

UNITED STATES INTERNATIONAL TRADE COMMISSION

In the Matter of:)
) Investigation Nos.:
XANTHAN GUM FROM AUSTRIA) 731-TA-1202-1203 (Final)
AND CHINA)

REVISED AND CORRECTED TRANSCRIPT

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Thursday,
 May 23, 2013

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

The hearing commenced, pursuant to notice, at 9:31 a.m., before the Commissioners of the United States International Trade Commission, the Honorable DANIEL R. PEARSON, Commissioner, presiding.

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On behalf of the International Trade Commission:Commissioners:

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Duty Orders:

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P R O C E E D I N G S

(9:31 a.m.)

1
2
3 COMMISSIONER PEARSON: Good morning. On
4 behalf of the U.S. International Trade Commission, I
5 invite you to this hearing on Investigation No.
6 731-TA-1202-1203 (Final), involving Xanthan Gum from
7 Austria and China.

8 The purpose of these investigations is to
9 determine whether termination an industry in the
10 United States is materially injured or threatened with
11 material injury by reason of less than fair value
12 imports of xanthan gum from Austria and China.

13 Schedules setting forth the presentation of
14 this hearing, notices of investigation and transcript
15 order forms are available at the public distribution
16 table. All prepared testimony should be given to the
17 secretary. Please do not place testimony directly on
18 the public distribution table. All witnesses must be
19 sworn in by the secretary before presenting testimony.

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

23 Speakers are reminded not to refer to
24 business proprietary information in their remarks or
25 answers to questions.

1 Please speak clearly into the microphone and
2 state your name for the record for the benefit of the
3 court reporter.

4 If you will be submitting documents that
5 contain confidential business information, your
6 request should comply with Commission Rule 201.6.

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

9 MR. BISHOP: No, Mr. Chairman.

10 COMMISSIONER PEARSON: Very well. Let's
11 begin with opening remarks. MR. BISHOP:
12 Opening remarks on behalf of Petitioner will be by
13 Matthew L. Kanna, Arent Fox.

14 COMMISSIONER PEARSON: Good morning, Mr.
15 Kanna.

16 MR. KANNA: Good morning, Mr. Chairman,
17 Commissioners, and also Commission staff. My name is
18 Matthew Kanna with the law firm Arent Fox. I'm here
19 today on behalf of Petitioner in this investigation,
20 CP Kelco.

21 Let me begin by stating what we believe is
22 obvious. Substantial evidence on the record of this
23 investigation demonstrates that the U.S. domestic
24 industry has been materially injured by subject
25 imports from Austria and China. Substantial record

1 evidence also indicates U.S. domestic industry is
2 threatened with material injury due to the currently
3 available production capacity in the subject
4 countries, the fact that they are export-oriented, and
5 the significant increases in capacity that are in
6 progress as we speak.

7 The data the Commission staff has diligently
8 compiled in the final phase of this investigation
9 establishes material injury on its face. Much of that
10 data is confidential, but the overall trends are
11 clear. In a rapidly growing market, subject imports
12 have taken the lion's share of growth, using pervasive
13 underselling as their primary tool. That same
14 underselling has prevented the domestic industry from
15 raising prices enough to cover their cost of
16 production.

17 This dynamic has turned the reinvestment
18 economics for the domestic industry upside down. As
19 the U.S. market grows, domestic producers have been
20 forced to cannibalize their production capital because
21 reinvestment at this time makes no sense. It is clear
22 from the staff report and the questionnaire responses
23 gathered by the Commission that the U.S. domestic
24 industry has been in decline. This decline can be
25 directly attributed to the massive quantities of

1 subject imports sold into the United States at below
2 fair market value.

3 The changes in subject imports market share,
4 underselling that is both significant in quantity and
5 degree, and statements contained in the questionnaire
6 responses received by the Commission from purchasers
7 and importers all corroborate the causal link between
8 subject imports and the material injury inflicted on
9 the domestic industry.

10 Moreover, that connection between subject
11 imports and material injury they have caused is
12 corroborated by improvements in the U.S. market for
13 xanthan gum since the filing of the petition in June
14 2012.

15 You will hear testimony today from CP Kelco
16 personnel who have been intimately involved in the
17 production and sale of xanthan gum during the
18 tumultuous time that subject imports have battered the
19 domestic industry. Our witnesses will speak to the
20 changes in the market and what filing the petition has
21 meant to CB Kelco.

22 We would like you to hear directly from the
23 people who have been fighting to make sure that
24 xanthan gum production in the United States remains an
25 ongoing viable and profitable concern, one that

1 provides good, high paying jobs for American
2 scientists, engineers, technicians, and managers, jobs
3 that provide for both families communities.

4 You will also be hearing today from counsel
5 and representatives of Jungbunzlauer, the Austrian
6 producer, and Deosen, the second largest Chinese
7 producer of xanthan gum and also the second largest
8 producer in the world.

9 Whom you will not be hearing from, however,
10 is Fufeng, the largest Chinese producer, and also,
11 coincidentally, the largest producer in the world.
12 Imagining why Fufeng declined to appear before the
13 Commission today can barely be imagined as
14 speculation.

15 Fufeng makes very clear in its public 2012
16 annual report that from the year 2011 to 2012 it
17 increased its already massive production capacity of
18 97 million pounds a year to 130 million pounds a year,
19 a 34 percent increase. Fufeng's 2012 annual report
20 goes on to state that Fufeng is in the process of
21 installing production lines in Phase II. They further
22 claim this increased capacity will allow them to be
23 more competitive and leverage their cost advantage
24 over their competitors.

25 These are difficult public statements to

1 reconcile with the idea that subject imports are not
2 causing material injury to the domestic industry and
3 will not continue to do so. I ask you to keep this in
4 mind during all of the testimony you hear today from
5 both sides.

6 Fufeng's absence creates a significant gap
7 in the record of this investigation and its absence
8 cannot be ignored. To do otherwise would reward
9 Fufeng for its decision to ignore the Commission, as
10 well as reward those here today who are opposed to
11 this petition.

12 CP Kelco is one of a handful of industrial
13 biotech pioneers in this country, and whether it will
14 continue to exist as a manufacturer of xanthan gum in
15 this country now depends on an affirmative finding of
16 material injury by the Commission.

17 I will leave my remarks there. Thank you
18 for your time and your attention.

19 MR. BISHOP: Opening remarks on behalf of
20 Respondents will be by Daniel L. Porter, Curtis,
21 Mallet-Prevost, Colt and Mosle.

22 COMMISSIONER PEARSON: Good morning, Mr.
23 Porter.

24 MR. PORTER: Good morning, Mr. Chairman.
25 Good morning, Commissioners. For the record, I am Dan

1 Porter with Curtis, Mallet-Prevost, Colt and Mosle.
2 I've been asked to present the opening statement on
3 behalf of the Chinese and Austrian Respondents.

4 With your indulgence, I ask that you look at
5 some tables and graphs while I'm talking so that I can
6 illustrate some critical facts without disclosing
7 confidential information. The tables and graphs are
8 in this handout here. Now, let's dive right into the
9 evidence.

10 Volume effects. I ask that you look at
11 chart entitled *No Volume Effects No. 1*. The
12 evidentiary record before you does not support a
13 finding of adverse volume effects. Yes, subject
14 imports did increase over the period, but only in
15 response to rising total market.

16 Even more telling is what happened in the
17 oilfield segment in the market. For this, I ask you
18 to look at the chart entitled *No Volume Effects No. 2*.

19 When looking at this chart, please remember that the
20 overwhelming majority of subject imports were for this
21 segment of the market, the oilfield segment.

22 Commissioners, I submit that this market
23 share data demonstrates the absence of adverse volume
24 effects.

25 Price effects. Domestic prices were

1 generally increasing during the period, contradicting
2 any claims of price depression. Petitioner announced
3 repeated price increases and the pricing data
4 collected by the Commission staff confirms that in
5 most segments most of the time domestic prices were
6 increasing over the period.

7 I ask that you look at the chart entitled *No*
8 *Price Effects No. 1*. As you can see, the Commission
9 staff compiled product-specific pricing data for 14
10 different product distribution channel combinations,
11 and for 12 of the 14 pricing series, domestic
12 producers were higher at the end of the period than
13 they were at the beginning.

14 Now you just heard counsel for Petitioner
15 cite the evidence of subject import underselling.
16 Yes, the data show some underselling; however, this
17 underselling did not have significant adverse price
18 effects. In some key segments, the domestic industry
19 was able to raise its prices even in the face of the
20 underselling. In other key segments, the domestic
21 industry actually undersold subject imports, again
22 contradicting any inference of an adverse effect from
23 those imports.

24 For this last point I ask you to take a look
25 at the chart entitled *No Price Effects No. 2* which

1 presents the Commission staff's underselling data for
2 the oilfield segment. We respectfully submit that
3 this data seriously undercuts Petitioner's claims of
4 significant price effects.

5 Moving on to impact, for virtually every
6 statutory factor, domestic industry has done well,
7 either with stable trends or increases over the
8 period. Domestic production is up, domestic shipments
9 are up, domestic market share is stable, domestic
10 employment is up, domestic capital expenditures are
11 up, and the domestic industry was profitable in every
12 year.

13 The only apparently negative trend is that,
14 operating income and some measures based on operating
15 income. The trends in operating income, however, do
16 not demonstrate any adverse impact by reason of
17 subject imports.

18 First, the trends in operating income do not
19 correlate with subject import trends. Neither the
20 volume, nor the pricing trends of subject import
21 explain the trends in the domestic industry operating
22 income. Subject imports did not gain significant
23 market share, and all prices have been generally
24 increasing over the period.

25 In contrast, the trends in operating income

1 do correlate quite closely with other things happening
2 in the market that were unrelated to subject imports.

3 Specifically, the changing product mix and changing
4 supplier mix provide a much better explanation of
5 changes in domestic industry profitability over the
6 period. This point is worth emphasizing because it is
7 completely supported by the data.

8 The apparent decline in domestic industry
9 operating profit can be explained by the simple fact
10 that over the period a higher proportion of the
11 domestic industry's total sales were made to the
12 rapidly rising oilfield segment, which historically
13 has always had much lower operating margins than other
14 xanthan gum segments. If the domestic industry shifts
15 more of its business to a segment with lower profits,
16 not surprisingly, the domestic industry's average
17 profit margin will fall.

18 This has nothing to do with subject imports,
19 as the large difference in operating margins between
20 oilfield and other xanthan gum segments completely
21 predates the increase in subject imports. Needless to
22 say, subject imports cannot be blamed for the dramatic
23 increase in demand for oilfield xanthan gum.

24 In addition, the trends in domestic industry
25 operating income also correlate quite closely with

1 certain internal business decisions by the domestic
2 industry that had nothing to do with subject imports,
3 and so we ask that you render a negative determination
4 in this case. Thank you.

5 MR. BISHOP: Will the first panel, those in
6 support of the imposition of antidumping duty orders,
7 please come forward and be seated.

8 Mr. Chairman, all witnesses have been sworn.

9 COMMISSIONER PEARSON: As you're getting
10 settled, allow me to extend my welcome to all of you.

11 One of the things I underappreciated when I became a
12 Commissioner years ago was how many interesting
13 products I would have the opportunity to learn about.

14 This is the first look I've had at xanthan gum and
15 it's been eye-opening.

16 The chairman, Chairman Williamson, is
17 necessarily absent today. He had asked me to extend
18 his regrets that he's not able to be with us. He will
19 be participating fully in this investigation, so don't
20 think that he's ignoring this by any means.

21 So, with that, are you ready to proceed?

22 MR. CLARK: We are. Thank you, Mr.
23 Chairman. We appreciate that Chairman Williamson will
24 participate fully.

25 To begin our testimony we are going to show

1 you a short video that was produced by the Discovery
2 Channel several years ago as part of a series of
3 productions it had to show what we do with corn in the
4 United States.

5 Their first chapter happened to focus on
6 what, I agree with you, really is a fascinating
7 product. I think it will be instructive. It's only,
8 it's just a little under three minute long. It's
9 available on YouTube and on the web. Very much made
10 in advance of this proceeding, certainly. It will
11 give you some additional insight into this product.
12 Then we'll begin our testimony with the president of
13 CP Kelco, Mr. Don Rubright.

14 So I'll ask my colleague Nancy Noonan to
15 launch that video.

16 (Whereupon, a video was shown.)

17 MALE VOICE: Xanthan gum is born in
18 Okmulgee, Oklahoma, and it all begins with corn or
19 corn syrup. The syrup is a kind of liquid corn
20 starch, sweet viscus, and loaded with energy. It's
21 used in sodas, and syrup, and sweeteners, and it's the
22 ideal food for xanthomonas.

23 At CP Kelco's 95 acre facility, fully
24 loaded, 110 ton railcars pull into the yard every
25 week. Each sealed car contains 20,000 gallons of corn

1 syrup.

2 MALE VOICE: Takes about six hours from the
3 pumping station to pump it over into a holding tank.

4 MALE VOICE: From there, chemists inside the
5 plant's lab inoculate the corn syrup with the
6 xanthomonas bacteria and start to mix.

7 MALE VOICE: The agitator is like a big
8 shaker table. The agitation causes friction and the
9 warmth of the room causes the bacteria to begin to
10 grow.

11 MALE VOICE: In this sugary environment
12 bacteria replicates fast. One bacterium cell can
13 spawn 100 trillion identical cells in just 48 hours.

14 FEMALE VOICE: From a little, tiny, tiny
15 amount of stuff, it turns into 40,000 gallons.

16 MALE VOICE: After a few days, the bacteria
17 has consumed the carbohydrates in the corn and
18 excreted a gooey residue, xanthan gum, ideal for a
19 variety of commercial uses.

20 MALE VOICE: Xanthan gum choose where they
21 want to have a uniform suspension. It goes into
22 applications where water needs to be controlled so
23 that when your toothpaste is squeezed out it doesn't
24 run out of the tube but is actually squeezed out onto
25 your toothbrush.

1 MALE VOICE: But what is it about this corn-
2 powered slime that's so vital to hard rock oil
3 drilling? It turns out that xanthan gum has a unique
4 ability to lubricate and suspend rugged materials deep
5 under ground, properties that are key to the
6 roughnecks working the drill.

7 FEMALE VOICE: If you can imagine, when
8 you're trying to drill an original hole there are a
9 lot of particulates, a lot of rocks, a lot of dirt,
10 things that we don't want to have included in the end
11 product, being oil.

12 MALE VOICE: The benefit of the xanthan gum
13 is it allows it to suspend the particles as you're
14 drilling that hole to clean out the whole so that you
15 get a uniformity drilling zone.

16 MALE VOICE: Keeping a hole uniform doesn't
17 just make drilling easier, it helps prevent deadly
18 accidents called blow outs.

19 MALE VOICE: You're punching a hole into an
20 area that's going to come out. It's like punching a
21 hole in a balloon, but it's in the ground so the
22 pressure's squeezed out and it comes out this hole.
23 So any little spark, it will ignite and catch on fire.

24 MR. CLARK: Thank you. Now we'll begin our
25 direct testimony with Mr. Don Rubright, the President

1 of CP Kelco.

2 MR. RUBRIGHT: Good morning to all the
3 members of the Commission. I'm Don Rubright,
4 President of CP Kelco. I have served as the president
5 of CP Kelco since 2006. Prior to that I was president
6 of Huber Engineered Materials. Both CP Kelco and
7 Huber Engineered Materials are part of the J.M. Huber
8 Corporation, which is a family-owned corporation, and
9 it has been that way for 130 years.

10 I will emphasize three key points in my
11 direct testimony. First, I will review the recent
12 history of CP Kelco's competition with low priced
13 imports of xanthan gum from Austria and China in the
14 U.S. market. In that discussion I will review the
15 commercial actions we took to deal with those dumped
16 imports.

17 Second, I will describe the impact that
18 dumped imports have had on CP Kelco and the
19 decisionmaking process that led to the filing of the
20 petition in this case.

21 Finally, I will discuss the impact this case
22 has had on our xanthan gum business since its filing
23 and what it implies if fair pricing is restored to the
24 U.S. market.

25 When I became president of CP Kelco in 2006

1 there were four U.S. producers of xanthan gum: CP
2 Kelco, ADM, Tate and Lyle and Merck. Today, there are
3 but two, CP Kelco and ADM. Imports of xanthan gum are
4 the reason the industry has shrunk and why, if fair
5 pricing is not restored, the U.S. industry will
6 continue to decline.

7 The United States is the world's largest
8 xanthan gum market. Imported xanthan gum had a
9 marginal presence in the U.S. market in the late 1990s
10 and early 2000s, but in 2005 large volumes of very low
11 priced xanthan gum from China began entering the U.S.
12 market.

13 At first the Chinese product was
14 concentrated on the least regulated segments of the
15 market. China used the low price strategy to enter
16 and dominate the growing oilfield segment. By the end
17 of 2006 we were forced to terminate a tolling
18 agreement we had with Merck for producing xanthan gum
19 at its plant in Pennsylvania, costing CP Kelco \$25
20 million. The Merck facility eventually ceased
21 production of xanthan gum altogether.

22 Tate and Lyle was the next victim, ending
23 xanthan production in its Decatur, Illinois plant in
24 late 2009. In this timeframe, Austria also adopted
25 competition, with pricing similar to the Chinese. The

1 onslaught of low priced imports required a response.
2 We knew there was no point in trying to compete just
3 on price in our plants in San Diego and Okmulgee. The
4 Chinese were selling below our production costs.

5 To meet this new, aggressive price
6 competition, we made a series of decisions. First, we
7 decided to focus our efforts on developing
8 differentiated xanthan gum to deliver greater value
9 and use to our customers in all market segments. We
10 developed products with higher value and use that
11 targeted oilfield, industrial, food, consumer, and
12 pharmaceutical applications. We continued to innovate
13 for our industry. We focused our U.S. plants on these
14 efforts.

15 Our second action to respond to Chinese and
16 Austrian competition was to compete in kind. In 2005,
17 CP Kelco purchased a xanthan plant in Wulian, China,
18 and set about upgrades to meet CP Kelco global
19 standards. In all candor, we imagined that with a low
20 cost plant in China on par with Fufeng and Deosen we
21 could compete in the U.S. oilfield and food markets.
22 We thought this approach would allow us to respond in
23 the oilfield segment, while our two U.S. plants
24 focused on developing and producing higher value, more
25 demanding food, consumer, and farmer products.

1 Finally, we knew that even if the high value
2 differentiated xanthan strategy succeeded, that
3 approach would not support all the capacity we were
4 carrying. In 2008 we closed our xanthan plant in
5 Moseley, England and committed to serve the U.S., the
6 European Union, and Asian markets from our two plants
7 in the U.S. and our plant in China.

8 In summary, our response to low priced
9 imports was to streamline production, focusing our
10 U.S. assets on developing high value end use products
11 for the most demanding segments of the market and try
12 to match low priced imports in the oilfield segment by
13 acquiring a low cost plant in China.

14 This brings me to the second aspect of my
15 remarks today, the impact of low priced imports on our
16 business, including the decision to bring this case.

17 The first direct impact of low priced
18 imports of our business hit our plant in Okmulgee,
19 Oklahoma. When the plant was commissioned in 1977, it
20 had a 10,000 metric ton capacity. Our xanthan
21 business was performing well in 2004 and 2005, and
22 projecting a future need for additional volumes. CP
23 Kelco began planning to significantly increase the
24 facility's capacity. Then came 2006 and the first
25 major wave of low priced imports.

1 Because of the rapid decline in price in
2 2006 and subsequent volume losses in 2007 and 2008, we
3 had to cancel the Okmulgee expansion. Low priced
4 imports basically destroyed the investment economics
5 in our xanthan business, in particular in the oilfield
6 segment, and we could no longer justify an investment
7 exceeding \$100 million. As we moved into 2009 and
8 2010, the situation became worse. By late 2009, CP
9 Kelco had been largely pushed out of the oilfield
10 segment by the surge of dumped imports.

11 We have long been a primary supplier of
12 drilling mode ingredients to the oil and gas
13 exploration industry, and xanthan gum is just one of
14 the several products that we make and sell into those
15 sectors.

16 I read with interest the comment that our
17 injury is self-inflicted. The result of reducing our
18 presence in the oilfield segment in 2009 was not self-
19 inflicted. Let me assure you this was not a matter of
20 choice. Chinese imports were selling below our
21 manufacturing costs here, in the U.S., and even in our
22 China plant. We shifted out of the oilfield segment
23 because low priced imports made it uneconomic to stay
24 in the market for any but the most demanding high
25 priced products.

1 In 2006 Chinese imports also accelerated in
2 their penetration of the food segment of the market.
3 In a repeat of what we saw in the oilfield segment,
4 aggressive price offerings also followed. Because the
5 Chinese were now encroaching on the food segment, we
6 started to see JBL offering its products as an
7 alternative to Chinese imports, but at a price point
8 below ours.

9 Production volumes in both the San Diego and
10 Okmulgee plants began to drop and margins fell. In
11 late 2009 we had to close line one of the San Diego
12 plant, reducing the plant's xanthan capacity by 33
13 percent. We concentrated production in Okmulgee and
14 continued to focus on the goal of providing customers
15 superior value and use. Even our plant in Wulian,
16 China became noncompetitive as delivered prices
17 offered by Fufeng and Deosen fell below Wulian's cost
18 of production. Without our specialty focus and export
19 successes, our Okmulgee facility would have been
20 sharply curtailed or possibly shut.

21 In late 2011 and early 2012 three factors
22 came together. First, we lost sales from a major
23 oilfield customer we were supplying with a highly
24 specialized xanthan gum formulation. That volume was
25 lost to Fufeng on price. Second, we lost an important

1 consumer account for dental applications to Chinese
2 imports, again on price. Finally, we learned that
3 after JBL expanded in 2010, both Fufeng and Deosen
4 were planning expansions of their facilities in China.

5 All this in an environment of rising costs and ever
6 lower price demands coming from our customers based on
7 quotes they were receiving from Fufeng, Deosen and
8 JBL.

9 When these events converged we knew that if
10 rational pricing was not established, that our U.S.
11 business would be lost so we decided to file this
12 antidumping case. It was not an easy decision to
13 make, but there was really no option. Imports were
14 offering delivered prices below our cost of production
15 and were attracting increasing volumes in food and
16 consumer segments of the market.

17 Now my final point. The future of the U.S.
18 xanthan gum manufacturers and the industry can be very
19 different than the recent past based on the market
20 response to just the filing of this case. Prices have
21 stopped falling and new orders have come to CP Kelco.

22 We have restarted line one in San Diego this past
23 January, and we have added workers. In Okmulgee we
24 have taken steps to optimize production, and we hired
25 new production workers in late 2012 to handle the up

1 tick in customer orders. Most important, because of
2 the increase in orders and solid pricing, we have
3 board authorization to begin planning the expansion of
4 Okmulgee that was shelved five years ago. We have
5 already engaged plant engineers, industrial designers,
6 and equipment manufacturers so that we can begin a
7 series of expansions this year.

8 In addition to line one reopening in San
9 Diego, we are planning a 2,200 metric ton
10 debottlenecking investment in both San Diego and
11 Okmulgee for the near term, and a capacity expansion
12 in Okmulgee of up to 10,000 metric tons to be in place
13 by 2016. The total cost of these expansions is
14 approximately \$100 million, for an estimated capacity
15 increase of about 15,000 metric tons.

16 In short, the last nine months have shown
17 that in a fair price environment there is a place for
18 U.S. production of xanthan gum. That performance has
19 been sufficient for me to lay the groundwork to commit
20 more than \$100 million of capital to our business.

21 To finish the job I need you to recognize
22 what our experience confirms. That dumped imports of
23 xanthan gum from Austria and China have caused, and
24 will continue to cause, material injury to CP Kelco
25 and ADM, and that an antidumping duty order on those

1 imports is the only thing that will bring some measure
2 of price stability to the U.S. xanthan gum market and
3 ensure the continued investment in the industry.

4 Thank you for your time and attention. My
5 colleague Didier Viala, our Vice President of
6 Innovation and Capabilities, will now give some
7 additional perspective and detail on xanthan gum and
8 its uses in industrial and consumer applications.

9 MR. VIALA: Good morning. I'm Didier Viala,
10 Vice President, Innovation and Capabilities, for CP
11 Kelco. I have 22 years of experience in the biogums
12 and xanthan gum industry. I have been working with CP
13 Kelco since 1991 in various roles, from field
14 technical support to sales management, marketing, and
15 business development.

16 As vice president of innovation and
17 capabilities, I'm currently primarily responsible for
18 product and process technology, customer service
19 applications and support, new product formulations,
20 quality, and regulatory affairs. My direct testimony
21 will focus on the functionality and production of
22 xanthan gum.

23 Xanthan gum is a biotechnology product
24 manufactured through a process of fermentation. The
25 single-most important point of that process is

1 carefully developed and maintained, that is the
2 strains of xanthomonas campestris bacterium.
3 Production strains of xanthomonas are developed over
4 many years through a process of selection and
5 carefully controlled mutation.

6 At CP Kelco we employ microbiologists, food
7 scientists, and engineers. The scientists and
8 engineers develop and maintain our production strains,
9 control and test product quality, and innovate new
10 products and applications. The scientists in research
11 and developments that are the foundation of our
12 xanthan business are located here, in the United
13 States.

14 The fermentation process lies at the heart
15 of our xanthan gum process. It takes place in large
16 capacity stainless steel fermenters and highly control
17 environments to maximize the performance of the
18 bacteria. Xanthan gum therefore is a highly capital-
19 intensive manufacturing process. That capital is in
20 the form of machinery, plant equipment, and also in
21 human capital. Scientists and technicians working in
22 near clean room conditions are the foundation of our
23 success.

24 So what is xanthan gum? It's a
25 polysaccharide, meaning a long, complex chain made

1 only of sugars. Xanthan gum is one of the members of
2 a larger family of product called hydrocolloids which
3 when mixed into a solution with water develops
4 functional properties.

5 Hydrocolloids include lots of products, such
6 as guar gum, carboxy methyl cellulose, or CMC,
7 carrageenan, and pectins. I want to highlight that CP
8 Kelco produces several hydrocolloids, so for us it's
9 key to have a deep understanding on what functional
10 properties xanthan gum brings versus those other
11 hydrocolloids.

12 Of hydrocolloids, xanthan gum is really
13 unique and that's due to the combination of a unique
14 rheology, which includes viscosity and suspension, how
15 it thickens, how it flows, how it suspends. It has a
16 unique functionality, but also a unique stability, and
17 that's why it can out perform any other hydrocolloid
18 in the industry in end use applications.

19 The use rate of xanthan gum is very low
20 compared to other hydrocolloids. Typically in an
21 application you only need .1 to .3 percent xanthan gum
22 concentration. Some applications are even lower than
23 .1 percent.

24 A key property of xanthan gum is that it
25 provides viscosity, or thicken, when the solution is

1 at rest. However, if you apply a force to the
2 solution, for example, you pump it, you spray it, or
3 you pour it out of a bottle, you are applying what is
4 known as a shear force to the solution. When that
5 happens the viscosity drops dramatically so it's much
6 easier to pump, spray, or pour. We call this shear
7 thinning.

8 I want to use some of the demo kits here to
9 highlight what I said. In here, starting from your
10 left to your right, you have a solution of .3 percent
11 xanthan gum, a solution of xanthan gum with 10 percent
12 salt, a solution of guar at .54 percent, and a
13 solution of CMC at .84 percent. All the solutions are
14 there and you have a bead at the bottom, the same bead
15 for all of them.

16 If we now, we turn the demo kit, you will
17 see what I mean by viscosity and what I mean by
18 suspension power. You see that in the xanthan gum
19 solution the bead is suspended while in both guar and
20 CMC, even if those are double or three times the
21 concentration, the bead falls immediately.

22 What does it mean? You all eat salad, you
23 all have salad dressings. So when I have a salad
24 dressings, I want to suspend herbs and I want to make
25 sure that the oil droplets kind of go and coalesce

1 together so that the dressing separates. That's what
2 xanthan gum does in your salad dressing.

3 Now, in a salad dressing you have salt, you
4 have enzymes coming from spices sometime, or you have
5 acid coming from the vinegar, so it's quite important
6 that this key rheology or viscosity of xanthan gum
7 remain stables to salt concentration, enzymes, or
8 acid.

9 In here, in this tube you see the salt and
10 the stability and the same properties. We got demos
11 with acid or we got the same with other enzyme
12 stability.

13 Now, very thick, but when you want to pour
14 your salad dressing you want to have a nice, smooth
15 flow out of the bottle and you don't want to have what
16 I will call blobbing flow or really gel that you would
17 need to push out of the bottle. We all try to do that
18 with ketchup sometime. In a salad dressing, you want
19 it to flow, right?

20 So I want to illustrate on another
21 demonstration what we call by the shear thinning
22 properties. You got the same solutions here, in
23 there, but when I will turn it there is a small hole
24 at the bottom of the tube and you will have a very
25 high shear at the bottom of this tube. You see that

1 the flow properties of xanthan gum -- again, from the
2 left, two solutions of xanthan gum, water, and salt,
3 and to the right, your right, guar, and CMC -- you see
4 that the way the solutions are pouring actually are
5 almost the same speed, meaning that it's easy to pour
6 because of the shear thinning properties of xanthan
7 gum.

8 So again, to your right you see that the
9 beads are still suspended while the solution has been
10 pouring through the tube already. That's what xanthan
11 gum is, and that's what we sell in all applications.
12 You see that it's dramatically different from CMC or
13 guar.

14 Now, as soon as you recover, as soon as you
15 pour the dressing out of the bottle, you want the
16 viscosity to recover, for orbs to be suspending again,
17 for the emulsion to be stable again and oil to be
18 separated out of the water. Xanthan gum viscosity
19 will recover immediately, and that's the property
20 we're selling and that's what we wanted to illustrate
21 with this model demonstration here.

22 So as soon as you start the shear force, the
23 viscosity recovers. What this means is that when you
24 spray a solution with xanthan gum and it thins out,
25 but as soon as it's out of the nozzle, the solution

1 will recover viscosity and cling to the support or
2 stabilizes the emulsion, and that does this
3 immediately. This is a very, very unique
4 functionality of xanthan gum. No other hydrocolloids
5 have the same functionality and the same level of
6 ferments.

7 You may hear that some others, such as CMC,
8 are known to have the same characteristics, but CMC
9 solutions do not recover at the remarkable speed of
10 xanthan gum that you just saw and cannot perform in
11 the same sterile environment.

12 I have some other demos that we can show at
13 the break. If we take solutions of CMC or guar in a
14 10 percent salt environment, those solutions will not
15 be uniform and you see some gels and precipitations in
16 the bottle. So as soon as you enter harsh conditions
17 and the right rheology, then xanthan gum is far
18 superior.

19 Why is this important? Some products have a
20 low pH because they contain acid, such as certain
21 cleaners. The acid in the cleaner can solubilize the
22 lime or the calcium carbonate so that it can be easily
23 washed away. Xanthan gum brings viscosity to the
24 cleaners so that it clings to the bath, or the tub, or
25 the toilet bowls, and when the acid can do its works

1 and dissolve the calcium carbonates.

2 There are other hydrocolloids, for example,
3 guar gum, that are known to be stable, but again,
4 nothing like xanthan gum. Other hydrocolloids break
5 down in low pH environments or high salt environments,
6 thus limiting their applications.

7 We refer the Committee to the combinations
8 of rheological characteristic that xanthan gum brings
9 to a solution as a structural function. We use that
10 phrase because of the relationship between the
11 structure of the molecule and the functionality it
12 brings.

13 Different molecule or molecules, structural,
14 brings a different functionality. Whether it's an
15 oven cleaner, or toilet cleaner, in a draining fluid,
16 in a salad dressing or low calorie beverage,
17 toothpaste, pharmaceutical products, xanthan gum
18 provides this same functionality because it uses the
19 same molecule.

20 For example, pharmaceutical, consumer, or
21 food and beverage grade xanthan gum could be used in
22 industrial or oilfield applications. However, while
23 we sell in industrial, and often market segments,
24 could not be used in higher value applications like
25 food and beverage because of limits on microbiological

1 contamination.

2 The functionality would be the same, but as
3 you move up to higher value end use, the xanthan has
4 met higher and higher regulatory limits on
5 contamination. Meeting those higher requirements
6 means more processing steps and higher failure rate.
7 So that's for the technical part.

8 Now, historically, the different market
9 segments from xanthan gum form a value pyramid. You
10 see on this slide the different layouts of it, from
11 oilfield and industrial oil, up to food and beverage,
12 consumer, and pharmaceutical applications.

13 When moving up and, you increase the
14 regulatory constraints in the specifications. Again,
15 you cannot substitute from the bottom to the top.
16 However, downgrading products from the top, pharma,
17 consumer, or food and beverage, into oilfield or
18 industrial applications is possible because, again,
19 this is the very same functionality. So we can move
20 down this ladder, and we need to add some stringent
21 specification to move up the ladder.

