I don't know. I

1 thought Mr. Button was sort of along the same line.
2 But maybe you want to clarify.

3 MR. SMITH: Just with respect to the spot
4 prices discussion, in our annual negotiations, we do
5 not discuss spot prices. It's a contract for one
6 year, typically, and we do not talk where spot prices
7 are ending up. That typically should not influence
8 our decisions. The discussions mostly focused around
9 the cost and the cost changes.

10 COMMISSIONER WILLIAMSON: Okay, I'm getting
11 conflicting views. Mr. Button, this is what I'm
12 saying. It is a signal of market demands applied,
13 which I assume you take into account when you
14 negotiate your contracts.

15 MR. BUTTON: What I'm saying is, as an
16 economist and not negotiating a contract there -- if
17 I'm an economist, and I look at contract prices and
18 spot prices and some of these at the time they're
19 negotiating, what does it tell me about the state of
20 the current market? Is it an over-supply, or is the
21 supply tight?

22 As an economist, what it tells me is the
23 market is tight, if the spot price is high, in this
24 product or other products. That's not in conflict
25 with what P&G does as an negotiating strategy, dealing

1 with its customers.

2 COMMISSIONER WILLIAMSON: Okay, I'll have to
3 come back to this, because I think they have some
4 economists on staff; thank you. Thank you, Mr.
5 Chairman.

6 VICE CHAIRMAN PEARSON: Commissioner
7 Pinkert?

8 COMMISSIONER PINKERT: Thank you; staying
9 with you, Dr. Button, you've testified about your
10 understanding of what was going on in the market in
11 the United States toward the end of 2007. I'm
12 wondering, is there a way to grapple with this
13 question of whether there was an immediate market
14 reaction in the United States to information about the
15 European investigation?

16 MR. BUTTON: I believe the way to grapple
17 with it is to ask whether there's any factual basis
18 for the speculation that it has a significant impact;
19 and I don't think there is.

20 The way it could have an impact is if the
21 market participants were themselves to believe that
22 supply in the United States market was going to become
23 increasingly tight because of a U.S. trade action.

24 As we find the text of the brief from the
25 domestic industry, it indicates that they were only

1 beginning to study the possibility of doing so, such
2 that at this point, it doesn't seem that the U.S.
3 producers themselves even knew exactly what they were
4 going to do. The purchasers themselves don't know
5 whether that's going to happen. That is not going to
6 affect their behavior.

7 So I believe what you're facing here is a
8 situation of speculation based on a circumstance of no
9 substantial data. The data that you do have are
10 commentaries with respect to the actual price in the
11 market, the cost of raw materials; and the commentary
12 you've heard from others is the supply as being tight.

13 COMMISSIONER PINKERT: Not to belabor the
14 point; but is the pricing data in the U.S. market
15 consistent with both your explanation and the
16 explanation offered, in terms of the affect of the
17 filing of the European investigation?

18 MR. BUTTON: Well, no; I believe for your
19 purposes, in terms of the causation nexus, the answer
20 is explicitly no. What I'm telling you is that in the
21 first quarter of 2008, you had a change in the
22 domestic price, which came in order to benefit the
23 domestic producers.

24 And what I think happened, you know, and it
25 may have happened at that point, is that at the

1 beginning of 2008, they were successful in perhaps
2 covering their raw material costs better than they had
3 in the past. In the negotiations, the corn prices,
4 you know, that were higher were now more reflected in
5 the prices; and the fact that there was this tightness
6 in the market, and that the various characters
7 involved in the negotiations respond to these.

8 Assuming that there's essentially a six
9 month anticipation of a dumping case, it seems to be a
10 stretch in terms of the Commission's ability to look
11 for a real foundation for economic changes in the U.S.
12 market.

13 COMMISSIONER PINKERT: Thank you; now I have
14 a question for Mr. Waite and Mr. Rainville, and it's
15 about your exhibit that is Dr. Buttons' Exhibit Number
16 3. Maybe we can put Exhibit Number 3 back up.

17 I think you noticed what it says for Canada
18 and what it says for China there; and I'm wondering if
19 that is consistent or inconsistent with your testimony
20 about the premium product?

21 MR. WAITE: Commissioner Pinkert, Fred Waite
22 on behalf of Jungbunzlauer -- perhaps I could start
23 with a response to your question, and Mr. Rainville
24 may decide to add to that from his experience in the
25 market.

1 We believe that this information is
2 consistent with both the view of Jungbunzlauer -- that
3 it sells a premium product at a premium price, that is
4 also confirmed, as the Petitioners alluded to this
5 morning in the Purchaser's questionnaire responses,
6 when they were asked about who is the price leader
7 and, in particular, who's the price leader when the
8 price goes down.

9 You may recall that the response was that
10 the Petitioner said that in those responses, the
11 purchasers uniformly mentioned China.

12 What they didn't tell you -- perhaps because
13 you didn't ask -- is that those same purchasers also
14 identified Jungbunzlauer as a price leader -- but the
15 price leader when the price goes up -- and that
16 Jungbunzlauer is a high priced supplier to the U.S.
17 market.

18 Now the exhibit that you're looking at,
19 which shows incidents of over-selling by the Canadian
20 product compared with the U.S. producers U.S. pricing,
21 we believe confirms that. But we actually believe
22 this understates it.

23 We, in our brief, selected those markets
24 where the U.S. industry is most heavily engaged. We
25 did not use the same parameters that Mr. Button did --

1 I'm sorry, that Dr. Button did. We looked at those
2 markets where the overwhelming majority of U.S.
3 purchasers reported their pricing data on the basis of
4 quantity.

5 What you saw in our brief is that the
6 incidents of over-selling is even more significant,
7 both in terms of the comparison periods -- that is the
8 number of comparison periods where the Canadian
9 product over-sells the U.S. products, as well as
10 margins of under-selling. Did I say under-selling --
11 over-selling; I'm sorry.

12 COMMISSIONER PINKERT: Mr. Rainville, do you
13 wish to add anything to that?

14 MR. RAINVILLE: I certainly agree with
15 Attorney Waite. We do participate though in the
16 annual contract bids with the U.S. domestics, and we
17 are very often or nearly all the time told by these
18 people that we are the highest priced product.

19 As a result, we have a significantly high
20 failure rate in obtaining these contracts, which is
21 why a significant portion of our volumes end up with
22 distributions in the spot markets of the United
23 States.

24 COMMISSIONER PINKERT: Dr. Button?

25 MR. BUTTON: Commissioner, specifically,

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1 with your focus on this chart and on the issue of the
2 2008 pricing, this morning, the Petitioners were
3 indicating that the issue of over-selling and the like
4 only occurred in 2008. It was a phenomenon brought on
5 by the filing of the petition.

6 Let me just note, and we will provide you
7 additional data in the post-hearing brief, that the
8 over-selling that you see continues to exist, if you
9 exclude 2008 and just use 2006 and 2007.

10 COMMISSIONER PINKERT: Thank you; Mr.
11 Cameron?

12 MR. CAMERON: Yes, I'd just like to note
13 that with reference to the statement about the Chinese
14 being the price leader when the market goes down was
15 in relationship to what? It was in relationship to
16 the spot market.

17 I find it curious that the Petitioners would
18 use as a causal connection to try and make their price
19 case, with respect to comments on a market that they
20 don't really commercially participate in. That
21 actually was the point that we made in the
22 introduction, and that's a point that we're making
23 here.

24 Because, in fact, the Chinese have over-
25 selling in the same markets that the Canadians have

1 over-selling in, and in the markets that the United
2 States producers are, by and large, participating in.

3 So what are we talking about here? You
4 know, that's where we get to this question of, what is
5 the causal nexus that we're talking about in terms of
6 volume and price?

7 And what they really are saying is that
8 Exhibit 1 -- this is the one which is an ITC graph
9 chart that has about, I don't know, 20 cases that
10 you've done over some period of time, and basically
11 saying, well, there are imports in the market. You
12 know, when these are the conditions, you're supposed
13 to vote affirmative on. Well, I mean, I get it. But
14 I don't think it's relevant.

15 COMMISSIONER PINKERT: Okay, now back to Mr.
16 Waite for a moment, is there disagreement on this
17 panel regarding the issue of cumulation?

18 MR. WAITE: There's certainly no
19 disagreement on this panel back here on the issue of
20 decumulation; no, Commissioner Pinkert. And I believe
21 you'll also find that in their pre-hearing brief, our
22 friends from P&G also advanced a decumulation
23 argument, as well.

24 COMMISSIONER PINKERT: So is the answer to
25 my question, yes?

1 MR. WAITE: I think you may want to address
2 that to Brother Cameron.

3 COMMISSIONER PINKERT: Brother Cameron?

4 MR. CAMERON: Commissioner, we are not
5 fighting decumulation. We are not advocating it one
6 way or the other. We believe that the outcome,
7 regardless of whether you cumulate or decumulate,
8 should be the same. It should be no injury and no
9 threat.

10 So we're not advocating decumulation. But
11 if that's what you decide to do, fair enough. But
12 we're not going to run away from the record here. I
13 don't think that the record necessarily -- the
14 Commission didn't decumulate it at the preliminary
15 and, therefore, we didn't really look at it like that.

16 COMMISSIONER PINKERT: For the post-hearing,
17 you may wish to comment on the issue of cumulation for
18 threat purposes and, specifically, on volume and price
19 trends.

20 MR. CAMERON: We'll be glad to do so,
21 Commissioner; thank you.

22 COMMISSIONER PINKERT: Thank you; and you
23 may wish to do that, as well, Mr. Waite.

24 MR. WAITE: We will do that, Commissioner.

25 COMMISSIONER PINKERT: Thank you; thank you,

1 Mr. Chairman -- Vice Chairman.

2 VICE CHAIRMAN PEARSON: Old habits die hard,
3 don't they? Mr. Smith, you made the argument that the
4 global supply demand balance seems to be balanced and
5 relatively tight; and you have, I think, quite a few
6 touch points to make those observations within the P&G
7 network.

8 How do we account then for estimates of
9 substantial excess capacity in China? In our staff
10 report, Table 7-7 on page 7-13 -- and that's available
11 in the public version -- we're showing excess capacity
12 in China of around 360 million pounds, which is not
13 inconsequential. If all of that was to land on the
14 U.S. doorstep next week, I think most of us would see
15 that as a significant increase.

16 So do you doubt the Chinese numbers; or are
17 there other reasons why we should not see that much
18 capacity as a potential problem for the U.S. industry?

19 MR. HODGES: Yes, this is Jim Hodges,
20 Procter and Gamble -- the way I calculated that and
21 gave some guidance to Mr. Smith for his testimony is,
22 if you look at the name plate capacity in all the
23 facilities globally, your conclusion may be accurate.

24 But if you look at a realistic operating
25 rate that producers globally run at, in the 91 to 95

1 percent range, then the market gets to the balanced to
2 tight position.

3 If all the producers around the globe,
4 including the producers in North America and Europe,
5 were able to run at 100 percent, we would definitely
6 have that over-supply position. But through our
7 experience, we haven't had a producer in any region
8 able to demonstrate running rates consistently above
9 the 91/92 percent rate.

10 VICE CHAIRMAN PEARSON: Okay, are thee any
11 other observations on that question? Mr. Rainville,
12 do you have any comments on how hard a plant can run?

13 MR. RAINVILLE: Well, as I noted in my
14 testimony, Jungbunzlauer's plant is state-of-the-art
15 and the newest plant certainly in North America. As a
16 result, we do achieve run rates greater than 95
17 percent consistently year after year.

18 VICE CHAIRMAN PEARSON: Would the same thing
19 be true for JBL's older facilities in Europe or
20 elsewhere?

21 MR. WALDERS: I think we'd have to check
22 with the facilities in Europe, with the headquarters
23 in Switzerland on that, Vice Chairman. Mr. Rainville
24 is very knowledgeable of the North American market --
25 the United States, Mexico, and Canada -- but he does

1 not get involved in marketing in Europe. But we could
2 find that information for you.

3 But as Mr. Rainville said, and as you've
4 seen in JBL's -- Jungbunzlauer's -- responses to the
5 Commission's questionnaires, the facility at Port
6 Colburn in Canada has operated at or near 100 percent
7 capacity utilization rates during the entire POI,
8 continuing through today.

9 As Mr. Rainville also mentioned, it's
10 important for these plants to operate at as high
11 capacity utilization as possible. That's the most
12 efficient way that these plants can be operated.
13 Certainly, that's the objective of the plant at Port
14 Colburn.

15 VICE CHAIRMAN PEARSON: Okay, well, for
16 purposes of the post-hearing, I would appreciate
17 learning what you could about the other facilities.
18 Let me turn to Mr. Taylor.

19 MR. TAYLOR: Yes, I think having
20 responsibility for the purchase of citric acid around
21 the globe, I would have to say that, as I said
22 already, we have seen a tightness. We've seen a
23 tightness in supply. We've seen an increase in lead
24 time; and this is from numerous sources around the
25 world.

1 I think that would signify that there's not
2 as much over-capacity as maybe you're indicating. We
3 do tend to see various suppliers running at very, very
4 high utilization rates.

5 MS. MENDOZA: Vice Chairman?

6 VICE CHAIRMAN PEARSON: Yes.

7 MR. MENDOZA: If I could just add one
8 comment in terms of that.

9 VICE CHAIRMAN PEARSON: Ms. Mendoza.

10 MS. MENDOZA: Yes, thank you; I think that
11 Petitioners talked a lot this morning about capacity
12 and global capacity and Chinese capacity. But the
13 fundamental problem with their argument is the same
14 problem they have with their present injury argument,
15 which is that they have not established any causation.

16 I think if you look at the tables, even the
17 public tables that are in the staff report, at the
18 proportions that were supplied to the Chinese market
19 versus exports to other markets and to the U.S., what
20 you saw over the period was a very flat pattern, in
21 terms of which markets were being supplied with that
22 capacity. So we would argue that the mere presence of
23 capacity does improve injury or threat of injury.

24 VICE CHAIRMAN PEARSON: Well, I would agree
25 with that in concept. But I am trying to understand

1 better how much capacity is out there that might be of
2 concern; Mr. Cameron?

3 MR. CAMERON: Mr. Vice Chairman, one other
4 thing with respect to the Chinese capacity is that I
5 believe that there are some adjustment to that
6 capacity that we can discuss in our post-hearing brief
7 in confidence. I think we mentioned them in our pre-
8 hearing brief. But it's important to understand that.

9 VICE CHAIRMAN PEARSON: Okay, thank you; and
10 that may prevent the need of asking Mr. Shao the
11 question directly about that. Because if there is
12 additional information available regarding Chinese
13 capacity --

14 MR. CAMERON: We will be glad to give it,
15 and he would not be the person that gives it to you.

16 VICE CHAIRMAN PEARSON: Okay.

17 MR. CAMERON: Thank you.

18 VICE CHAIRMAN PEARSON: Mr. Rainville, does
19 JBL America see itself as an integrated part of a
20 single North American industry? Another way of asking
21 the question is, why was the plant build in Canada?
22 And there may be some public reasons that you can
23 mention and some post-hearing reasons. But I'd be
24 curious what your thoughts are.

25 MR. WAITE: In order to preserve Mr.

1 Rainville's position within JBL, perhaps I should
2 respond to that question.

3 VICE CHAIRMAN PEARSON: We want Mr.
4 Rainville to remain employed, yes.

5 MR. WAITE: We would very much like to see
6 that, as well. There were a number of reasons. We
7 can provide you with a very comprehensive discussion
8 in our post-hearing brief.

9 However, there are a number of factors that
10 I think we can refer to publicly, Mr. Vice Chairman,
11 that may be helpful at this point. JBL certainly did
12 look at the North American market, at the North
13 America territory, as an opportunity to build their
14 new plant. They did look at a number of locations.
15 There were a number of factors that went into their
16 decision.

17 For example, if you visited the plant in
18 Port Colburn, you will see within 150 meters of that
19 plant is a wet corn processing mill, owned and
20 operated by Casco, which is a Canadian subsidiary of a
21 U.S. corn producing company.

22 What that means is that glucose can be piped
23 directly from the Casco plant into JBL's facility;
24 obviously an advantage, both in terms of convenience,
25 reliability of supply, long-term planning, security,

1 in their production.

2 They're also located within a short walk of
3 the Wellin Canal, which offers not only transportation
4 possibilities, but also water, which is an important
5 component in the production of citric acid.

6 It's geographic location -- obviously, it's
7 close to major markets throughout North American;
8 certainly, Ontario, the Midwest, New York State, and
9 Pennsylvania. I believe I've seen publicly
10 acknowledged that within 500 to 800 miles of the
11 plant, there's probably 80 percent of the consumption
12 of citric acid in North America.

13 Why Canada, rather than the United States --
14 well, because JBL is a European company, Austrian
15 owned, Swiss headquartered. Plants in Germany,
16 France, and elsewhere look at North America as a
17 unified market; and certainly feel that they are part
18 of the North American market.

19 The notion that they are somehow foreign or
20 different, or operating a different way than, for
21 example, their fellow European competitors at Tate &
22 Lyle, is probably a concept that they would find
23 perplexing and maybe even offensive.

24 Certainly, as you can see in their responses
25 and in the data collected by the Commission staff on

1 pricing, on marketing, they operate in a very
2 responsible, long-term way; and once again, to refer
3 to the pricing data collected by the Commission staff,
4 it certainly shows that they are not coming into this
5 market trying to seize market share with low prices.
6 In fact, it's just the opposite.

7 VICE CHAIRMAN PEARSON: Mr. Rainville, a
8 quick follow-up, do you see JBL as competing most
9 closely against subject imports from China or other
10 non-subject imports; or do you see your major
11 competitors as the U.S. domestic manufacturers?

12 MR. RAINVILLE: On a long-term contract
13 basis or full year contract basis, we see our
14 competition as being the U.S. domestic producers.

15 VICE CHAIRMAN PEARSON: Okay.

16 MR. RAINVILLE: And to add to what Mr. Waite
17 said, if you don't mind, my office in Boston,
18 Massachusetts has been there for over 20 years,
19 servicing the U.S. market, but also Canada and Mexico,
20 selling Jungbunzlauer's citric acid. That material
21 came from Austria, as I mentioned earlier.

22 We did not enter this market in 1992. We
23 entered many years prior to that; and when that plant
24 was built in Canada, the purpose was absolutely to
25 serve the entire North American market.

1 VICE CHAIRMAN PEARSON: Okay, thank you very
2 much; Commissioner Lane?

3 COMMISSIONER LANE: Mr. Cameron, this may be
4 for you. But you may direct it towards someone else,
5 if you want to.

6 One of the issues in this case is the
7 relative prices within the contract market. The
8 domestic industry maintains that purchasers are using
9 the threat of massive subject import capacity to
10 negotiate lower contract prices. Is it possible that
11 the mere threat of such massive subject imports would
12 force the domestic producers to lower their prices in
13 the contract market that they find most attractive?

14 MR. CAMERON: Let me start, and I think that
15 all of the purchasers here would like to participate
16 in the answer to your question.

17 No, I think the answer is that no, that is
18 not realistic. I think the evidence of that is
19 twofold. Number one, if you look at the purchaser
20 questionnaires, there is overwhelming preference for
21 domestic producer supply.

22 Well, why is that? In other words, if you
23 have that preference for U.S. producer supply, does
24 that mean that you can just go tomorrow and say, well,
25 I'm going to go buy from what's-her-name over in

1 China? Well, I think the answer to that is no.

2 The reason is that they prefer the short
3 lead time, the short supply chain, and other things
4 that have been noted. That's one reason that the
5 United States industry is the price leader in this
6 market and not the imports. That's one of the reasons
7 that they are preferring the domestic supply.

8 So the idea of the mere threat of capacity -
9 - which I think is the basic argument, right -- I
10 don't see it, and I don't think you see it in the
11 numbers, either. If that were the case, I think you
12 would see under-selling in that market, and you're not
13 seeing that.