22 Now, when you want to move from oilfield up
23 into farmer, there are limited costs of manufacturing
24 premium moving up because, again, this is
25 fundamentally the same process, the same molecule, and

1 the same recovery and extraction that you saw on the
2 video.

3 So up to 2005 there was a perception in the
4 United States that Chinese-made xanthan gum maybe was
5 not as consistent quality or had performance of the
6 U.S. or European manufacturer. That perception has
7 changed dramatically over the past few years as
8 Chinese producers have increased the quality and
9 reliability of the products, and also simultaneously
10 massively increased their production and reduced their
11 prices.

12 Some customers stopped using U.S.-produced
13 xanthan gum and went directly to Chinese xanthan gum.

14 Other actually tested Chinese products, but somehow
15 were still I would say hesitant to buy. They were
16 still attracted by the lower price, so the customers
17 went to low priced Austrian product. For customer
18 with bottom price, whether they went with Chinese or
19 Austrian product depending on the level of risk those
20 customer were willing to take in order to get that low
21 price.

22 But in every market segment that the Chinese
23 have penetrated, again using price to open the door,
24 we actually saw Austrian product following up the
25 value pyramid and offering their own generic low

1 priced alternative. You say you don't want Chinese
2 product, but you like the price. I got Austrian
3 Western-made product and it's still less expensive
4 than U.S.-made product so to speak. That's the
5 dialogue that we had at our customers. That started
6 in industrial and oilfield market and we saw that
7 going up the pyramid, and now it has reach as high as
8 the consumer product segment.

9 In summary, the xanthan gum sold into the
10 oil and field and industrial market and the higher
11 markets are not different products because they have
12 different structure function or use a different
13 molecule. It has to do with the purity, regulatory
14 compliance and specifications, like total plate count,
15 yeast and molds, and foreign material.

16 The xanthan gum from China and Austria is
17 identical to the product produced in the United
18 States. The only difference that we see is in the
19 price.

20 I thank you for the opportunity to appear
21 this morning, and I would like to introduce Mr.
22 Charles Bowman, Vice President, Global Marketing, for
23 CP Kelco.

24 MR. BOWMAN: Good morning. For the record,
25 my name is Charles Bowman. I'm the vice president of

1 marketing for CP Kelco. I've held this job since
2 2007. I've been working in the hydrocolloid industry
3 for the last 24 years, all directly related into the
4 biogum business.

5 I'd like to expand on Mr. Rubright's
6 statement by focusing on what happened into the U.S.
7 industry from the period of 2011 up to when we filed
8 the petition on June 5, 2012, and then with the period
9 after that until today. What I think you'll find is
10 the impact to the domestic industries has been quite
11 positive since we filed this petition. In fact, I
12 think you'll see two different periods, one of
13 contrast, of darkness, and one of sunshine.

14 I'll start by taking us back into the
15 darkness before the petition was filed. The price
16 competition in the U.S. was fierce. In fact, in 2011
17 we saw prices fall to levels we thought were
18 unimaginable.

19 As Don mentioned in his testimony, during
20 this time we were told of a strategic oilfield
21 customer that would be awarding us zero percent of
22 their annual requirements because both Chinese
23 manufacturers were now approved to supply their
24 products. The product of choice was the highly
25 sophisticated value added product xanthan gum that was

1 almost one-fourth of the price of CP Kelco's which was
2 sold the year before.

3 The technology to produce this grade was
4 pioneered by CP Kelco and is in the foundation of our
5 food, pharmaceutical, beverage, consumer business.
6 Now these markets had become under threat and CP
7 Kelco's market shares declined.

8 While we attempted to maintain prices at
9 levels which covered our cost, we even attempted to
10 raise prices in conjunction with rising cost. These
11 increases did not significantly materialize in the
12 marketplace because lower priced competition continued
13 winning more and more volume by offering lower and
14 lower prices, ultimately resulting in lower market
15 share for the domestic industry.

16 For example, in the oilfield service markets
17 all major producers of xanthan gum had been qualified
18 over the years and are given an opportunity to bid on
19 a set of volume for each tender, thus leaving only
20 price as the sole criteria to win or lose the bid.
21 Price has become the deciding factor on winning or
22 losing the business since all major xanthan gum
23 producers have been qualified to bid on a set volume.

24 So as Respondents were qualified, they continued
25 dropping pricing, winning bid after bid and gaining

1 market share at the expense of the domestic industry.

2 Unfortunately, for the first half of 2012
3 these negative trends continued as market prices for
4 xanthan gum eroded further in Q1. Thus, with no
5 foreseeable future or change in these dynamics, Don
6 Rubright and the CP Kelco board gave me the permission
7 to file this antidumping petition in Q2 of 2012 as a
8 last resorts to restore fair market prices in the
9 world's largest xanthan gum market.

10 Now let me take you into a sunshine, the
11 period after the petition has been filed. After June
12 12 we witnessed a significant change in the
13 marketplace. Customers who had not done business in
14 years with CP Kelco began calling, asking for price
15 quotes and options to supply their needs.

16 Some customers inquired because Deosen and
17 Fufeng had changed their terms of sale, shifting the
18 burden of potential antidumping duties and any
19 critical circumstance duties to their customers, and
20 refused to take responsibilities as the importer of
21 record.

22 By late third quarter and early fourth
23 quarter 2012 we began to see an increase in demand.
24 The petition was having a positive effect into the
25 marketplace and the U.S. xanthan gum manufacturing

1 industry. Therefore, in October 2012 we made the
2 decision to increase the production and run our plants
3 at full speed in anticipation of higher demand for
4 U.S.-produced xanthan gum.

5 We shifted our production mix to maximize
6 our production volume and to supply all market
7 segments. We moved temporary and part time employees
8 to full time employees and hired additional full time
9 employee staff at both facilities.

10 In summary, by the end of 2012, sales from
11 our San Diego and Oklahoma facilities had increased 16
12 percent in xanthan gum over our May 12 forecast. That
13 was the last forecast we conducted before we filed the
14 petition. The positive impact of this petition was
15 happening.

16 Now five months after the provisional
17 measures were set in June 2012 we had numerous
18 discussions with customers about what was happening in
19 the marketplace in terms of supply and to dispel many
20 of the myths regarding this tariff and what was really
21 happening up here, in Washington, D.C., and why we
22 filed the petition.

23 Many of our customers approached us for
24 supply in the second half of 2013 after their
25 contracts expired, while others stated they were in a

1 wait and see mode to wait and see how the Commission
2 ruled.

3 I'd like to take a moment to address the
4 comments that have been made throughout this hearing.

5 There is no question CP Kelco's commitment to supply
6 the U.S. xanthan gum market with xanthan gum at fair
7 market prices. I'd like to remind everyone CP Kelco
8 invented this industry and is a leader in biotech
9 technology that started right here, in the United
10 States.

11 Since filing the petition in June 2012, CP
12 Kelco has moved quickly to prepare our facilities to
13 maximize production. In fact, CP Kelco released a
14 press announcement in the fourth quarter announcing
15 investments in San Diego and dramatically increasing
16 our capacity. This investment was made months prior
17 to the provisional measures that were put in place
18 into the U.S. Department of Commerce.

19 We placed a bet by investing first in San
20 Diego and are prepared to invest further, as Mr.
21 Rubright highlighted, in Okmulgee to increase supply
22 to meet the U.S. demand.

23 Also, prior to the U.S. Department of
24 Commerce imposing the preliminary duties, the mere
25 possibility that Chinese or Austrian producers would

1 come subject to threat and have to raise their prices
2 to fair market value resulted in many purchasing
3 agents re-evaluating their supply chain options and
4 change their supply chains to a domestic producer.

5 If the Commissioners choose not to act
6 against unfair traded Chinese and Austrian xanthan gum
7 into the U.S. market, many of the customers that are
8 now on the sidelines or the new customers that have
9 come on board will revert back to purchasing low price
10 options from the Respondents.

11 The positive impacts in the marketplace
12 which have occurred since the petition was filed will
13 quickly erode and be reversed. Prices for xanthan gum
14 will fall again and now, as foreign competitors will
15 seize market share without fear.

16 Furthermore, there is no reason to believe
17 that history will not repeat itself and that Fufeng
18 will lead in dropping prices to gain market share from
19 the domestic industry. They'll leverage their scale,
20 combined with their low price strategy that was
21 previously published in Fufeng's annual reports.
22 Right behind them will be the other Chinese
23 manufacturers and the Austrian manufacturers all
24 dropping prices to gain market share and the price war
25 will begin again, all at the expense of the domestic

1 industry.

2 So I hope you maintain these trade actions
3 against China and Austrian manufacturers which have
4 resulted in positive impacts to the U.S. domestic
5 industry and can be directly attributed to the
6 petition filing date.

7 Finally, I'd like you to hear the positive
8 impacts that's happened at our Okmulgee, Oklahoma
9 facility. I'd like to introduce my colleague Russell
10 Casey, Jr.

11 MR. CASEY: Good morning, Commissioners and
12 Commission staff. For the record, my name is Russell
13 Casey, Jr. I first began at CP Kelco in November of
14 2004. I'm a second generation CP Kelco employee. I
15 graduated from Oklahoma State University in Okmulgee
16 in 2002 with Associate's degrees in both electrical
17 engineering technology and industrial electrical
18 technology. I'm currently an electrical and
19 instrumentation technician, and also a union steward
20 for International Union of Operating Engineers, Local
21 351.

22 Over the past three years, the lowest point
23 for morale was midway through 2010 when CP Kelco
24 centralized the control room for our facility. 2009
25 had been a terrible year. San Diego plant had shut

1 down line one and the rumors were that the entire San
2 Diego plant was going to shut down. If that plant
3 shut down, we thought that Okmulgee would be next.
4 The rumors were that lay offs were going to start
5 anyway. Although those lay offs never materialized,
6 people were let go through attrition and not replaced
7 as we tried to make fewer people cover more positions.
8 We lost four out of 18 leads that way.

9 The first time I can remember a
10 manufacturing excellence team coming through our
11 facility to make equipment improvements was in late
12 2009. The rumors were that the improvements were
13 going to be made to our utilities department, like
14 modifying our boiler system to low pressure steam and
15 improving our distillation. Those changes also never
16 materialized.

17 Starting in the summer of 2011 when we
18 negotiated our new union contract we saw a shift to
19 hiring more temporary employees who are less expensive
20 than full time employees. Since December of 2012, CP
21 Kelco has shifted to hiring full time employees.
22 Currently, there is only a fraction of the temporary
23 employees that we used to use.

24 Part of being a union steward is that I get
25 to hear grievances and complaints from our union

1 members. There is a learning curve associated with
2 training new temporary employees. Before fourth
3 quarter 2012, my union members' biggest complaint was
4 why do I have to keep training new employees? Why
5 don't they hire someone permanently?

6 Since fourth quarter 2012, despite hiring a
7 significant number of new full-time workers, now I
8 hear complaints about having to work too much overtime
9 because production in our facility has increased
10 significantly.

11 In my position as an electrical and
12 instrumentation technician there is now a lot of
13 emphasis to really keep everything running all the
14 time. There's always been a priority for maintaining
15 equipment, but because our production has increased so
16 much, permanent repairs must now be made more quickly.

17 I've seen morale at our plant steadily
18 improving over the course of the past two years. In
19 late 2011 and early 2012 we were hearing about
20 customers we were losing, and now we're making as much
21 product as possible.

22 2013 has been a good year. We're hiring
23 more full time people and we're getting lots of
24 overtime. There's a big push on production and a big
25 push on quality repairs, and in just the past few

1 months I've seen the manufacturing excellence team
2 return to evaluate our plant for increasing capacity.

3 I was told that we're planning on increasing the
4 number of fermenters and C tanks. Right now our plant
5 is set on a trajectory for success.

6 My colleague Terri McConnell can speak to
7 her experience over the past few years working
8 directly in production.

9 MS. MCCONNELL: Good morning. For the
10 record, my name is Terri McConnell. I started working
11 with Kelco in March 1991 as a helper, helping out
12 wherever needed. Since then I've held several
13 positions with the company, including Operator 2 in
14 the packaging department, supervisor of the packaging
15 department, as well as an Operator 1 in recovery.

16 I have had the position of Operator 1 in
17 recovery for the past 18 years. The recovery process
18 is what happens between the fermenter and before
19 packaging. Those steps include precipitation, drying,
20 taking samples for lab testing, as well as milling.

21 The two things that I'm most proud of at
22 Kelco are its commitment to safety and its commitment
23 to quality. Kelco is committed to the safety of
24 workers, like me, and to the making of a product that
25 is safe for our customers. Kelco is committed to

1 quality. Kelco helps its workers be the best they can
2 be through cross-training opportunities so we can
3 understand all aspects of the production process and
4 also by reimbursement of education expenses. I now
5 have a business degree that is a Bachelor's. Thanks
6 to Kelco I was able to accomplish that with their
7 help.

8 We produce a quality product that we are all
9 proud of. Our product goes into Children's Tylenol,
10 prepared foods, and many other products that are
11 consumed by people, including us.

12 When I lay down at night, I know I gave
13 Kelco my best and that I helped produce a high quality
14 product that is safe. It is very fulfilling to know
15 that what is going out the door is the best that you
16 can possibly make. As an Operator 1 in recovery, I
17 see every pound of xanthan gum that is produced.

18 In 2009 I started to become worried about my
19 job, as well as the company, because I saw production
20 slowing down. Overtime was suspended in 2009, in
21 2010, and 2011. Any overtime that was worked had to
22 be preapproved by management. The plant was only
23 running two out of four lines in 2010 and 2011. Our
24 warehouse was filling up to capacity. No trucks was
25 backing up to the door to take our product.

1 In 2010 we asked management what was going
2 on and we were told that we had lost customers and
3 there was not much demand for the product. It got
4 worse in 2011 and the first half of 2012, and I was
5 scared.

6 At the same time we were going through this
7 slow down from loss of customers, the doctors gave my
8 husband a death warrant basically. I apologize
9 because it's so fresh still. The clouds was hanging
10 low at Kelco and it was pretty dark at home.

11 My managers came to me and asked me to take
12 time off work so that I could take care of business at
13 home, because, you see, Kelco would not sacrifice
14 quality or safety for anyone. Yes, they care about us
15 as employees, but they also care about every person
16 that xanthan goes into their bodies, so they will not
17 sacrifice that.

18 They assured me that if everything was still
19 okay at Kelco once I got through my storm at home,
20 that I could return to work. I thank God that I was
21 able to return to work, and my husband is doing fine
22 now.

23 At the same time, in October 2012,
24 management held a town hall meeting and told us that
25 things were picking up and we would be getting back up

1 to capacity soon. Everyone was told to roll up their
2 sleeves and push hard on production.

3 Now, in 2013, I have seen that increase in
4 production. The company lifted the hiring freeze and
5 made new hires. We're running all four lines
6 continuously. Now overtime is back to normal,
7 according to our normal operating procedures.

8 Not only did the clouds pass over at my
9 house, the clouds have passed over Kelco. The sun is
10 shining again, and because that sun is shining, I can
11 smile again, as well as every colleague that I work
12 with. Thank you.

13 MR. CLARK: Mr. Chairman, that concludes our
14 direct testimony, and we'd like to reserve the balance
15 of our time for the closing statement. And the panel
16 will be delighted to respond to any questions that the
17 members of the Commission or the Commission staff
18 have.

19 COMMISSIONER PEARSON: Okay. Thank you for
20 that presentation. I would just like to say to the
21 witnesses from Oklahoma that all of us are holding in
22 our hearts the families of Moore, Oklahoma, who have
23 been so devastated by the tornado. Some of us come
24 from the center of the country, and we know what that
25 can be like. So we're glad you're able to be here

1 with us today.

2 We will begin the questioning this morning
3 with Commissioner Pinkert.

4 COMMISSIONER PINKERT: Thank you, Mr.
5 Chairman, and I thank all of you for being here today
6 to help us to understand these issues. I want to
7 begin with some questions that reference segments of
8 the U.S. market, and I can't get into a lot of detail
9 about those segments without talking about proprietary
10 information, so I'm not going to do that. But will
11 reference segments, and you can then share with me
12 whatever you think is appropriate.

13 My first question is do Austrian and Chinese
14 imports compete in different segments of the U.S.
15 market?

16 MR. VIALA: We see Chinese and industrial
17 imports and competition in all of those segments in
18 the pyramid. Historically, it started from the bottom
19 of the pyramid, but as we explained, they moved up,
20 and we now see them in each and every layer.
21 Pharmaceutical may be the one where we do not see a
22 lot of Chinese products probably yet. And Austrian,
23 yeah, being somehow moving up. We see Austrian
24 product in most segments now.

25 COMMISSIONER PINKERT: Mr. Bowman, do you

1 want to add to that?

2 MR. BOWMAN: Yeah, I'll add to Mr. Viala's
3 comment. What we've seen over the years as an
4 industry, a new manufacturer comes onboard. They
5 start at the bottom of the pyramid and move their way
6 up. And as Didier expanded, we're seeing on web sites
7 and in literature that the entire industry and
8 everyone that is at this table and at the tables
9 behind us that can participate in all the markets --
10 where we see sales right now and approve of the sales
11 -- and the pharmaceutical market may be the one that's
12 exempt. But outside of that, we see Austrian
13 manufacturers participate in all these segments the
14 way you've highlighted it out. We also see the
15 Chinese manufacturers participate and proclaim that
16 they can be in those segments, even major customers,
17 which we can handle off the record into those consumer
18 and pharmaceutical that sit right in the middle have
19 approved them as suppliers.

20 COMMISSIONER PINKERT: In the industry, is
21 there commonly referred to a Chinese low-cost segment
22 of the U.S. market?

23 MR. BOWMAN: I'm sorry. Could you repeat
24 that?

25 COMMISSIONER PINKERT: Just in common

1 parlance in the industry do folks talk about there
2 being a Chinese low-cost segment of the U.S. market?

3 MR. BOWMAN: Allow me to start. What I
4 think you see is there is a perception that because
5 it's made offshore, not in the United States, it's
6 cheaper. And China does have a stigma with it as
7 being a low cost. But we have a manufacturing
8 facility in China in which we produce the same quality
9 as we do in our Okmulgee or San Diego facilities. We
10 have a one CP Kelco-quality standard because many of
11 our customers will purchase a product in the U.S., but
12 then export it, or some of the larger multinational
13 companies want to buy a product and then be able to
14 ship it where there is different regulations for food,
15 non-food quality.

16 Those regulations have to meet a certain
17 standard. So if you're supplying the multinational
18 companies, regardless of where they're at, you have to
19 meet that standard quality. So to me, there is a
20 quality standard which is in the industry. And each
21 segment has its area there. I don't see it directly
22 that there is a cheap Chinese alternative to
23 everywhere. In fact, sometimes we see some prices
24 pretty high.

25 COMMISSIONER PINKERT: Any other comments on

1 that issue, Mr. Clark?

2 MR. CLARK: Commissioner Pinkert, I think
3 the record shows, without going into confidential
4 information, product from China and from Austria being
5 present in overlapping market segments, and they're
6 even being overlapping customers. So the record shows
7 that the product is simultaneously contesting all
8 segments of the U.S. market. It's certainly
9 geographically present in the U.S. market, competes
10 with our product, and competes with other domestic
11 product.

12 We see the product from Austria and China
13 competing in all of the consumer food and beverage,
14 industrial, and oil field markets beginning to
15 penetrate in the sense of being offered in the
16 pharmaceutical market as well for both China and for
17 Austria.

18 MR. DOUGAN: This is Jim Dougan from ECS, if
19 I may add one thing. The purchaser perceptions as
20 well, there is data that are in the public staff
21 report that can be discussed. And according to
22 purchase responses, when asked to compare imports from
23 Austria and China, whether they're, you know, superior
24 or comparable or inferior, they were reported as
25 comparable in a very high majority of the cases, 151

1 out of 222 responses.

2 So the perception of the purchasers in the
3 market broadly is that the Austria and the Chinese
4 merchandise is broadly comparable.

5 COMMISSIONER PINKERT: Staying with you, Mr.
6 Dougan, what about pricing? Is there a distinction
7 between Chinese pricing generally speaking and
8 Austrian pricing?

9 MR. DOUGAN: Without getting into anything
10 that's confidential, I would say that it would -- that
11 would vary based on the segment, and that the pricing
12 within the segment -- and in other words, an overall
13 import average unit value would be determined by
14 product mix. And I'm trying to be very careful here.

15 COMMISSIONER PINKERT: You can always
16 supplement in the posthearing.

17 MR. DOUGAN: I certainly will. I think the
18 thing to say is that the comparisons within particular
19 market segments would certainly be closer than perhaps
20 an overall import average based on the various weights
21 of the segments that the different countries
22 participate in.

23 COMMISSIONER PINKERT: That's a helpful
24 answer, and I'm sure that you can supplement that in
25 the posthearing.

1 MR. VIALA: If I may, and that will not be
2 any confidential information, having been in the
3 marketplace, what we saw is Chinese coming where it's
4 very low pricing, and those prices being matched most
5 of the time by Jungbunzlauer from Austria. That's
6 from a market sales perspective. We saw that
7 happening.

8 COMMISSIONER PINKERT: Thank you. Now, and
9 I'm going to be very careful about how I phrase this
10 next question. I've checked with staff, and I'm
11 trying to avoid any business proprietary information.

12 But is the increase in U.S. shipments of Chinese
13 imports in the oil field segment largely a function of
14 expanding U.S. demand?

15 MR. RUBRIGHT: I would say that demand in
16 the U.S. market probably has been growing. But our
17 inability to compete there means a disproportion of
18 that is going to Chinese imports or JBL imports. So
19 it's not just a matter of the market expanding. The
20 pricing does not allow us to participate in that
21 expansion.

22 MR. CLARK: Just to elaborate on picking up
23 on one of the points that Mr. Rubright made earlier,
24 one of the critical factors that precipitated the
25 company's decision to come forward with the petition

1 was actually a late 2011, early 2012 loss of an
2 extremely demanding xanthan gum oil field
3 specification.

4 So even though you heard the
5 characterization earlier that oil field is a
6 chronically low-margin segment of the market, in point
7 of fact, as you saw in the video, xanthan gum plays a
8 critical role. There are some very demanding
9 specifications for some very demanding customers. CP
10 Kelco had been providing a very demanding, very
11 expensive product to meet that need, and we lost that
12 business, and we lost that business for just a little
13 over one-fourth of what had been the prevailing price
14 in the previous two years.

15 So in the oil field segment, I think it is
16 fair to reiterate Don's point, which is, yes, the oil
17 field market demand has certainly increased. But if
18 we take a situation where we were the pioneer, we had
19 a premium product, demand for which was also growing,
20 we lost even that product to low-priced offerings
21 coming out of China.

22 COMMISSIONER PINKERT: And finally, looking
23 at the market segment data in our report, were some
24 domestic producer shipments diverted from the domestic
25 market to export markets over the course of the POI?

1 MR. RUBRIGHT: Our strategy back in -- when
2 we saw the price competition that was going on in the
3 business, was to go to high-end differentiation. The
4 high-end differentiation was more broadly accepted in
5 some export markets than it was in the U.S. market, as
6 Chinese prices just drove down even the margin rate
7 and the difference between highly differentiated
8 product and standard product.

9 So just in terms of survival, we went to the
10 markets that were willing to pay the price for the
11 cost of manufacturing at higher differentiated grade.

12 MR. VIALA: I may add an additional point.
13 We also, as was in Mr. Rubright's testimony, closed
14 down a plant in the UK, and obviously also redirected
15 some of the capacity from domestic into serving our
16 customers over there. And probably in the posthearing
17 documents, we can give you more details about some of
18 the programs and differentiation and targeting markets
19 that we had so that we could maintain our -- or try to
20 maintain our margins in a really broad capacity from
21 low-cost, low-price here competition onto the more
22 profitable markets for us. We can provide more
23 details on that.

24 COMMISSIONER PINKERT: That would be very
25 helpful. Mr. Clark, do you have a final comment?

1 MR. CLARK: One final comment. I was
2 actually going to extend an invitation to Mr. Bowman
3 to comment because your question was -- you used the
4 word "divert," which implies a conscious decision to
5 not meet domestic demand in favor of export demand.
6 And Mr. Bowman is in a good position to speak to the
7 question of whether there were customers in the U.S.
8 that we said we're not going to supply you, we're not
9 going to quote you. We're too busy selling to export
10 markets.

11 Since he's global marketing and sales, he's
12 well-positioned to address that.

13 COMMISSIONER PINKERT: Very briefly, Mr.
14 Bowman, since I'm post the end of my round.

15 MR. BOWMAN: Okay, yeah. What our product
16 is, is really this high quality, safe, consistent
17 product that we sell out into the marketplace. What
18 we found is that outside of the U.S., we would service
19 customers outside. The same customers inside the U.S.
20 had actually turned and went to the Respondents at
21 these low prices that they were getting.

22 Many of the multinational products that --
23 multinational companies that would buy from us outside
24 the U.S. were not buying from us in the U.S. because
25 of the prices in this market. We saw that in a number

1 of cases within -- across all of those segments that
2 are up there, which we can represent, with the
3 exception of the pharmaceutical. I think it
4 exemplifies that the product was there, it was
5 available. The offering wasn't taken.

6 COMMISSIONER PINKERT: Thank you very much.
7 Thank you, Mr. Chairman.

8 COMMISSIONER PEARSON: Commissioner
9 Johanson.

10 COMMISSIONER JOHANSON: Thank you, Mr.
11 Chairman. I would also like to thank all of the
12 witnesses for being here today, and in particular
13 those of you who came a long way from Oklahoma. And
14 once again, I know the situation in your state has
15 been very difficult, and we've all been thinking about
16 is happening there.

17 Mr. Viala, you did a very good job of
18 describing differences in different types of xanthan
19 gum and comparing that to guar. And I personally
20 enjoyed looking at the exhibits before the hearing
21 started along with Commissioner Pinkert, and we were
22 able to witness firsthand, of course, the differences
23 in viscosity, et cetera.

24 Given the different types of xanthan gum --
25 and this is a very basic question. But do you

1 consider xanthan gum to be a commodity product?

2 MR. VIALA: I would say the functionality of
3 xanthan gum is the same wherever the product comes
4 from, whatever the producer is. Now, you heard Mr.
5 Rubright talking about differentiation of products,
6 which will go against the commodity approach. But let
7 me elaborate a bit.

8 I would say that there is a baseline for
9 xanthan gum, and the typical functionality of xanthan
10 gum, and there is differentiation from this baseline.

11 What we try to do at CP Kelco is to work with
12 customer, differentiate the product according to their
13 needs, and then obviously charge a premium for that
14 differentiation.

15 However, the premium is only from the
16 baseline. So when the baseline collapses, either our
17 price goes down or customer says, okay, the
18 differentiation that you are providing is not worth
19 the huge premium anymore, so I will revert to the
20 commodity-like standard grade xanthan gum. I'd rather
21 call it standard grade xanthan gum than commodity.

22 But still, let me give you an example. To
23 stay on the salad dressing example, when you go to
24 those plants, you've got very large plants, and people
25 needs to make a solution of xanthan gum so that it can

1 go into the process. How you get the product into the
2 water can be tricky because you don't want to make any
3 lumps. We have grades that will allow you to do that
4 without any lumps. There are grades that will go
5 faster into solution so that your batch cycle time is
6 lower, and you don't need to have a huge plant, so you
7 save on capital.

8 We have grades that protect workers when you
9 empty a bag to not generate any dust. We have grade
10 that will flow, the powder will flow very well before
11 you put it in solution so that you can have air
12 adductor and actually blow the product from the
13 emptying line onto the production line.

14 All of that has a value for the customers,
15 and you can have a premium which is, let's say 5 or 10
16 percent. Now, if your price difference become \$3, \$4,
17 \$5 a kilo, then producers will say, okay, for such a
18 difference, I can't even invest in a new plant or a
19 new tank, or I don't need -- or I can put masks on my
20 operators. I don't like that, but I can do this.

21 So I would say that this premium would vary
22 very much with the baseline. Therefore you have
23 differentiated xanthan gum from standard ones, but the
24 pricing element of it, they are linked.

25 COMMISSIONER JOHANSON: When you're

1 producing xanthan gum, let's say I go into your plant
2 in Okmulgee, Oklahoma. When you produce in a batch,
3 do you specifically designate that as going to oil
4 field applications, food applications, pharmaceutical,
5 et cetera, or at the beginning? Or at what point does
6 that separate out?

7 MR. VIALA: In CP Kelco, we scale production
8 for the end product. So we target a specific product,
9 stock-keeping units for us. That's how we do in CP
10 Kelco. I don't want to go in specifics for the
11 others, but sometimes you may have a large volume of
12 more commodity grade xanthan gum, and you produce this
13 large volume, and then you can test and look at
14 specifications that you have. And if you're lucky,
15 you may have from batch to batch variability. You may
16 end up with a specific batch that will show better
17 specifications, and you can then lot sell it or
18 cherry-pick from this big pie.

19 That works if you have a large commodity-
20 like baseload in your plant and some process
21 variability, if you will. For us, we have optimized
22 it in a different way where we target specific SKUs so
23 we know what it is. Sometimes we fail, but we try to
24 have a very good first pass success rate.

25 COMMISSIONER JOHANSON: Do any of you

1 believe the U.S. might have an advantage pricewise
2 over imports, given the large U.S. corn supply? The
3 U.S. is the largest corn-producing country in the
4 world, from what I understand.

5 MR. VIALA: Anyway, it will depend. As you
6 understood in I think everyone's testimony in CP
7 Kelco, quality and safety matters a lot, and that's
8 including food safety. And right now we produce
9 actually domestically in the U.S. and even China. We
10 tend to buy the highest standards raw materials and
11 quality, and when dealing with our suppliers, we're
12 asking for very high standards, whatever the product
13 we're making.

14 We all hear about food safety scandals.
15 That's not for us. We don't want to go that way. So
16 I would say that we almost put ourselves in a
17 disadvantage because we have those high quality
18 standards, and we accept to pay higher price for
19 those. But we also provide safe products for our
20 customers.

21 So domestically, there is a lot of corn and
22 corn syrup, and we try to add that. Now what we know
23 is that in some other part of the world, some people
24 are not as demanding in terms of quality and may
25 offset the advantage that we have in the corn in the

1 U.S.

2 COMMISSIONER JOHANSON: But do you think
3 that would impact the prices of production?

4 MR. VIALA: If we were less demanding, we
5 would definitely have cheaper raw material costs. But
6 that's what we went into as well.

7 COMMISSIONER JOHANSON: Okay. Thank you.

8 MS. NOONAN: Commissioner, if I can.

9 COMMISSIONER JOHANSON: Yes, Ms. Noonan.

10 MS. NOONAN: Thank you. If I can add, we
11 did have some significant increases in the price of
12 corn that's reflected in the staff report in section
13 5-1.

14 COMMISSIONER JOHANSON: Has that been
15 worldwide, though? I know in the U.S. it's a
16 commodity product, so I assume it's affected around
17 the world. But I just don't know.

18 MR. RUBRIGHT: I would think you would
19 classify corn as a global market, not a local,
20 geographic market. Whether we're pricing for corn
21 syrup, say in Europe versus the Americas, there is
22 very little difference normally in global pricing.

23 COMMISSIONER JOHANSON: That's what I would
24 think, although in the United States we have such a
25 pull into ethanol at this point in time, which is not

1 reflected in all other markets, or most other markets
2 probably.

3 MR. RUBRIGHT: I think the large supply of
4 corn in the U.S. that is exported globally -- I'm not
5 sure of the ethanol. I believe it has an impact, but
6 on the global pricing schematic, it's going to level
7 out.

8 COMMISSIONER JOHANSON: Okay. That makes
9 sense. I've looked at corn figures a lot in the past,
10 but not recently. So thank you for your responses
11 there.

12 This next question deals with likely price
13 effects. When purchasers were asked to rank
14 purchasing factors as very important, somewhat
15 important, and not important, more purchasers ranked
16 availability, delivery time, product consistency,
17 quality and reliability as very important, then price.

18 Does this suggest that other factors are more
19 important than price in purchases?

20 MR. RUBRIGHT: I think our experience has
21 been if you look at the major applications, especially
22 the large applications on the bottom of that triangle
23 you're looking at, that basically all suppliers have
24 met those other requirements in the eyes of the buyer.

25 So the one thing that is a differentiator at

1 the end of all that is price.

2 COMMISSIONER JOHANSON: Yes, Mr. Bowman.

3 MR. BOWMAN: I'd like to expand upon Mr.
4 Rubright's comments. I think what you'll see is the
5 functionality that Mr. Viala highlighted here has to
6 be there. The product has to work, otherwise the
7 function that you're bringing into the product is not
8 going to be in your end product.