14 You're seeing that the domestic industry --
15 you know, look at the industries that we look at in
16 this context. They're not operating at full capacity,
17 you know. The buyers are going in saying, well, I'm
18 going to get somebody else and they do. So the
19 industries end up at 75 or 50 percent capacity, which
20 is what you're hearing today.

21 Well, what is the situation with the U.S.
22 industry? They are at full capacity and turning away
23 orders. So I think the answer to that is, that's not
24 happening, and there's absolutely no evidence on the
25 record that it is. But I'd like to hear from some of

1 the purchasers.

2 MR. SMITH: From P&G's perspective, how our
3 negotiations operate is, we like to approach the
4 negotiations in a very principled way. Incumbency
5 plays a valuable role in who we give business to.

6 So if a supplier is supplying 5,000 tons to
7 P&G one year, they'll have every opportunity to have
8 that same volume the next year. We start the
9 discussions, again principally, based on cost changes
10 from the previous year -- what we've seen in the
11 market, what they've seen in the market; and we use
12 that as the foundation for the price discussions.

13 We don't shop the prices around. We don't
14 bring a quote from China in and say, if you don't beat
15 this price, you're not getting the business. We try
16 to understand and work with our suppliers over a
17 period of time to come to an agreement where they're
18 supplying to P&G for the long term. Because
19 ultimately, it's to our advantage to have more
20 suppliers than less; and we want to make it long-term
21 valuable for the suppliers, also.

22 MR. TAYLOR: I think it's similar from a
23 PepsiCo point of view. We tend to have long-term
24 relationships with our suppliers, and don't tend to
25 change the purchasing pattern hugely year over year

1 predominantly because, you know, continuity of supply
2 is paramount.

3 We will make certain modifications, year
4 over year, and price will become a minor factor in the
5 change. But really, it doesn't play a big factor.

6 COMMISSIONER LANE: Okay, does anybody else
7 want to respond to that? Well, I would like to hear a
8 response from either Dr. Button or Dr. Magrath on that
9 argument.

10 MR. BUTTON: Well, the key issue in
11 negotiations is whether if an over-hang is credible or
12 not. The reasons you have here to doubt that the
13 over-hang is a credible determinant of how price
14 negotiations will go is whether the U.S. purchasers
15 really are themselves convinced, motivated simply by
16 price.

17 In fact, what you've been hearing through
18 the couple hours from the U.S. purchasers is the
19 importance for them of non-price factors, such as
20 reliability, availability, and the convenience and
21 assuredness of having relatively near, geographically
22 near, supplies of the product, which they need so very
23 much.

24 I think the other aspect of this, just on
25 the imperial basis, is that it shows that the threat

1 of the foreign capacity is not credible as the over-
2 selling data. How is the foreign capacity going to
3 cause a suppression of the prices if it, in fact, is
4 consistently higher?

5 COMMISSIONER LANE: Okay, thank you;
6 approximately how many purchasers of citric acid are
7 in the United States, and how many of these are large
8 end users and how many are large distributors?

9 MR. CAMERON: Well, I mean, I believe the
10 staff has identified the largest purchasers as four;
11 and if you want to look at, it depends on your level
12 of aggregation. Then you go up to about 16. There
13 are five distributors, do you think -- five major
14 distributors. But the best estimate that we have
15 obviously is in the staff report. But that's not
16 going to get to the small purchasers.

17 COMMISSIONER LANE: Okay, thank you.

18 MR. CAMERON: I mean, we'll try and get you
19 some more. But I think the staff report and what
20 you've done is actually the best that we've seen.

21 COMMISSIONER LANE: Okay, thank you; in
22 various places in Petitioner's pre-hearing brief and
23 in the testimony this morning, the Petitioners refer
24 to a time series that begins in 1999 and 2005 to the
25 current period, or to the period for which data were

1 collected in these investigations -- 2006, 2007, and
2 2008.

3 Why should the Commission take into
4 consideration data that do not necessary correspond to
5 the data collected in its final phase questionnaires,
6 and that cover a longer period that pre-dates the
7 period covered by the questionnaires?

8 MR. CAMERON: Well, Commissioner, you
9 shouldn't; and I believe that the Commission practice
10 has been to look at the data collected in the
11 questionnaire data over the POI.

12 One reason that you do that is because the
13 data collected over the POI is complete with respect
14 to essentially, you guys understand and have
15 understood for many years that these are complicated
16 issues. Therefore, you seek answers, not from one
17 single source. It's not just, well, production was up
18 so that must be the answer; or, they lost money --
19 okay, well, that must be the answer.

20 You don't look at it like that. You look at
21 it on a very broad basis. You collect information
22 from producers. You collect information from
23 importers, and you collect information from
24 purchasers.

25 Once you've done that, you have a rather

1 complete database, and you are then checking the data
2 against each other to see exactly how things make
3 sense. That's the reason that you generally tend to
4 use the POI.

5 What I've found to be rather surprising was
6 the extent to which, (A) the Petitioners had really
7 had gotten quite a bit of input into the questionnaire
8 process, which is fine. I mean, that's the normal
9 deal; and they were successful at it and there were
10 many changes made in the questionnaire. But after all
11 the data came back, they're still running away from
12 the record.

13 This kind of gets at, if I may, earlier you
14 asked whether or not there had been any differences
15 between the preliminary and now. Well, I guess
16 another difference is that 2005 was included there,
17 and it is not now because it's not part of the POI.
18 Of course, you didn't have purchaser questionnaires in
19 the 2005 database.

20 But the other thing that has changed, and I
21 apologize for my slowness in responding to your
22 question, is there were obvious cost anomalies that
23 occurred in the data that we have discussed in our
24 pre-hearing brief that we really can't discuss.

25 And we also heard testimony this morning

1 from the consultant for the Petitioners that they had
2 re-calculated essentially the raw material costs, and
3 included other things in raw material costs that they
4 had not in the preliminary determination.

5 So I think that you have a good database.
6 Really, the reason they're doing this is, they don't
7 like 2008. Well, why don't they like 2008? Well,
8 they don't like 2008 because it's difficult for them
9 to argue that their pricing was affected by a petition
10 that was filed in April of 2008, when virtually all of
11 their prices were negotiated in late 2007, and it
12 appears to have been related to increases in corn
13 costs, which is fine.

14 But of course, they had no problem in
15 getting their price increases, as shown in the first
16 quarter of 2008, which you already had seen in the
17 preliminary determination. But again, I think that's
18 what they're doing. They are running away from the
19 data.

20 You've got a solid database. The staff has
21 worked extraordinarily hard to gather the data; and we
22 don't think there's any reason for you to be doing
23 anything else.

24 COMMISSIONER LANE: Dr. Button?

25 MR. BUTTON: Thank you, Commissioner. I

1 agree with Mr. Cameron what Mr. Cameron said about the
2 appropriateness of using the data. However, I can't
3 resist pointing something out in the data if you have
4 Exhibit 12 with you in its full color.

5 During the discussion as to the
6 meaningfulness of this I would direct you to the left-
7 hand side where you see a decline in what is shown to
8 be the net income, the profitability of the domestic
9 industry from a relatively high level on the far left
10 side down into the negative points and it's red as
11 imports rose. We were told that nothing else had
12 changed, just the increase in the imports.

13 But if you look closely at the period from
14 first quarter 1999 through first quarter 2002 you see
15 all the black dropping, the profitability falling to
16 zero. But a period where in essence the subject
17 imports are flat. There's one spike up, then it goes
18 farther down. You have a very dramatic change in the
19 financial circumstances of the domestic industry at a
20 time when the subject imports are relatively flat.
21 That is not a good causal connection.

22 Thank you.

23 COMMISSIONER LANE: Okay, thank you.

24 Mr. Vice Chairman, I'll wait until my next
25 round. Thank you.

1 VICE CHAIRMAN PEARSON: Commissioner
2 Williamson?

3 COMMISSIONER WILLIAMSON: Thank you, Mr.
4 Vice Chairman.

5 I was wondering how the Respondents would
6 reply to the Petitioners' assertion at pages 79 to 84
7 of their brief that the domestic industry has been
8 unable to make "lumpy types of capital investment
9 needed to build additional capital because imports
10 have been injuring them for a number of years." I was
11 wondering if you have any response to that.

12 MR. BUTTON: Well, I would respond with the
13 following. It's one thing to have the capital to make
14 it, it's another thing to assert a particular cause as
15 to what happened.

16 Secondly, I would note the commentary by the
17 domestic industry that they have not been able to make
18 a sufficient ROI, return on investment, for a very
19 long period of time.

20 Then I recall this morning's discussions
21 about how their internal profitability is in fact
22 determined based on transfer prices, hedging
23 strategies, all of which remain something of a
24 mystery. And Commissioner Lane has asked a series of
25 probing questions to try and get more information

1 about these things which were not on the record.

2 It comes down to why is there profitability.
3 Let's look at the cost side. We've talked a lot about
4 the pricing side from our point of view that the
5 subject imports have not suppressed that price. But
6 on the cost side, where did the corn come from? What
7 happened to the corn by-products of milling and
8 producing it? About 30 to 40 percent of the value of
9 that? How did it get assigned among the various other
10 divisions to which the starch material is to go?

11 There was a discussion back and forth as to
12 how it was priced internally, about cost plus a
13 markup. It sounded like there was cost plus a markup
14 in the internal books, but Petitioners indicated they
15 believed they had been careful in removing the markup
16 in providing the questionnaire data.

17 Well, that may not be all.

18 What about the benefits or problems with
19 hedging? If the corn had been hedged they should have
20 been able to lock in a predictable cost. All three US
21 producers told you this morning that at the time they
22 negotiate their contracts to sell the citric acid they
23 can know what the cost of their corn is going to be.

24 Why then the variability? Why then the
25 losses? What happened to these other financial

1 aspects, the byproducts and things of that nature and
2 the transfer pricing?

3 I find it somewhat confusing to confront,
4 let's say I find it puzzling that the domestic
5 industry has the financial outcome it has in a
6 situation where they have the means to protect
7 themselves but they don't.

8 COMMISSIONER WILLIAMSON: Thank you.

9 For JBL, I was wondering, do you agree or
10 want to comment on the Petitioners' argument this
11 morning regarding the impact of the new JBL plant on
12 US investment.

13 MR. WAITE: Yes. Thank you, Commissioner
14 Williamson.

15 We'd like to think about that because we
16 don't fully understand what the Petitioners may be
17 getting at. I'm not an economist, I only took Econ
18 101, 102 and 304 in college, but when I looked at the
19 chart of subject import volumes and US producers' net
20 income that the Petitioners presented this morning and
21 saw all of those black columns at about the same time
22 that JBL was making its decision to consider, plan,
23 design and build a new facility in North America, I
24 would suppose that the domestics had pretty deep
25 pockets at that point looking at this chart. Why they

1 didn't make a similar decision to upgrade their
2 operations, to perhaps consider new operations whether
3 in the United States or Canada, I simply can't answer
4 that question.

5 Because JBL, in looking at its global
6 interest, it's always considered itself one of the
7 global leaders in the production of citric acid, it's
8 taken great pride in that. While JBL was making a
9 decision to try to secure its future in this industry,
10 I'm simply not in a position to speak as to why the
11 domestic industry did not make a similar decision.

12 COMMISSIONER WILLIAMSON: Anything you can
13 provide post-hearing will be helpful.

14 MR. RAINVILLE: May I make one additional
15 comment?

16 COMMISSIONER WILLIAMSON: Sure.

17 MR. RAINVILLE: Dan Rainville from
18 Jungbunzlauer.

19 When we did open our plant in Canada we were
20 importing from Austria, so those imports were, we
21 ceased those imports when Canada opened, and then we
22 started importing into the United States from Canada.

23 COMMISSIONER WILLIAMSON: Thank you.

24 Just a technical thing, Mr. Waite. I wonder
25 if there's a typo on the last line of the text on page

1 34 of your brief, and if you can take care of that
2 post-hearing.

3 MR. WAITE: There is a typo on that last
4 line on that page. We regret it very much and we will
5 take care of it in our post-hearing brief. Thank you,
6 Commissioner Williamson.

7 COMMISSIONER WILLIAMSON: Thanks.

8 A question I asked this morning, can
9 Respondents discuss the extent to which your US citric
10 acid sales or purchases are part of a larger
11 negotiation process that involve sales or purchases to
12 other markets. The Petitioners said that wasn't the
13 case, but I was wondering since we do have global
14 companies here.

15 MALE VOICE: Can you repeat the question,
16 please?

17 COMMISSIONER WILLIAMSON: To what extent are
18 your US citric acid sales or purchases are part of a
19 larger negotiation process that involves sales or
20 purchases for other markets, or that involve sales or
21 purchases of products in addition to citric acid,
22 concerning citric salts.

23 MR. HODGES: Jim Hodges, Proctor & Gamble.

24 None of our citric acid negotiations
25 globally are linked to any other products that

1 companies that supply citric produce.

2 COMMISSIONER WILLIAMSON: Thank you.

3 Mr. Taylor?

4 MR. TAYLOR: That also tends to be the case
5 for PepsiCo where we have different divisions
6 purchasing certain materials, i.e. like high fructose
7 corn syrup, as do some of the other Petitioners.

8 MR. HOFMANN: Same for us.

9 COMMISSIONER WILLIAMSON: Thank you.

10 For the Chinese Respondents, I was
11 wondering, and you may have to do it post-hearing,
12 what exactly is provided for in the price undertaking
13 that the EU, with the EU? And particularly if you can
14 give post-hearing the prices that are involved.

15 MS. MENDOZA: We'd be happy to respond to
16 that in our post-hearing brief. It's going to depend,
17 obviously, by individual producers.

18 COMMISSIONER WILLIAMSON: Thank you.

19 Again, Chinese Respondents. Petitioners
20 argue at pages 62 to 65 of their brief that exports
21 from China to EU and US markets surged in periods
22 prior to the imposition of the provisional preliminary
23 duties. I was wondering if you could comment on that.

24 MR. CAMERON: I found the description rather
25 interesting. We will comment in our post-hearing

1 brief. I think it was quite an over-simplification of
2 what has occurred, but we'll be glad to comment.

3 COMMISSIONER WILLIAMSON: Okay. Another
4 question for Respondents.

5 Do any of you know of instances in which
6 firms have chosen formulations not using citric acid
7 because of difficulties in obtaining citric acid or
8 the high price of citric acid? Or other reasons not
9 related to the quality of the final product?

10 MR. HOFMANN: We have a situation where it
11 is extremely difficult to replace the material, so the
12 answer is no.

13 COMMISSIONER WILLIAMSON: Thank you.

14 Any other --

15 MR. HODGES: Jim Hodges, Proctor & Gamble.

16 From our perspective, we've had two
17 projects, one a new initiative where the business
18 asked us for increased citric acid or citric salt and
19 we gave them guidance to pursue other chemistries
20 because of availability and price. And one
21 formulation this year we did reduce citric acid in a
22 non-laundry brand because there was an alternative
23 chemistry that gave some better performance options.

24 COMMISSIONER WILLIAMSON: Okay, thank you.

25 Thank you, Mr. Vice Chairman.

1 VICE CHAIRMAN PEARSON: Commissioner
2 Pinkert?

3 COMMISSIONER PINKERT: Thank you, Mr. Vice
4 Chairman.

5 Mr. Cameron, on pages 54 and 55 of the
6 Chinese Respondent brief you referenced what you call,
7 and I quote, "the rest of the industry". I can't be
8 more specific about this in a public setting, but what
9 I want to ask you, and you can answer this either here
10 or in post-hearing, is it your contention that the
11 rest of the industry is doing well in the face of
12 import competition?

13 MR. CAMERON: Yes, it is, and we'll be glad
14 to expound on it in the post-hearing brief because
15 it's very difficult to say anything much more than
16 that.

17 COMMISSIONER PINKERT: Could you, when you
18 do that, give us some sense of the historical context
19 in which you make the judgment that they are doing
20 well in the face of import competition?

21 MR. CAMERON: Certainly. No problem.

22 COMMISSIONER PINKERT: Thank you.

23 Another question. This could be Mr. Cameron
24 or any other of the attorneys on the panel. How do
25 you respond to Petitioner's point about the recent

1 inventory buildup? That is information that was
2 different in the staff report now than in the
3 preliminary?

4 MR. CAMERON: The first thing I would say
5 with respect to the inventory buildup is again, let's
6 look at the normal expectation in many industries
7 would be that that is an overhang that is on the
8 market and would be an immediate threat for 2009. But
9 that doesn't apply to this situation. Why is that?
10 Because 2009 is already in the bank as far as the US
11 industry is concerned with respect to the contracts.
12 So I don't really find it to be that meaningful.

13 Actually what you're seeing is that a lot of
14 that's being drawn off now with the increases back to
15 the EC now that they've got their agreement.

16 COMMISSIONER PINKERT: I used the term
17 inventory buildup.

18 MR. MAGRATH: Inventory buildup. Which
19 inventory are you --

20 COMMISSIONER PINKERT: I believe the
21 testimony earlier today had to do with the Chinese
22 inventory.

23 MR. MAGRATH: Oh, that's not an issue with
24 Canada.

25 COMMISSIONER PINKERT: Okay.

1 Any other comments on the panel about that
2 issue?

3 MR. CAMERON: We would also, by the way, if
4 you're going to talk about inventories, I think it's
5 only fair to talk about US inventories as well. And
6 when you're talking about threat, actually what you've
7 heard and you've seen in some of the questionnaire
8 responses from purchasers is responses by the domestic
9 industry that actually they were not going to be able
10 to supply certain amounts because they needed to build
11 up inventory for the peak summer months for this
12 coming summer, and what you are also seeing, and
13 that's publicly available data, that the inventories
14 of the United States industry are at a very low point.

15 COMMISSIONER PINKERT: Thank you.

16 Just a couple of other questions for Mr.
17 Bloom. You refer to the kosher certification process,
18 and I wondered if you could explain what that
19 involves.

20 MR. BLOOM: We don't actually do a
21 certification on kosher. That is done by a rabbi. We
22 require that the suppliers be certified and have a
23 kosher label before we can buy from them because our
24 customers demand kosher products.

25 COMMISSIONER PINKERT: Given the season that

1 we're entering into I'm wondering if there's a special
2 kosher for Passover certification that goes into that.

3 MR. BLOOM: There is.

4 COMMISSIONER PINKERT: Thank you.

5 As far as your testimony about the market
6 closing rate, can you tell me what you meant by that?

7 MR. CAMERON: Sorry, can you rephrase it?

8 COMMISSIONER PINKERT: I thought what I
9 heard Mr. Bloom testify to earlier is that there's a
10 possibility of a market closing antidumping or
11 countervailing duty rate that could emerge from this
12 process, and I'm wondering what you might have meant
13 by that. Did I misunderstand your testimony?

14 MR. CAMERON: Sorry. I don't think that we
15 said that. I don't think so. I think he was just
16 saying that obviously he's got more limited sources of
17 supply and he's worried about getting any supply,
18 actually.

19 COMMISSIONER PINKERT: Thank you.

20 That's all I have for this round, Mr. Vice
21 Chairman.

22 VICE CHAIRMAN PEARSON: This is a question
23 primarily for counsel. I see indications of injury on
24 this record and I just want to get your reaction to
25 this sizing up of the case.

1 There has been an increase in volume, both
2 absolutely and relative to consumption. There are
3 clear indications of underselling for some pricing
4 products and those cover commercially meaningful
5 volumes of product. There are confirmed lost sales.
6 There has been a decline in employment and in hours
7 worked. Hourly wages are stagnant. There's a
8 consistent trail of red ink throughout the POI.

9 So why isn't this an affirmative, either for
10 present injury or threat?

11 The follow-on question is has anything other
12 than an increase in price competitive subject imports
13 changed in recent years that would explain this?

14 I'd hate to have to write an opinion that's
15 based too heavily on the theory that the real problem
16 that the industry is dealing with is poorly informed
17 fratricidal three-way competition. Or perhaps it's
18 four-way competition depending on how one considers
19 the role of JBL. Could you comment?