9 So I think that's one of the areas that's a
10 given. The dynamics of these markets, there is not a
11 lot of new food applications that comes on in like the
12 U.S. They change new product lines, but the same
13 major food companies are there. And over time, they
14 have the ability to bring on several different
15 manufacturers to get people to approve on certain
16 specs.

17 What we would see is that those -- over
18 time, those specifications in all these segments, with
19 maybe the exception of pharma, are available, and then
20 folks will have the ability to bid one or two
21 different suppliers off of each other, in some cases
22 five or six, and therefore that's what impacts the
23 pricing area.

24 There is a quality that you have to meet,
25 otherwise you wouldn't -- you would lose the benefits

1 of the xanthan gum. As Mr. Viala said, whether you're
2 in a pharmaceutical suspension or whether you're
3 suspending rock in an oil field, xanthan gum from the
4 *Xanthomonas campestris*, the way it was produced will
5 give you that suspending qualities. It's those price
6 points that have been in the dynamics with the
7 purchasing folks. That's the way I would see it.

8 COMMISSIONER JOHANSON: All right. Thank
9 you. Apparent consumption of xanthan gum has
10 increased substantially during the period of
11 investigation. We know that to be the case. But
12 could you all possibly discuss the impact of the
13 recession on purchases of xanthan gum? Was your
14 industry heavily affected, in particular in your food
15 and beverage areas?

16 MR. BOWMAN: Could you repeat the period
17 just one time?

18 COMMISSIONER JOHANSON: During the period of
19 investigation, which is 2009.

20 MR. SCHKADE: 2009? The recession had some
21 impact, not as much on the food and the beverage
22 industry, but more so in the lower pyramid here, in
23 the industrial and oil field side, because again what
24 happened is we lost an accelerated pace of market
25 share, and that was due purely on price. We were told

1 that our price was too high, and so therefore we lost
2 virtually the vast majority of all of our business in
3 the U.S. during that period of time.

4 COMMISSIONER JOHANSON: Thanks. Of the many
5 products in the U.S. economy, it appears that yours,
6 due to what is happening in the oil and gas industry,
7 is coming back very strongly. So --

8 MR. SCHKADE: Yes. You know, as far as
9 coming back, there are several different indicators
10 showing an increase in demand, our count is. But
11 actually, if you take a look at actual wells drilled,
12 they did increase, but actually in 2013, those wells
13 drilled are predicted to be down anywhere from 4 to 5
14 percent versus 2012.

15 COMMISSIONER JOHANSON: Okay. All right. My
16 time has expired, and thank you for your responses.

17 COMMISSIONER PEARSON: Commissioner
18 Broadbent.

19 COMMISSIONER PINKERT: Hi. I wanted to
20 thank the witnesses for coming. We appreciate you
21 taking the effort to come and describe these things to
22 us. It's a real education. We haven't looked at a
23 product like this before.

24 Mr. Rubright, I wanted to pick up a little
25 bit on your statement that it was sort of a difficult

1 decision to file this petition. How do you make such
2 a decision among your board? What are some of the
3 factors that you weigh on one side and the other?

4 MR. RUBRIGHT: As I mentioned before, the
5 owner of the corporation is a family by the name of
6 J.M. Huber. They are strategic owners. They are not
7 people that look to optimize buy-sell companies. When
8 they normally buy something, they hold it for many
9 generations.

10 This business under examination of long-term
11 competitive sustainability is something that we look
12 at on a regular basis. In 2006, when I came into the
13 business, we had owned this business for
14 approximately, you know, a year, year and a half at
15 the time. And the business was performing quite
16 poorly, especially in the xanthan gum side of the
17 business, and was trending downward. And this is about
18 the time when all these imports were coming into the
19 U.S. market.

20 And perhaps we were naive. Maybe we had
21 more confidence in our ability to innovate our way out
22 of that competitive onslaught coming out of China,
23 which is why we made the moves we did in 2006 and 2007
24 in response to this. As we innovated our way up into
25 those top tiers that you're talking about, the Chinese

1 in particular grabbed so much more of the market down
2 in the oil field space that when Mr. Viala was talking
3 about you can lot select specifications to a product
4 to go to that next level, the bigger that base becomes
5 at the bottom in the oil field and industrial sector,
6 the more they can lot select and attack your
7 competitive barrier that you have on innovation in
8 those higher segments.

9 When that actually happened to us in the
10 2011-2012 time frame, we more or less saw the writing
11 on the wall in terms of what is our sustainable
12 competitive position here. And while we had shut
13 plants, if you think of that bottom tier as a huge
14 bell curve of production, what we did to innovate was
15 tighten the bell curve and shift it to the end of the
16 tail.

17 What they were doing is taking that huge
18 bell curve and lot selecting and attacking our
19 innovation that we had worked so hard to isolate on
20 the upper end of the spectrum of the processing
21 capabilities. When we saw that and saw that this
22 insidious erosion of the market share and grabbing all
23 of the growth going on in the lower field -- lower end
24 of this spectrum we're talking about, they had a more
25 -- a larger and larger base of which to lot select and

1 continued to move upscale against us.

2 So when we sat down to talk about this, as
3 you know, we were on the other side of this with the
4 CMC business, and we saw the impact that it had on us,
5 and at least, you know, giving us pause as to are we
6 operating effectively here and properly in the
7 international markets.

8 We think that pause is needed here, and we
9 think that we need to send -- we needed to send a
10 strong message that these practices that are in this
11 insidious spiral in terms of attacking a marketplace,
12 and even offsetting the millions of dollars we are
13 spending on innovation in the process, convinced
14 myself and the board that this is an action we should
15 consider, and after a very strong debate decided to
16 take.

17 COMMISSIONER BROADBENT: What were the
18 import levels from China when you bought the business?

19 MR. RUBRIGHT: I'm not sure of the numbers.
20 We can check that in the post-discussion brief. But
21 it was just starting to ramp up in 2006. And the
22 reason -- the thing that I remember most significantly
23 was the impact on profitability in 2006, where we
24 priced to maintain share and saw that even maintaining
25 share, we were losing -- starting to lose money. So

1 our overall margin rate in the business before selling
2 in general, before R&D expenses, and all that
3 innovation that we were spending money on was barely
4 in double digits. And our SG&A and R&D spend was
5 higher than the margin on the product that we were
6 making, even after we decided let's go compete and see
7 what we can do, and maybe push productivity in the
8 operations. We just couldn't get there.

9 COMMISSIONER BROADBENT: Okay. In terms of
10 trying to set up the correlations that we need to look
11 at as we make our determination, is your sense that
12 the prices were depressed throughout the period of
13 investigation -- when did the price depression start
14 to occur?

15 MR. RUBRIGHT: We saw the price depressions
16 start in 2006 and then accelerate. And we saw a real
17 aggressive competitive positioning between Deosen and
18 Fufeng in 2011 and into 2012, almost to the point of
19 they were trying to out-low price each other's, the
20 best way we could see it. But we did not have the --
21 we could not compete at those numbers.

22 COMMISSIONER BROADBENT: The two Chinese
23 firms.

24 MR. RUBRIGHT: Yes.

25 COMMISSIONER BROADBENT: Okay. And then

1 what the Austrians doing at that point?

2 MR. RUBRIGHT: They were matching -- we
3 believe they were matching the Chinese in order to
4 take and maintain share, and they took some share from
5 us in the food.

6 MR. BOWMAN: If I may to add to Mr.
7 Rubright's comment, what we saw in the period back to
8 2009 when we filed the petition, we saw the rapid
9 increase in supply from the Chinese manufacturers.
10 And when prices were starting to fall, what we saw is
11 that the market started falling with it. And then the
12 economy collapsed in 2008 and came back. A lot of
13 inflation occurred because supply chain dynamics got
14 disruptive. What we saw was prices continuing to fall
15 down, literally on order to order, versus what we had
16 had with contracts. And normally you would have a
17 chance to recoup some of that inflation, like we
18 talked about with corn, energy, even the raw materials
19 supplies.

20 And so what we found, both Austrian -- and
21 Chinese manufacturers started it. Specifically Fufeng
22 was the first to take it down. And then as Deosen and
23 other manufacturers came on board and the spiral
24 continued, JBL followed down as an alternative. It's
25 we like Chinese prices, but western quality. So they

1 pushed it down to the part, and that's when we saw the
2 prices pretty much start collapsing.

3 And then as Mr. Rubright said earlier, we
4 had a highly sophisticated product tailored to a
5 customer, a product that has the same attributes in
6 the technology, what we do in the plants, that could
7 be right up in the pharmaceutical, but it is sold in
8 the oil field for that specific need. And they have
9 now been able to crack that code and come in at just
10 over a fourth of the price. And that was when I
11 approached Don and the team and said we have to make a
12 move.

13 COMMISSIONER BROADBENT: Okay. I'm just
14 trying to piece this together. We have a staff report
15 that has a lot of public statements there were Kelco
16 is saying that they're increasing prices in 2012,
17 December 20 -- I mean, excuse me, July 2010, December
18 2010, July 2011, November 2011. So did you feel
19 comfortable raising your prices at that point. And it
20 seems to me you're raising prices throughout the
21 period of investigation.

22 MR. BOWMAN: That's right. Most of those,
23 if not all of those, price increases, my name is on
24 them. What we do is we do a global price increase
25 when we come through. We do it for our complete

1 portfolio. And you'll see I have a magnitude. I
2 think it was something said that the prices would go
3 up 47 or 48 percent if I rounded it up. And I think
4 you'll see our numbers are nowhere near those
5 magnitudes of price changes from the start of this to
6 the end.

7 What you will see is we now have price
8 increases up to or to not exceed a certain number, and
9 it expands across our complete portfolio, and that
10 portfolio would include three grades of pectin, two
11 grades of CMC, three grades of carrageenan, a
12 microparticulated whey protein, a number of biogums
13 that aren't in xanthan gum, which will be three, and
14 xanthan.

15 So when you see those press announcements, a
16 lot of times to protect ourselves we'll place that in,
17 but it covers our complete portfolio. But our numbers
18 are on the record. You can see the magnitude of price
19 increases we were actually able to maintain when these
20 things went through.

21 What we were finding is we were trying to
22 recoup some of these raw materials and shifts in the
23 materials while our competitors were rapidly dropping
24 prices and gaining market share at the expense of the
25 domestic industry.

1 COMMISSIONER BROADBENT: Okay.

2 MR. CLARK: Commissioner Broadbent, if I
3 might interject one small -- we talked about this in
4 our prehearing brief, and you will see it also in the
5 posthearing brief, and you can deduce it from what is
6 in the staff report.

7 If you take some of these segments and break
8 them out and overlay market share with price
9 movements, while it is certainly true that there were
10 in the different segments, critically industrial, food
11 and beverage, and consumer, modest increases far below
12 the ones that come from the advertised public
13 statements.

14 Now, you will see a precipitous decline in
15 share associated with that, and that is the effect of
16 imports penetrating those markets, even as our costs
17 are going up and we're trying to cover the cost of
18 innovation and reinvestment in the business.

19 COMMISSIONER BROADBENT: Okay. I'll stop
20 there. Thank you.

21 COMMISSIONER PEARSON: Mr. Kanna, Mr. Clark,
22 do we have on the record the information that Mr.
23 Bowman has been providing about the lost sale in the
24 oil field sector of the high-spec product?

25 MR. CLARK: Yes. That is -- that was

1 featured as one of the lost sales in the preliminary
2 phase and is on the record here as well.

3 COMMISSIONER PEARSON: Okay. But do we have
4 in the type of detail that he has been providing?

5 MR. CLARK: We will provide it from -- in
6 the level of detail he is describing so you that you
7 have an appreciation for the quality of that product,
8 the specific customer, some of the detailed
9 information that was shared with us for why we lost
10 that business.

11 We will provide that. You have the
12 instances in the record. The greater detail we will
13 provide in the posthearing brief.

14 COMMISSIONER PEARSON: Okay, good, because
15 it would be nice to put that into context more. Okay.

16 Mr. Rubright, you've discussed challenges
17 faced by the industry dating back to more or less
18 2005. Of course, in this investigation we're
19 constrained to look at the record from 2010 to 2012.
20 From Mr. Porter's opening remarks, you may have
21 deduced that there is an alternate view of the record
22 relative to the one that you have been providing us.

23 So there may well have been injury in those
24 past years that we aren't looking at. What should we
25 look at on this record for injury? And, of course,

1 you are constrained and not able to see the
2 confidential data, so, Mr. Clark, Mr. Kanna, if it's
3 better for you to answer, that would be fine, but you
4 can see what I'm trying to say, Mr. Rubright.

5 MR. RUBRIGHT: I do. I think our largest
6 concern is not just what happened to us, and if there
7 is a period of what looks like no injury to us because
8 of the data, I think the deeper you dig into that
9 data, you see that the trends are the same.

10 So while we can't put what happened prior to
11 that period in the record, the same thing that
12 happened there is in the process of happening again.
13 And so as they move upscale, the fact that we've gone
14 from four to two manufacturers and that we were having
15 difficulty in this market, as well as ADM in this
16 market, just leads us to the conclusion that more of
17 the same is coming. And if this antidumping exercise
18 is not successful, the tariffs are not put in place,
19 then it will totally reverse what any progress we've
20 seen in the last six months or so, and that trend will
21 continue downward.

22 So I don't know how the '12 data impacts
23 your viewpoint on whether there has been damage done
24 or not. But I would ask you to look closely at what
25 happened in '12 in that data to see what was the trend

1 prior to the antidumping being filed. We saw a
2 significant change in attitude in the marketplace, and
3 we saw customers that we had lost, you know, several
4 years ago, in '06 and '07 and '08.

5 So if they were lost by the time we got into
6 this period of review, then that damage was already
7 done, and for the most part that's when the damage was
8 done. We gave ourselves some breathing room through
9 our innovations efforts and spending millions of
10 dollars on repositioning our business. We learned a
11 hard lesson in China that if you're going to have a
12 global standard on safety, if you're going to have a
13 global standard on environmental control, if you're
14 going to have a global standard on food safety, and
15 you implement those, you cannot hit those price
16 points, or at least we could not.

17 Maybe they are better than us at the low
18 end. I don't know. But we just find it hard to
19 understand. We saw some serious problems in a plant
20 that we bought that was built the Chinese way that
21 simply wasn't sustainable, and frankly dangerous. And
22 we'll be glad to go into some of those specifics, but
23 we will not sacrifice those principles just to compete
24 on price. And I think that whatever those trends were
25 back prior to the period of review, our biggest fear

1 is that those trends get reinstated and continue.

2 COMMISSIONER PEARSON: Okay. Now, Mr.
3 Dougan, Mr. Kanna, and Mr. Clark, based on the
4 forward-looking nature of Mr. Rubright's comments,
5 should we look at this more as a threat case than a
6 present injury case?

7 MR. CLARK: Commissioner Pearson, we would
8 say no, that this case needs to be viewed as you
9 typically do, in equal parts, present injury and then
10 also future injury.

11 The reason to provide some of the historical
12 context is really to try to as best we can take the
13 Commission into the thinking of the company and our
14 view that the past here is prologue.

15 So if we look at what was experienced in the
16 late 2000s, 2006 to 2009, for the industry as a whole
17 -- and by the way, 2009 we'd argue is a component of
18 the record in the sense that the calendar year was
19 included in the preliminary phase investigation and
20 the information, significant parts of it, are
21 reflected in the staff report.

22 But nevertheless, there was a pattern. The
23 industry's, the domestic industry's, response was to
24 meet competition with competition. As we move into
25 the current period of investigation, 2010, 2011, 2012,

1 we see that pattern of competition based on price
2 continuing. Mr. Porter fairly characterized the
3 underselling in the case as being extensive. We think
4 when you correct or recognize level of trade, you'll
5 find that it's much more than extensive.

6 That pattern now had gone from the
7 environment that existed in the late 2000s. So as we
8 move into '10, '11, and '12, now we see traveling up
9 the pyramid. So the part of the markets, those
10 segments were the U.S. industry could play a
11 significant role and capture margin, even the high end
12 of the oil field, were now under assault in a way they
13 had not been under assault in '06, '07, '08, and '09.

14 In '10, '11, and '12, we see a difference. We're
15 losing business in '10, in '11, in '12. You heard Ms.
16 McConnell refer to what was happening at the plant,
17 what she was seeing, and she saw every pound of
18 xanthan gum that went through the plant.

19 And now we have a proof of concept. We've
20 seen what has happened in the wake of the petition
21 being filed. That is evidence of current material
22 injury, and it speaks, as does quite elegantly, the
23 capacity additions by Fufeng to the threat that is
24 also part of this analysis.

25 COMMISSIONER PEARSON: Mr. Dougan?

1 MR. DOUGAN: Just to build slightly on what
2 Mr. Clark has said, you do see -- and as we've
3 presented in our prehearing brief, which I can't
4 entirely get into -- you do see the trend of current
5 material injury, and you do see declines in key
6 indicators. Again, I'm trying to be very careful.

7 What we also see, certainly from the
8 testimony of Ms. McConnell and Mr. Casey, is, as Mr.
9 Clark said, what has happened since the petition was
10 filed. Customers who, you know, were lost long ago
11 coming back, the production increasing -- these are
12 not coincidences. They very much are the result of
13 the filing of the petition.

14 So in a way, that could almost be viewed as
15 a photo negative of a lost sale that, you know, isn't
16 on your record, but occurred prior, but this is a
17 customer who wasn't calling them before June of last
18 year, and now all of a sudden they are again. So in a
19 way, that change in behavior also indicates the
20 behavior that had -- or the injury that had occurred
21 and was occurring, and that they were subject to over
22 the period.

23 COMMISSIONER PEARSON: Right. Mr. Bowman of
24 course had referenced darkness versus light in his
25 discussion of the post-petition effects in the

1 marketplace.

2 In the staff report, do we see evidence of
3 this? Because, I mean, it's not unambiguously clear
4 that things have gotten better for the domestic
5 industry following the filing of the petition, unless
6 -- there may be exhibits in your posthearing
7 submission that you would direct me to. But help me
8 with this one, if you could. Mr. Kanna?

9 MR. KANNA: I think that the issue there is
10 the way that the data has been aggregated, of course,
11 is on an annual basis. And in this investigation, you
12 have a petition that was filed in the middle of the
13 year. So although the numbers as aggregated may not
14 tell exactly the same story, what we've provided you
15 today in our testimony and can provide more of in our
16 posthearing brief is evidence demonstrating that the
17 filing of the petition had a major impact on this
18 market. And as Mr. Clark said, it's a proof of
19 concept in a sense, and it also speaks to the
20 causality of the injury that the domestic industry was
21 experiencing prior to the filing of the petition.

22 That kind of change has only become more
23 dramatic since the provisional measures were put in
24 place. And there is no reason to think that the
25 advances in the market for the domestic industry will

1 do nothing but reverse if those provisional measures
2 are removed and there is not an order put in place.

3 COMMISSIONER PEARSON: Okay. Well, it's not
4 -- Mr. Clark.

5 MR. CLARK: Commissioner Pearson, let me try
6 to just point to just a couple of things that might be
7 indicative. It is a little bit challenging because we
8 are dealing with calendar years. But I think you will
9 observe if you look at the reporting of the numbers on
10 production-related workers that you will see a
11 difference in 2012 than you will see in 2011 or 2010.

12 If you compare the domestic industry's
13 production and the movement of the production numbers,
14 but more importantly the movement of inventory
15 numbers. In particular looking at 2012, what you will
16 see is inventory is being consumed far in advance of
17 the rate of progression, even though as Mr. Bowman
18 testified, production is up quite significantly in the
19 second half of the year.

20 That's indicative of very rapid movements in
21 the market, the market immediately taking up product
22 and having instant demand. That uptick is really
23 reflected in the second half of the year. Because we
24 don't have partial-year data, we can't do a first
25 half/second half analysis. But if you take today's

1 testimony and look at those couple of considerations,
2 2012 versus '10 and '11, you can see the effects of
3 acceleration through 2012, and you could fairly ask
4 yourself what is the difference, primary difference,
5 between 2012, 2011, and 2010. There is a significant
6 event in June of 2012.

7 COMMISSIONER PEARSON: Okay. Thank you for
8 those answers. My time has expired, so allow me turn
9 now to Commissioner Aranoff.

10 COMMISSIONER ARANOFF: Thank you, Mr.
11 Chairman. Thank you to all of this morning's
12 witnesses for being here today.

13 You've given a lot of testimony this morning
14 about improvements that you've seen in the market
15 since the petition in this investigation was filed.
16 Deosen argues that to the extent that we see any
17 improvement in the data that we collected for the
18 second half of 2012, that those don't reflect any
19 effects from the petition because Commerce's
20 preliminary determination wasn't issued until January
21 of 2013, and that that's the first thing that would
22 actually have affected the market. And they therefore
23 argue that the Commission should not give weight to
24 the presumption, the statutory presumption, that any
25 improvements after the petition are results of the

1 filing of the petition.

2 How would you respond to that in terms of
3 how we should be looking at the data from the second
4 half of 2012?

5 MR. BOWMAN: One of the things put in my
6 testimony was around to dispel some of the myths that
7 were in the marketplace. When we filed this petition,
8 there were a number of comments made that CP Kelco is
9 exiting, CP Kelco is going to sell the biogum
10 business, CP Kelco is not committed to the U.S.
11 industry.

12 As we move forward to work with our
13 customers and actually grow our business, what you'll
14 find is we saw customers coming to us asking for more
15 and more product as soon as the petition was filed,
16 almost immediately.

17 We also saw quite a bit of response at the
18 -- about a quarter after the petition was filed into
19 the marketplace with prices from all the Respondents
20 starting to rise quite rapidly. Therefore, as Mr.
21 Viala had said, if you're selling a different shade of
22 product of high value that maybe 20-30 percent of that
23 product can be used less than the commodity or the
24 Respondent's product.

25 If that price starts coming up, the value of

1 that differentiated grade really becomes materialized.

2 And we saw that quite a bit in all the market
3 segments that are on the board. We continue to see
4 customers, and we have an exclusive distributor in
5 North America called Univar. They also saw an
6 increase within the folks asking about the ability to
7 supply, the ability and price that would come into the
8 marketplace, and how we could work closer together in
9 our innovation engine.

10 So we saw it immediately, and that's why I
11 said it's ironic. I would have thought that there
12 would have been a stop point when you file a petition
13 because that's when we saw the impact, almost
14 immediately. We looked at this phenomena -- I think
15 you call it critical circumstances. We felt we -- you
16 know, many of those, as the shift of the burden of
17 being the importer of record from China and Austria,
18 some were shifted into the marketplace to the
19 customers.

20 We saw no need to punish customers
21 potentially of having to pick up those tariffs. We
22 looked at it as we're starting to see the impact
23 already in fourth quarter. And you could see it from
24 our inventory levels dropping. You could see it from
25 our production rates going up. And we had a very

1 robust fourth quarter, one of the strongest fourth
2 quarters we've ever had, which was indicative. And
3 that has translated over into 2013.

4 So from my perspective, this trade order and
5 the investments and the commitment that I got from Don
6 and the board flat out was working, which is exactly
7 what we came here for.

8 COMMISSIONER ARANOFF: Okay. I appreciate
9 those answers. And, Mr. Clark, I would just say that
10 for posthearing, since you're the one who can see the
11 confidential data, if there is anything you want to
12 say about the consistency of what Kelco saw with the
13 domestic industry, the data for the domestic industry
14 as whole, that would be helpful.

15 MR. CLARK: We will do that. Thank you.

16 COMMISSIONER ARANOFF: In the Respondent's
17 briefs and certainly in Mr. Porter's opening this
18 morning, he made the argument that the domestic
19 industry sold larger quantities of xanthan gum over
20 the period of investigation as demand grew in the oil
21 field segment, that the domestic industry was selling
22 larger quantities of xanthan gum into that segment,
23 which has, they said, historically and traditionally
24 been the lowest priced segment of the market, and the
25 result of this shift in product mix would necessarily

1 pull down the domestic industry's operating results
2 and would be unrelated to the presence of subject
3 imports in the market.

4 How do you respond to that assessment of the
5 record?

6 MR. CLARK: It's certainly one possible
7 interpretation of the statistical data from a very
8 high level. But if you break down the record a little
9 bit more carefully, for example, by looking at the
10 individual segments, you'll see very different
11 phenomena occurring across the different segments.

12 In a period of, for example, increasing
13 demand in the oil field segment, there would be no
14 particular reason for price in that segment to
15 decline. But that would be a phenomenon that you
16 would ask, and whether the impact on the domestic
17 industry's performance was more attributable to that
18 than to any phenomenon of dilution of average profit
19 across market segments.

20 You will also see, if you look at the
21 different segments, that given the impact on domestic
22 industry in the non-oil field segments, I think you
23 can isolate a more significant effect from -- trying
24 to be careful on confidential information -- market
25 share phenomenon in the higher margin and higher

1 priced markets that is equally if not as great as any
2 alleged dilution coming through the oil field segment.

3 We can go into this in somewhat greater
4 detail in the posthearing brief. I think another
5 phenomenon you'll see that relates to a point I made a
6 few minutes ago is contrasting the work-off of
7 inventory, and the relative level of pricing that's
8 associated with the runout of inventory as opposed to
9 current production is also a component of what was
10 happening in the rapidly -- the most rapidly growing
11 segment of the market.

12 COMMISSIONER ARANOFF: Okay. For
13 posthearing again, because there is so much
14 confidential information involved, I'm going to have
15 to ask you to look very carefully at the arguments
16 that were raised regarding what was going on in the
17 oil field segment and who at particular times was the
18 lowest price seller in that segment and what was going
19 on with market share.

20 So there is nothing more that I can say
21 about it now except to say that the arguments are laid
22 out in detail in the Respondent's briefs, and it would
23 be helpful to have a point-by-point response.

24 MR. CLARK: Thank you. We will do that.

25 COMMISSIONER ARANOFF: Thank you. When

1 you're looking at the specific pricing products for
2 which the Commission sought pricing data, within those
3 categories, and there were seven categories and then
4 two different channels of distribution, but within
5 those descriptions for the pricing products
6 themselves, are there a range of products that are
7 going to fit those descriptions that might reflect a
8 range or pricing, or is that a fairly narrow category
9 that should have fairly consistent pricing, all other
10 things being equal?

11 MR. BOWMAN: Yeah. Of the seven categories
12 that we started off with -- three, and then it broke
13 to four, and then it went to seven when we came back.

14 Those are very tightly narrowed into the quality
15 specifications and end-use needs that the customer
16 would want.

17 So Mr. Viala had highlighted the use of
18 agglomeration, for example, or sometimes
19 clarification, and then the benefits that you get from
20 clarification.

21 So those market segments are very tight in
22 the specifications and the markets, and the portfolio
23 of products that would be offered in each one of those
24 is extremely tight.

25 MR. KANNA: And if I could just add to that,

1 Commissioner, that what Mr. Bowman said is very, very
2 true, although if you look closely at the description
3 for product six, you'll see that in essence it does
4 function as a basket category. There was a
5 possibility that you might have a somewhat wider range
6 of product pricing in product six, as compared to the
7 other six product categories.

8 COMMISSIONER ARANOFF: Okay. All right. So
9 you would argue that the possible exception of product
10 six, that if we are seeing pricing disparities within
11 what is reported for a particular pricing product that
12 that could not be based on product mix. That would be
13 what we would call underselling.

14 MR. KANNA: Yes.

15 COMMISSIONER ARANOFF: Okay. All right.
16 Let me just ask one last question. The number of
17 purchasers who responded to the Commission reported
18 that there were supply shortages, that there were
19 periods when they felt that they couldn't get what
20 they needed from the domestic industry.

21 Now, some of those come after the filing of
22 the petition, so that's a different situation, and you
23 can set those aside. But with respect to the ones
24 that are referring to earlier periods, why would a
25 purchaser perceive that the domestic industry was

1 unable to supply them, didn't have adequate supply for
2 them in a period where you've told us that the
3 industry had a great deal of excess capacity?

4 MR. BOWMAN: I think we can go back and look
5 at the full period of review, and we look at the
6 ability of the domestic market to be able to supply.
7 When we had -- when customers inquired about these
8 different product lines, both pre- and post- petition,
9 we always look at the specifications and at what the
10 customer needs. And we align those up with our
11 portfolio offering, and then we put it forward.

12 When we had opportunities to bid, if we
13 didn't get the business or supply, there could be a
14 price impact that comes on. But the U.S. industry,
15 when customers have inquired for us, we have supplied
16 material.

17 MR. VIALA: I think back to the purchasing
18 criteria that we talked about earlier, first we can
19 match any customer needs or any specifications on the
20 marketplace, and we had -- and we have the capacity to
21 supply those products.

22 However, we turned down lots of business,
23 unfortunately, because the price that the purchasing
24 agents were requested were not matching our cost
25 structure and were not matching the need that we had

1 to at least cover with some margins.

2 So I think that there is a false perception
3 around us not taking the business versus us not being
4 able or capable of supplying those businesses.

5 COMMISSIONER ARANOFF: Okay. I appreciate
6 those answers.

7 MR. KANNA: May I make one comment here?

8 COMMISSIONER ARANOFF: Oh, certainly.

9 MR. KANNA: I see the vast majority of every
10 inquiry that has come in, especially since the
11 petition has come through. And there has only been
12 one instance that we said we cannot supply you from a
13 U.S. industry, you know, when purchasers were
14 inquiring. And that happened to be a competitor, and
15 it would be in direct violation of our agreement with
16 another distributor in the U.S.

17 COMMISSIONER ARANOFF: Okay. You might want
18 to get the confidential details on that to see if it
19 matches up with any of what the purchasers were saying
20 so we could maybe rule out one particular situation.

21 MR. CLARK: We'll be able to provide details
22 around a number of those instances.

23 COMMISSIONER ARANOFF: Thank you very much.
24 Thank you, Mr. Chairman.

25 COMMISSIONER PEARSON: Commissioner Pinkert.

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

3 Now, Halliburton suggests that there is not
4 in fact intense competition between domestic and
5 subject producers for certain business. I don't know
6 if you can discuss this in the public hearing, but I'd
7 like to have your response to that.

8 MR. SCHKADE: Can you clarify intense
9 competition in your terms?

10 COMMISSIONER PINKERT: Well, again, without
11 getting into proprietary information, all I can do is
12 point out that in your brief you state that there is
13 intense competition between domestic producers and
14 subject producers to sell xanthan gum to certain
15 purchasers. So my question then is what about
16 Halliburton?

17 MR. SCHKADE: I think there is intense
18 competition with all of our customers within the
19 United States. If we're talking specifically
20 Halliburton is intense competition. Our pricing is
21 not as low as what they seek or get from our
22 competition, and thus our business with them is not
23 what we would like it to be.

24 MR. DOUGAN: Commissioner Pinkert, if I may
25 add to that. I think what you were referring is in

1 the allegation that was made, I don't recall there
2 being actual -- there was an assertion, but I don't
3 know that there was actually a citation to record
4 evidence in support of that. And I think that there
5 are certainly evidence on the record from purchaser
6 questionnaires that that would suggest that
7 Halliburton's assertion is not true.

8 MR. CLARK: Commissioner Pinkert, if I may
9 interject. Because of the confidential nature of some
10 of the correspondence that relates to your particular
11 inquiry, we will go into that in very clear detail in
12 the posthearing brief, and what that will demonstrate
13 quite conclusively is for that particular customer
14 there was an ask, there was a bid, there were offers,
15 there were commitments to supply, and the response
16 that came back is we appreciate the offer to supply,
17 but we have found other supply.

18 COMMISSIONER PINKERT: Thank you. Now, in
19 your testimony just now, Mr. Schkade, you referred to
20 your competition, and you said that you weren't able
21 to match the pricing of the competition. I want to
22 ask you very specifically are you referring to
23 domestic competition there, or are you referring to
24 subject import competition?

25 MR. SCHKADE: Subject import competition.

1 COMMISSIONER PINKERT: What about domestic
2 competition? Do you have any comment on that?

3 MR. SCHKADE: Not in this particular case,
4 no, no question. I mean, in general if you're asking
5 about -- what we see in the marketplace is that
6 domestic competition pricing are much higher than the
7 subject producer's prices. And that's across all
8 industries.

9 COMMISSIONER PINKERT: Right. But what I
10 heard you say was that you'd been hurt by your
11 competition in this area. Have you been hurt by
12 competition from domestic production?

13 MR. SCHKADE: Not to my knowledge.

14 COMMISSIONER PINKERT: Any other thoughts on
15 this panel, either now or in the posthearing on that
16 issue?

17 MR. RUBRIGHT: I think if you look at the
18 other U.S. producer, they participate in the lower end
19 segments here, and that's what they target. So I
20 would suspect they have a larger share than we do.
21 Whether or not we can specifically point to where they
22 have taken business from us, we cannot -- most of the
23 business that we see that we've lost has been to price
24 competition from Chinese and Austrian suppliers.

25 MR. VIALA: Let me -- just to add, the only

1 current domestic competitor is ADM. And I would say
2 that they have an approach to the market and a
3 business model which is different from ours. You may
4 have seen some of the commercials, which is the
5 supermarket of the world. That tells very much what
6 they tried to do, meaning they would go to large
7 multinational companies and try to supply a basket of
8 ingredients, while at CP Kelco we try to go and try to
9 solve their stabilization challenges, problem, and
10 sell only hydrocolloid solutions.

11 So we have two different business models,
12 meaning that we serve two different needs, and to
13 different sort of customer mix, if you will. We don't
14 have proteins. We don't have other ingredients. We
15 don't have starch products and all that to offer. We
16 only have hydrocolloids.

17 So we're not approaching the market the same
18 way, and therefore we're not competing head to head
19 either. So it's two different business models that
20 you have there.

21 COMMISSIONER PINKERT: Thank you. That's
22 very helpful. And again, if you can supplement that
23 in the posthearing, that would be helpful as well.

24 Turning to the ability to switch from
25 producing xanthan gum for one market segment versus

1 another market segment, how difficult is it to switch
2 from producing for one of those segments up on the
3 projection to another?

4 MR. VIALA: I would say it's not extremely
5 difficult. Obviously when you run pharmaceuticals,
6 there's a lot of paperwork to fill for the FDA, like
7 CPNs and IPEC regulations. So you have to go through
8 extensive cleanings, making sure that you have some
9 very tight standard operating procedures.

10 So I would say it's not difficult. It's
11 just paying attention to details, cleaning time. So
12 when you get the line down for 2 hours or 12 hours,
13 depending on how extensive the cleaning is, this is
14 obviously lost capacity. So I would say this is more
15 in term of the cost of running those campaigns than
16 the difficulty of doing it, provided you know how to
17 do that, provided you have the right skills and people
18 in place to run a pharmacy GMP campaign. Not
19 extremely difficult, but taking time, I would say.

20 COMMISSIONER PINKERT: Just to see if I
21 understand your testimony, would you say that shifting
22 to pharmaceutical applications involves more of kind
23 of a paperwork challenge than it does a technical
24 challenge?

25 MR. VIALA: That is correct. Again, the

1 functionality that you are trying to achieve is the
2 same. So the process is not fundamentally different.

3 Now, obviously, the standard operating procedures,
4 the testing protocols, the paperwork, the supplier,
5 the traceability, all that is more complex. But
6 fundamentally in term of the manufacturing process
7 itself, it's not that different. The quality
8 assurance program is a lot different obviously.

9 And I would also add maybe one point quickly
10 on that. It's not because you are running oil field
11 product that you don't care about contamination. Let
12 me explain why. I say that the bacteria is kind of
13 the centerpiece of the process. Obviously, you want
14 these *Xanthomonas campestris* to grow, but not any
15 other competitive organism. And why is that? It's
16 because you want as much xanthan gum as you want at
17 the end of the process, and you don't want other
18 bacteria to eat up your sugar that you're paying for,
19 and also that causes issues in recovery, in
20 precipitation and all of that because they also
21 produce other products.

22 So running clean in any fermentation, in any
23 biotech products is key whether you produce product
24 that go in form of food and regulated industry, or
25 whether you want to go in industry in an oil field

1 because that drives your productivity as well.

2 So all these attention to detail is key.

3 All the sterilization is key. And when you run an oil
4 field batch, you also sterilize the fermenters because
5 you want them to be clean.

6 COMMISSIONER PINKERT: Thank you. Thank
7 you, Mr. Chairman.

8 COMMISSIONER PEARSON: Commissioner
9 Johanson.

10 COMMISSIONER JOHANSON: Thank you, Mr.
11 Chairman. As you all have explained today, the number
12 of producers in the United States has declined in
13 recent years. I believe it's from six to two in the
14 past several years. And I know that you all attribute
15 that to imports. But have other factors led to the
16 exit of some players from the U.S. market?

17 MR. RUBRIGHT: Not that I'm aware of.

18 COMMISSIONER JOHANSON: Because we had seen
19 this -- this has been fairly common throughout the
20 U.S. economy, that the number of -- it's due to
21 consolidation, et cetera, but you attribute it solely
22 to imports.

23 MR. RUBRIGHT: Yeah. The period that we
24 have been talking about since 2006, there were four
25 down to two. One of those three was -- one of those

1 two that's shot was impacted because we canceled a
2 tolling agreement with them that they were
3 manufacturing for us. And we know why our volumes
4 went down.

5 So 50 percent of that leading of the market
6 happened because of that one issue.

7 COMMISSIONER JOHANSON: Yes, Mr. Clark?

8 MR. CLARK: Just one other observation. You
9 have in the staff report and on the record from the
10 preliminary phase a domestic producer's questionnaire
11 from Tate and Lyle, where they have described their
12 circumstances.

13 COMMISSIONER JOHANSON: Okay. Thank you. I
14 recall that. Thank you. The Petitioner's brief at
15 page 6 discusses how the food and beverage end use for
16 xanthan gum has declined over the period of
17 investigation. Could one of you all please elaborate
18 as to why that is the case? And that is page 6 of
19 your brief.

20 MR. BOWMAN: The use of -- I'm sorry. The
21 use of xanthan gum in processed foods as a whole
22 globally is actually increasing quite a bit. But when
23 you actually look in some of the new products that are
24 coming out right now, the benefits of xanthan gum in
25 the U.S. market, we've actually seen some erosions in

1 certain new product launches. It's actually below,
2 quite below, the rest of the world.

3 And so when you're seeing a lower uptick in
4 the use of xanthan gum in those labels, that's
5 directly reflected into those new product launches.

6 COMMISSIONER JOHANSON: Do you know -- I
7 guess Mr. Clark.

8 MR. CLARK: Just it's a very minor point of
9 clarification, but what we described there is that the
10 food and beverage market as a share of apparent
11 consumption --

12 COMMISSIONER JOHANSON: Okay.

13 MR. CLARK: -- has declined, which is -- the
14 point is still fair. That's a reflection of the
15 overall growth in the market -- there has been
16 discussion previously -- of oil field. It's not to
17 suggest that beverage, food and beverage, was a
18 declining market, but as a share -- as a segment, it
19 was not as dominant a segment as it had been.

20 It is obviously a critical segment for us,
21 and you can see in the record what has been the
22 domestic industry's performance in that and the other
23 segments, and we did comment on that in the brief as
24 well, and that has a significant effect going to one
25 of Commissioner Aranoff's earlier questions about the

1 overall profit performance of the industry over the
2 period of investigation.

3 And we can -- we will break that out for you
4 so that it will be quite illustrative of what happened
5 over the period of investigation. We'll do that in
6 confidence in the posthearing brief.

7 COMMISSIONER JOHANSON: All right. Thank
8 you. You know, now looking at this again, I realize
9 that I didn't read as well as perhaps I should have.
10 But thank you for the clarification there. That helps
11 out.

12 To the extent that you all can discuss this
13 in this public hearing, could you all please discuss
14 the differences in sales among the food and beverage,
15 pharmaceutical, consumer, industrial, and oil field
16 applications? In other words, what the process is
17 selling those to customers, how they differ.

18 MR. VIALA: I can start on that. What we do
19 most of the time -- and again, it will depend on the
20 business model. I will describe how we do that in CP
21 Kelco. It may be different as well. We don't come
22 and ask for a set specification for a competitor and
23 say give me that, and I will match the product and
24 give you a price.

25 We try to understand and go to former

1 customer, and then we say our new suspension and
2 biotech in a product that goes -- and that will be the
3 concentration, and that is the suspension challenge
4 that I have. There are a lot of the other ingredients
5 in the formulation, so we then come to recommend a
6 hydrocolloid that may or may not be xanthan gum, that
7 often in that case will be xanthan gum, because of the
8 functionality requirement.

9 So we provide a solution and then we pick up
10 the best product. So we say that xanthan gum because
11 it has the functionality that you want. Now let's
12 discuss about your manufacturing plant and
13 capabilities, and then we provide the best grade of
14 xanthan gum.

15 Price would then come but will come after
16 the technical solution is divided. And all of the
17 team that's reporting to Mrs. Kelly do have a
18 technical background actually and technical
19 understanding so that they can have this dialogue with
20 customers. If it's complicated, it will go to our
21 laboratories and we can help as well.

22 So this dialogue happens, and that's how we
23 sell in most of the industries actually. We provide
24 more solutions than just product if you will. Now
25 what we saw happening is while you do all that, you

1 are going through the approval process, you work,
2 you're giving the support for the customer to launch.

3 We then had some of our, and the Respondent here in
4 this case here, come in and say give me the name of
5 the product from CP Kelco or give me a specification.

6 I can match that. And I'll give you a best price.

7 But that's a different business model, I
8 would say. SO I described it how we do it in CP
9 Kelco, and our model is fairly consistent across our
10 industry, actually.

11 COMMISSIONER JOHANSON: And that's with all
12 segments of the market.

13 MR. VIALA: Yes.

14 COMMISSIONER JOHANSON: Okay. Thank you.
15 How should the Commission assess the vulnerability of
16 the domestic industry in light of continuous growth in
17 apparent U.S. consumption and projected, although not
18 certain, continued growth and demand for xanthan gum
19 in the United States?

20 MR. CLARK: The vulnerability of the
21 domestic industry is best assessed by looking at its
22 financial performance over the entire period of
23 investigation, including the trends as you move
24 through that period of investigation. Obviously, that
25 picks up and includes an improving performance post-

1 petition, so part of your analysis will be to imagine
2 if the petition had not been filed, how the trends,
3 apparent consumption might easily have continued on
4 the same trajectory, but participation in that
5 increase, you could imagine based on the testimony and
6 the evidence of record would be different. And that
7 would be indicative of what the counterfactual trend
8 would be without the case, and looking at the
9 vulnerability of the industry, so a situation where,
10 for example, there was significant excess capacity,
11 inventories were quite high, inventories had been
12 growing over the period of investigation, production
13 was on the whole relatively flat.

14 If there had not been a petition, those
15 vulnerabilities would look very different. We would
16 maintain that those trends that had been going down
17 would have accelerated and would have fallen much more
18 sharply.

19 That's the industry that will exist if there
20 is not an affirmative determination. That's the
21 measure, we maintain, of vulnerability in an
22 environment where the evidence of record is that price
23 is a determinant. While we've talked about different
24 characterizations that everything matters except
25 price, when you look at actual points of competition,

1 our experience is that price is the ultimate
2 determinant of when sales are made, even selling to
3 incumbent customers we've been doing business with for
4 many years.

5 That's the expression of vulnerability for
6 the industry.

7 COMMISSIONER JOHANSON: All right. Thank
8 you. Yes.

9 MR. DOUGAN: If I may just add to that. One
10 other thing that you may want to look at in terms of
11 vulnerability is the sustainability of the current
12 level of investment in the capital equipment and
13 assets of the industry. And I can't go into too much
14 more detail, but basically look at those trends and
15 the relative relationships with some of their
16 financial indicators.

17 COMMISSIONER JOHANSON: Yes, I recall that,
18 now that you bring that up. Thank you. And my time
19 is -- I don't have a lot of time left, but I had a
20 very basic question, and this is probably best
21 answered by Mr. Viala. And thank you again for
22 demonstrating the product here today.

23 In the use of -- as an oil field lubricant,
24 does xanthan gum basically make the residue when
25 you're drilling rise to the top or -- I'm trying to

1 figure it out. I know this is a very basic question,
2 but exactly what this product does in oil field
3 applications.

4 MR. VIALA: It will suspend -- and I will
5 describe a very generic --

6 COMMISSIONER JOHANSON: Okay.

7 MR. VIALA: -- application. But you have
8 part of the drilling that will have very high sheer.
9 So it's important there that you have very --

10 COMMISSIONER JOHANSON: High shale?

11 MR. VIALA: Sheer.

12 COMMISSIONER JOHANSON: Sheer, okay.

13 MR. VIALA: Very little viscosity. And the
14 sheer thinning property of xanthan gum will make that
15 at the head, for example, you will have very little
16 viscosity. It's like water essentially. So you will
17 not block it, and it will be easy to drill.

18 However, at the back end of it, you want the
19 rocks and the piece of rocks to be suspended so that
20 you can remove them, and they don't stay there. So
21 again, you want it to be easy to drill, that follow
22 viscosity where you have high sheer. And you want
23 high viscosity when the product is more at rest so
24 that you can suspend the particles and help removing
25 them.

1 So in a nutshell, if you will, close to the
2 surface, you want to suspend the beads to where you
3 see that. Close to the head of the drilling you would
4 like to flow the way it was on the one in the middle.

5 And that's this difference in viscosity, depending on
6 the sheer you apply. That is key to the drilling.

7 Again, at rest, you want to suspend. When
8 it's high energy and you're drilling, you want no
9 viscosity because you need to move quick and go into
10 the rocks. That's the fundamental property of xanthan
11 gum. Plus then you want stability because very often
12 you've got high salt system when you go deep. And you
13 have those moments which because of ions you don't
14 want that to degrade easily. So the stability of
15 xanthan gum combined with this special biology makes
16 it a unique product for oil feel application.

17 COMMISSIONER JOHANSON: Thank you. That
18 brings it to life to me. I actually -- I'm interested
19 in this personally. In college, I took a course in
20 petroleum engineering. I had to take an engineering
21 course. I took that, and I actually did very well.
22 But I'm quite surprised.

23 But it does help me to understand exactly
24 what this product is used for. I have to tell you,
25 it's a very unique product, used in everything from

1 toothpaste to baked goods to pharmaceuticals to oil
2 field equipment, as an oil field application as well.

3 So this has been quite interesting for me to learn
4 about. Thank you.

5 MR. VIALA: That's what makes it very
6 interesting.

7 COMMISSIONER JOHANSON: Right. Thanks a
8 lot.

9 COMMISSIONER PEARSON: Commissioner
10 Broadbent.

11 COMMISSIONER BROADBENT: Thank you. I guess
12 this is for Mr. Clark, just trying to hone in on the
13 volume arguments you're making. We've sort of seen
14 limited net shifts in market share overall. And can
15 you kind of summarize how you're advising us to look
16 at this? We sort of drill down into certain segments
17 and see displacement, or --

18 MR. CLARK: That -- and this has to be done
19 on the confidential record. But if you see different
20 market share performances by market segment --

21 COMMISSIONER BROADBENT: Right.

22 MR. CLARK: So if you take the overall trend
23 -- if you take apparent consumption, and instead of
24 treating it for xanthan gum as an entirety, you look
25 at the individual market segments where you have

1 information, you see different trends at very specific
2 points of competition. And when you look at those
3 particular instances, you see different volume
4 effects. You see very significant price and volume
5 effects that are correlated in time.

6 COMMISSIONER BROADBENT: And that wouldn't
7 argue for a different domestic product definition.

8 MR. CLARK: It would not argue for a
9 different domestic product definition because, for
10 example, going to a point that Mr. Viala made earlier
11 when he was making the demonstration, and also looking
12 at the hierarchy, the so-called value triangle.
13 Production that is in the case of CP Kelco targeted at
14 any of the higher segments of the market is perfectly
15 available for sale to oil field, to industrial, to any
16 of the less regulated or less purity demanding
17 specifications.

18 There is no significant cost differential.
19 Even if we take the most demanding application,
20 pharmaceutical, going to Commissioner Pinker's
21 questions, the differences there are fundamentally
22 recordkeeping and traceability questions. So they're
23 an overlay to the production, but the production
24 process is undifferentiated.

25 So we see no difference in the cost or

1 production, but we have the ability to move volume
2 into the less demanding segments of the market.
3 Conversely, it is harder to move up unless you are, as
4 Mr. Rubright described, producing this very large bell
5 curve of production, in which case you can find at the
6 edges of the bell curve product that can be sold into
7 the more demand segment.

8 So simply by being a volume producer without
9 regard to targeting specifications, you will generate
10 product that has utility and meets higher
11 specifications.

12 So we have the ability to move down. What
13 that means is a company like CP Kelco that is
14 targeting a range of different specifications, all of
15 whom are demanding, we always will have the ability to
16 sell into a less demanding application without paying
17 a cost penalty because there is not a cost or
18 production difference where we are producing. And
19 that's why we would say that as we -- if you imagine a
20 situation where you have a cost volume effect in the
21 demanding markets, but because of the prevailing price
22 and the history we've described in oil field, you no
23 longer have the ability to dispose.

24 You see the phenomenon that Ms. McConnell
25 testified to of 2010, 2011. Warehouses are filling

1 up. It's not for lack of quality product. It's for
2 lack of a price market. And in instances where -- in
3 those segments where there was some ability to
4 increase price, you will see a volume effect
5 associated with that price increase. And we'll go
6 into that and be able to illustrate it in detail
7 posthearing.

8 COMMISSIONER BROADBENT: Okay. This is
9 probably for Mr. Rubright and maybe Mr. Bowman. The
10 testimony has been very helpful to me this morning.
11 I'm still trying to kind of measure the importance of
12 price in this market, given all that you have said
13 about non-price factors. You've made it clear that
14 you consider price to be the primary differentiating
15 factor, but you also expressed a lot of pride in the
16 principles of your product quality, safety, and the
17 goals that you work for at Kelco.

18 You referred to the Austrian product as
19 having this western quality, but Chinese pricing. And
20 I think, Mr. Rubright, you referred to a purchaser's
21 decision to shift away from your product as frankly --
22 shift away from your product as a dangerous decision
23 to go to the lower-priced Chinese product.

24 These statements square with substantial
25 minorities of purchasers -- and this is sort of a

1 substantial minority of the folks that we interviewed
2 in our staff report. It did say that the U.S. product
3 is superior, and it prioritizes non-price factors.

4 What can you say about the Chinese quality?

5 Do they meet your standards really, or do they not?

6 And how do you see your purchasers viewing the quality
7 versus price in the priority of how they make their
8 decision to buy from you?

9 MR. RUBRIGHT: I can talk to that from a
10 perspective of what we do in operations versus what we
11 have seen in their operations. And given our high
12 standards, we see it as a risk if someone is going
13 into, say, the food grade application or
14 pharmaceutical grade application.

15 Without going into any specifics around that
16 here, I think some of those risks are real, and I
17 think in terms of the risk factors versus pricing that
18 people see in the market, perhaps some customers are
19 willing to take that risk because of the economics
20 around the gap between some of our pricing and some of
21 the import pricing.

22 MR. VIALA: Just summarizing, the
23 functionality is the same, but the product
24 certification and the quality management systems are
25 different.

1 MR. BOWMAN: And to Don's point, the number
2 of times our brands in many cases here, the Keltrol,
3 the Kelzan XCD brand, we pioneered this industry.
4 We've written most of the specifications. We've
5 worked with different governments, not only in the
6 U.S., but around the world on the specifications. So
7 we have quite a bit of gravitas from the standpoint of
8 what the product should look like and how it should
9 behave.

10 We've seen Chinese material that can behave
11 equally as good as the domestic product. It's the
12 shortcuts, as Mr. Rubright said, that can get
13 concerning. But the bacteria, the Xanthomonas
14 campestris, this whole realm around biotechnology is a
15 fantastic manufacturing engine. It does its job.

16 MR. DOUGAN: If I just may add, the
17 purchaser responses also do I think speak to this a
18 little bit in the broad acceptance of the quality of
19 the Chinese product and its interchangeability with
20 the U.S. Twenty-one out of twenty-six responding said
21 that there were no applications where only the U.S.-
22 produced xanthan gum could be used. And 15 out of 23
23 said that there was absolutely no quality issue. And
24 17 out of 24 said that Chinese imports were always or
25 frequently interchangeable with the U.S. product.

1 So there are fairly sizable majorities
2 seeing, you know, little difference, if any.

3 COMMISSIONER BROADBENT: Okay. Me.
4 Rubright, what can you tell me about sort of the cost
5 structure of your experience producing in China versus
6 what is going on in Europe versus the U.S.?

7 MR. RUBRIGHT: Yeah. Go back to our
8 acquisition of the Wulian, China operation in 2005.
9 We bought that plant with the idea -- and I was not
10 there at the time, so I'm giving you the history that
11 developed in 2006. And the idea was to be able to buy
12 a low-cost China facility and compete head on with the
13 Chinese.

14 The stated cost per unit there was
15 comparable to the Chinese cost per unit when we bought
16 that operation. On the due diligence side, once in
17 that operation, we saw some issues, both in terms of
18 how they were perhaps accounting for some things, but
19 also in the structure of the plan. They had things
20 like big piston compressors that frankly were unsafe.

21 We had one actually blow up and almost kill one of
22 our employees, required extensive brain surgery to
23 save his life.

24 So we went about replacing all of those. We
25 had serious foundation issues underneath the

1 fermenters that we found were crumbling. We had to
2 rebuild all the foundations underneath those
3 fermenters. And as we did that, we found a pipe
4 underneath the ground that was diverting wastewater
5 directly to the river at times of production because
6 the waste water treatment facility could not properly
7 support the throughput in the plant when it was
8 operating at full capacity.

9 We also found an open -- what we call an
10 open precipitation system, which allows alcohol vapors
11 to be open, and any spark could set off an explosion
12 in the plant. We know for certain there had been such
13 explosions in Chinese plants that make this product.

14 So we invested heavily to go to what we call
15 closed precipitation systems, which eliminate that
16 risk in the factory. So after you make those
17 investments and you go to proper compliance levels,
18 you start to see the cost change significantly. We
19 also made sure that we were working hard on the raw
20 material supply to make sure that, you know, food
21 safety was of paramount concern to us.

22 So our standards, our one global standards,
23 set of standards, require that we do this. And I will
24 tell you our shareholders are more concerned about
25 environmental concerns or food safety concerns often

1 than they are about the performance of the business,
2 which I know sounds strange in today's environment,
3 but it's factually true.

4 So that set of standards stems from the
5 family directly, and they enforce that on us and
6 demand compliance. The fact that that pushed our cost
7 up -- when we were done with all those changes, it
8 actually doubled our cost -- really created a
9 situation where we could no longer compete in the U.S.
10 market on a direct import basis out of the China
11 facility.

12 So what we did is what we always do. We
13 tried to -- we started down the innovation path, so we
14 have implemented a high performance xanthan gum that
15 has much higher viscosity and much higher hydration
16 rates than some of the other products that you
17 typically see in the marketplace, and that product was
18 just launched about two years ago and is slowly
19 building acceptance globally in the marketplace,
20 including the U.S. market. But it is much higher
21 priced than the China imports or the Austrian imports,
22 for that matter.

23 The other thing we have done is we have
24 created some proprietary products around non-xanthan
25 products that also utilize fermentation, and that

1 product is doing quite well in the cementing
2 application side of the oil field business. So we are
3 still competing in the U.S. oil field business through
4 a non-xanthan product. So we had to reconfigure the
5 plant to remain competitive in the oil field in the
6 U.S. market.

7 As to the Austrian side of the equation, I
8 am less familiar with that, although I know that I
9 believe they play in a much higher level of
10 participation than food, in the higher level
11 application spaces. And I know they have a solid
12 business in Europe, where the standards are quite
13 demanding.

14 So I would expect that their standards would
15 be as stringent as the U.S. standards and what we try
16 to comply to.

17 COMMISSIONER BROADBENT: So when you were
18 reaching compliance, was this Chinese regulations that
19 you were complying with, or were these domestic? I
20 mean, were these sort of internally driven standards
21 or --

22 MR. RUBRIGHT: These were internally driven.
23 We call them one global standard in CP Kelco. So we
24 do not acquiesce to the local requirements. We often
25 go beyond that based on what we see as the one global

1 standard, especially when it comes to safety and
2 environmental, where, you know, our safety record and
3 what we do to try to protect employees -- we're in the
4 top quartile of our industry, and we're proud of it.

5 COMMISSIONER BROADBENT: So is it your sense
6 the Chinese were skirting these standards?

7 MR. RUBRIGHT: I cannot say that. I'm sure
8 they can create documentation that says they are in
9 compliance.

10 COMMISSIONER BROADBENT: And then you sold a
11 plant in Europe, right, and are now planning to export
12 from the U.S. to serve that market?

13 MR. RUBRIGHT: We actually did shut that
14 plant in 2008.

15 COMMISSIONER BROADBENT: And what was the
16 reason for that?

17 MR. RUBRIGHT: The scale was subscale, and
18 we did not -- and after we pulled back in terms of our
19 equipment to the oil field market because of the
20 import prices, we knew that we would not need the
21 capacity. So we wanted to leverage out the capacity
22 in the Okmulgee, Oklahoma facility to make sure that
23 we run at -- the economics around a biofermentation
24 operation like this, if you go below a certain level
25 of throughput, then your costs ratchet up quickly.

1 And so we needed to consolidate some of our
2 capacity in order to maintain the economics of the
3 plant.

4 COMMISSIONER BROADBENT: Okay. I'll follow
5 up later. I'm getting the hook here from my
6 colleague.

7 COMMISSIONER PEARSON: Mr. Rubright, I would
8 just comment, having had some experience myself with
9 companies that apply global standards in multiple
10 markets, it can be a real challenge, and I salute you
11 for insisting on this within CP Kelco.

12 I would just observe that I think there have
13 been instances where bringing higher standards to a
14 market that was not accustomed to them does have the
15 affect over time of raising the standards overall, to
16 the benefit of the people and the environment in those
17 countries. So keep at it.

18 MR. RUBRIGHT: Yeah. I would add that we
19 have received awards from local governments for those
20 efforts, as a model for the rest of the industry in
21 the area.

22 COMMISSIONER PEARSON: Right. In Exhibit 4
23 of its prehearing brief -- and this will be a question
24 only for those who have access to the confidential
25 record. But Exhibit 4 of its prehearing brief, JBL

1 brings our attention to pricing differences between
2 the two domestic producers. And this involves the
3 pricing -- the quarterly pricing products.

4 Now, I'm curious. What explains those
5 differences that they point out, and are those
6 differences significant in the context of this
7 investigation? I understand that part of the response
8 might have to be post-hearing, but whatever you can
9 tell me, Mr. Dougan.

10 MR. DOUGAN: I think this will largely have
11 to be addressed in the posthearing. There are things
12 in my head that I'm thinking of saying, and I'm not
13 sure at the moment whether I've, you know, gotten them
14 through public or confidential channels. So I want to
15 be careful. But I will definitely provide a detailed
16 answer with the posthearing.

17 COMMISSIONER PEARSON: Okay. And in those
18 quarters in which we do see some differences in
19 pricing for the same products, should we analyze them
20 as examples of underselling in the same way we do with
21 -- when we look at the pricing of imported product
22 versus domestic product? And the question being, in a
23 given quarter is the fact that on domestic firm might
24 have a lower price than the other, is that perhaps
25 suppressing the price of the other firm? How do we

1 analyze all that?

2 MR. DOUGAN: My response to that would build
3 on something that Mr. Schkade said earlier in his
4 testimony, which is, you know, in his experience --
5 and he sees just about everything that goes through CP
6 Kelco from a sales perspective -- that they're not
7 competing or hearing about prices from their domestic
8 competitor.

9 So in that sense, those aren't -- that
10 wouldn't be underselling. It's not impacting what
11 they're able to charge for their product.

12 COMMISSIONER PEARSON: Okay. Well, of
13 course, Mr. Schkade hasn't seen Exhibit 4 of the --

14 (Laughter.)

15 COMMISSIONER PEARSON: But those of you who
16 have seen it, explain it to us as best you can in the
17 posthearing because I'm wrestling with it, and, you
18 know, it's not an issue for every product, for every
19 quarter, but for those instances that they brought to
20 our attention, I'm trying to understand how to analyze
21 it.

22 MR. DOUGAN: Will do.

23 COMMISSIONER PEARSON: Then why do we see
24 some apparent difference between the performance of
25 U.S. producers in the U.S. market compared to export

1 markets? You know, the performance seems to be
2 somewhat different, and I think I'm probably not going
3 too far to say that the export market appears almost
4 to have been a better market for domestic producers
5 than the domestic market. Why is that?

6 MR. VIALA: We -- and again I want to be
7 careful on that, and we'll go in further details in
8 the posthearing. But we have and we are the
9 producers, always looking for a new way to pioneer the
10 use of xanthan gum. And when you open up new market
11 segments for xanthan, because there is a new need, and
12 you go from, say, petroleum-derived thickeners that
13 are not biodegradable to xanthan gum, which is fully
14 biodegradable, then you can command higher margins
15 because you're the first comer in that segment, and
16 you worked to get all these customers. That's why we
17 have managed to do an export market, and we increased
18 the volume for those segments as the first mover, and
19 we have been enjoying the first mover advantage in
20 terms of pricing and margin there.

21 So I would say that's a result of our
22 strategy. That was a response to us having to sort of
23 survive and move away from the U.S. domestic market.

24 So we'll give example in the posthearing
25 that I don't want to give here, obviously. But you

1 see that we have had some successes and large volume
2 successes.

3 COMMISSIONER PEARSON: Okay. Do the subject
4 importers, when they are competing with you in third
5 country markets, do they compete less robustly in
6 those markets than they do in the United States?

7 MR. VIALA: Sometime they don't even know
8 about those markets, and that's why I have to be
9 careful.

10 (Laughter.)

11 MR. RUBRIGHT: There are also some markets
12 where certain suppliers of material have not been
13 welcome, especially on the food side of the business.
14 We are concerned about food safety and about what
15 might be there in the product. And so they have been
16 very slow to adopt other suppliers' recommendations.

17 That said, at some point, our concern is if
18 we stop our innovation -- and we are the innovator in
19 this market -- and we create markets, and then the
20 lower pricers come in take the high volume segments
21 out from under us, if we're not there to innovate,
22 what happens to the industry? And that is of real
23 concern to us because this is the base camp here, is
24 the U.S.

25 But if that volume becomes large enough, and

1 the U.S. producers and the one innovator in the
2 industry disappears, then what goes on from there is
3 of concern.

4 MR. BOWMAN: Yeah. To Mr. Rubright's point,
5 we see some innovation historically. The U.S. and
6 parts of Europe were the foundation of new products,
7 especially consumer-based products. But we're seeing
8 quite a bit of that growth in other parts of the world
9 in which they have been working with us on these new
10 grades, and specific products where they could launch
11 new products.

12 A product might be developed in the U.S., in
13 the Midwest, but then launched in Asia, which we have
14 formulated it here, but then it has been shipped in
15 other parts of the world.

16 We also see quite a bit with the expansion
17 in the U.S. about pushing price down to expand these
18 channels, more emphasis in price here and innovation
19 in other parts of the world. So that also kind of --
20 it builds upon what we see in this export model that
21 you might see in the gross combined with noticeably
22 being slammed into Okmulgee.

23 MR. CLARK: I was going to offer one other
24 comment, really picking up on one of Mr. Rubright's
25 remarks from earlier. The United States is the

1 world's largest xanthan gum market. The Chinese
2 producers, the leading producers, Hoofing and DSNR,
3 are the world's one and two largest producers.

4 So it's therefore critical for every
5 producer to have a presence in the U.S. market. This
6 is the largest market, and it is a demanding market.
7 At every segment, we have significant customers, and
8 they are exacting, and they are demanding. So it's an
9 important market to participate in. The company CP
10 Kelco's experience in 2010 and 2011, as Mr. Rubright
11 explained, was one where it seemed that the Deosen and
12 Fufeng were committed to eviscerating one another and
13 using the U.S. market as the playground for that
14 particular night fight. And that was very much at the
15 expense of the domestic industry, and I think your
16 underselling analysis over the period of investigation
17 is indicative of that experience.

18 COMMISSIONER PEARSON: Okay. Well, shifting
19 gears, I recognize that ADM is not here today. I
20 assume that there have been some discussions with
21 them. Are you able either now or in the posthearing
22 to give us some understanding of what their thinking
23 is? Does it reflect their different business model
24 that they're not here to participate in this case?

25 MR. BOWMAN: Well, I believe if you look at

1 the size of ADM's xanthan gum business to the size of
2 Arthur Daniels Midland, if you took a look at the size
3 of the xanthan business to CP Kelco, this is our
4 business.

5 I'm not sure it's a rounding error, but it's
6 quite small, whatever the contribution of xanthan gum
7 is to Arthur Daniels Midland. We're here because of
8 the leadership that we've brought forward in
9 pioneering, establishing the xanthan gum, which is one
10 of the first major biotechnology industries from an
11 industrial scale in the world and also in that level
12 of innovation which we keep funding through.

13 So from a standpoint of where we sit, that's
14 why we're here.

15 COMMISSIONER PEARSON: Okay. Another
16 question related to ADM, again for the posthearing.
17 Do you know anything about how that company might have
18 fared in this product line post-petition? What have
19 been the effects of the petition on ADM? Because you
20 have information about CP, but can you get anything
21 for us on ADM?