20 MR. CAMERON: Let me start. I'm sure there
21 are going to be others that want to join in this.

22 First of all, with respect to the
23 indications of injury, I think that the only
24 indication of injury are the losses. The increased
25 import volumes correspond to increases in consumption

1 and the increase in consumption, per force, could not
2 have been supplied by the US industry and that's clear
3 from the record.

4 There are indications of underselling that
5 are limited in the areas in which the US industry is
6 competing meaningful. In fact it is mostly
7 overselling. The lost sales is overwhelming a
8 testimony to the nature of the competition in the
9 domestic market.

10 When you then combine that with the decline
11 in employment, we can see the decline in employment
12 except for one thing. I would suggest to the
13 Commission, we heard the witness this morning from the
14 union. The union is from Tate & Lyle, and I do
15 sympathize with the workers. This is not to go after
16 them because I do understand their problem. However,
17 I would ask the Commission to look at the
18 questionnaire response of Tate & Lyle and then I would
19 like someone to explain to me how it is conceivable
20 that unemployment and employment losses at Tate & Lyle
21 could possibly be tied to imports. I don't think that
22 can be done.

23 I think it goes to exactly the point that
24 was made earlier with respect to yes, there were
25 losses in employment and there were gains in

1 productivity. That, I believe, is the key to that
2 issue.

3 So at the end of the day you have losses,
4 which according to the slide show that was presented
5 to the Commission in its ADM tour, appears to have
6 been almost forever. And yet there's been on this
7 record no causal relationship that has been shown
8 between import volumes when the domestic industry
9 couldn't satisfy the demand, nor import pricing which
10 in fact, while there is some underselling, actually
11 it's not very much.

12 Answer this. In a commodity product, and
13 we've dealt with commodity products before this
14 Commission, when was the last time you had a commodity
15 product where the purchasers didn't overwhelmingly say
16 the number one criteria, it's price. That's not on
17 this record.

18 And in a commodity product where the imports
19 are allegedly decimating the industry when was the
20 last time you had price leader absolutely,
21 unquestionably listed as the domestic industry? We
22 haven't had that.

23 That gets to the point. The point is
24 there's no causal relationship here between the
25 imports and what's been happening. What you now have

1 is an absolute shortage situation that the US industry
2 is basically telling purchasers I'm really sorry. I
3 know it put you out of business, but it's not my
4 problem.

5 MR. LAFAVE: If I may, Commissioner. There
6 has been an increase in the volume of imports but as
7 Don said, it was based on increases in consumption,
8 also replacement of non-subject imports. And where
9 there was a minor increase in market share by imports
10 in 2008, that was a year in which by all accounts the
11 industry was in a sold-out condition and many people
12 here have said they wouldn't have been able to
13 continue operating their plants had they not been able
14 to import citric acid.

15 So the trends analysis doesn't support the
16 notion that the volumes have caused any kind of
17 injury.

18 As far as the lost sales and lost revenues,
19 the confirmed ones are minuscule. I submit to you
20 they don't rise to the level of material injury. And
21 what's most interesting is that quite a few of those
22 allegations apparently involve cases where the
23 domestic industry was fighting with itself. And that
24 reinforces the point that we've made, which is it's
25 the domestic industry that's leading prices down,

1 suppressing prices in this market, while the imports
2 are coming in at overselling margins.

3 So as Don says, there's no causation in this
4 case.

5 VICE CHAIRMAN PEARSON: So you rather
6 subscribe to the fratricidal competition theory then.

7 MR. LAFAVE: I absolutely do. I call it the
8 creative destruction theory, but it's the domestic
9 industry that's engaged in the creative destruction,
10 not the imports.

11 VICE CHAIRMAN PEARSON: If there's more that
12 we should know, let us know in the post-hearing.

13 MR. CAMERON: We'll amplify in the post-
14 hearing brief, Commissioner.

15 VICE CHAIRMAN PEARSON: Okay.

16 I think this may be my last question for the
17 purchasers of citric acid that are in the panel.

18 Would it be a problem for your firms if one
19 or more of the domestic producers was to exit the
20 business?

21 MR. BLOOM: Absolutely. Even though we
22 don't buy from them or they won't supply us, it would
23 cause the rest of the world market to tighten up.

24 VICE CHAIRMAN PEARSON: Mr. Taylor?

25 MR. TAYLOR: Yes, I think it would. I think

1 that goes for anyone, any of the suppliers, and more
2 specifically any of the US suppliers. From a PepsiCo
3 point of view, because we really heavily on them to
4 give us the majority of our citric acid requirements.
5 We can't afford not to have citric acid in a plant.
6 The last potential loss in revenue is huge to Pepsi
7 and therefore we need for them to be in operation.

8 VICE CHAIRMAN PEARSON: Mr. Hofmann?

9 MR. HOFMANN: We are in exactly the same
10 situation. We would find it very difficult, as
11 historically we have bought all our volumes in the US.
12 It's only recently when we started to import from
13 Canada and it was only on the basis that we were not
14 able to satisfy the volumes from the US market.

15 VICE CHAIRMAN PEARSON: Mr. Smith?

16 MR. SMITH: From P&G's perspective,
17 absolutely. We would not want any of the US producers
18 to exit the market. Not only in the US would that
19 impact us but also globally. We could not handle the
20 reduction globally.

21 VICE CHAIRMAN PEARSON: Representing
22 Vertellus, Mr. Pensak?

23 MR. PENSAK: Mr. Pensak. Thank you.

24 Because none of the US domestics currently
25 are willing to supply us on the surface, it would seem

1 to be irrelevant. But certainly on a global basis it
2 could only serve one purpose which would drive pricing
3 higher, and we would certainly view that as a negative
4 for our business.

5 VICE CHAIRMAN PEARSON: Do you have any
6 comment, Mr. Rainville? Perhaps not. If you don't
7 want to, don't, but otherwise I'd be glad to hear what
8 you have to say.

9 MR. RAINVILLE: Correct.

10 VICE CHAIRMAN PEARSON: Okay. It should be
11 an interesting round of pricing negotiations the next
12 time you all get together, I guess.

13 I think that concludes my questioning.

14 Commissioner Lane?

15 COMMISSIONER LANE: What is the average
16 shelf life for citric acid and certain citric salts?

17 MR. RAINVILLE: May I try to answer that for
18 you? Dan Rainville from Jungbunzlauer.

19 Our product shelf life is three years, but
20 because of the possibility of caking we certainly
21 warrant that people use the material in a shorter
22 shelf life than that because we cannot control how our
23 customers store the material in their own warehouses.
24 But the shelf life is three years.

25 COMMISSIONER LANE: Thank you.

1 It appears that there's agreement among all
2 the parties that demand for citric acid is seasonal.
3 Do you concur? And why is it seasonal?

4 MR. TAYLOR: From a PepsiCo point of view it
5 is seasonal. Obviously it's going into beverage and
6 the majority of the beverage we sell is during the
7 summer period. So it most definitely is normally from
8 April to July is our busiest time of the year.

9 COMMISSIONER LANE: I sort of figured that
10 out, but does that mean that you only make your
11 product in the summer time and you sell it in the
12 summer time?

13 MR. TAYLOR: No, we make it all year round,
14 but as I say, we are busier during that time period.

15 COMMISSIONER LANE: So you manufacture more
16 in the summer?

17 MR. TAYLOR: We make and sell more product
18 from April to July.

19 COMMISSIONER LANE: Thank you.

20 MR. CAMERON: Commissioner, it all does
21 revolve around the beverage because of the
22 significance of the food and beverage market in the
23 overall demand. So the fact that beverage in the
24 summer months tends to spike because of the heat I
25 suspect and because of Pepsi's terrific advertising

1 campaigns, it's able to, but that's what's driving the
2 seasonal element, I believe.

3 I think that we wash dishes the same all
4 around.

5 COMMISSIONER LANE: Thank you.

6 I won't comment on the fact that you wash
7 dishes.

8 MR. CAMERON: That I wash dishes?

9 (Laughter.)

10 MR. CAMERON: Thank you, Commissioner.

11 COMMISSIONER LANE: Okay. You made me lost
12 my train of thought.

13 Do you agree with Petitioner's assertion at
14 page 40 to 45 of its brief that the caking problem was
15 exaggerated because not many questionnaire respondents
16 identified it as a frequent problem because
17 unrefurbished, caked, citric acid is useable for all
18 but a small portion of the US market?

19 MR. CAMERON: Commissioner, we don't believe
20 that we have exaggerated the caking problem. It is an
21 issue that exists to a degree, more or less, with some
22 purchasers than others. We have not said that caking
23 is the be all, end all of this case. What we have
24 said is it's another factor. And I believe that Pepsi
25 can talk about the fact that actually yeah, it's an

1 issue. It's not that it can't be overcome, but
2 somebody's got to pay money to take care of the
3 problem. So it's a consideration.

4 MR. TAYLOR: I think from a Pepsi point of
5 view it absolutely is a problem and has been for the
6 duration of the time we've been buying material from
7 China. We've invested a lot of money in the last few
8 years to overcome the problem and also a lot of
9 resources at our plants to overcome it as well.

10 So the material does require an extra step
11 in the process to be able to get it into a form that
12 we can use easily. So is it insurmountable? No.
13 Does it cause issues? Absolutely, yes.

14 COMMISSIONER LANE: Yes, sir?

15 MR. LAFAVE: I think 19 of 60 purchasers
16 indicated, mostly in the food and beverage sector,
17 indicated that caking or clumping was a very important
18 issue to them. So it's clear that for at least part
19 of the market it's a very important issue.

20 The staff report says that the reasons were
21 that the customers will not accept caked material.
22 Caked material does not flow properly. Caked material
23 has caused equipment to break. Caking affects the
24 weight of the product and requires formulas to be
25 reworked. Caked product cannot be used in dry blends.

1 And caked product takes longer to melt.

2 So clearly caking is an issue in this case.

3 MR. CAMERON: Commissioner, Mr. Bloom also
4 has some additional information, but he'd like to
5 submit it in confidence in a post-hearing brief which
6 we intend to do if that's okay with you.

7 COMMISSIONER LANE: Yes. That would be
8 fine. Thank you.

9 MR. CAMERON: Thank you.

10 COMMISSIONER LANE: Petitioners contend that
11 imports from Canada and China have battered the
12 domestic industry for a number of years, even prior to
13 the period of investigation.

14 If true, then isn't that an explanation for
15 the domestic industry's inability to meet demand in
16 the US market and its performance?

17 Dr. Button?

18 MR. BUTTON: Thank you. We've touched on
19 this topic a bit during the prior round in your
20 questioning, Commissioner Lane. The JBL
21 representative I believe rather counsel for JBL has
22 indicated a point of view that during the period shown
23 in the 1999 during 2001 period when the domestic
24 industry was making profits, during that kind of
25 context they chose not to expand their capacity. So

1 there are various factors that one can consider.

2 The issue we believe that is before the
3 Commission is why is it that the domestic industry is
4 in the position that it's in? Why does it have
5 currently a weak financial position?

6 It hasn't had a weak financial position all
7 along because of the subject imports, we believe,
8 because the subject imports as we found in prior years
9 had not increased, were not large. And using their
10 own exhibit we find a level of negative operating
11 performance being basically constant, not getting
12 worse, after the period of 2002 even though the
13 subject imports rose continuously over time. We don't
14 see the trend analysis, we don't see the correlation.

15 Then we see the financial performance
16 improve, commencing in the first quarter of 2008 based
17 on negotiations in the fourth quarter of 2007. We
18 come back to the issue of causation and nexus that
19 we've discussed a good deal this afternoon.

20 So our view is that the inability of the
21 domestic industry to expand capacity is something that
22 does relate indeed to how they run their businesses.
23 There may be other factors. But it does not appear to
24 relate to the role of the subject imports or the
25 pricing or the subject imports role in filling demand

1 in the market.

2 COMMISSIONER LANE: Thank you.

3 Mr. Vice Chairman, that's all I have. Thank
4 you.

5 VICE CHAIRMAN PEARSON: Commissioner
6 Williamson?

7 COMMISSIONER WILLIAMSON: Thank you, Mr.
8 Vice Chairman. Just one question.

9 Petitioners assured on page 20 of their pre-
10 hearing brief that Canada and China are the only two
11 markets with export dependent producers. They refer
12 to Exhibit 3 of their brief which is a SRI consumption
13 report.

14 Do you agree that China and Canada are
15 export dependent?

16 MS. MENDOZA: Commissioner Williamson, this
17 is Julie Mendoza for the Chinese Respondents.

18 Actually one of the things that we wanted to
19 respond in the earlier question about inventories in
20 China is that in fact the Chinese producers have found
21 this year that demand has actually been much greater
22 in China than they had anticipated originally. We'll
23 be putting information in our post-hearing brief
24 concerning that. In fact they've seen a substantial
25 amount of growth in China for the reasons I think Mr.

1 Shao indicated in his testimony.

2 So while it's true that we do supply a great
3 deal of material to the EU and we also are seeing a
4 big increase in demand in the Chinese market and they
5 supply, a significant amount of their production goes
6 to satisfying that demand in the Chinese market.

7 MR. TAYLOR: I think to add to that point as
8 well from a PepsiCo point of view, our largest market
9 and fastest growing market is China currently.

10 COMMISSIONER WILLIAMSON: So that means
11 you're getting your product from there?

12 MR. TAYLOR: We're using local Chinese
13 citric acid in the local market and as I said it's
14 increasing in double digit growth.

15 MS. MENDOZA: I thin Pepsi's referring to
16 their facilities in China.

17 COMMISSIONER WILLIAMSON: I understand that.

18 MR. RAINVILLE: May I comment regarding
19 Jungbunzlauer?

20 COMMISSIONER WILLIAMSON: Yes.

21 MR. RAINVILLE: Our plant is in North
22 America. In my opinion, in Jungbunzlauer's opinion, it
23 is not in Canada. It was built there to service,
24 again, the United States and Canada. So we are a
25 stone's throw from the border, and as we commented

1 earlier, we are within a one day truck drive to the
2 majority of the citric acid market within the United
3 States.

4 COMMISSIONER WILLIAMSON: I have to keep
5 laughing at this because at one point earlier in my
6 career I remember writing articles about the unified
7 North American market and it resulted in NAFTA.
8 That's when I was working with the Port Authority in
9 New York and New Jersey. So I can't disagree with you
10 on that point.

11 MR. CAMERON: Commissioner, just one thing.
12 We had mentioned I think in our brief with
13 respect to the, as Julie mentioned, the growth of
14 demand in China. Part of the issue is as the
15 population is growing into middle class, and I think
16 we've seen that in other areas, where demand has
17 started to explode in China, as the market matures and
18 the economy matures. And the types of products that
19 use citric acid are prime growth markets for the
20 Chinese market which I believe is what you're seeing.

21 When you combine that with new applications
22 which you've already heard testimony here today, like
23 replacing phthalates and replacing phosphates, they
24 are also planning on being able to supply increasing
25 segments of the Chinese market.

1 COMMISSIONER WILLIAMSON: That also raises
2 the question, I think Mr. Shao talked about some
3 consolidation in the Chinese industry that would lead
4 to tighter --

5 MR. CAMERON: Sure.

6 COMMISSIONER WILLIAMSON: -- standards.
7 What does that imply though as companies begin to
8 qualify? Are you seeing companies that maybe sort of
9 got pushed out who are now able to improve their
10 standards so they can come back into the market?

11 MS. MENDOZA: Yes, actually. In our
12 confidential brief we discuss one particular
13 circumstance of a producer who had encountered a
14 number of environmental problems and no longer is
15 allowed to export.

16 COMMISSIONER WILLIAMSON: But my question is
17 can that producer come back in if he meets those
18 standards?

19 MS. MENDOZA: At some point in the future if
20 they can qualify with all the environmental
21 requirements. At some point in the future they can
22 come back and operate their facility. But there's no
23 indication at this time when they'll be able to do
24 that.

25 MR. CAMERON: You also have dynamics in the

1 market. For instance DSM, I believe, DSM shut down
2 their Chinese facility. They're a European producer.
3 They had moved to China. They were sourcing out of
4 China and now they're going to move back and close
5 down that facility. That is capacity that is simply
6 being taken out of the market. So there are changes
7 that reoccurring in China, in part because of tighter
8 regulations and tighter restrictions.

9 MS. MENDOZA: I think just given the amount
10 of producers who have been eliminated and who no
11 longer exist in China. As we were saying, it went
12 from hundreds of producers to qualified 15 producers
13 right now in China.

14 COMMISSIONER WILLIAMSON: I was just
15 thinking with China having the largest stimulus
16 program, maybe people can come back faster than we
17 think. That's speculation at this point.

18 MS. MENDOZA: No, and in fact I think that's
19 right. One of the things that our Chinese producers
20 were telling us is that the Chinese government has
21 actually been very active in promoting development in
22 China and very effectively. In fact they think being
23 in China you have much less of a feel of any kind of
24 economic downturn there than you do here.

25 COMMISSIONER WILLIAMSON: By the way, are

1 there any other countries that might be considered
2 export dependent? Any other suppliers?

3 Are there any other suppliers who one might
4 consider to be export dependent?

5 MR. HODGES: This is Jim Hodges, Proctor &
6 Gamble.

7 I think if you look at the way the plants
8 are and you go by either country or region, you could
9 say Austria is export dependent because most of the
10 product made there goes into all the European nations,
11 not just Austria.

12 COMMISSIONER WILLIAMSON: But that's a
13 unified market now too, so.

14 MR. HODGES: Well, it goes into this North
15 America/Europe argument where JBL sits.

16 MR. HOFMANN: There is another producer who
17 used to be export dependent, the one in Israel.

18 COMMISSIONER WILLIAMSON: Thank you.

19 MR. THOMPSON: Commissioner Williamson?

20 COMMISSIONER WILLIAMSON: Yes.

21 MR. THOMPSON: If the threshold for export
22 dependence is 25 percent, certainly the US industry
23 would qualify, it appears.

24 COMMISSIONER WILLIAMSON: Okay. Thank you.

25 I want to thank the witnesses for all of

1 their testimony. That concludes my questions. Thank
2 you.

3 VICE CHAIRMAN PEARSON: Commissioner
4 Pinkert?

5 COMMISSIONER PINKERT: Thank you, Mr. Vice
6 Chairman.

7 Going back to the brief for the Chinese
8 producers, in that brief it's argued that the Chinese
9 producers are primarily focused on non-US markets.
10 You've just testified at some length about what's
11 going on in China regarding consumption. But I'm
12 wondering for other non-US markets besides China why
13 couldn't those exports be shifted to the United States
14 in the near future?

15 MS. MENDOZA: Part of the testimony you
16 heard this morning was the fact that they have been
17 selling into those European markets forever to other
18 countries.

19 In 2006 they used that, because so many
20 countries entered the EU at that point in time, since
21 2006 it's been by far their major export market. But
22 long before that the countries that now make up the EU
23 have always been their traditional market. So this
24 isn't a recent phenomenon that just happened during
25 this period of investigation. Those have been their

1 traditional markets forever.

2 As we said, they believe that because of the
3 undersupply in the European market that that's going
4 to continue to be the case. And if you look at the
5 data, it's been very stable over the entire period.

6 MR. CAMERON: Actually when you start
7 thinking about stability, stability in terms of
8 relationships, I think you've heard this from every
9 purchaser on this panel, that stability in terms of
10 supplier relationships is one of the most critical
11 things in this industry. Therefore, once you have
12 established the supplier relationship which they have
13 done in Europe, they're not going to cut it off in
14 order to divert supply here, for what? To the spot
15 market? It really doesn't make any sense to do so.

16 I think what you're talking about is in this
17 industry you're trying to establish long term
18 relationships. In the case of Europe they don't have
19 to compete with US producers because they have GMO
20 material so they're not going to be competing with US
21 producers in Europe. And they've got a good market.
22 So why would they want to throw that away?