22 MR. SCHKADE: What we've heard is that
23 they've had the same type of increasing inquiries as
24 we have, as far as after the petition was filed. And
25 therefore we understand that they've increased their

1 sales domestically as well since the filing in June of
2 2012.

3 COMMISSIONER PEARSON: Okay. Well, if
4 you're able to say anything in the posthearing, please
5 let us know.

6 My time has expired, so Commissioner
7 Aranoff.

8 COMMISSIONER ARANOFF: Thank you, Mr.
9 Chairman.

10 In the prehearing brief for Petitioner, your
11 pricing injury argument is based mainly on a price
12 suppression theory that the domestic industry was not
13 able to raise its prices sufficiently in the fact of
14 rising costs to maintain its profitability.

15 According to the record, though, a
16 significant portion, and perhaps the largest portion
17 of the relevant cost increases, are not raw material
18 costs or energy costs that are largely out of a
19 producer's control, and they are not labor costs, but
20 they are other costs which one might argue, and
21 Respondent's do argue, were voluntarily undertaken
22 based on management decisions, but were not
23 necessarily required.

24 In such a case, should the Commission view
25 the inability to raise prices sufficiently to maintain

1 a certain level of profitability in the face of rising
2 costs as price suppression by reason of the subject
3 imports or by reason of some other cause?

4 MR. CLARK: Commissioner Aranoff, our view
5 is that the -- while we see the argument that has been
6 made, we think that it is incorrect to characterize
7 these cost increases as reflecting casual decision-
8 making or business decisions that are at some level
9 disconnected from the production and sale of not just
10 xanthan gum, but you will recall that CP Kelco
11 produces a range of different products across a number
12 of different plants.

13 There was a verification by the department
14 staff of our questionnaire response, and you have the
15 information that emerged from that verification.
16 Other portions of CP Kelco's business performed and
17 have performed throughout the period of investigation
18 quite well, including in 2012. And that performance
19 drove levels of recognition that were due the
20 employees of that business, and it is under normal
21 accounting, including the Commission's form of
22 accounting, appropriate to allocate that across all
23 lines of business.

24 One of the other allegations that was made
25 is that there was a decision -- and we'll go into this

1 greater detail in confidence, of course. But there
2 was a decision made to voluntarily increase a form of
3 internal pricing. You heard Mr. Rubright refer to the
4 very significant effort that was made to bring the
5 Wulian plant up to CP Kelco's standards. Because
6 operating at that standard there was no ability to
7 sell even at cost into the oil field segment, so we
8 therefore innovated and created the advanced
9 performance product.

10 When that product is sold into the United
11 States at a higher cost and at a higher value,
12 compliance with the normal laws of customs valuation
13 and transfer pricing for Internal Revenue Services
14 purposes will cause there to be a an increase in
15 declared value and in transfer price.

16 So what you have here is a phenomenon that
17 does not explain at all that there is a cause other
18 than subject imports for CP Kelco's inability to raise
19 price sufficiently to cover the complete range of
20 increasing costs.

21 MR. DOUGAN: If I may add to that, and when
22 Mr. Clark says complete range of increasing costs, I
23 think the Commission should also consider that it's
24 not only the range of increasing costs that might
25 appear, say, on the P&L, but also in the press

1 releases announcing the price increases that were at
2 least attempted or announced, if not gotten.

3 It not only mentioned rising raw material
4 costs, but also a strategic desire to make investments
5 in innovation and capital equipment and capacity to
6 allow for continued growth and innovation by the
7 domestic producer. And I think if you -- as I
8 mentioned to Commissioner Johanson before, if you look
9 at the CAP-X relative to depreciation of this industry
10 over time, you'll see that that additional investment
11 is needed.

12 And so the inability to raise prices
13 sufficiently because of the dumped imports is not only
14 reflected in a cost-price squeeze, but also in its
15 level of investment and capital equipment.

16 COMMISSIONER ARANOFF: Okay. That's an
17 interesting answer because that's not usually the
18 first place that the Commission looks when we're
19 looking at price suppression. As you know, we're just
20 usually looking at the COGS to net sales ratio. And
21 then the second piece of that is that the statute
22 says, you know, we need to find that price increases
23 that otherwise would have occurred have not occurred.

24 Now, we've got a situation where demand has
25 been improving overall during the period, and we have

1 evidence of generally rising prices. I know that's
2 not consistent with the personal experience that some
3 of you have expressed, but that's what is on our
4 record. And based on the profitability data that we
5 have, based on the way the Commission generally looks
6 at price suppression in the costs that we look at
7 seemed to be largely covered.

8 So we're left with this question of what
9 price increases otherwise would have occurred? What
10 is there on the record that suggests that there should
11 have been more price increases than what was seen.

12 Now, I take the one answer is that we should
13 look at what was going on on the investment side. Is
14 there anything else that we should be looking at?

15 MR. CLARK: The answer, Commissioner Aranoff
16 is no. The record is complete in terms of the
17 reported costs. But you'll recall two points, that
18 Mr. Viala made the first one. And you saw it captured
19 also in the ideo clip.

20 This is a very capital-intensive industry.
21 Mr. Rubright made multiple references to the lack of
22 sufficient economic reinvestments, a rationale for
23 economic investment in the business for it to sustain
24 over time.

25 So it is not an issue of simply carrying

1 marginal cost in the short term. In order for the
2 business to succeed, in order to move into an
3 environment in which we can go from having two
4 operating lines in Okmulgee to filling the plant, we
5 need to have price stability. We need to have prices
6 no longer declining.

7 That puts us in a position to make the
8 investments that are necessary. If we cannot capture
9 price increases in order to fund investment and
10 reinvestment, then the fate of a biotechnology
11 business, which is what this is, extremely capital
12 intensive with a very expensive workforce of
13 scientists, geneticists, biologists, and technicians
14 does present somewhat of a different scenario than
15 you've seen in some cases.

16 COMMISSIONER ARANOFF: Okay.

17 MR. DOUGAN: And if may add one other thing,
18 the reflection of your characterization of the costs
19 having largely been covered by increases in prices
20 that appear in the P&L, one thing that we'll examine
21 in the posthearing is the degree to which that was
22 largely contributed to or driven by what was achieved
23 in the export markets and not just in the domestic
24 market, where the competition with the dumped imports
25 was most intense.

1 So the overall P&L reflects, you know, the
2 export sales as well.

3 COMMISSIONER ARANOFF: Okay.

4 COMMISSIONER BROADBENT: Say that once more.
5 I'm sorry.

6 MR. DOUGAN: The P&L that -- I'm trying to
7 be careful here, but your characterization of the
8 increase in price as being sufficient to cover what
9 would be considered the usual cost that you might look
10 at from a price suppression standpoint. That's fed by
11 in large part the domestic industry's export sales,
12 which are higher value and -- well, you have to be
13 careful here again.

14 But there is a component -- and as we showed
15 in the prehearing brief, that performance overall for
16 domestic sales was not as good. And so I think that
17 that's worth considering as well.

18 COMMISSIONER ARANOFF: Okay. Let me turn to
19 a more general question about pricing, and that is
20 just a description of how sales transactions are
21 handled in this industry. There has been some
22 reference to bidding and being qualified, and then
23 bidding. Can you describe for me generally how it
24 works? And I imagine it's different in different
25 segments. So is it generally that a purchaser is

1 going to put a request for quotes, and then you submit
2 a bid? Are there multiple rounds of bidding? Do you
3 go and try and develop new customers who haven't
4 requested bids? What can you tell me about the
5 dynamic that surrounds any particular price
6 negotiation?

7 MR. SCHKADE: Well, the vast number of the
8 businesses are usually through requests for quotes.
9 It's very similar in all industries. So therefore
10 from the oil field all the way to the pharmaceuticals,
11 they'll come out usually with an annual request for
12 quote bid. And then we will enter their form, submit
13 the bids, and usually at that point in time, after
14 the analysis, we will come back, and they will let us
15 know if they had been awarded that business or not.

16 COMMISSIONER ARANOFF: So it's one bid, they
17 analyze their award, or do they come back to you and
18 say you're a little high, can you bring your price
19 down?

20 MR. SCHKADE: There is certain customers
21 that will do that, will let us know if we're a little
22 high. And others will say if you can't match or be
23 below, then you won't win the business, or we're going
24 to take the business away from you, yes.

25 COMMISSIONER ARANOFF: And what most

1 customers are awarding are a requirements contract
2 covering a certain period of time as opposed to a set
3 volume?

4 MR. SCHKADE: They give us estimated
5 volumes, and they're requiring a price stability for a
6 certain period of time. And those may vary.

7 COMMISSIONER ARANOFF: Is it typical for a
8 purchaser after having multiple bids to award all of
9 their business to one supplier, or do they tend to
10 split their business between two or more suppliers?

11 MR. SCHKADE: It varies by company.

12 COMMISSIONER ARANOFF: Okay. All right. If
13 there is anything else you think the Commission should
14 know about the way that the bidding process operates
15 that you want to add posthearing, that would be
16 welcome.

17 Thank you, Mr. Chairman.

18 COMMISSIONER PEARSON: Commissioner Pinkert.

19 COMMISSIONER PINKERT: I just have one
20 additional question, and this is a legal question for
21 Mr. Clark. In order to make an affirmative present
22 injury finding or determination in this case, would I
23 have to find that both U.S. producers have been
24 injured by reason of subject imports?

25 MR. CLARK: The answer to your question,

1 Commissioner Pinkert is no, you do not have to make
2 individual determinations looking at the performance
3 of specific individual producers. What you need to do
4 under the statute is look at the domestic industry as
5 a whole, except that there is only two producers.

6 But nevertheless, there are indicia of
7 injury that you can find in the record relevant to
8 both of the producers. I don't think that you need to
9 go down a specific path that says, for example, I find
10 that company A has suffered material injury; company B
11 has not.

12 Your analysis needs to look at the totality
13 of the industry, all of the indicia of injury. And by
14 the way, you may find indicia of injury -- certain
15 indicia of injury in one company, and a different set
16 of indicia of injury in the other. And for the
17 industry as a whole, that would be the foundation to
18 make an affirmative determination, that the domestic
19 industry as whole has been injured.

20 COMMISSIONER PINKERT: Thank you. With
21 that, I have no further questions. Thank you, Mr.
22 Chairman. And I thank the panel.

23 COMMISSIONER PEARSON: Commissioner
24 Johanson? Commissioner Broadbent?

25 COMMISSIONER BROADBENT: Thank you. This

1 would be for Mr. Bowman, I think. How come there are
2 so few suppliers of this product globally? Is it
3 something that -- is it because it is technical and
4 sophisticated and biotech? Or does it have to be done
5 in a big -- on a very large scale? Can you kind of
6 describe to me why there are so few global producers?

7 MR. BOWMAN: I'll start off and tell you
8 some of the commercial and the markets and all that.
9 Mr. Viala can come in with some of the technology side
10 of it because I think he's probably a little bit more
11 -- has more to add.

12 What you find is there has been a number of
13 companies over the years that have been in this
14 business. You do -- this biotechnology business
15 really does -- you have to first be able to control
16 and manufacture the bacteria. That's the first step
17 of this process.

18 Then you have to put that bacteria -- stress
19 that bacteria to produce the xanthan gum from the
20 *Xanthomonas campestris*, and that puts it in the
21 finished product, or what we look at now, into the
22 powder forms and such. And then with the back end of
23 the plants, we actually tailor those to meet the
24 market needs.

25 It's not as easy as just taking a couple of

1 chemicals, putting it into a vat, mixing it, and
2 voilà, xanthan gum out the back side. There is a lot
3 of different areas it comes through that's up front
4 in the fermentation side, and then in the recovery,
5 and then in the finishing.

6 When you look at it in the marketplace, what
7 you saw in front of you in the demonstrations is this
8 uniqueness of chemistry set that structure and
9 function in real life. This is why people use this
10 product. No one in their right mind would include bug
11 sweat in a product that they would consume.

12 But when you see this functionality that
13 comes forward, there is a need. And then what we
14 found is the reason that our brands, the Keltrol and
15 Kelzan XCD brands -- because we were able to pioneer
16 this industry and bring it forward, those are the ones
17 that are typically the preferred brands globally, when
18 folks come in to look.

19 When it comes down to the capital-intensive,
20 couple intensity, being able to have the skilled
21 workforce, being able to have the R&D, technologists,
22 the process R&D, the engineers to be able to produce
23 the product on an ongoing scale, and then to have the
24 commercial force on the other side to be able to bring
25 that to market and educate customers to incorporate it

1 into the industry, it's a difficult sale. It's a very
2 difficult sale.

3 And so when you find the industry, even
4 around this room, you're going to find it's a Kelco
5 reunion today. Predominantly this training
6 methodology that has gone on to build this industry
7 has deposited itself pretty much in this small little
8 baby industry known as biotechnology or xanthan gum.

9 The other side of the factor that really
10 comes into play is there is government regulations
11 globally on where you can and cannot use these
12 products. The U.S. is by far the largest market in
13 the world. All these market segments are growing and
14 mature, but they're all growing. Now, the other parts
15 of the world might grow faster. But these markets are
16 all expanding. So the dynamics is to get into the
17 U.S. market, and as Mr. Viala said, they start working
18 their way up that value chain. And if you gain scale,
19 then you can accelerate that by lot selection or
20 cherry-picking.

21 But you might want to highlight some of the
22 technology some.

23 MR. VIALA: Getting back to the question on
24 why so few current suppliers, I think it's difficult
25 to scale it up. This is a naturally occurring

1 fermentation. If you're going natural, that's harder
2 bacteria, as was related, out of cabbage leaves in the
3 field, right? That produces xanthan gum, when
4 cabbages get rotten.

5 Now, when you get this bacteria, and you put
6 it in the fermenters, which is high, like a four-story
7 building, that's more difficult to get it cost
8 effectively. And I think the scale-up of it and the
9 mastering the technologies so that you can have a
10 reproducible quality is what made it difficult.

11 So you heard through the testimony of Mr.
12 Rubright and myself talking about capital intensity.
13 That's the first part, yeah. The second one is
14 definitely the technology and how to scale it up. And
15 over the years, there have been large corporations
16 that tried to get into the business and could not
17 successfully day-in and day-out produce xanthan gum.

18 So I would say the second one is the
19 technology. And the third one is to be able sell the
20 value to customers and keep innovating and grow the
21 market. I think when you combine those three, and
22 that's what why we're so proud at CP Kelco -- when you
23 combine the three, then you can win, if you play
24 equally, and if the competition is there.

25 COMMISSIONER BROADBENT: Mr. Bowman, you

1 sort of alluded to a little bit of a downward trend in
2 demand for this in food uses in the U.S. Are we
3 getting more sensitive to certain food issues related
4 to this product? Or do you see it growing faster in
5 developing country markets in the future?

6 MR. BOWMAN: What you're seeing is year over
7 year processed food in the U.S. industry has slowed
8 down. We've seen a slowdown in the restaurants,
9 eating out. Quite a bit of the xanthan gum market
10 does service this quick serve restaurants, the fast
11 food, but also some of your gourmet restaurants that
12 you might find down here in D.C., certain spots. The
13 industry as a whole is not as growing compared
14 especially relatively to other parts of the world,
15 where we're seeing quite rapid growth in other
16 processed foods.

17 And so those are some of the areas. To eat
18 local and not prepared foods, you do see that trend
19 impacting the adoption rates. Still growing. I don't
20 want it to come across the market, it's still growing.

21 I know we had some slowdown in oil field rigs in the
22 U.S.; but in the other markets, it's still growing.

23 COMMISSIONER BROADBENT: And I wanted just
24 to take the opportunity to ask you kind of what your
25 perspective is on the talk of a U.S./EU free trade

1 agreement, how would that affect your business back
2 and forth across the Atlantic with Europeans?

3 MR. BOWMAN: I'm not familiar with that
4 trade term and the rest that comes through, so I'll
5 let the legal team handle that side of it. But what I
6 will say is we have open innovation globally and we
7 work with our customers. As I said, many of the
8 multinationals which buy our products outside the U.S.
9 have R&D facilities here in the U.S., where we work
10 very closely to expand the xanthan gum market.

11 What we find in the European Union right now
12 with the slowdown of their economic state is that
13 they're not launching as nearly as many new products
14 as they did a couple of years ago. We also see a
15 tightening of the belts. But in the areas of consumer
16 markets that we participate in, we do see growth there
17 as well. I don't know, you guys could probably expand
18 on this trade law.

19 MR. CLARK: Commissioner Broadbent, our
20 speculation is too early to tell what the potential
21 U.S./EU trade agreement brings. But going back over
22 the nature of the market and the participation, what
23 we see is that there are not significant barriers to
24 trading xanthan gum around the world. In the case of
25 --

1 COMMISSIONER BROADBENT: Not yet.

2 MR. CLARK: Not yet. But if we take that by
3 way of example, CP Kelco participates in the EU market
4 and has participated in the EU market for a long time.

5 JBL participates obviously in the EU market, but also
6 in the U.S. market. So the things that are of concern
7 to commentators as to the presence of non-tariff
8 barriers, in particular safety, health, welfare types
9 of specifications are not appearing to be an
10 impediment now. We are participating in those
11 markets. It's very difficult to imagine when you
12 already have qualified suppliers on both sides of the
13 Atlantic, that entirely new barriers are going to be
14 erected.

15 So we have a situation where product flows
16 now without significant regulatory barriers and we
17 don't really see a prospect for in a free trade
18 environment to create barriers to a product that
19 frankly is desired in both markets. There would be no
20 particular reason -- there's no domestic incumbency
21 that would drive a different outcome than we see in
22 the marketplace today.

23 COMMISSIONER BROADBENT: You say it's a
24 harmonized standard at this point generally? I mean
25 are we generally with the Europeans?

1 MR. BOWMAN: Mr. Viala correctly described,
2 and you see this also reflected in the staff report
3 and in some of the briefing, there are a variety of
4 regulatory regimes of increasing specificity and
5 detail as you travel up the food pyramid. In the case
6 of the European and U.S. producers, we comply with
7 those standards and those standards are quite
8 harmonious. So the standards that are relevant to the
9 ability to bring product into European markets or into
10 the U.S. market have been achieved already by the U.S.
11 and European producers.

12 COMMISSIONER BROADBENT: Thank you.

13 COMMISSIONER PEARSON: Let me try to get
14 through several questions somewhat expeditiously.
15 There appear to be differences in the way that
16 Austrian and Chinese firms compete in the U.S. market.
17 Why is JBL involved in this case would be another way
18 of saying it? Either now or in the post-hearing
19 perhaps a bit more explanation?

20 MR. BOWMAN: What I can say in the public
21 area is that when we reviewed the data and we were
22 monitoring this date pretty closely, as Mr. Rubright
23 said, we did not jump into this thing lightly. This
24 was our last resort, that we showed up.

25 When we analyzed the data, we found cases

1 where if the Chinese led by Food Fang dropping prices
2 quite rapidly across all market segments, promoting
3 low prices in all the market segments, driving down
4 the innovation to just take on low price. We also
5 found that many times if customers were resistant to
6 buy the Chinese and weren't sure yet, the Austrian
7 prices, western quality good enough and the prices
8 were lower. And then when we really started looking
9 further into that analysis, we saw that repeated over
10 and over into the market segments.

11 So we brought it in from the standpoint as
12 that's one of the areas we can see that they were also
13 selling below fair market value.

14 COMMISSIONER PEARSON: Okay. What explains
15 the change that we see in SG&A expense, sales, general
16 administrative expenses over the POI? And as we
17 consider the effect that it has on our analysis of the
18 financials, do we see any tie in with subject imports?

19 Mr. Dougan? And again you might want to deal with it
20 in post-hearing, but I've noted this and I'm trying to
21 understand what to think about it.

22 MR. DOUGAN: I think that's something best
23 handled in post-hearing.

24 COMMISSIONER PEARSON: Okay. Likewise we
25 see a change in hourly wages over the POI and also a

1 change in the unit cost per pound of the labor. What
2 explains that change? And again post-hearing might be
3 best, although I'm happy to hear anything you have to
4 say. Now I would just note it's a somewhat larger
5 change than we commonly would see in one of these
6 investigations.

7 MR. CLARK: We will go into greater detail
8 in post-hearing in confidence. But an example of the
9 reason that you would see that particular change in
10 labor over the course of the period of investigation,
11 in particular looking at 2012, is the phenomenon that
12 was described by Mr. Casey and Ms. McConnell. The
13 case was CP Kelco and the Okmulgee plant in
14 particular.

15 As we saw the phenomenon that really began
16 in the latter part of Q3 and extended into Q4 of 2012,
17 where there had been an environment in which for
18 example over time was largely eliminated, where to the
19 extent that there was any hiring, it was done on a
20 temporary basis, where the plant had been attriting
21 heads over the course of several years. By the end of
22 2012, which means for the time period that we were
23 reporting information, we have seen an about face
24 there. We've actually added significant bodies and
25 not only in Oklahoma, but also in San Diego in

1 redirect response to the increase in orders coming in.

2 So you have to increase your headcount
3 immediately in order to begin processing. You
4 produce, you ship, and then the revenue comes in. So
5 you're going to have a lag time always between when
6 you do your hiring, when you are producing, and when
7 you are sending that new production out the door, as
8 opposed to for example consuming your inventory. So I
9 think you heard here from the individuals involved why
10 you see, in particular in 2012, an increase in labor
11 costs.

12 COMMISSIONER PEARSON: Okay. Thank you for
13 that explanation. If you wish to flush it out a
14 little bit more in the post-hearing, that would be
15 great. What you're saying makes -- certainly is
16 consistent with that we see on the record.

17 MR. CLARK: We'll do that.

18 COMMISSIONER PEARSON: The staff report
19 makes reference to blending of xanthan gum with other
20 products. And I'm just curious, is that a business
21 that CP Kelco is involved in, where you put various
22 items together in a package and sell it to a customer
23 as a finished product, or is that something that
24 somebody else in the marketplace might do?

25 MR. VIALA: We do some of that, but I would

1 say it's minimal. And we tend to have some
2 differentiated hydrochloride solutions, but none of
3 these reblends of hydrochloride with starch, with
4 proteins, with sugar, nothing. That is a different
5 business model again and this is not something we're
6 doing a lot of. We have a few blends, you may have
7 seen that already, and we do that very often at
8 customer request. But when we try to go and solve a
9 solution for customers, we do not look at blends
10 immediately. That's not who we are as a business
11 model.

12 COMMISSIONER PEARSON: Okay.

13 MR. VIALA: There are other companies out
14 there, sometimes including xanthan gum manufacturers
15 themselves that would also have a large blending, what
16 we call blending division or blender activity. But we
17 don't do that in CP Kelco.

18 COMMISSIONER PEARSON: Okay. For purposes
19 of the post-hearing, if you could give us some idea of
20 what portion of CP's volume of xanthan gum goes in
21 blends. It would give us just a little additional
22 perspective on this. And obviously if you have any
23 knowledge of how ADM might handle issue, that also
24 would be useful to know. But I understand the
25 limitations there.

1 A basic question that relates to the pyramid
2 here. If your goal is to produce high-grade stuff,
3 pharmaceutical or consumer grade product, and you're
4 trying to run the plant to accomplish that, does that
5 have the effect of reducing somewhat the overall
6 volume of output of the plant? In other words, are
7 you having to run it slower or is there some equipment
8 that's limiting for the production of the most highly
9 refined product?

10 MR. VIALA: I may qualify a bit what you
11 just said. Our goal is when we want to make a pharma
12 grade, we want to get a pharma grade. When we want to
13 make an oil field grade, we want to get an oil field
14 grade. That's our goal.

15 So we know for a fact that when we go and
16 want to produce a pharma grade, we know that we need
17 to put the right cleaning in place. We need to
18 respect the right isopach. So we know that it would
19 take more line time and marching time if you will than
20 would the oil field run.

21 Now this is reflected in the cost of the
22 products and, therefore, reflected in our margin
23 calculations. But, indeed, if we were deciding not to
24 make any pharma products, then you can get more kilos
25 out the door, but the cost of those would be different

1 as well

2 COMMISSIONER PEARSON: Right, okay. So we
3 understand the capacity of a plant. It actually would
4 vary based on the grade of products one was trying to
5 produce?

6 MR. VIALA: Correct. That is correct.
7 Note, you don't have a 50 percent volume swing
8 obviously, but you're correct.

9 COMMISSIONER PEARSON: Okay. Well, for the
10 post-hearing, let us know kind of what the swing and
11 volume might be between trying to produce say all oil
12 field grade and all pharmaceutical grade, just give us
13 some perspective on it.

14 I think my last question, this would be for
15 post-hearing. For counsel, could you please brief the
16 issue of cumulation for threat because I don't think
17 your post-hearing brief really went into that, did it?

18 MR. CLARK: We did not spend a lot of time
19 on the cumulation issue pre-hearing, but we will speak
20 to the arguments presented by JBL.

21 COMMISSIONER PEARSON: Okay, great. Thank
22 you. And with that, I believe I have no further
23 questions. So I thank all of you for your
24 participation. Commissioner Aranoff? No. Do members
25 of the staff have questions for this panel?

1 MS. HAINES: Staff has no questions.

2 COMMISSIONER PEARSON: Do representatives of
3 the Respondents have any questions for this panel?

4 MR. PORTER: We have no questions.

5 COMMISSIONER PEARSON: Okay, thank you.
6 Well, in that case, this might be a good time for a
7 lunch break. I propose that we return at quarter to
8 2:00. Be mindful that the room is not secure, so if
9 you have confidential material please take it with
10 you. And Mr. Secretary, is there anything else I'm
11 supposed to say now? I forgot to look at the script.

12 MR. BISHOP: No, Mr. Chairman, that covers
13 it.

14 COMMISSIONER PEARSON: See, I'm rusty at
15 this. I used to be more -- okay, we stand in recess
16 until quarter to 2:00.

17 (Whereupon, at 12:45 p.m., the hearing in
18 the above-entitled matter was recessed, to reconvene
19 at 1:45 p.m. this same day, Wednesday, May 23, 2013.)

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1 company, which dates back to 1867. Today we have
2 manufacturing operations in Austria, France, Germany,
3 and Canada. We produce xanthan gum only at our plant
4 in Pernhofen, Austria. Our production of xanthan gum
5 began in 1985 and we have sold xanthan gum in the
6 United States since 1986. JBL Inc. is the exclusive
7 U.S. importer of xanthan gum from JBL Austria and we
8 do not sell xanthan gum produced by any other
9 manufacturer.

10 As you already know, there are only four
11 countries that produce xanthan gum: Austria, China,
12 France, and the United States. And the United States
13 is the largest market in the world for the consumption
14 of xanthan gum. JBL produces xanthan gum and citric
15 acid at our plant in Austria and these products are
16 produced on separate production lines. We also
17 internally produce glucose syrup in Austria, which is
18 the feedstock for both of these production lines. We
19 have been expanding our glucose production so that we
20 can meet all of our needs internally.

21 Contrary to Petitioner's claims, the
22 expansion of our glucose production has no effect on
23 our capacity to make xanthan gum or citric acid.
24 Instead, it is entirely a matter of eliminating
25 outside sourcing of glucose to control costs. In fact

1 JBL has no plans to increase its capacity to produce
2 xanthan gum in Austria.

3 JBL's largest markets of xanthan gum are
4 Europe, which is JBL's natural home market in North
5 America. From 2010 to 2012, the quantity of our U.S.
6 imports of xanthan gum increased, but not as rapidly
7 as the growth of the U.S. market for xanthan gum. In
8 fact although we increased our sales to existing U.S.
9 customers in 2012, JBL has lost market share in the
10 U.S. market since 2010.

11 JBL is primarily a food grade producer of
12 xanthan gum, so most of JBL's sales of xanthan gum in
13 the United States are in the food and beverage sector.

14 We also product technical grade xanthan gum and sell
15 it for industrial applications in the U.S. market.
16 Some examples of these include detergents, paints, and
17 fire fighting applications. JBL also produces small
18 amounts of xanthan gum for the pharmaceutical and
19 personal care industries, but we sell very little of
20 these products in the United States. We also have
21 limited sales in the United States into the oil field
22 sector.

23 In terms of customers, JBL sells to both end
24 users and distributors, although we sell more to end
25 users than distributors. Most of our U.S. customers

1 have purchased from JBL for extended period of time,
2 often more than five years. We sell to several
3 customers that indicate to us that they buy xanthan
4 gum exclusively from JBL.

5 Most of our customers buy xanthan gum on an
6 annual contract basis. Normally our customers provide
7 us with their product specification and their
8 estimated requirements and they ask us to make an
9 offer. The specification usually contains parameters,
10 such as viscosity under certain defined test methods,
11 granular size, and purity. JBL's technical service
12 manager then identifies our grade xanthan gum which
13 corresponds to the given specifications and our sales
14 manager prepares the appropriate offer.

15 Sometimes existing customers develop new
16 products or have problems with existing formulations.

17 In these cases a customer may ask JBL for technical
18 support. Our technical service department will assist
19 and provide insights about the formula or the
20 application and we will try to find the best solution
21 for our customer.

22 There are a number of factors that are
23 important to our customers when they buy xanthan gum.

24 First, the product must be strict quality standards
25 which JBL's xanthan gum does. The U.S. Food and Drug

1 Administration approves xanthan gum as a safe and
2 effective food in 1969 and the European Community
3 likewise in 1980s. JBL's food grade product meets
4 these standards, as well as the purity standards for
5 the U.S., EC, and World Health Organization. All of
6 JBL's xanthan gum is 100 percent pure regardless of
7 the end use application.

8 Second, customers want a reliable and
9 consistent supplier. We maintain inventories of
10 xanthan gum in public warehouses throughout the United
11 States in order to provide our customers with prompt
12 delivery. Generally, we are able to provide our
13 customers with product from inventory in less than
14 three days. Our inventories generally have been
15 steady over the period of investigation, although they
16 did decline somewhat from 2010 to 2012. JBL has
17 proven to be a reliable supplier while many of our
18 customers have told us that the U.S. producers haven
19 to been as reliable.

20 Finally, price is also a consideration, but
21 less so than quality or availability. Over the past
22 three years, the average price to our U.S. customers
23 have increased. JBL makes a premium product and we
24 have a reputation for quality and reliability. Our
25 customers are willing to pay for this. We are told by

1 our customers that JBL is not the low price supplier
2 in the U.S. market, but they are willing to pay a
3 premium for our product due to product availability,
4 quality of product, and service. Thank you very much
5 and I'll be happy to answer any questions you may
6 have.

7 MR. TERRY: Good afternoon. I'm Keith
8 Terry. My position is Director for the Global Supply
9 Chain for the Baroid Product Service Line within
10 Halliburton Energy Services, Inc. Halliburton Energy
11 Services is a wholly-owned division of Halliburton
12 Company. I've been with Halliburton for more than 15
13 years. Since 2009 I've been in my present position
14 with Halliburton Baroid, which provides drilling fluid
15 services, fluid performance additives, and waste
16 management services for drilling operations.

17 I've been the principal procurement decision
18 maker for the Halliburton Baroid PSL for the
19 components used in drilling muds by Halliburton
20 globally since 2009. As such I'm well aware of
21 suppliers of such additives, including those based on
22 xanthan gum. I provided a declaration last week,
23 which I understand has been submitted to the
24 Commission for the purposes of this case.

25 Halliburton is one of the world's largest

1 providers of products and services to the energy
2 industry. We operate in more than 80 countries and
3 are involved in every major aspect of exploration,
4 drilling, and production services in the oil and gas
5 business. As a result we are one of the largest
6 purchasers of xanthan gum products in the world for
7 use as drilling fluid additives in the United States,
8 Middle East, Asia, Latin America, and the remainder of
9 the world.

10 To understand what motives Halliburton's
11 purchasing decisions, it is important to understand
12 the role that xanthan gum products play in
13 Halliburton's business. Halliburton Baroid is a
14 product service line of Halliburton, meaning that a
15 menu of products and services are provided under the
16 family of registered Halliburton Baroid trademarks.
17 Our value proposition to our customers is engineered
18 fluid solutions customized to maximize well bore
19 value.

20 Specialty xanthan gum compositions are one
21 category of Halliburton products that differentiate
22 and carry trademarks such as BARAZAN D PLUS, BARAZAN
23 D, BARAZAN L, and BISL and others. All have unique
24 compositions according to the specific application of
25 the product and specifications and contain multiple

1 ingredients. These products are additives used in
2 some drilling mud formulations. Drilling muds provide
3 a variety of functions and drilling operations,
4 including the removal of cuttings, pressure control,
5 well stability, cooling and lubrication of the drill
6 string, filter cake facilitation for the cementing of
7 well bores, as well as other functions.

8 Xanthan gum is an important but minor cost
9 additive in drilling muds. Drilling mud is an
10 important but minor cost component of Halliburton's
11 overall drilling services. Put together, xanthan gum
12 products represent an extremely minor portion of the
13 cost related to services that Halliburton provides its
14 customers. However, these products do carry the
15 Halliburton Baroid trademark name and are used as part
16 of the Baroid suite of products and, therefore, must
17 conform and be manufactured to our strict
18 specifications.