23 COMMISSIONER PINKERT: Maybe this follow-up
24 question is more of a question for the economic
25 consultants, but how would you rank the relative

1 attractiveness of the US market for the Chinese
2 producers?

3 MR. LAFAVE: Commissioner Pinkert, I would
4 just add that the percentage of Chinese product coming
5 to this country as a percent of total sales was around
6 10 or 11 percent and was declining slightly over the
7 period of investigation. That doesn't suggest to me
8 that there's a huge amount of excess capacity there
9 that could be directed here. If that's the case, why
10 didn't they do it before?

11 Nor does it suggest to me that they'll do it
12 in the future.

13 MR. CAMERON: What Art is referring to is
14 actually one of the things that strikes you about this
15 case as opposed to many of the Chinese cases that this
16 Commission sees.

17 Here we're not talking about an unknowable
18 number of producers with an unlimited capacity that is
19 poised to descend on the market, and we've see those
20 cases. I'm not trying to be flip about that. But we
21 have seen those cases. But that's not what this case
22 is.

23 In those cases what do we usually see? We
24 usually see huge margins of underselling, overwhelming
25 underselling, and we see unknowable capacity and total

1 export dependence on the United States market. Well
2 none of those actually apply here.

3 The Chinese producers have cooperated with
4 this investigation, have provided information, will
5 continue to cooperate with this investigation, and we
6 know who they are. We know that there's basically
7 four or five of them that are really the major
8 suppliers that most of these people trust, so this is
9 not your typical Chinese case.

10 I think that everything you see on the record in this
11 case basically testifies to that.

12 COMMISSIONER PINKERT: Is it more expensive
13 to produce the non-GMO product?

14 MR. CAMERON: I don't think it's a cost
15 issue. It's a matter of where the corn is. The corn
16 is not genetically modified corn. It's raised the old
17 fashioned way.

18 COMMISSIONER PINKERT: So if the price were
19 right, could you sell the non-GMO product in the
20 market where GMO product is acceptable?

21 MR. CAMERON: In Europe you can't sell non-
22 GMO material.

23 COMMISSIONER PINKERT: I understand, but
24 it's acceptable in this market. Right?

25 MR. CAMERON: Sure.

1 COMMISSIONER PINKERT: Both the GMO and the
2 non-GMO.

3 MR. CAMERON: Right.

4 COMMISSIONER PINKERT: So if the price were
5 right could you sell the non-GMO product in the US
6 market?

7 MR. CAMERON: The Chinese product is GMO.
8 The US producers have non-GMO -- The other way around.

9 (Laughter.)

10 COMMISSIONER PINKERT: It's late in the day.

11 MR. CAMERON: It's late in the day and the
12 answer is yes, you can sell it all here.

13 COMMISSIONER PINKERT: Thank you.

14 MR. CAMERON: Sorry.

15 COMMISSIONER PINKERT: Thank you, Mr. Vice
16 Chairman. That completes my questions.

17 VICE CHAIRMAN PEARSON: Commissioner Lane?

18 COMMISSIONER LANE: I just have one
19 question. I'll start with Mr. Cameron and then the
20 other lawyers can add their take on this.

21 Would you discuss the meaning of the Fed
22 Circuit's opinion in Bratsk and Mittal generally? And
23 whether or not, what is the relevance of these
24 decisions to our analysis in this investigation?

25 MR. CAMERON: Commissioner Lane, as in past

1 investigations in which I have appeared here, when
2 legal questions of a sophisticated nature are
3 presented I always defer to my partner because she
4 gives a much more cogent analysis than I do, and I'm
5 going to defer to Ms. Mendoza.

6 COMMISSIONER LANE: You know? You're
7 correct.

8 (Laughter.)

9 MR. CAMERON: I know.

10 MS. MENDOZA: Boy, with that lead-in, I
11 don't know.

12 I think the Federal Circuit has said that
13 you cannot attribute any affects from non-subject
14 imports to the subject imports. And as a consequence,
15 I think the relevant conditions that occurred in this
16 particular case is that actually subject imports, to
17 the extent they increased, actually took market share
18 away from non-subject imports. So non-subject imports
19 were actually declining as a percentage of domestic
20 consumption.

21 COMMISSIONER LANE: Anybody else want to add
22 to that?

23 MR. LAFAVE: I would just add one thing.
24 That is the ability of non-subject imports to replace
25 subject imports in this case is extremely limited

1 because the capacity outside of China and Canada is
2 extremely limited. So that's the other side of the
3 coin.

4 COMMISSIONER LANE: Thank you.

5 Mr. Vice Chair, that's all I have and I want
6 to thank this panel for all of your answers. Thank
7 you.

8 VICE CHAIRMAN PEARSON: Commissioner
9 Pinkert?

10 COMMISSIONER PINKERT: Nothing further.

11 VICE CHAIRMAN PEARSON: No questions from
12 the dais?

13 COMMISSIONER PINKERT: But I would like to
14 thank the panel.

15 VICE CHAIRMAN PEARSON: Have we left any
16 ground unturned? Or would the Chairman and
17 Commissioner Okun be pleased with our efforts?

18 COMMISSIONER LANE: They'll be very pleased.

19 VICE CHAIRMAN PEARSON: Well, I don't think
20 I've completely avoided speaking in sentence fragments
21 so I may hear something about that.

22 Do members of the staff have questions for
23 this panel?

24 MR. DEYMAN: Yes, I'm George Deyman, Office
25 of Investigations. One staff member does have a

1 question.

2 MS. PREECE: This is Amelia Preece,
3 Economics.

4 I'm still working on this pricing data. It
5 seems like we've sliced and diced it a lot of times,
6 but I want to be sure --

7 VICE CHAIRMAN PEARSON: Can you pull the
8 mike just a little closer please, Ms. Preece?

9 MS. PREECE: I want to be sure to the extent
10 possible that I get delivered prices and the product
11 that's fine granular has been eliminated from the
12 product. I know I've asked this of everybody, but to
13 the extent that anybody can put any pressure on
14 anybody who hasn't responded to this yet, I'd really
15 appreciate it.

16 That's all I have to say.

17 MR. DEYMAN: The staff has no further
18 questions. Thank you.

19 VICE CHAIRMAN PEARSON: Does counsel for the
20 Petitioners have any questions for this panel?

21 MR. ELLIS: No questions, thank you.

22 VICE CHAIRMAN PEARSON: Well, I also would
23 offer my thanks. It's gotten to be a slightly long
24 day. You have been very patient and shown great
25 endurance and been really forthcoming with your

1 answers and we very much appreciate it.

2 MR. CAMERON: Thank you very much. We
3 appreciate your patience.

4 VICE CHAIRMAN PEARSON: Let me just review
5 the time remaining.

6 For the Petitioners, three minutes from the
7 direct presentation that could be used for rebuttal,
8 plus five minutes for closing. A total of eight.

9 Respondents, four minutes from the direct
10 presentation, five for closing, total of nine.

11 If there's no objection I suggest that we
12 just lump the chunks of time together so the
13 Petitioners have eight minutes for rebuttal and
14 closing and Respondents nine. If no objection?

15 MR. ELLIS: that's fine by us.

16 VICE CHAIRMAN PEARSON: Okay.

17 We certainly don't take adverse inference
18 against anyone who uses less than the allotted time.

19 Let me dismiss this panel, please shift back
20 to your other seats, and we will proceed then to the
21 closing statements.

22 I have received a request for a two minute
23 break, which we will take right now.

24 (Whereupon, a short recess was taken.)

25 VICE CHAIRMAN PEARSON: Mr. Ellis, are you

1 ready to proceed?

2 MR. ELLIS: Good afternoon. It's been a
3 long day. I want to extend our thanks to the
4 Commission and the staff for your attention and
5 interest during this hearing and also for your hard
6 work during the investigation. I appreciate
7 everybody's work.

8 To quote T.S. Elliott, if I may, "In my end
9 is my beginning." I'd like to go back to the
10 beginning of a couple of the points we talked about
11 earlier today.

12 First, there's no doubt that the US industry
13 is suffering severe injury and has been for the past
14 several years. The time period over which they have
15 suffered correlates precisely with the period over
16 which subject imports increased significantly.

17 The operating losses have been so severe
18 that the industry has not reinvested in their
19 facilities, and income does not even cover
20 depreciation.

21 Moreover, despite the Respondents' claim
22 that this injury was self inflicted, creative
23 destruction or whatever phrase was used, this is just
24 not credible. An error in hedging corn costs, for
25 example, or a one day or a couple of day plant

1 closure, or vigorous competition among the US
2 producers might explain the situation if one company
3 or another had a bad year or another. But the sheer
4 consistency of the losses and the magnitude of the
5 losses over the seven years until this investigation
6 was launched belies that assertion.

7 Dr. Button, I noticed, finds it "puzzling"
8 that the US industry had the bad financial returns
9 they reported despite the fact that they were able to
10 fix their corn costs, but it is not a puzzling point.
11 It is very clear. The bad returns were not caused by
12 corns costs or caused by hedging errors. Our
13 opponents want to find other source of injury and they
14 can't find it, but they don't want to resist the
15 actual cause of injury which is the ruinous imports.

16 You have heard claims that quality and other
17 factors are important in this market, despite the fact
18 that the product is a commodity and that all major
19 producers can meet the standards for inclusion in
20 food, beverage and pharma applications. They fail to
21 note that a large percentage of purchasers noted that
22 the Chinese product leads the prices downward, and
23 that's in Part 5 of the staff report.

24 Although the US industry sometimes is called
25 the price leader, it's misleading to say it's price

1 leader in leading prices down. The Chinese are the
2 ones who are leading the prices down. The purchasers
3 say that. That is perhaps one of the most
4 illuminating facts on the record.

5 Commissioner Lane asked a very interesting
6 question, whether purchasers used Chinese prices and
7 the capacity to drive US prices downward in
8 negotiations. The answer is yes. That is exactly
9 what happens.