19 Stated differently, the important factor to
20 Halliburton is that xanthan gum products be delivered
21 to location on time and function properly with other
22 Halliburton Baroid products in the fluid system, so
23 that Halliburton can perform contracted services to
24 meet or exceed expectations of our customers. To that
25 end, the xanthan gum products must be Halliburton

1 Baroid's specifications and be readily available in
2 required quantities and in Halliburton Baroid custom
3 bags or drums with the trademark Halliburton Baroid
4 name to support our drilling operations without delay.

5 In comparison the cost of xanthan gum is
6 such a small part of overall costs and revenue
7 received by Halliburton that our purchasing decisions
8 are dictated by quality and continuity of supply,
9 factors that can directly impact our customer's
10 business if not kept under careful control.

11 Halliburton purchases xanthan gum products
12 under contract and only goes into the spot market when
13 necessary to meet urgent supply requirements. We have
14 global specifications for trademark xanthan gum
15 products and purchase these products from
16 manufacturers to meet our global requirements, in part
17 to control our quality, and additionally to ensure
18 that inventory can be used in any operation anywhere
19 in the world. This reflects the high importance
20 placed on quality, availability, and consistency of
21 supply. If a xanthan gum product does not meet
22 Halliburton's global specifications for quality, then
23 it will not be considered for use in any location
24 regardless of price or the desire of a supplier to
25 provide the product.

1 Halliburton generally purchases only from
2 prequalified contracted suppliers capable, willing,
3 and committed to deliver large volumes on schedule and
4 abide by strict quality reporting disciplines. At
5 these volumes changing suppliers is difficult and time
6 consuming. Availability, supply reliability, product
7 quality, and logistic options are more important
8 factors than price for Halliburton to consider
9 suppliers for strategic procurement contract.

10 I understand that there is an issue in this
11 case regarding competition to supply xanthan gum
12 products for oil field applications. Without getting
13 into too much detail on the public record, I would
14 emphasize that unless Halliburton has confidence that
15 a supplier has the capability, willingness, and
16 commitment to supply large volumes of our trademark
17 xanthan gum products on a reliable contract basis,
18 Halliburton will not negotiate price, develop a
19 contract, nor place orders.

20 There are only a limited number of xanthan
21 gum producers and even fewer have the capability,
22 willingness, and commitment to supply our needs. And
23 as such, Halliburton does not have the confidence in
24 companies lacking these factors to consider them as
25 reliable strategic partners for this product. The two

1 U.S. xanthan gum producers, CP Kelco and ADM, fall
2 into that category. To be clear, these two companies
3 have been unwilling to manufacture large volumes of
4 our trademark xanthan gum products at the high turn
5 rates needed to meet our demand and have not shown
6 commitment to provide solutions to these challenges
7 presented by the oil field market.

8 Two final points. First, I understand there
9 may be an issue as to how xanthan gum products are
10 priced when a combination of products are sold as a
11 part of a complete services offering. I want to make
12 clear that in the large majority of cases, our xanthan
13 gum products are priced separately and appear as
14 distinct line items on a customer's invoice. This is
15 required by our customers.

16 Secondly, from my standpoint of having
17 responsibility for global procurement of xanthan gum
18 products, I can confirm that suppliers are tight
19 worldwide. I'm not personally aware of any supplier
20 having excess capacity. Certainly no such U.S.
21 supplier has approached Halliburton offering the extra
22 capacity to meet our needs since I assumed my present
23 position in 2009. Thank you.

24 MR. MARZULLI: Good afternoon. My name is
25 Noel Marzulli. I have been working in this industry

1 for almost 40 years. I started working at CP Kelco in
2 1973 and was part of the early development xanthan gum
3 as a new product. I left Kelco in 1988 and began
4 working as an independent consultant to companies
5 selling xanthan and other hydrocolloid products.

6 I started working with Deosen in 2003 and
7 have been a marketing and technical consultant for
8 them. My current work with Deosen USA focuses on the
9 food and beverage segment and also includes other
10 consumer and industrial products other than oil field
11 applications. In my testimony this afternoon, I would
12 like to discuss a few key issues about the market
13 dynamics and about Deosen's participation in the U.S.
14 market, particularly the food and beverage market.

15 First, let me describe a bit about the
16 nature of the food and beverage segment of the xanthan
17 gum market. What does xanthan do and how do companies
18 buy it? The product is an additive that imparts
19 various properties to processed food and beverage
20 products. Take for example cake mixes, xanthan gum
21 stabilizes the amount of air in a cake mix and thus
22 allows a cake to bake with more volume and a lighter
23 taste. It avoids a gummy or sticky quality of a
24 flour-based product.

25 Another example, consider non-separating

1 salad dressings, such as French, Ranch, or Blue
2 Cheese. Xanthan helps keep oil and water mixed
3 together without separating. Xanthan also improves
4 the degree to which the dressing clings to the salad
5 ingredients instead of just rolling off the lettuce
6 like water.

7 When added to beverages, xanthan gum changes
8 the mouth feel of the product. The beverage takes on
9 a thicker more juice-like consistency and is no longer
10 watery. The beverage is thicker than water, but allow
11 the flavor of beverage to come through.

12 Early today you heard a lot of testimony
13 about xanthan gum as a commodity with purchase
14 decisions being made solely on price. In fact the
15 market realities are more complicated than that.
16 Xanthan gum is actually a high valuated technical
17 agreement and customers care about many factors other
18 than price. For example, customers care about
19 hydration rate, how fast can the powder turn into a
20 solution during the manufacturing process. The faster
21 the powder converts to a solution, the faster the
22 throughput of the manufacturing process. Faster
23 throughput means lower cost for the end user.

24 Another technical characteristic is the flow
25 properties. Customers need xanthan gum that exhibits

1 smooth type pouring and is not gloppy as it pours. In
2 this case this characteristic adds value to the
3 finished product by making it more appealing to the
4 ultimate customer.

5 Customers also need product stability and
6 batch consistency. The xanthan stabilized dressing
7 needs to maintain stability for at least a year or
8 longer. In addition, xanthan needs to impart the same
9 physical properties from batch to batch, so that the
10 customer can produce a product with the necessary
11 consistency batch to batch.

12 These important physical characteristics are
13 precisely why all our food customers have a
14 comprehensive qualification process. Our food
15 customers require that their xanthan suppliers pass
16 their qualification requirement not only for the type
17 of product, but also the specific type of application.

18 For example, at one of our customers we had to pass
19 their qualification requirement for several different
20 types of salad dressing, such as separating dressing,
21 non-separating dressing, and low calorie dressing.
22 For each of these different types of salad dressings,
23 there are unique functionality requirements for the
24 xanthan gum.

25 For example, in low oil dressing, the

1 customer is concerned about the fact that there is
2 much more water than in regular salad dressing.
3 However, the customer wants the mouth feel of the
4 salad dressing to be the same. This desire
5 establishes a separate requirement for the xanthan
6 gum. In addition to holding the oil and water
7 together like xanthan does in regular salad dressing,
8 the xanthan for low oil dressing also needs to be able
9 to work with other ingredients to provide a creamy
10 type texture.

11 This is why the customer requires that their
12 xanthan gum suppliers pass their qualification process
13 for each separate application that would use xanthan.

14 And indeed for some of our customers, we have not
15 been able to pass their qualification for certain
16 applications. For example, we have a customer for
17 which we supply an agglomerated type product for a
18 type of relish. However, for this very same customer,
19 we've not been able to become qualified to supply
20 xanthan for the pourable salad dressing. This
21 particular customer requires very rapid solubility for
22 the salad dressing and our xanthan gum was not able to
23 pass their solubility requirements.

24 I want to make a few comments about the
25 differences between the food segment of the market and

1 the non-food gum segment, the biggest for which Deosen
2 is oil field. It is no secret that in general food
3 grade xanthan gum commands a much higher price than
4 does oil field xanthan. There are a few practical
5 reasons for this.

6 The first reason is that food segment
7 customers are less price sensitive than oil field
8 customers and the reason for this is because xanthan
9 gum accounts for a very small percentage of the end
10 use product. One of the primary end uses for food
11 grade xanthan is salad dressing. Xanthan gum accounts
12 for well under one percent of the total cost of making
13 the dressing. Indeed it is barely a quarter percent.

14 In contrast, xanthan accounts for a much bigger share
15 of the total cost of drilling fluid.

16 The second reason concerns the relative
17 shipment volumes. Although in total the two segments
18 may consume comparable quantities, the food grade
19 segment has smaller volume customers. Even our
20 largest customer of food grade xanthan consumes just a
21 fraction of what the large oil field segment customers
22 would consume. A universal truth in the business is
23 that the ability to ship larger quantities in a single
24 shipment results in lower prices.

25 The third reason for the difference in

1 selling price has to do with history and the fact that
2 xanthan gum absolutely cannot be sold to customers if
3 the plate count, that is the bacterial level, is too
4 high, no matter how good the other attributes are.

5 Please understand that for the most part
6 there is little difference between the production
7 process to make food grade xanthan and the production
8 process to make oil field xanthan. The real
9 difference becomes evident in the testing phase. If
10 it does not meet the plate count for food quality
11 standards, that the bacteria count is too high, it
12 cannot be sold as food grade xanthan. And so xanthan
13 gum producers needed some outlet for the batches of
14 xanthan that did not meet food grade standards. It
15 was this search for an outlet for xanthan that led to
16 the development of xanthan for the oil field
17 industrial segments in the first place. And as you
18 can imagine the original pricing reflected the fact
19 that food grade xanthan gum producers originally had
20 no other outlet for the xanthan gum that had a high
21 plate count.

22 These are the reasons why there is such a
23 big difference between the selling price for food
24 grade xanthan and oil field xanthan. Importantly this
25 large difference has always existed. Such differences

1 in selling prices necessarily meant that there was
2 also a larger difference in profitability. For a
3 xanthan gum producer, food grade xanthan has always
4 been much more profitable than oil field xanthan.

5 In my final comment I want to address the
6 future. This morning you heard claims by CP Kelco
7 that if the AD duties were not imposed, the Chinese
8 will take -- excuse me here -- the Chinese will take
9 the -- I'm sorry -- will take over the xanthan market.
10 Commissioners, that simply is not true and is
11 particularly not true for many segments of the xanthan
12 market.

13 As part of Deosen USA, I help manage
14 Deosen's sales of xanthan to all segments other than
15 oil field and I can tell you over the past few years,
16 my overall business has been relatively flat and quite
17 honestly I do not see much change in this trend for
18 the future. Please understand there are several
19 segments of the xanthan gum market in which the
20 Chinese do not have real presence and are unlikely to
21 have in the future. For example, I estimate that 10
22 to 15 percent of the U.S. market is for non-oil field,
23 non-food applications. These applications include
24 products like toothpaste, cosmetics, pharmaceuticals,
25 and other non-food uses. Deosen has not really

1 participated actively in this segment because of some
2 very specific barriers to entry and because of certain
3 customer needs in this segment.

4 First, many of these applications require a
5 highly clarified xanthan. The xanthan needs to have
6 transparency greater than 85 percent. Chinese
7 producers have had difficulty in producing such
8 products for a number of reasons. The difference in
9 the underlying production process thus limits the
10 application of the resulting xanthan gum.

11 Second, many of these applications require
12 xanthan produced using only isopropyl alcohol. Most
13 Chinese production uses ethanol as a precipitate, so
14 it cannot match customer requirements. So far only
15 Deosen has the ability to use either ethanol or
16 isopropyl alcohol as a precipitate in its process. So
17 if a customer insists on a product that meets the
18 standards in 21 C.F.R. 172, most Chinese suppliers are
19 unable to meet these specifications.

20 Third, many of the specific applications in
21 this non-food segment are smaller volume. The
22 customers therefore have little incentive to qualify
23 multiple suppliers or go to the trouble to even
24 consider other sources. These products are left to
25 the current supplier with no replacement by others.

1 Fourth, these other segments generally
2 require more technical support and laboratory time,
3 and no Chinese producer is able to provide these
4 locally.

5 For all of these reasons, the Chinese
6 competition in this segment is very limited and the
7 U.S. producers have this segment of the market largely
8 to themselves. These barriers to entry limit
9 competition by the Chinese manufacturers.

10 That concludes my testimony. I will be
11 happy to answer any questions.

12 MR. BOLEN: Good afternoon. For the record,
13 my name is Ron Bolen. I am currently employed by
14 Grinding & Sizing Company or G&S. G&S specializes in
15 the manufacture and sale of a variety of drilling
16 fluid products, including xanthan products with
17 applications in the oil field sector. In my capacity
18 as Vice President of Sales & Marketing at G&S, I
19 oversee both customer and vendor accounts associated
20 with xanthan sales and purchases.

21 I have been working in the oil field sector
22 for more than 25 years and know the oil field market
23 for xanthan quite well. In addition I worked for CP
24 Kelco for nearly 30 years and so know something about
25 the domestic industry in this case as well. I left CP

1 Kelco for Grinding & Sizing in September of 2007. My
2 last position at the company as oil field sales
3 manager for the Americas. I am pleased to be here
4 today to discuss G&S's experience in the market and to
5 answer any questions you may have.

6 Let me start by telling you a little bit
7 more about G&S. G&S serves as a custom blender and
8 packer of a variety of products for the oil services
9 community. Our objective is to be a one-stop shop
10 where our customers can procure all their drilling
11 fluid products requirements.

12 In terms of xanthan gum, we blend xanthan
13 products based on our customer's own formulation and
14 also serve as a distributor of prepackaged products.
15 Most of our own purchases of xanthan gum are in bulk,
16 so that we can provide those additional services to
17 our customers. This might include packaging that
18 bulks xanthan under our own customer's label or
19 preparing various powder or slurry blends based on
20 customer specifications.

21 As background, slurries are a fluid
22 preparation in which we pre-disburse xanthan gum in a
23 carrier system and the product is delivered to the
24 drill site in this pre-disbursed state. This is a
25 common product for smaller drilling companies in drill

1 sites that lack mixing equipment at the drill site to
2 properly mix the dry xanthan. While powder and slurry
3 blends contain more than just xanthan, the prices are
4 based on the total makeup of the product and service
5 provided. The xanthan component can be tracked and
6 price quantified, and this is how we report it to you
7 in our own purchaser's questionnaire.

8 G&S is not a dedicated re-distributor of any
9 particular brand. We buy from both domestic and
10 Chinese sources, although the majority of our bulk
11 purchases are of Chinese origin. On the domestic
12 side, most of our purchases have been from ADM, who
13 actively solicits our business. The same cannot be
14 said for CP Kelco. CP Kelco does not actively call on
15 us and we have had some difficulty in getting Kelco to
16 return our calls.

17 Last September, we requested a quote and
18 followed up with them again. They finally responded,
19 indicating that they had little volume to offer. I
20 can only speculate on CP Kelco's possible reasons for
21 excluding G&S as a prospective xanthan customer. They
22 used to be more active in the oil field sector, but
23 even before my departure they began a substantial
24 reduction in their sales force for this segment on a
25 global basis.

1 In terms of demand, I can make this
2 assessment on the market as far as the domestic
3 industry's ability to meet it. In my opinion, I don't
4 think they can. I know this from public statements
5 and from earlier testimony that CP Kelco announced a
6 40 percent increase in their capacity at the San Diego
7 facility. Based on the most capacity increase
8 announcements made by other producers, this usually
9 means the addition of new fermentation capacity.
10 Given the very public circumstances surrounding the
11 cost facing CP Kelco at its San Diego facility, such
12 as utility, environmental, and other rate increases, I
13 can only wonder if this is a real increase in new
14 fermentation capacity to produce xanthan.

15 As for xanthan gum demand itself, there is
16 no question that it will continue to grow driven by a
17 number of factors. First, drilling activity worldwide
18 continues to grow, which is a bell weather of xanthan
19 demand. The more rigs, the more drilling activity,
20 the more xanthan. It's really that simple. The
21 global rig count is up and we do not expect that to
22 change.

23 Admittedly, some of this drilling activity
24 has no direct connection to xanthan demand, as it
25 involves exploiting unconventional petroleum plays

1 that depend on hydraulic fracturing or fracking.
2 Nonetheless, the result is more xanthan demand and let
3 me explain why.

4 Fracking requires guar gum and the
5 industry's most recent with guar is that the market
6 price and supply can be highly volatile. This creates
7 an incentive to look for substitutes to limit the
8 exposure. Xanthan is an imperfect substitute for guar
9 and the industry is still working out solutions, but
10 sometimes substitution is an indirect phenomena. More
11 guar consumption in the oil sector leads to more guar
12 substitution in sectors like food, including the shift
13 to xanthan gum where there are more ready
14 applications. And fracking will not always be just a
15 U.S. phenomenon. It will begin to take hold in other
16 regions, as other interests traverse the language
17 curve and make the necessary investments and resolve
18 other logistical issues.

19 The bottom line is that demand is going to
20 be strong inside and outside the United States. And
21 there is no evidence in my mind that the domestic
22 industry is up to the task. It was not adequately
23 meeting demand and was not interested in that demand
24 in strong markets prior to the existing duties. I am
25 confused as to why additional duties would change that

1 situation. In my mind any difficulty the domestic
2 industry is facing is not about imports. It is about
3 their own internal issues.

4 And let me quickly address one aspect of
5 these internal issues that is quite relevant here.
6 There have been a lot of discussion about the xanthan
7 market being all about price. This is simply not
8 true. Let me give you a good example. In mid 2007
9 Grinding & Sizing was approached by Kachina Drilling
10 Chemicals regarding their xanthan supplier
11 requirements. Kachina had been a committed customer
12 of ADM, but had grown frustrated with ADM over service
13 and reliability issues and other business practices.
14 This was a significant account.

15 Kachina was worried of purchasing Chinese
16 product over quality concerns and expressed those
17 concerns to us. Over a six-month qualification
18 period, we convinced Kachina that Chinese product
19 could reliably meet their specifications. Price was
20 the last thing we talked about, not the first. We had
21 to be competitive with ADM product, but that meant
22 more than price and price was not what drove Kachina
23 to us. Kachina came to us over non-price issues and
24 we were able to address those issues where ADM had
25 failed. This is not a unique story.

1 And with that, I will conclude my remarks.
2 Thank you for your time and I look forward to your
3 questions.

4 MR. DURLING: Good afternoon. For the
5 record my name is James Durling with the law firm of
6 Curtis, Mallet-Prevost, appearing today on behalf of
7 the Respondents.

8 Let me begin with volume effects. This case
9 is somewhat unique. In most cases there are
10 significant shifts among the market participants.
11 That did not happen in this case. Instead, the market
12 shares remain quite stable. Subject imports were a
13 significant part of the market, but they have always
14 been a significant part of the market. The
15 Commission's analysis focuses on changes over a
16 specific period of investigation. Subject imports may
17 have increased, but that increase is not particularly
18 significant in this case during this period because it
19 did nothing more than match the overall growth in the
20 market.

21 This first graph describes the overall
22 market, but the key segment in this case has been the
23 oil field segment that alone accounts for the vast
24 majority of the increase in subject imports. The
25 trends in this oil field segment are even less

1 injurious with the domestic industry gaining market
2 share in this key segment. These trends demonstrate
3 the absence of any adverse volume effects in this
4 case.

5 Petitioner claims the overall capacity
6 utilization is too low to be sustainable and that the
7 domestic industry should have been able to gain market
8 share. But capacity utilization has been stable. If
9 it is too low, it has always been too low. Subject
10 imports have not changed anything about capacity
11 utilization during the period of investigation, nor
12 does the failure to gain market share constitute
13 adverse effects under the statute.

14 Petitioners also claim petition effects
15 distort the analysis, but this claim is at odds with
16 the record evidence. This slide summarizes the semi-
17 annual volume of subject imports according to the
18 pricing data, which accounts for about 80 percent of
19 the total volume of imports in this period. During
20 the second half of 2012, subject imports continued to
21 increase. More telling relative to the same periods
22 in 2011, the subject import gain in the first half of
23 2012 was only about 2.2 million pounds, while the
24 subject import gain in the second half of 2012 was
25 about 4.5 million pounds. In other words, the second

1 half 2012 gain was more than double the increase in
2 the first half of 2012. Since the petition did not
3 lead to any decrease in subject import volume, it is
4 hard to see any basis for dismissing the volume or
5 other trends because of petition effects.

6 So we now turn to price effects. This case
7 is unique in that the survey of purchasers revealed
8 price to be a much less important factor than in most
9 cases before the Commission. Many other factors are
10 more important than price.

11 But this case is also unique in that
12 domestic prices have been increasing so much over the
13 period. We don't have so much pricing data that is
14 public, but we do have the following data showing that
15 for 12 out of 14 possible comparisons, prices at the
16 end of the period were higher, sometimes significantly
17 higher than prices at the beginning of the period.
18 There is thus no price depression.

19 As one might expect, Petitioner focuses on
20 the existence of underselling, but the simplistic
21 approach ignores several key points about the record
22 evidence. First, the margins of underselling have
23 been generally consistent across the various products
24 across time. We cannot show it publicly, but the
25 confidential pricing graph in the pre-hearing report

1 show very consistent margins of underselling over
2 time. Petitioner's theory cannot explain why
3 underselling in 2010 that was not injurious somehow
4 becomes injurious in 2012.

5 Second, the margins of underselling often
6 coincide with increasing domestic prices. As our pre-
7 hearing brief discusses, in one key segment margins of
8 underselling increase somewhat, but they increase
9 because domestic prices were increasing so much faster
10 than subject import prices.

11 Third, the underselling also often coincides
12 with increasing domestic volumes. Again as our pre-
13 hearing brief discusses in another key segment,
14 underselling existed, but the domestic industry was
15 still able to increase its volume shipped. These
16 patterns are utterly inconsistent with any theory of
17 injurious underselling.

18 Finally, we note that there is also
19 underselling by the domestic industry itself. We
20 cannot discuss this issue publicly, but our pre-
21 hearing brief discusses and we will elaborate in our
22 post-hearing brief about the extent and significance
23 of domestic industry underselling in key product
24 segments at key points in time. Domestic industry
25 underselling may not have occurred in very many

1 quarters, but we are confident the Commission's
2 analysis will go beyond just mechanically counting the
3 quarters of underselling. When the underselling
4 coexists with increasing domestic prices and
5 increasing domestic volumes, pretty clearly some other
6 dynamics are at play in the market.

7 Petitioner also claims price suppression.
8 But once again Petitioner presents a simplistic
9 approach that ignores several key points about the
10 record evidence. First, the use of a single overall
11 annual AUV masks important shifts in the product mix
12 behind that single AUV.

13 Second, in fact the price increases were
14 more than enough to cover raw materials and other key
15 variable costs, such as energy. Given the production
16 process for xanthan gum, raw materials are a small
17 part of the production process. The more important
18 variable cost is energy and energy costs in the United
19 States have been stable or declining over this period.

20 So the traditional notion of a price-cost squeeze
21 with external variable costs changing by more than the
22 price increases simply does not apply here. If
23 there's been any price-cost squeeze at all, it
24 reflects internal factors that have nothing to do with
25 subject imports. We will return to these issues in a

1 moment.

2 Finally, we turn to adverse impact and
3 whether the evidence shows that any adverse impact is
4 by reason of subject imports. At the outset, we note
5 that most of the statutory factors have been positive.

6 Production and shipments are up. Prices are up.
7 Workers and wages paid are up. And these improvements
8 have occurred in spite of increasing subject imports.

9 The petition was filed too late in 2012 to have
10 materially affected any of the trends showing up in
11 the 2012 data. Subject imports continue to increase
12 through the end of 2012. These positive domestic
13 trends occurred in spite of subject imports.

14 The only negative trend is operating income
15 and some other statutory factors that are basically
16 calculated from operating income. Yet this one
17 negative trend has little to do with subject imports.

18 Rather this trend reflects other factors that are
19 demonstrably not related to subject imports. Let me
20 explain.

21 Let's start with the domestic industry
22 operating income as a whole. This graph reflects the
23 operating income trend based on the most recent
24 revisions submitted by domestic producers. So the
25 underlying data is slightly different than the pre-

1 hearing report. I cannot provide actual numbers, but
2 this public graph makes the key points.

3 First, the domestic industry has been
4 consistently profitable. Second, the drop in
5 operating income occurred in 2011 and then remained
6 pretty stable. So the key question for the
7 Commission's analysis is what happened in 2011. It
8 was not subject imports. On an overall basis from
9 2010 to 2011, subject import market share was stable
10 and subject import AUVs and prices were generally
11 increasing.

12 So what changed? Product mix changed. This
13 slide presents an import counterfactual. In addition
14 to the basic trend in overall industry operating
15 income, we show how much of this decline in overall
16 operating income reflects the drop in the export
17 markets. Virtually all of the overall decline
18 reflects a drop of profitability in the export market
19 in 2011 that continued in 2012. These trends have
20 nothing to do with any adverse impact of subject
21 imports in the U.S. market.

22 Now the domestic industry presents a
23 domestic shipments only trend in operating income, but
24 this argument is wrong and misleading in two key
25 respects. First, the statute requires the Commission

1 to consider the profits on all U.S. production,
2 whether it is sold domestically or sold in export
3 markets. The company and the workers benefit from
4 each additional ton produced regardless of where it is
5 sold. So the legally relevant trend is the trend in
6 overall operating income.

7 Second, Petitioner focuses on trends in
8 export market AUVs in isolation. When those trends
9 are put in context, export AUVs relative to changing
10 costs for those export sales, a very different picture
11 emerges. We discuss this issue more in our
12 confidential post-hearing brief.

13 But another way to look at this trend is to
14 show the effect of various internal factors at play
15 for the domestic industry. Here, we present the
16 discussion from our pre-hearing brief, but using the
17 revised domestic industry questionnaire responses and
18 using a public format. This graph shows that almost
19 all of the decline in 2011 and a substantial portion
20 of the decline in 2012 can be attributed to two
21 different internal factors at the domestic industry.
22 Again these trends have nothing to do with subject
23 imports.

24 We acknowledge that this graph shows a
25 modest drop in 2012 even after taking into account

1 these internal factors, but that decline reflects
2 changing product mix over the period as the domestic
3 industry shipped more volume at a higher percentage of
4 its total volume to oil field applications that on
5 average had lower operating margins. This trend is
6 hardly surprising. If an industry chooses to shift
7 more of its business to a segment with lower profits,
8 not surprisingly the average profit margins will fall.

9 In light of this discussion, it should be
10 clear by now that the oil field segment is a key part
11 of this case. Petitioner stresses the alleged adverse
12 impact in the oil field segment. Given the limits of
13 what I can say publicly, let me just note a few key
14 points.

15 First, the domestic industry gained the same
16 amount of volume in the oil field segment as the
17 subject imports. This graph shows the difference in
18 annual volume, showing 2012 compared to 2010 for both
19 supply sources. The idea is to convey publicly that
20 both sources of supply grew comparably in the oil
21 field segment in response to strong demand during the
22 period.

23 Second, the domestic industry changed its
24 prices in the oil field segment more dramatically than
25 the subject imports. This graph shows the difference

1 in annual average unit value showing the difference
2 between the 2012 AUV compared to the 2010 AUV for both
3 sources. The idea is to convey publicly that subject
4 imports have not been dramatically dropping their
5 prices in this key segment. Our pre-hearing brief
6 discusses this issue in much more detail using the
7 confidential record. Thank you.

8 MR. MCCULLOUGH: For the record, my name is
9 Matt McCullough and I will briefly just -- whether
10 subject imports threaten to cause material injury to
11 the domestic industry. The simple answer to that
12 question is an emphatic no.

13 A review of the statutory threat factors and
14 other relevant considerations makes that reality
15 clear. My comments will focus on facts surrounding
16 the Chinese industry, as I believe counsel for the
17 Austrian industry will cover facts relevant to the
18 Austrian industry.

19 First, the record in this case has very
20 little unused production capacity in China and no
21 basis to assume that such capacity even if filled
22 would be used to serve the U.S. market. To the
23 contrary, the Chinese industry is serving several
24 other export markets as reflected in the pre-hearing
25 staff report.

1 I can also tell you that looking at our own
2 client's own pricing data, that Deosen's average unit
3 values for xanthan gum are higher in nearly all export
4 markets and its own domestic market than in the U.S.
5 market across all end-use segments. This indicates a
6 greater incentive to ship to those markets over the
7 U.S. market.

8 As far as any evidence of an imminent
9 substantial increase in production capacity in China,
10 that is not apparent from the record. On the other
11 hand, publicly available information shows that there
12 are very substantial constraints on the use of
13 existing capacity in China.

14 This April, for example, it was reported
15 that Fufeng's inner Mongolian plant will be forced by
16 new environmental laws to abandon its own underground
17 wells and instead source water from the Yellow River.

18 As reported given the differences in water quality,
19 this shift threatens a sustained shutdown of the inner
20 Mongolian plant to address bacteria acclimation
21 issues. That's just one of the environmental examples
22 and we will address that more in the post-hearing
23 brief.

24 Second, any increase in the volume or market
25 penetration of Chinese imports of the subject

1 merchandise does not indicate the likelihood of
2 substantially increased imports. At the outset, the
3 increase in imports from China over the period of
4 investigation is not significant. Yes, volume was
5 higher, but domestic market shares remain stable.
6 Moreover, as I already mentioned, there are real
7 capacity constraints in China, as well as other more
8 lucrative export markets to attract Chinese exports.

9 CP Kelco is the first to acknowledge growing
10 global demand for this product. As documented in the
11 pre-hearing staff report, in a series of price
12 increase announcements dating back to 2010, CP Kelco
13 repeatedly discusses growing global demand as the
14 cause. Given these circumstances, any finding that
15 substantially increased imports are likely to enter
16 the U.S. market would be the kind of conjecture and
17 speculation not permitted under the statute.

18 Third, evidence of imminent significant
19 price effects from subject imports, whether in the
20 form of price depression or suppression, cannot be
21 found on this record. To the contrary, CP Kelco
22 consistently and significantly raised prices during
23 the period of investigation even as Chinese volume
24 increased and whether or not Chinese volume undersold
25 domestic product. This is not a surprising trend, as

1 the purchaser questionnaire responses received by the
2 Commission ranked price sixth among purchasing factors
3 behind other considerations, including availability,
4 delivery time, product consistency, quality, and
5 reliability of supply. There is no evidence to
6 suggest that these trends or preferences will change.

7 These are the basic facts. But what else do
8 we know? The staff report offers no indication of
9 threat based on any perceived inventory overhang.
10 None exists. Trend are working in the opposite
11 direction. There is also no evidence of any
12 significant capability to product shift on the same
13 equipment. And in this environment, we also know that
14 xanthan demand will be growing in the United States
15 and abroad. Not even CP Kelco can challenge this
16 point.

17 We can start with the most fundamental
18 demand indicator, gross domestic product. U.S. GDP is
19 projected to grow. As a GDP in every single major
20 xanthan market, in emerging markets with high
21 populations, and where organization and rising living
22 standards are leading to exponential growth in
23 processed foods and therefore xanthan consumption, GDP
24 growth is at its highest.

25 Looking at the oil sector and rig counts, a

1 common bell weather for xanthan consumption, the
2 global rig count remains far above levels in 2010 and
3 there is no prediction that these counts will plummet
4 any time soon.

5 Another factor in the drilling market that
6 will sustain higher xanthan consumption rates, both
7 inside and outside the oil sector, is that segment's
8 experience with the recent volatility of guar prices
9 and supply. Yes, guar prices had declined, but the
10 substitution effect in terms of increase xanthan use
11 and in particular use in the food segment will not
12 decline in tandem. Rather, some of that substitution
13 will be locked in since once a reformulation occurs
14 using more xanthan, it does not necessarily make sense
15 to reformulate back to more guar.

16 Moreover, given the experience with guar
17 prices and supply, guar consumers will seek to
18 diversify as a hedge, leading to further exploration
19 of xanthan as a substitute.

20 Finally, the domestic industry is simply not
21 vulnerable to subject imports. The domestic industry
22 has in fact performed quite well and is solidly
23 positioned to perform well for the foreseeable future.

24 As my colleague Jim Durling previously discussed,
25 virtually all the statutory factors the Commission

1 considers have been positive or neutral. The only
2 negative trend has been operating income and some
3 other metrics derived from operating income. But
4 those trends come with two additional considerations.

5 First, that there has been consistent
6 profitability despite such trends; and second, that
7 there are very obvious explanations as to why subject
8 imports have not been the cause of such trends that we
9 will again address in confidential briefing.

10 Under the circumstances, there is no basis
11 for the Commission to find threat of material injury
12 from subject imports.

13 Thank you.

14 MR. MAGRATH: Good afternoon members of the
15 Commission, Commission Staff, ladies and gentlemen. I
16 am Patrick Magrath appearing on behalf of JBL the
17 Austrian producer of Xanthan Gum.