10 Dr. Button said he thinks a key question is
11 whether the Chinese capacity overhang is credible.
12 The answer is, it is credible. It is credible because
13 it is huge and it is credible because a large quantity
14 of Chinese product has already entered the United
15 States at low prices. This is not a theoretical
16 capacity that's out there somewhere. In fact Mr.
17 Cameron noted, we know who these people are. We know
18 the size of their capacity, and it's a very large
19 capacity.

20 You have also heard the assertion that the
21 industry's conditions improved during the POI, but the
22 bulk of that improvement occurred in 2008, the final
23 year of the POI. And 2008, like it or not, was
24 clearly affected by the petition and the preliminary
25 duties. This is precisely the situation anticipated

1 by Congress when they gave you the discretion to
2 disregard data from the time period covered by the
3 pendency of the investigation.

4 We continue to submit that far more
5 illuminating are the data from the three prior years,
6 '05 to '07, which you have full data for from the
7 record in the preliminary phase. That data show the
8 consistent injury and impact of the subject imports.

9 You have also heard about shortages in the
10 US market or about situations in which US producers
11 declined requests for additional product, but almost
12 all that anecdotal evidence that our opponents have
13 provided on this issue were from 2008 and 2009 with
14 one example of a shutdown in 2004. At least that's
15 all I heard.

16 FBC itself in fact said that the issue
17 really started in October of 2008. That obviously was
18 what happened after the preliminary determinations
19 with the department.

20 Other allegations of refusal to supply that
21 are discussed in opponents' briefs are confidential so
22 I would just say that they involve efforts by
23 purchasers to seek more produce from the United States
24 off cycle, in other words after the contracted amounts
25 had already been established, but at the contract

1 prices, not at the spot prices that were then
2 prevailing off cycle. Or those requests were declined
3 for customer relations reasons, which again I can't
4 get into, but are unrelated to anything having to do
5 with alleged product shortages.

6 As to the shortages in supply, why is there
7 an inadequate US supply? There's no reason to invest
8 in largescale facilities given the long term high
9 scale negative returns or operating losses. You heard
10 that from our panel this morning. We are
11 acknowledging that if there was as stable, reliable
12 source of income, an adequate return on investment,
13 investments would be made.

14 Also we're noting that we don't want to stop
15 imports, of course, because we recognize that they
16 must fill in some of the market, but we do not want
17 the supply of ruinously priced imports that some of
18 the purchasers you heard from today have negotiated in
19 the past using, as Commissioner Lane asked, using
20 Chinese prices and Chinese capacity as a hammer over
21 the heads of the US industry.

22 On another point, to the extent that you do
23 consider the 2008 data, I would think again, as we
24 said this morning, that perhaps the best insight to be
25 gained from that year is seeing what occurred at the

1 end of the year in negotiations for 2009 deliveries.
2 Without going through it in detail, we see here for
3 the first time when subject imports dropped
4 precipitously because of the preliminary duties
5 imposed by the Department of Commerce, prices
6 increased for the first time in years to the point
7 that the US industry was able to earn a profit.

8 In other words, the subject imports declined
9 and prices increased.

10 Finally, as to threat. You have heard a lot
11 of speculation this afternoon, why the mammoth Chinese
12 production capacity will not come to the United
13 States. But against this speculation you have some
14 very clear facts. These facts include the large
15 quantities of Chinese product that have flooded other
16 markets causing the closure of production facilities
17 such as Tate & Lyle and ADM's in Europe. This has
18 happened. It's a fact.

19 Also what occurred in Mexico at the end of
20 2008 when the longstanding dumping order there against
21 imports from China was terminated.

22 Also the relatively small size of the
23 Chinese domestic market compared to its capacity.
24 You've heard speculation this afternoon about possible
25 growth in Chinese domestic consumption in the coming

1 years, but you should note in 2008 consumption in
2 China declined. That is not a sign that they are able
3 to absorb the massive capacity that they have built.

4 The same is true with the Canadian capacity
5 in terms of its small domestic market.

6 In conclusion I would just note that fact,
7 not supposition, make it very clear that even if you
8 don't find current material injury, which we do submit
9 you should, the threat of such injury is imminent and
10 the statutory prerequisites are satisfied.

11 Thank you very much.

12 VICE CHAIRMAN PEARSON: Thank you, Mr.
13 Ellis.

14 Mr. Waite, you're the one with the voice
15 left at this point?

16 MR. WAITE: Some voice left. It's quite a
17 different perspective up this close, isn't it, Mr.
18 Vice Chairman?

19 (Laughter.)

20 Mr. Vice Chairman and members of the
21 Commission. From the Petitioners' pre-hearing brief
22 and again from the testimony that you've heard today
23 it appears that Petitioners want this Commission to
24 ignore the data collected by the staff for the period
25 of investigation in this case.

1 Petitioners want the Commission to disregard
2 2008 data. Petitioners want the Commission to
3 disregard the purchasers who disagreed with lost sales
4 and lost revenue allegations made by the Petitioners.
5 Most tellingly, Petitioners want the Commission to
6 disregard or at least severely discount the pricing
7 data as collected by the Commission staff, data in the
8 form and organization that was explicitly requested by
9 the Petitioners themselves.

10 However we expect, in fact we know that the
11 Commission will place great weight on the record
12 evidence that has been diligently collected and
13 skillfully organized by the staff in this
14 investigation.

15 I'd like to review briefly with you some of
16 the salient facts in this investigation that come
17 directly from the record that's been developed.

18 With respect to supply and demand, it's
19 quite clear that Petitioners cannot meet demand in the
20 domestic market. In some cases it appears that they
21 do not want to meet demand for particular customers,
22 especially those who may not be part of their
23 strategic marketing plans.

24 Purchasers need to ensure sufficient supply
25 for their operations. To do this, imports are

1 necessary to meet the full demands of the consumers in
2 this market.

3 Demand has consistently increased over the
4 period of investigation and purchasers project
5 increased demand in the near future. This is why so
6 many purchasers appeared before you today, from the
7 largest consumers of citric acid in this market to
8 smaller, more specialized customers. They need this
9 key ingredient for their operations.

10 Petitioners have claimed that citric acid is
11 a commodity that is purchased only or solely or
12 largely on the basis of price. The record shows that
13 purchasers overwhelmingly reported that other factors
14 were equally important or even more paramount than
15 price. Quality, availability, reliability of supply
16 were mentioned to you repeatedly today by the
17 purchasers who appeared in this hearing, and they were
18 mentioned repeatedly in the responses to purchasers'
19 questionnaires from those who could not make it here
20 today.

21 The pricing data collected by the Commission
22 in this investigation show that there is no causal
23 nexus between subject imports and present material
24 injury to the domestic industry. It should first be
25 noted, as I've alluded to earlier, that these data are

1 precisely what the Petitioners asked the Commission to
2 collect. Petitioners requested the current
3 subdivisions of pricing data into contract and spot
4 sales and sales to end users versus distributors.
5 These data confirm what the Petitioners have told the
6 Commission in other contacts, that they are focused on
7 the contract market specifically with end users. This
8 is where imports compete with them most directly.

9 But the data also confirm that imports
10 consistently oversold Petitioners in exactly these
11 types of sales.

12 We all know that discussion of the pricing
13 data is constrained by confidentiality considerations.
14 I would therefore obliquely and respectfully urge you
15 to examine the following features of the pricing
16 comparisons for the four segments on which data were
17 collected, that is contract sales to end users, spot
18 sales to end users, contract sales to distributors,
19 and spot sales to distributors.

20 First I would ask where are the sales of the
21 domestic industry concentrated? And secondly, to what
22 extent are they concentrated in those segments?
23 Third, in those market segments where the domestic
24 industry concentrates its sales, what is the incidence
25 of overselling by imports when compared with the

1 domestic producers?

2 I believe when you look at these questions
3 and answer them you will find conclusive proof that
4 imports are not adversely affecting the pricing of the
5 domestic industry.

6 I would also urge you to look at those
7 market segments where imports may be underselling the
8 domestic industry. Again, consider the amount of
9 citric acid the Petitioners reported as selling into
10 those market segments, both in absolute terms and as a
11 percentage of the domestic industry's total sales.

12 I respectfully submit to you that the
13 pricing data in this investigation show that imports
14 are not having an adverse affect on the Petitioners
15 and that they are not causing material injury to the
16 domestic industry.

17 Thank you.

18 VICE CHAIRMAN PEARSON: Thank you, Mr.
19 Waite.

20 In accordance with Title 7 of the Tariff Act
21 of 1930, post-hearing briefs, statements responsive to
22 questions and requests of the Commission and
23 corrections to the transcript must be filed by April
24 15, 2009.

25 Closing of the record and final release of

Heritage Reporting Corporation
(202) 628-4888

1 data to parties, May 1. And final comments on May 5.

2 This hearing is adjourned.

3 (Whereupon, at 5:25 p.m., the hearing in the
4 above-entitled matter was adjourned.)

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CERTIFICATION OF TRANSCRIPTION

TITLE: Citric Acid & Certain Citrate Salts
INVESTIGATION NO.: 701-TA-456 & 731-TA-1151-1152
HEARING DATE: April 7, 2009
LOCATION: Washington, D.C.
NATURE OF HEARING: Hearing

I hereby certify that the foregoing/attached transcript is a true, correct and complete record of the above-referenced proceeding(s) of the U.S. International Trade Commission.

DATE: April 7, 2009
SIGNED: LaShonne Robinson

Signature of the Contractor or the
Authorized Contractor's Representative
1220 L Street, N.W. - Suite 600
Washington, D.C. 20005

I hereby certify that I am not the Court Reporter and that I have proofread the above-referenced transcript of the proceeding(s) of the U.S. International Trade Commission, against the aforementioned Court Reporter's notes and recordings, for accuracy in transcription in the spelling, hyphenation, punctuation and speaker-identification, and did not make any changes of a substantive nature. The foregoing/attached transcript is a true, correct and complete transcription of the proceeding(s).

SIGNED: Rebecca McCrary

Signature of Proofreader

I hereby certify that I reported the above-referenced proceeding(s) of the U.S. International Trade Commission and caused to be prepared from my tapes and notes of the proceedings a true, correct and complete verbatim recording of the proceeding(s).

SIGNED: Christina Chesley

Signature of Court Reporter