18 I'd like to say first off I'd like to
19 incorporate Commissioner Pearson's question this
20 morning, why are we here?

21 This portion of my testimony will consider
22 the conditions of competition in the Xanthan Gum
23 market as well as the volume price of subject imports
24 and their decidedly not-impact on the conditions of
25 competition and the industry.

1 First, there is attenuated competition in
2 the U.S. market for Xanthan Gum. The market is
3 fragmented by end use applications, pricing levels,
4 different sets of customers, barriers to market entry,
5 and Xanthan Gum is therefore decidedly not a commodity
6 type product.

7 As the pre-hearing staff stated, there are
8 five separate market segments for Xanthan Gum --
9 pharmaceutical, consumer, food, beverage and
10 industrial and the oil field. JBL is a producer in
11 the food and beverage sector. It sells no or
12 virtually no Xanthan Gum to these other sectors. The
13 confidential record shows that other suppliers to the
14 U.S. market concentrate on one or more of these
15 segments and that for some there is essentially no
16 competition between domestic products and imports.

17 Of these submarkets, the single largest
18 segment, oil and gas, increased strongly over the P&L
19 due to both domestic and global booming energy
20 production. JBL has almost no participation in this
21 market segment.

22 On the other hand, the food and beverage
23 sector where JBL has the greatest majority of its
24 sales declined over the POI. It was also the segment
25 which reported the largest increase in AUVs or prices

1 of any segment. So if you're looking for price
2 depression or suppression here, it is impossible to
3 discern.

4 In addition to competition being segregated
5 to these rigid market segments, it is also
6 differentiated by price. In oil and gas applications
7 prices are noticeable lower than in any other segment.

8 At the other end of the broad price scale are the
9 prices of branded Xanthan Gum products in other
10 sectors.

11 As usual in the Commission's investigations,
12 much relevant information is contained in the
13 responses to purchasers' questionnaires which show
14 ample proof of the market separation of JBL from other
15 suppliers.

16 A large number of purchasers reported no
17 purchases of Xanthan Gum from JBL and several reported
18 buying exclusively from JBL. A few reported buying
19 only Austrian and Chinese products.

20 Based on the purchasers' responses it is no
21 surprise that different sets of customers purchase
22 from JBL in contrast to the two U.S. producers.

23 Please see Table IV-25 of the producers' and
24 importers' questionnaire responses where JBL and the
25 U.S. producers identify their ten largest customers.

1 Finally, because of the segmented nature of
2 this market and JBL's concentration in the food and
3 beverage sector, the number of lost sales and revenue
4 examples alleged against Austria, there are just six
5 allegations of lost sales and one of lost revenue.
6 These few allegations are also an indication of
7 attenuated competition.

8 In short, U.S. purchasers who buy for the
9 pharmaceutical, industrial, consumer and oil field
10 markets seldom buy from JBL and those purchasers that
11 do buy from JBL are concentrated into one end use --
12 food and beverage.

13 We think that this along with the rigidly
14 segmented market constitutes limited and attenuated
15 competition between JBL and the U.S. producers,
16 substantially limiting if not severing completely the
17 possibility that the U.S. industry could be injured by
18 imports from Austria.

19 The purchasers' questionnaire responses also
20 addressed the considerations that go into purchasing
21 decisions. What the Commission is probing in this
22 context is how important the pricing is in helping
23 subject imports get a toe-hold into the U.S. market.

24 In contrast to many cases, only 2 of 30
25 purchasers who answered this question, 2 of 30, named

1 price as their number one factor. Indeed, price is
2 outranked by quality, product safety and availability
3 concerns with most purchasers ranking price as only
4 the third most important factor.

5 So low price does really not count for that
6 much and probably not at all for very high value
7 applications such as pharmaceutical and food and
8 beverage.

9 The relative unimportance of price is also
10 the reason for the wide differences in domestic
11 producer prices that were noted this morning and that
12 are in our pre-hearing brief.

13 There are a number of reasons why lower
14 price is less important than quality and service
15 factors. First, there is what has been called
16 functional specificity. This describes the situation
17 in which there are two chemically identical Xanthan
18 Gum products but only one of them will work in a
19 specific application for a specific user. That is
20 even if both are qualified.

21 Second, the long, up to 24 months and costly
22 qualification process.

23 Third, the extremely low cost share of
24 Xanthan Gum in all applications, which is a minor but
25 essential ingredient in a myriad of applications.

1 Together these factors constitute extremely
2 high barriers to entry -- a situation in which a
3 current supplier of Xanthan Gum to a purchaser has
4 extensive knowledge of its customers' specific
5 application and the functionality of the product.
6 These barriers are the reason behind the unusual
7 aspects in this market we have been talking about.
8 The lack of alternate suppliers, the focus of JBL in
9 only one segment, and the premium demanded for
10 domestic branded products.

11 Although subject import volumes have gone
12 up, the domestic industry has not lost market share
13 and domestic producers' prices have increased at the
14 same time. Subject import share of the U.S. market
15 increased by less than one percent over the period of
16 investigation, despite underselling of the U.S.
17 product.

18 It is even harder to discern any effect of
19 subject imports on U.S. producerers' prices. All of
20 the parties enjoyed price increases over the period.
21 Prices rose in each channel of distribution. Despite
22 evidence of underselling there is no price depression
23 or suppression.

24 Lower import prices did not seem to affect
25 domestic prices at all. In fact domestic prices rose

1 consistently throughout the POI.

2 This morning the U.S. industry talked a lot
3 about how the profitability of the U.S. went down over
4 the POI but not how import prices were going the other
5 way, rising inversely as the profits declined.

6 As a result of the U.S. industry's
7 increasing shipments, domestic producers maintained
8 market share in the presence of increasing imports and
9 they retained the power to raise prices.

10 Petitioner Kelco has invested in a major
11 capacity expansion. This is not a textbook or any
12 kind of a book definition of injury. I would also
13 encourage the Commission to look at the domestic
14 industry's trends in net sales, inventory, employment,
15 related variables of employment, and capital
16 expenditures. They are all up, some substantially.

17 I would urge the Commission to read or re-
18 read and ponder Footnote 2 on page VI pages one and
19 two of the pre-hearing report.

20 Finally, JBL endorses the analysis of the
21 U.S. industry's profitability found in Respondent
22 Deosen's brief identifying the impact of internal
23 business decisions and not subject imports on
24 profitability.

25 The trade statutes are not designed to

1 protect the U.S. industry from the consequences of its
2 own internal business decisions.

3 Briefly, I will cover the threat factors
4 related to JBL and JBL only.

5 Over the POI, U.S. consumption of Xanthan
6 Gum grew by 35 percent but JBL's market share fell
7 during this period. JBL's Austrian plant runs at a
8 high capacity. JBL's capacity increased marginally in
9 2011 as a de-bottle-necking exercise.

10 Fourth, the growth segment of the U.S.
11 market is the oil and gas sector which accounted for
12 the great bulk of the overall increase in apparent
13 consumption. JBL barely has a presence in this
14 segment. In all other segments save food and
15 beverage, JBL's market share is minuscule.

16 Finally, JBL is not likely to have negative
17 price effects in the future for the food and beverage
18 sector into which JBL sells the great majority of its
19 shipments. Please see our pricing data which was on
20 the increase throughout the period in Products 3 and 4
21 in the pre-hearing report.

22 I'd like to thank the staff for the pre-
23 hearing report.

24 That completes my testimony.

25 MR. PORTER: Mr. Chairman, that concludes

1 Respondents affirmative presentation.

2 COMMISSIONER PEARSON: Thanks to all of you
3 and welcome to the Commission. I appreciate your
4 willingness to be with us this afternoon, and coming
5 from different parts of the country with different
6 expertise.

7 We will begin the afternoon questioning with
8 Commissioner Johanson.

9 COMMISSIONER JOHANSON: Thank you, Mr.
10 Chairman, and I would also like to extend my thanks to
11 all of the witnesses for appearing here today.

12 I'm going to start with a very basic
13 question and any of the witnesses can answer this.
14 But do you consider that there is a global price for
15 Xanthan Gum?

16 MR. TERRY: From my perspective the pyramid
17 that was shown this morning, I don't have really much
18 knowledge of any of the pyramid except for the oil
19 field. From an oil field perspective yes, there is a
20 price that our customers are wiling to pay and this
21 pretty much sets the tone for kind of a global
22 expectation.

23 COMMISSIONER JOHANSON: Mr. Marzulli?

24 MR. MARZULLI: I would like to just say
25 that there are some multinational customers we have

1 that require a global pricing for all locations.

2 COMMISSIONER JOHANSON: Does that cut across
3 all segments of the Xanthan Gum industry?

4 MR. MARZULLI: Certainly for food.

5 COMMISSIONER JOHANSON: How about when you
6 cut across like the oil and gas sector?

7 MR. TERRY: The majority of our customers,
8 let's say we service three main customer groups. One
9 is international oil companies. The international oil
10 companies, they build a global expectation. They
11 don't segregate the market in the U.S. from the market
12 in the Middle East or from anywhere else where they
13 drill. They look at their bills, they look at their
14 invoices, et cetera.

15 We also have national oil companies. They
16 have a national expectation for what they will pay for
17 any product. It doesn't matter if it's Xanthan Gum or
18 anything else.

19 Then you've got a third group which is
20 independent producers. Independent producers tend to
21 focus on how can they get their needs met. When you
22 have these large national and international oil
23 companies the private oil companies are sometimes
24 shoved out to do their own thing. So they're looking
25 out for number one. They wouldn't have an

1 understanding of what a global price would be on
2 anything.

3 COMMISSIONER JOHANSON: Thank you.

4 This next question is for Mr. Bolen. Mr.
5 Bolen, you stated that the majority of the purchasers
6 of Xanthan Gum for your firm are from China. And
7 could you tell me why that is the case?

8 MR. BOLEN: Yes. One being we get the
9 quality that we require. And the one big contract
10 that we got happened to be Chinese produced Xanthan
11 Gum based on quality. So that kind of defines the
12 majority.

13 We have used ADM Xanthan Gum. We kind of
14 use it interchangeably based on grades and whatever.
15 And as I stated before, Kelco really doesn't want to
16 sell us any Xanthan Gum.

17 COMMISSIONER JOHANSON: Thank you.

18 This question is probably going to be best
19 answered either by you, Mr. Bolen again, or Mr. Terry.

20 That is, it was stated in the testimony today, I
21 believe by Mr. Marzulli, that the price of Xanthan
22 Gum, the amount of Xanthan Gum used in baked products
23 let's say or food products, is a much smaller
24 component than that that's used in fluid for drilling.

25 Do you know what the approximate amount of

1 -- Do you know what the approximate amount of Xanthan
2 Gum that is used in drilling fluid by price

3 MR. TERRY: I don't have that information at
4 this time.

5 COMMISSIONER JOHANSON: Would you know, Mr.
6 Bolen, by chance?

7 MR. BOLEN: It really depends. The unique
8 thing about food systems is it's a set formulation.
9 So if you're putting it in a salad dressing or
10 whatever, you're using a very specific amount of
11 Xanthan Gum, When you go to drill a well, you really
12 don't know how much you're going to use. You can make
13 estimates, but because of that drilling process of
14 drilling two or three or four miles into the ground,
15 you could require varying amounts of Xanthan Gum so
16 it's really hard to predict.

17 The use rates in drilling fluids have
18 steadily increased over time as folks have realized
19 that Xanthan Gum is more functional the more you put
20 it into the system, so the use rates over time have
21 grown.

22 Typical use rates could be a pound per
23 barrel which is like .28 percent. But we've seen
24 instances where they're using as many as three to four
25 pounds per barrel in certain applications.

1 So it's a highly variable thing depending on
2 that particular well and that particular
3 circumstances.

4 COMMISSIONER JOHANSON: So the use has
5 increased not only because of deeper wells or
6 increased drilling, but also due to functional
7 reasons?

8 MR. BOLEN: Yeah.

9 COMMISSIONER JOHANSON: This is a follow-up
10 question for you, Mr. Bolen. You say that you
11 purchased Xanthan Gum on the basis of quality,
12 primarily on quality, that's the highest factor. What
13 occurs when you use lower quality Xanthan Gum in
14 drilling?

15 MR. BOLEN: You're having to use more. You
16 can use lower grade material, and some of our
17 customers prefer to do that, but we don't make that
18 decision for them. We basically have the various
19 grades that appear to be favored in our application,
20 then they can decide. If price varies a little bit
21 based on the functionality, but it's really up to our
22 customer to decide what they want.

23 COMMISSIONER JOHANSON: Mr. Marzulli, I have
24 a question that comes out of your testimony from
25 earlier today. I think you stated something along the

1 lines of Xanthan Gum when it goes bad for food
2 purposes, it can be used for drilling purposes? Is
3 that correct?

4 MR. MARZULLI: For industrial.

5 COMMISSIONER JOHANSON: For industrial
6 purposes.

7 MR. MARZULLI: Yeah.

8 COMMISSIONER JOHANSON: How often does that
9 happen?

10 MR. MARZULLI: I really couldn't state. But
11 what I said was in the beginning.

12 COMMISSIONER JOHANSON: Okay, in the
13 beginning. So it's no longer --

14 MR. MARZULLI: When it was started Xanthan
15 Gum that did not meet food grade material was made for
16 industrial.

17 COMMISSIONER JOHANSON: But as far as you
18 know that's no longer a major factor?

19 MR. MARZULLI: I'm not sure.

20 COMMISSIONER JOHANSON: Or a factor in
21 industry?

22 MR. PORTER: We can see what we can do in
23 post-hearing. Mr. Marzulli is on the sales end of
24 things. He's at Deosen USA. He's here in the United
25 States. So he's sort of been told to sell the food

1 grade stuff as it's shipped to him.

2 Every once in a while because they have to
3 do further testing, he runs into a situation where
4 perhaps it doesn't meet the customer spec and then he
5 has to sort of sell it off. But that, the decision of
6 whether it meets food grade, whether the plate count's
7 too high, whether the bacteria's too high, is actually
8 made at the factory. It comes off the line and I
9 believe all Xanthan Gum producers but certainly
10 Deosen, test it immediately. If the plate count's too
11 high, it cannot be used for food. So at that point it
12 is, if it was intended for food has to be somewhere
13 else.

14 What I do not know, we can look into, I
15 think your question is when they are sort of
16 deliberately trying to make food grade, how often is
17 it that the plate count is too high so it cannot be
18 for food. Is that your question?

19 COMMISSIONER JOHANSON: Right. Along those
20 lines.

21 MR. PORTER: We will try to get some
22 information from the manufacturer in China about their
23 experience over the last few years.

24 COMMISSIONER JOHANSON: Thank you.

25 Mr. McCullough, you had spoken about prices,

1 of Guar prices being unstable in recent years. Can
2 you explain why that is the case?

3 MR. McCULLOUGH: It's a combination of both
4 demand and supply considerations. The market took a
5 shock because of real supply constraints and increased
6 demand. If I recall correctly, and we can go back to
7 the record from the preliminary phase, but prices rose
8 to over \$12 or \$13 a pound, I recall.

9 Prices have come back down and that was part
10 of my point is I think the idea that because prices
11 have come back down it's eliminated concern about that
12 market, it really hasn't. And it certainly is an
13 incentive to explore other applications for Xanthan.

14 COMMISSIONER JOHANSON: I assume that prices
15 have been somewhat unstable due to what's happened in
16 the oil and gas sector?

17 MR. McCULLOUGH: That's part of it,
18 particularly with increased fracturing, that increased
19 demand for Guar, but there are also supply issues.
20 There are only a couple of regions in the world where
21 Guar is produced at this point. They're trying to
22 change that, but India in particular is the primary
23 supplier of that product.

24 COMMISSIONER JOHANSON: Thank you.

25 My time has about expired. I will end

1 there. I think you for answering my questions.

2 COMMISSIONER PEARSON: Commissioner
3 Broadbent?

4 COMMISSIONER BROADBENT: Thank you. I want
5 to thank the witnesses. We're pleased to have you
6 with us today.

7 This is sort of an open question for the
8 panel if anybody had a comment. What do you believe
9 the effect of an antidumping duty order would be in
10 this market? Would the sales shift to the domestic
11 suppliers? Or do you think businesses would retain
12 their existing suppliers and just accept the increased
13 prices inherent in the duty orders.

14 MR. RAINVILLE: May I comment first from
15 Jungbunzlauer's standpoint?

16 Our customers have a hard time receiving
17 material or even responses from Kelco or the domestic
18 market. They rely heavily on our services and our
19 ability to provide that product. So I believe a
20 dumping duty will just raise their price and make them
21 less competitive against their competition.

22 MR. TERRY: My comment on that is that our
23 customers will be forced to pay higher prices.

24 COMMISSIONER BROADBENT: Do we think the
25 U.S. industry has the capacity and capability to

1 produce enough Xanthan Gum to meet all the U.S.
2 demand?

3 Mr. McCullough, I see you shaking your head.

4 MR. McCULLOUGH: I'm shaking my head because
5 I think about the record, and obviously some of it is
6 proprietary, but if you look at some of the capacity
7 utilization rates and then you look at the record, as
8 the Commission mentioned this morning about there have
9 been consistent reports of not being able to secure
10 supply from the domestic industry. Then you look at
11 announcements to the domestic industry including CP
12 Kelco about how they're going to expand capacity.
13 There's some disconnect there.

14 I think the story's really not out on the
15 table about what really is their capacity to supply
16 this market, and I think all the record evidence
17 points to the reality that they can't.

18 MR. MAGRATH: I would agree with that.
19 Remember that capacity in this industry isn't just one
20 number. This is divided into these five rigid market
21 segments. Perhaps the U.S. industry could have the
22 capacity to produce for one end use but not the
23 capacity to produce for another. The same goes with
24 the importers.

25 COMMISSIONER BROADBENT: Are there

1 particular market segments you see more of a shortage?

2 MR. MAGRATH: I really don't see any
3 particular sector. Certainly if the oil and gas
4 sector continues to go gangbusters, you would think
5 that that would be one sector, yes.

6 COMMISSIONER BROADBENT: Okay.

7 MR. TERRY: Our strategy is to use a small
8 number of high volume providers. We do not want a
9 large number of low volume suppliers.

10 Kelco has not told us that they want to be a
11 high volume custom supplier. So they are mainly a
12 spot supplier to our oilfield needs.

13 I have discussed price for what we regard as
14 a high volume, or I've not, excuse me, discussed price
15 for what we regard as a high volume of Xanthan Gum
16 products with any of the domestic suppliers. Not have
17 they indicated the willingness to supply those types
18 of volumes.

19 COMMISSIONER BROADBENT: Since ADM isn't
20 here, I just wondered if any of you have any
21 observations on the role that ADM plays in this
22 market?

23 MR. BOLEN: At least in the oil field
24 they're a player but they're not a large player. I
25 don't know who their customers are. I talked briefly

1 about who one of them was. And I don't think they're
2 a major impact on the oil field.

3 COMMISSIONER BROADBENT: How do their prices
4 compare to the Chinese prices?

5 MR. BOLEN: They're generally higher.

6 COMMISSIONER BROADBENT: This is a question
7 about production of this product.

8 At what point do you start getting a more
9 sophisticated product that has a lot of specifications
10 associated with it. Do you sort of produce a baseline
11 product and then add to it with bells and whistles?
12 Or does it start out being very, have a very specific
13 character at the beginning of the production process.

14 MR. RAINVILLE: From Jungbunzlauer's
15 standpoint, we are historically, and our expertise is
16 in fermentation. Everything we do we do through
17 fermentation.

18 We have always served the food and beverage
19 industry first, so Xanthan Gum just fits into that
20 portfolio. For the most part we make food and
21 beverage quality Xanthan Gum as well as our other
22 products and we have been doing this since 1986 when
23 we entered this market.

24 COMMISSIONER BROADBENT: Okay. But does the
25 production process start out with the same product

1 then it's kind of tweaked? Or does it go into the
2 batch with a separate identity? Do you understand my
3 question?

4 MR. MARZULLI: The value added portion of
5 Xanthan at least on the food side, comes after
6 manufacturing. You have your Xanthan Gum, then you
7 might change the grinding to have a finer mesh Xanthan
8 or you may coat it to make it a better disbursable
9 Xanthan. That's where the changes take place, once
10 it's Xanthan Gum.

11 COMMISSIONER BROADBENT: That was helpful.
12 Thank you.

13 Mr. Bolen, why do you believe that Kelco is
14 not pursuing your business given your part of the oil
15 sector is really where the growth is protected?

16 MR. BOLEN: I really don't know. We're
17 here. We're a demonstrated user of Xanthan Gum. I
18 guess that's best answered by them.

19 COMMISSIONER BROADBENT: Okay.

20 I think some of the witnesses were
21 addressing this before, but I'm still trying to get a
22 grip onto the relationship in the price of the Guar
23 Gum as a substitute or versus the effect that it has
24 on the Xanthan Gum price. Can someone explain that to
25 me once more?

1 MR. BOLEN: Guar Gum has been traditionally
2 used in fracturing over the years. Many, many years.
3 It had a relatively low price. It had a particular
4 functionality that the industry applied. So it worked
5 and it was relatively inexpensive.

6 You probably read about shale gas drilling
7 and drilling in Pennsylvania and Ohio and West
8 Virginia and places that had never been really drilled
9 before. To make shale gas drilling work you have to
10 fracture the well. You have to use a fracturing
11 technique which uses Guar.

12 So as the virtual explosion of development
13 in shale gas formations, wherever they were in the
14 United States, it just meant that there was a lot more
15 Guar used.

16 There were some aspects of supply related to
17 weather. There always are issues in Pakistan and
18 India relative to floods and droughts and whatever.
19 It comes from a plant. So there was a shortage at
20 least through the early, or late 2009, related to
21 shortage based on drought.

22 But then the demand increased, and I think
23 the suppliers kind of said we can ask whatever we want
24 to on this and they're going to pay it because they
25 really don't have an alternative. That's kind of the

1 way I saw it.

2 Now supply is beginning to relax a little
3 bit and because it is a commodity the price is going
4 to go down.

5 MR. PORTER: Commissioner Broadbent, let me
6 see if I can try to come back to Xanthan Gum on that.

7 I invite others to correct me if I'm wrong, but I
8 think the main idea is the following.

9 Guar is a very sort of preferred product in
10 oil fields, certain types of oil field oil drilling,
11 as Mr. Bolen explained, especially in fracking. In
12 fact you can probably only use Guar there.

13 There was a big increase in demand combined
14 with sort of disruptions in supply led to a huge spike
15 in the price of Guar.

16 Now Guar is also used in other applications,
17 primarily food applications. In those applications
18 there's more of a substitution with Xanthan Gum.

19 What happened is as the price of Guar shot
20 up because of oil fields, food and beverage people
21 said I don't like this, I'm going to now try Xanthan
22 Gum. They reformulated their product. I think it's
23 cake mixes and dairy where they can kind of use
24 either. They reformulated the product and then began
25 purchasing more Xanthan Gum which led to an increase

1 in Xanthan Gum. I think that's kind of the history
2 that we were trying to develop, and we expect that to
3 continue, which is why we think the demand is good for
4 Xanthan Gum for the future.

5 COMMISSIONER BROADBENT: This is for Mr.
6 McCullough. Can you comment on similarities between
7 the U.S. food and beverage market for Xanthan Gum and
8 those in emerging markets, India and Brazil? Do these
9 markets and the customers have different quality
10 specifications, or the same?

11 MR. McCULLOUGH: I may have to, admittedly I
12 don't know what the preferences are in terms of
13 different Xanthan qualities. I may want to leave that
14 to one of the other witnesses that deal in the food
15 sector.

16 I think one of the points I was trying to
17 make is that as these emerging markets in particular,
18 their living standards and GDP increases and there's
19 more organization, you're going to get a push towards
20 more processed foods. That's obviously a demand
21 driver for Xanthan. In terms of different qualities,
22 I don't know, but maybe one of the other witnesses
23 could address that.

24 MR. MARZULLI: The multinationals, again,
25 will set a standard for their Xanthan Gum requirements

1 and wherever in the world they use that Xanthan for
2 that application, they will be the same standards.
3 There are no differences.

4 COMMISSIONER BROADBENT: Okay. Thank you
5 very much.

6 COMMISSIONER PEARSON: Following up on
7 Commissioner Broadbent's question regarding how the
8 marketplace might respond to the imposition of an
9 antidumping order on all subject imports.

10 I note this really isn't a commodity
11 product. With some commodity products you can
12 envision if subject imports get shut out there's going
13 to be supply from elsewhere and it can come in
14 relatively quickly and the marketplace can adjust.

15 I have the impression that this marketplace
16 would have a lot more challenging adjustments to make
17 because of the specific formulations of products into
18 which Xanthan Gum goes.

19 Tell me first about non-subject imports.
20 Are there some non-subject imports that potentially
21 could replace some subject imports given a period of
22 months?

23 MR. TERRY: The answer is no.

24 COMMISSIONER PEARSON: Okay.

25 MR. TERRY: If you want me to comment

1 further, there are no manufacturers outside the
2 subject import countries other than France that I'm
3 aware of which does not have the capability or the
4 capacity to meet these types of demands.

5 COMMISSIONER PEARSON: You of course are
6 taking a large volume use of this specialized product.

7 MR. TERRY: Yes, sir.

8 COMMISSIONER PEARSON: I think you already
9 commented to Commissioner Broadbent that it would be
10 challenging, or likely not possible in the short term
11 for domestic producers to satisfy that demand.

12 MR. TERRY: Right.

13 COMMISSIONER PEARSON: So at least for a
14 period of time you would be continuing to purchase
15 from Chinese producers, I would guess. Or from
16 subject producers at any rate.

17 Mr. Porter, did you have --

18 MR. PORTER: I just wanted to comment. I
19 fully understand your question. What I'm wrestling in
20 my mind is the answers that you're hearing, how does
21 it affect the statutory analysis.

22 COMMISSIONER PEARSON: It's a condition of
23 competition issue, actually. I'm trying to understand
24 how much rigidity there is in the marketplace given
25 existing contractual relationships and the existing

1 specific customer/producer relationships. It may have
2 nothing directly to do with statutory construct, but
3 I'm curious about it regardless.

4 MR. PORTER: We will do our best to answer.

5 COMMISSIONER PEARSON: Okay.

6 I was going to ask too if anyone wishes to
7 speculate, how long it would take for the effects to
8 be fully accommodated by the marketplace? There would
9 be some period of months or years in which there would
10 be changes going on. I assume that after one to two
11 years things would have pretty much settled down and
12 the marketplace would be dealing with the new reality.

13 Dr. Magrath?

14 MR. MAGRATH: Perhaps. Our testimony here
15 and the facts of the case are that very long
16 qualification periods, up to 24 months, and the fact
17 of this functional specificity that I talked about.
18 The phenomenon where you could have two or three
19 qualified suppliers but yet for only one of those
20 qualified suppliers, the product will actually work in
21 the application. And if that guy is knocked out by a
22 dumping duty, what is the purchaser going to do?

23 Well, what the purchaser will do is he'll
24 pay the extra, or it might be absorbed by the Xanthan
25 Gum producer. but it would lead to extreme

1 dislocations I think in the short run in many
2 applications, and it would lead to the raising of
3 prices on Xanthan Gum.

4 I don't think it would lead to a decrease in
5 actual imports over the long run.

6 COMMISSIONER PEARSON: Maybe that's enough
7 for that non-statutory question.

8 The marketplace would be in a world of hurt,
9 is what I'm hearing. The adjustments would be really
10 challenging.

11 MR. PORTER: I believe the witnesses can
12 expound quite a bit on that question if you want them
13 to. If these duties are sort of finalized I think
14 they believe they will be in a world of hurt.

15 COMMISSIONER PEARSON: Perhaps more for this
16 post-hearing because we could probably go on for quite
17 some time now if we started speculating on all of
18 that.

19 Mr. Rainville, I just wanted to clarify,
20 JBL's plant in Austria, the source of the glucose that
21 it uses, is it derived from corn or from wheat or from
22 some other product?

23 MR. RAINVILLE: It's entirely coming from
24 corn.

25 COMMISSIONER PEARSON: Is that a GMO-free

1 product? Is that important in your production
2 process?

3 MR. RAINVILLE: It is GMO-free. It's
4 important for the European Community. We see some
5 interest in the United States but not to any great
6 degree for GMO-free Xanthan Gum.

7 COMMISSIONER PEARSON: Obviously that's an
8 issue for food uses, maybe for pharmaceutical, but
9 less so for oil field, I would assume.

10 MR. RAINVILLE: I would assume too. We
11 don't sell too much to the oil field worldwide, so I
12 don't ever recall being asked the questions on GMO, or
13 GMO-free from an oil field --

14 COMMISSIONER PEARSON: There probably
15 wouldn't be a real concern. But who am I to decide
16 what GMO issue might be offensive to someone.

17 MR. RAINVILLE: GMO-free products are
18 growing in interest in the United States. To what
19 degree this market will grow in the future, and what
20 need will be there, time will tell.

21 COMMISSIONER PEARSON: I'm happy that the
22 marketplace should give consumers what they want, but
23 I'm not sure how relevant a distinction that is for
24 this product.

25 Mr. Terry, you had indicated that Kelco

1 hasn't been interested in being a high volume provider
2 to Halliburton. Some of this may want to be offered
3 in the post-hearing, but I'm wondering how much
4 contact have you had with Kelco over the entire POI?
5 I think you made reference to some contact in 2012.
6 What I'd like to get a picture of is whether there's
7 been kind of an ongoing effort to cultivate a
8 relationship with Kelco.

9 MR. TERRY: Kelco, as with any of our other
10 suppliers, makes contact from time to time just to
11 keep up with the industry, keep up with what's going
12 on with Halliburton.

13 From the perspective of serious inquiries
14 and serious communication regarding production to meet
15 Halliburton's ongoing large volume needs, very, very
16 few conversations in that vein.

17 Prior to this period, there were always
18 discussions, there always seemed to be diverging
19 interests between what Halliburton was trying to
20 accomplish with large volumes, trademarked products,
21 that type of thing versus what Kelco would prefer to
22 do which would be more market their products, be more
23 of a seller of their Xanthan Gum products. That kind
24 of drove maybe our interests further and further
25 apart. But over a period of the subject timeframe, we

1 continued to purchase on a spot basis from Kelco.

2 That was about the extent of the conversations.

3 COMMISSIONER PEARSON: Mr. O'Brien, did you
4 have a comment?

5 MR. O'BRIEN: Thank you, yes.

6 I just wanted to draw the distinction
7 between spot purchases which can be made from time to
8 time in emergency situations, versus contract large
9 volume suppliers.

10 COMMISSIONER PEARSON: Are there occasions,
11 Mr. Terry, when Halliburton might purchase Xanthan Gum
12 in the United States and then export it to some other
13 location where drilling was going on?

14 MR. TERRY: Under extreme emergency
15 circumstances, yes. That would not be a normal
16 circumstance because there are international supplies
17 available as well.

18 COMMISSIONER PEARSON: So if you had a
19 drilling project going on in the Persian Gulf, for
20 instance, and you needed a supply of Xanthan for that,
21 that would be coming from these same companies we're
22 talking about now, but it would be delivered to Dubai
23 or something like that.

24 MR. TERRY: That's correct, yes.

25 COMMISSIONER PEARSON: I know that

1 Respondents have briefed the issue of cumulation in
2 regard to threat. Do you have any thoughts on
3 cumulation for present injury? Is there an argument
4 there that there's enough on this record to allow
5 decumulation for purposes of present injury? And this
6 could be post-hearing too. Mr. Waite?

7 MR. WAITE: We will address it in post-
8 hearing, but candidly, Commissioner Pearson, we've
9 looked at the cumulation standard for present material
10 injury and based on the findings in the staff report
11 we don't see much ground to till there.

12 COMMISSIONER PEARSON: Okay. There's some
13 attenuation of competition here and I just didn't know
14 whether that took one far enough down that road.

15 With that, my time has expired. Let me turn
16 to Commissioner Aranoff.

17 COMMISSIONER ARANOFF: Thank you, Mr.
18 Chairman. Welcome to the afternoon panel.

19 I was going to jump into some of the pricing
20 questions that I was asking the first panel, but
21 before I do, one other question.

22 The Petitioner has provided the Commission
23 with information from Fufeng's 2012 annual report
24 regarding additional capacity. Since Fufeng did not
25 return a questionnaire in the final phase of this

1 investigation, do you see any reason why the
2 Commission should not take this additional capacity
3 into consideration?

4 MR. PORTER: Let me take a stab at first
5 addressing that, Commissioner Aranoff.

6 Petitioner provided some factual
7 information, and like all factual information the
8 Commissioners are allowed to evaluate it.

9 I would note that although Fufeng decided
10 not to participate in the final phase, the staff did a
11 very good job essentially of preparing a Fufeng
12 questionnaire response based on a lot of data they had
13 compiled. So we actually have a completed Fufeng
14 questionnaire response that the staff prepared with
15 pretty much all of the data.

16 So you have capacity, production, capacity
17 utilization, you have shipments and so forth.

18 When I looked at Petitioner's Exhibit, I
19 didn't see honestly a whole lot of discrepancy between
20 what that exhibit was actually saying and what the
21 staff had compiled themselves. So I don't see that
22 there's a big difference there.

23 I think what the staff has done can be used
24 by the Commission in evaluating Fufeng's capacity in
25 production.

1 COMMISSIONER ARANOFF: Okay. Let me turn to
2 those pricing questions that I wanted to get to.

3 First, kind of a technical data question.
4 Petitioner argues in their brief that certain import
5 pricing data with respect to pricing product number
6 six is at the wrong level of trade and should be
7 disregarded. I don't know if there's anything you can
8 say about that in the public session. Otherwise I'd
9 ask you to respond in post-hearing.

10 MR. PORTER: I'm afraid we're going to have
11 to do post-hearing. It's just too much confidential
12 information.

13 COMMISSIONER ARANOFF: Okay.

14 When I asked Petitioner this morning about
15 the specific pricing products and whether the
16 specifications for each of them were tight enough that
17 we could not expect an product mix issues within each
18 pricing product. They said no, those are very tight.

19 And to the extent that we were seeing differences in
20 price between two different producers, that would not
21 be product mix, that would be underselling. I wanted
22 to ask whether you agree with that assessment.

23 MR. PORTER: Let me see if I can first start
24 with food and beverage, and then go to oil field.
25 Let's first go to JBL and see if --

1 MR. MAGRATH: We agree. they are specific.

2 MR. PORTER: Let me ask Mr. Marzulli, are
3 you familiar with the product distinctions in the
4 question or not so much?

5 MR. MARZULLI: I'm not familiar with that.

6 MR. PORTER: Okay. Let us for Deosen, we
7 will address this post-conference.

8 There are different people that fill out the
9 questionnaire and I don't think Mr. Marzulli sort of
10 read the specific definition, so it's hard for him to
11 answer on the spot.

12 COMMISSIONER ARANOFF: That's fine.
13 Obviously that's the factual prerequisite to the
14 question of whether or not we should be giving weight
15 to the underselling that we see in the data.

16 MR. PORTER: Absolutely, Commissioner
17 Aranoff, and if I may make a suggestion, if the
18 Commission is interested, I think perhaps going back
19 to the parties and simply saying for each pricing
20 product give me your of high/low, your range of prices
21 that you sold in that pricing product. Then you would
22 have data from all the parties in response to your
23 question. Just a suggestion.

24 COMMISSIONER ARANOFF: We'll think about
25 that.

1 This afternoon you've made the argument that
2 the U.S. market is not the most profitable market in
3 which to sell Xanthan Gum for Chinese producers.
4 Therefore, increased volumes of Chinese imports are
5 not likely in the imminent future. How do you
6 reconcile that with the fact that imports from China
7 did increase in absolute terms significantly over the
8 period? Or significantly is a conclusory term. In
9 any event, they rose in absolute terms over the period
10 of investigation.

11 MR. PORTER: Thank you, Commissioner
12 Aranoff.

13 Yes, imports from China did increase but the
14 whole reason the Commission asks and receives capacity
15 utilization information is to get at this very
16 question.

17 Imports rose from 2010 to 2012 but now your
18 question is looking beyond 2012, and what the data
19 shows is there's just not much capacity there to
20 engage in significant exports from China. That's how
21 we would respond to your question.

22 COMMISSIONER ARANOFF: At the end of my
23 questioning of the Petitioners panel I was asking
24 general questions about how sales transactions work in
25 the market, so obviously we have some sellers and

1 purchasers here. If you could just talk a little bit
2 about how the process works. How a request for quotes
3 put out, do you have to be pre-qualified to bid? Do
4 you reach out to potential suppliers or do they reach
5 out to you?

6 I can start with Mr. Terry. You're probably
7 the most directly affected person.

8 MR. TERRY: From our standpoint, generally
9 we do a global RFQ which would identify, we would
10 identify the potential suppliers.

11 This cursory identification would not
12 necessarily determine whether these suppliers would be
13 qualified or not.

14 Then we would go through a pre-qualification
15 period and phase which includes a combination of can
16 you align with our custom needs and can you meet our
17 custom requirements from the quality and volume
18 perspective.

19 Once suppliers are pre-qualified under that
20 process, then we have the RFQ itself which has those
21 suppliers quote on a group or a batch of volumes or
22 their desired interest in our business. Allows them
23 to comment on their capabilities, on their future
24 expansions, developments, innovations, all those types
25 of things.

1 We try to be complete. Then we go through a
2 number of different considerations, primarily quality,
3 availability of supply, ability to meet our trademark
4 needs, ability to package, warehousing, logistics
5 information, as well as price.

6 MR. MARZULLI: With the multinational food
7 companies, they will issue an RFQ, a request for
8 quotation. And you do not necessarily have to be
9 fully qualified for them to send that out and they
10 will get the bids from the different suppliers.

11 Once they review the bids and decide which
12 supplier or suppliers they want to deal with, if they
13 are not approved for Xanthan at those companies it
14 will go into an approval process there.

15 But for the most part in our case, in
16 Deosen's case, we are asked to bid on the business on
17 a worldwide basis, and we do that, and then the
18 customer decides if we have the winning bid.

19 Many times they do not award the bid 100
20 percent to any one supplier. It will be given to a
21 number, a couple of different suppliers.

22 MR. RAINVILLE: From JBL's standpoint, we do
23 participate as well in these formal bids, but from
24 many of the U.S. food and beverage customers we do not
25 see such a formal process. And very often it's more

1 of a negotiation or a discussion between us and our
2 customer because it's not so much about price. It's
3 about availability of product in meeting the needs
4 that they expect from us and they've received from us
5 over the years.

6 COMMISSIONER ARANOFF: In your collective
7 experience, is it common for a purchaser in the course
8 of one of these discussions to come back to you and
9 say I have a lower quote from another supplier, can
10 you meet that? Or your price is a little higher than
11 I was expecting, can you do something for me? Is that
12 common?

13 MR. BOLEN: In the case of Grinding and
14 Sizing, the vast majority of our customers are -- You
15 can classify drilling fluid service companies from the
16 big global companies like Halliburton, Schlumberger,
17 whatever. Then there are some mid-tier people that
18 are kind of regional independents, if you will.
19 They're the next tier of -- The majority of our
20 customers are the lower tier and there are hundreds of
21 them in America. They're the drilling fluids
22 engineers who learn the business and then start a
23 business. It can be a husband and a wife, it can be
24 three guys that had some contact with an independent
25 operator and got some business. They're the ones that

1 we deal with. Basically we have a price list that we
2 don't deviate from much. They'll call us and say we
3 need some, we need some lost circulation materials or
4 we need some of this and some of that. And oh by the
5 way, could you fill out the truck with a couple of
6 pallets of Xanthan Gum. Yeah, we're glad to do that.

7 That's kind of where we -- We don't do a lot
8 of contract work.

9 COMMISSIONER ARANOFF: How about in your
10 capacity as a purchaser of Xanthan Gum? When you're
11 dealing with your Xanthan Gum supplier. That's kind
12 of the level at which I think we're the most
13 interested.

14 MR. BOLEN: First we try to estimate our
15 requirements. I can tell you last fall that we were
16 allocating Xanthan Gum to all of our clients because
17 we didn't have any. We didn't have enough. There
18 wasn't enough in the business and we were getting
19 calls from people who we knew were in the business but
20 they weren't customers who were begging us for Xanthan
21 Gum.

22 So there was a shortage mid-year last year
23 all the way close to the end of the year. We finally
24 started getting some more supply in. So there was --
25 We go to our suppliers and let them know what, not

1 only what do we need now but what do we think we're
2 going to need in the future. That's a really
3 difficult thing to -- It's such a dynamic industry
4 that you really don't know what these guys are going
5 to need in the future and in a lot of cases they don't
6 know themselves.

7 We run a 24x7 operation, seven days a week.

8 To be a supplier to the drilling fluid business you
9 have to have availability of whatever you're selling
10 on a 24x7 basis because they can come in in the middle
11 of the night and want it, they can come in on
12 Saturdays and Sundays. They never close. It's
13 because those rigs, once they get going they never
14 close. They drill 24x7 until they get to where
15 they're going to get, until they produce oil or gas or
16 whatever they're looking for.

17 So it's a highly service oriented business
18 where they don't -- Sure, we've got customers that say
19 can you give me a little lower price on this? Well,
20 they ask for a little lower price on everything.
21 That's the business they're in, is to try to reduce
22 their costs. But we generally put our service and our
23 capabilities out there and say this is what we charge.
24 We've been pretty successful at that.

25 COMMISSIONER ARANOFF: I've gone over my

1 time, but thank you for those answers.

2 COMMISSIONER PEARSON: Commissioner Pinkert?

3 COMMISSIONER PINKERT: Thank you Mr.

4 Chairman, and I join my colleagues in thanking all of
5 you for being here and taking time out to help us
6 understand this industry.

7 I want to begin with a question that may
8 seem to be going over well trod ground at this point,
9 but I think you've testified quite a bit about what
10 you regard as the lack of impact of the underselling
11 that we observe in this market. But I haven't heard a
12 succinct explanation of why we observe the persistent
13 underselling in this market? What's going on that
14 enables this pattern to continue?

15 MR. PORTER: I'll start, but I'm obviously
16 going to quickly turn it over to the industry experts.

17 I think one thing that you heard is the
18 market does have branded versus private label. As the
19 Commission knows from many past case, that itself
20 produces, if you will, perceived underselling simply
21 because of the markup for the brand. I think in the
22 oil field you'll hear that some of the oil field
23 customers ask the Xanthan Gum supplier to make the
24 Xanthan Gum and put it into their bag. So that way
25 when they ship it to their customer it looks like

1 whoever the oil, the drilling fluid, it looks like
2 it's theirs, but obviously it was made by one of the
3 few Xanthan Gum suppliers.

4 Where there are other types of Xanthan Gum
5 from some of the producers who were boasting about
6 their branded product, and I think that helps to
7 explain why there is a, we would call it a natural
8 premium for that which in trade law parlance
9 translates into underselling. But I'm going to ask
10 the industry experts to elaborate.

11 COMMISSIONER PINKERT: I see Mr. Magrath in
12 the back there. Do you want to go ahead and start?

13 MR. MAGRATH: While they're pondering their
14 response, from JBL's standpoint, I'm really just
15 repeating what Mr. Rainville said. First of all, the
16 underselling and overselling information is mixed in
17 terms of JBL. And with them, selling to a customer is
18 more of a discussion, a negotiation between them and a
19 long time customer, customers that have been with them
20 five years, with them ten years.

21 So there's a certain price that's
22 established that's bumped up over time, but for JBL,
23 it just wouldn't be good business practice for them to
24 raise their prices willy-nilly, because they are
25 negotiating with these guys who are basically friends

1 of theirs. Right Dan?

2 MR. RAINVILLE: Correct.

3 COMMISSIONER PINKERT: In the first row
4 here, do we have an answer?

5 MR. O'BRIEN: Commissioner Pinkert, I think
6 we'd like to address that in the post-conference brief
7 if we can.

8 COMMISSIONER PINKERT: Certainly.

9 MR. PORTER: I'm looking at, I think we'll
10 do the same. I think they want to think about that
11 and also get their, all their experiences together,
12 and we'll address that in our post-hearing brief.

13 MR. MAGRATH: Commissioner, I'm sorry, may I
14 add one thing quickly?

15 COMMISSIONER PINKERT: Certainly.

16 MR. MAGRATH: This goes to what Mr. Porter
17 said.

18 This is a market that is characterized by a
19 large producer that's got a branded product. And once
20 you start talking about brands, a little, maybe a lot
21 of price competition in the usual way you look at
22 underselling goes out the window. So I would just
23 have you remember that the nature of what a brand
24 means to a market and to a producer.

25 COMMISSIONER PINKERT: I will do that.

1 I want to give you a chance to answer a
2 question that I asked the earlier panel, and this may
3 be more of a post-hearing question. But do you think
4 that CP Kelco has been hurt or harmed in some way by
5 domestic competition rather than by subject import
6 competition?

7 MR. PORTER: We have a lot to say about that
8 but we're going to have to defer to post-hearing on
9 that one. But we have quite a bit to say about that.
10 Thank you.

11 COMMISSIONER PINKERT: Can anybody address
12 this in a public hearing? I totally understand if the
13 answer to that is no, but --

14 Mr. Waite?

15 MR. WAITE: After careful consideration,
16 Commissioner Pinkert, I think we'd like to reserve for
17 the post-hearing brief as well.

18 You may recall that in our pre-hearing brief
19 we did address this issue. We did present certain
20 information which has already been referred to during
21 testimony this afternoon. We'd like to expand upon
22 that. But given the constraints of confidentiality, I
23 really feel uncomfortable saying much more than if you
24 could wait for our post-hearing brief.

25 COMMISSIONER PINKERT: Thank you.

1 Note that I did not use the term injured in
2 my question. I said hurt or harmed. So we don't need
3 to get into a philosophical discussion of whether
4 somebody can be harmed but not by reason of subject
5 imports.

6 My next question is for Mr. Terry. I
7 understand that you've described the history that your
8 company has had in dealing or not dealing with
9 domestic producers, but what would it take for you or
10 your company to purchase Xanthan Gum from domestic
11 producers? Just sort of turning the whole thing on
12 its head and saying what would have to be different
13 for you to do that?

14 MR. TERRY: We do purchase on a spot basis
15 today, but I think your question is more along the
16 lines of larger volumes more than spot.

17 MR. PORTER: Correct. Just kind of treading
18 over old ground, but the willingness, the capability
19 or at least the willingness to devote capability, and
20 the wherewithal to produce trade named, trade packaged
21 products in large volumes would be a primary
22 consideration that were specifically designed for our
23 specifications. That's the biggest hurdle I think for
24 us to get over, is just to get that commitment on high
25 volume, high quality devoted products to Halliburton's

1 needs.

2 MR. O'BRIEN: If I could just add,
3 Commissioner Pinkert, in the post-hearing brief we'll
4 explain that Halliburton, its strategy is to use a
5 small number of suppliers that can supply quite high
6 volumes. So what might be high to another company
7 might not be adequate or acceptable to Halliburton.
8 That's a situation we'll explain in more detail, but
9 that has certainly been part of the problem.

10 COMMISSIONER PINKERT: Thank you.

11 I believe you heard testimony earlier today
12 from the earlier panel about the difficulty or lack of
13 difficulty there is for producers to switch from
14 producing Xanthan Gum for one market segment over to
15 pharmaceutical applications. The characterization
16 that we heard from the earlier panel more or less ran
17 along the lines of there's a lot of paperwork. There
18 are a lot of tasks unrelated to the specific qualities
19 of the product that have to be undertaken in order to
20 move over. But more or less it's pretty easy
21 otherwise.

22 Can you comment on that characterization?

23 MR. MARZULLI: For the pharmaceutical area,
24 it is very, very difficult. It has been very
25 difficult for Deosen to get into that market or the

1 consumer market. Because many of these customers
2 require an FDA approved plant which means audits over
3 in China for those plants, and they have to meet very,
4 very stringent standards for the pharmaceutical grade
5 products.

6 Secondly, the applications for the most part
7 in those areas are very, very small, so it is very
8 difficult and very time consuming and costly for a
9 pharmaceutical company to qualify another supplier for
10 Xanthan Gum. Even if that supplier meets the FDA and
11 all the other regulations, it's an extremely difficult
12 area to try to get in. I believe they could even
13 require an NDA for the ingredient to get in there. So
14 it's very, very difficult.

15 MR. PORTER: Commissioner Pinkert, can I
16 have ten seconds?

17 COMMISSIONER PINKERT: Certainly.

18 MR. PORTER: The Commission staff did a very
19 admirable job in collecting data by different
20 segments. And quite honestly, your question, at least
21 in concept, has been answered by the Commission staff
22 because they have data on sort of everyone's
23 participation in these segments.

24 And if it were so easy, and if the Chinese
25 were as rapacious as CP Kelco is making out, you would

1 expect to see a lot more participation in those
2 segment. I submit that the data doesn't show that and
3 the reason is precisely what Mr. Marzulli said. It's
4 not that easy, so they have not been able to overcome
5 the barrier to those markets.

6 COMMISSIONER PINKERT: Thank you very much.

7 It was a little more than ten seconds, but we didn't
8 hear from the Chairman on it so it's okay. Thank you
9 very much.

10 COMMISSIONER PEARSON: Commissioner
11 Johanson?

12 COMMISSIONER JOHANSON: Thank you, Mr.
13 Chairman. It's okay that it was more than ten seconds
14 because I'm going to continue along the same theme
15 here.

16 In Deosen's brief you all write that there
17 has been consumer, I'm sorry, customer resistance to
18 China's imports that will continue to advantage the
19 U.S. industry. Could you all please expand in that?

20 MR. PORTER: Certainly. I'd ask Mr.
21 Marzulli to give sort of real world examples of, quite
22 honestly what been an anti-China bias for certain
23 applications of Xanthan Gum.

24 MR. MARZULLI: There are customers who sell
25 to the fast food industry, per se, that those people

1 do not want any Chinese manufactured material in their
2 ingredients. Even our existing customers, they will
3 tell us we cannot use your product in certain
4 applications because our customers will not allow
5 Chinese material to be in here. So it's very, very
6 difficult for us to penetrate some of those markets.

7 COMMISSIONER JOHANSON: I assume some
8 customers are using Chinese product.

9 MR. MARZULLI: Yeah, but there are a couple
10 of major multinational companies in the cereal area
11 that will not even evaluate Chinese material.

12 COMMISSIONER JOHANSON: Is that due to
13 perceived safety issues or quality issues?

14 MR. MARZULLI: That they feel, yes.

15 MR. PORTER: If I may --

16 COMMISSIONER JOHANSON: Yes, Mr. Porter.

17 MR. PORTER: It is definitely a perception
18 issue, Commissioner Johanson. Obviously the Chinese
19 are selling --

20 COMMISSIONER JOHANSON: And I used the word
21 perceived.

22 MR. PORTER: Yes, perceived. But I would
23 sort of note that the evidence of how widespread that
24 perception was given to you this morning CP Kelco
25 commented that in their view using Chinese product was

1 actually dangerous in certain applications. That's
2 what they said this morning. I think you heard it.
3 From Deosen's standpoint, unfortunately, many U.S.
4 customers feel the same way which is why Deosen, as
5 much as they wanted to, is not particularly bullish
6 about expanding into sort of food and beverage,
7 consumer and farmer segments into the future.

8 COMMISSIONER JOHANSON: Are there issues
9 with the FDA applications?

10 MR. MARZULLI: The plants have to have an
11 FDA approval process. Deosen is not an FDA-approved
12 plant. It is FCC approved, but not FDA approved.

13 COMMISSIONER JOHANSON: FCC?

14 MR. MARZULLI: The material meets the food
15 chemical --

16 COMMISSIONER JOHANSON: I was thinking
17 Federal Communications Commission. I was confused.
18 they're right down the street, so I got a little
19 confused. I'm sorry.

20 MR. MARZULLI: But not FDA requirements.

21 Many of these suppliers will come to China
22 and do audits on the plants. But there's many
23 restrictions that customers have regarding Chinese
24 Xanthan.

25 COMMISSIONER JOHANSON: Again, with Mr.

1 Bolen we heard earlier today that Chinese product is
2 actually preferred in some cases with regard to oil
3 field applications.

4 MR. BOLEN: With regard to the Buy American
5 thing I can tell you that the majority of our
6 customers drive pickup trucks with brush guards on the
7 front and an American flag in the back. So they are
8 pretty patriotic. But they've also come to realize in
9 the drilling business that a lot of the Baroid comes
10 from China, just because it's there and it's
11 available.

12 So they've had to kind of deal with the
13 reality that if they're going to be in business
14 they've got to accept products that come from all over
15 the globe. So they've transitioned to that over time.

16 But we don't see any resistance to Chinese product at
17 all. After you convince them that it's what they need
18 and it meets their specs.

19 COMMISSIONER JOHANSON: Thank you.

20 This question regards Austria so I'm going
21 to the other part of the globe.

22 Mr. Rainville, I was wondering, the plant
23 that you own, your company owns in Austria, was that
24 built I assume primarily to supply the European
25 market?

1 MR. RAINVILLE: No, not necessarily. It was
2 built to supply all markets. The Xanthan Gum portion
3 was built in the 1980s. At that point we had been
4 producing citric acid for 20 years off that same plant
5 location and we were already servicing the U.S.
6 market. So there was clearly a volume dedicated to
7 servicing those same food and beverage customers in
8 the U.S. that we provide citric acid, who are now
9 asking us for Xanthan Gum.

10 COMMISSIONER JOHANSON: One reason, I'm
11 actually following up on something that Commissioner
12 Pearson talked on earlier and that was the feed stock
13 for Xanthan Gum produced in Austria.

14 I understand that, I believe you said it's
15 primarily, or you indicated it's primarily European
16 produced corn and if that's proprietary you don't have
17 to answer that.

18 MR. RAINVILLE: It is entirely European
19 corn.

20 COMMISSIONER JOHANSON: Does that put you at
21 a price advantage in any way? Because with the U.S.
22 being the largest corn producer in the world, and I
23 know the various corn production in the European
24 Union, but I know it's not nearly as high as that in
25 the United States.

1 MR. RAINVILLE: Price advantage from the --

2 COMMISSIONER JOHANSON: With regard to the
3 feed stock. The corn.

4 MR. WAITE: Commissioner Johanson, this is
5 Fred Waite. If I could begin to respond to that. Mr.
6 Rainville's on the sales side --

7 COMMISSIONER JOHANSON: I understand, sir.
8 I apologize.

9 MR. WAITE: No apology necessary,
10 Commissioner. But we obviously, both Mr. Rainville
11 and I have spoken extensively with the production side
12 as well, and whether there's a cost advantage to JBL
13 to purchase European produced corn rather than corn
14 from other sources.

15 There are certain advantages, obviously, in
16 purchasing corn from nearby locations. As I recall
17 when we visited Pernhofen earlier this year, much of
18 their corn comes from Austria, some of it comes from
19 Czechoslovakia, Hungary, nearby locations. And as Mr.
20 Rainville also testified, the real change in the cost
21 structure, if you will, of JBL's production in Austria
22 has been a shift to move toward entirely internally
23 produced glucose rather than purchase glucose from
24 other suppliers. They would buy, that is JBL now buys
25 the corn and prepares the feed stock at the plant.

1 There's another advantage perhaps that JBL
2 has in that respect in that the citric plant at
3 Pernhofen, which again as Mr. Rainville testified is
4 entirely separate and distinct from the Xanthan.
5 There's no commingling of production processes or
6 output.

7 The citric plant, as we were told, is the
8 largest in the world, so there's a tremendous
9 consumption of glucose at that facility, and by moving
10 to internally supply their input needs, that has given
11 JBL price stability, it's given them input reliability
12 and assurance. But whether or not there's a distinct
13 advantage in say the United States or Europe in terms
14 of prices of corn. I mean we can look at that and
15 report to you in our post-hearing brief what we find
16 in terms of corn prices and the movement of corn
17 prices during the POI. That's not very difficult to
18 do. We'd be happy to do that for you.

19 COMMISSIONER JOHANSON: That would be
20 useful.

21 One of the reasons I'm asking these
22 questions is I'm somewhat familiar with the production
23 of GMO corn in the European Union and I would assume
24 that would add to your costs. I know that produces a
25 marketing advantage for you perhaps, in the United

1 States and certainly in the European Union. But that
2 would be more expensive.

3 I know for example, at least I understand
4 that livestock producers in the EU feel this advantage
5 -- vis-a-vis the livestock producers in other parts of
6 the world because the corn used in that production,
7 feed, is higher priced than it would be let's say in
8 the United States due to the fact that it's usually
9 GMO-free. This is in regard to European produced
10 corn.

11 MR. RAINVILLE: I understand the question,
12 Commissioner. We can look at that. We just don't
13 have that information with us right now.

14 COMMISSIONER JOHANSON: Thank you. I'd
15 appreciate that.

16 Mr. Rainville, I have another question for
17 you and I don't know if this is something you want to
18 get into or not because it might potentially be
19 proprietary.

20 But you had stated that U.S. suppliers are
21 not often that reliable. Do you have any examples of
22 that by chance, that you'd be willing to speak on?

23 MR. RAINVILLE: My examples are from
24 discussions over the past years between myself and
25 customers as well as my sales team and customers. And

1 very often we get this response from the buyers of the
2 various customers, that they've reached out to the
3 domestic market product, they either can't get the
4 volumes they need or very often they can't even get
5 quotes, offers for volumes that they may need.

6 COMMISSIONER JOHANSON: Thank you.

7 Mr. O'Brien and Mr. Bolen, in the oil and
8 gas sector, have you experienced the same problems?

9 MR. BOLEN: Yeah, like I commented on it
10 briefly before.

11 COMMISSIONER JOHANSON: Okay.

12 MR. BOLEN: I've seen it demonstrated, an
13 unwillingness to supply the volume that are necessary
14 to fulfill the needs of the market.

15 COMMISSIONER JOHANSON: Thank you. That
16 concludes my time.

17 COMMISSIONER PEARSON: Commissioner
18 Broadbent.

19 COMMISSIONER BROADBENT: We're sort of in
20 the stage where we have these lingering questions in
21 our minds that are kind of random, so I have a few
22 extra things to ask you.

23 Why the sharp increase in demand in 2012.
24 We sort of said we saw a flat demand during 2011 and
25 this sharp spike up in demand in 2012.

1 Anybody have an explanation for what was
2 going on there?

3 MR. BOLEN: UI said earlier that generally
4 use in the oil field was related to rig count and the
5 higher the rig count the higher the use of Xanthan
6 Gum. That's generally true.

7 In the case of some of these new techniques,
8 the industry loves to make these rigs count as
9 rotating rigs, those traditional things that you see
10 out there,. There's some new technology that's coming
11 to the fore using coil tubing techniques. They take a
12 big piece of steel and thread it into the hole, they
13 straighten it out as they go and thread it in so they
14 can actually drill a well without a rig. No one's
15 counting that part of it in the activity and there's a
16 lot of that, an increasing number of that going on.
17 There's also an increasing amount of Xanthan Gum used
18 in those types of operations, whether they be drilling
19 or completion. Using those techniques.

20 So you tend not to be able to see where it's
21 coming from, but the demand for liquid Xanthan Gum
22 slurries, at least from our standpoint, has kind of
23 gone through the roof. So that would account for part
24 of it.

25 MR. McCULLOUGH: Commissioner Broadbent,

1 Matt McCullough. Just to add some flavor to that. If
2 you look at our exhibit 5 from our pre-hearing brief
3 and looking at the traditional rig count you'll see
4 that the rig count in the U.S. was 25 percent higher
5 in 2012 than it was in 2010 and almost double what it
6 was in 2009. That tells part of the story.

7 And obviously Xanthan demand has just grown
8 in both sectors, it tracks the economy, GDP growth.
9 So you're going to get that kind of demand growth.

10 COMMISSIONER BROADBENT: Thank you.

11 This is sort of to get a little bit of a
12 distinction, a comparison between the oil field sector
13 and the food sector.

14 I think this is probably Mr. Marzulli, Mr.
15 Terry, Mr. Bolen, Mr. Rainville might have an answer
16 on this.

17 Are most of your purchasers in your sector
18 characterized by spot purchases? Or are they more
19 longer term contract based supply relationships? I
20 just wanted to contrast the two different sectors.

21 MR. MARZULLI: In the food area ours are
22 primarily contract basis.

23 MR. RAINVILLE: Same with Jungbunzlauer.
24 Most of our business is annual contracts.

25 MR. TERRY: The majority of our business in

1 the oil field is contracted, large volume producers.

2 MR. BOLEN: Ours is a combination of spot
3 buying and contracts with the heavy leaning toward
4 spot buying.

5 COMMISSIONER BROADBENT: Okay.

6 As you know in the staff report, our staff
7 collected pricing data for both end users and
8 distributors. In looking at specific products, do you
9 recommend that we give extra weight to sales to end
10 users, to distributors, or to look at both together?

11 MR. MARZULLI: In the food area in our case
12 it's primarily to end users. We don't use very many
13 distributors in the United States.

14 MR. PORTER: In terms of giving extra
15 weight, I think that's a little bit hard for me to
16 answer. We typically look at this on a volume basis
17 and two aspects of volume. One is where's the subject
18 imports that most and where's the domestic the most
19 and then by doing that, where is the most intense
20 overlap of competition.

21 I don't sort of have all the numbers in my
22 head.

23 As you might have seen, there's been,
24 without getting into detail there's been some
25 confusion in one of the segments about how to identify

1 purchasers. Whether they should be end users or
2 distributors. We think in that particular thing the
3 best thing to do is just do a weight average of both
4 when you do your underselling analysis.

5 COMMISSIONER BROADBENT: Okay.

6 Mr. Marzulli, to expand on your answer to
7 Commissioner Johanson about the Chinese product, is
8 the anti-China bias easing a bit? As the Chinese
9 product is in the U.S. market for a longer period of
10 time? Do you see that at all abating or is it a
11 pretty steady anti-Chinese bias in the U.S. market.

12 MR. MARZULLI: It was quite severe four or
13 five years ago when they had all those issues in China
14 with the milk powder and things like that.

15 It has dissipated quite a bit now.
16 Certainly in the food industry that we call on. But
17 again, if you move up to the higher value added
18 Xanthan in the cosmetics and the pharmaceuticals, I
19 think there's probably still a very strong Chinese
20 bias.

21 COMMISSIONER BROADBENT: Thank you.

22 Mr. Chairman, I want to just thank the
23 witnesses for educating me today. I think I'm going
24 to sleep better tonight knowing that I can get Xanthan
25 Gum on an emergency basis 24 hours a day. I know how

1 to call now. This has been a great hearing. Thank
2 you.

3 COMMISSIONER PEARSON: I think I have only
4 one question and this would be for you to comment on
5 in post-hearing if you're able.

6 I asked the domestic industry this morning
7 whether they could tell us anything about ADM and why
8 they aren't here. Given that your firms either
9 compete with ADM in the marketplace or purchase from
10 them, you might have some insights into that.
11 Whatever you could help us to understand that might be
12 useful on the record. I guess in order to be
13 substantial evidence it has to be something other than
14 just speculation, but -- Mr. Porter, you have
15 something to add?

16 MR. PORTER: Yes. I want to thank you for
17 the question because quite honestly, we were going to
18 answer that anyway, even though you asked it of
19 Petitioners. So thank you for asking us.

20 COMMISSIONER PEARSON: Okay, and I don't
21 expect you to say anything herein the public session.

22 With that I believe I have no further
23 questions.

24 Commissioner Aranoff?

25 COMMISSIONER ARANOFF: Thank you.

1 You've made the argument that the petition
2 had no material impact on the domestic industry's
3 operating results because the preliminary duties
4 weren't imposed until January 2013. And you've shown
5 us the data regarding what happened with import levels
6 in the second half of 2012. But Petitioner has
7 pointed us to evidence in the record of a number of
8 purchasers that they say have come to them who haven't
9 come to them in a really long time, a pickup in their
10 business, a pickup in their production. How do you
11 respond to the argument that those are visible effects
12 from the petition?

13 MR. PORTER: Two responses.

14 The first response, I'd like to sort of set
15 the stage a little bit. Petition effect historically,
16 the way the Commission has looked at it, has been
17 about the disappearance of subject imports which
18 traditionally had been because of termination. It
19 really started out as a volume sort of, what happened
20 was you'd have the prelim like come out in say March
21 or April. Then the Petitioner would ask for nine
22 months of data and Respondents would come and say look
23 at the interim period. They're doing really well.
24 That's because all of the subject imports disappeared
25 because of the prelim. So the idea of petition effect

1 was really related to the disappearance of the subject
2 imports.

3 COMMISSIONER ARANOFF: Or the increase in
4 price of the subject imports.

5 MR. PORTER: Fair enough.

6 But again, the Commission in past cases has
7 repeatedly said we do that as a date of the prelim, as
8 you I believe, Commissioner Aranoff, said this
9 morning, that's when under the law it has effect.

10 In this case in particular, there has not
11 even been an allegation of critical circumstances.
12 What that means as a practical matter is that the
13 exporters knew that essentially they could ship
14 without fear of antidumping duties until January 2013
15 with respect, without the antidumping duties.

16 So you really have this nice situation that
17 the antidumping duties did not affect anything in
18 2012.

19 Now I do recognize what Petitioners have
20 argued in their brief. I believe if, I believe you
21 don't need to, but if you really believe that this is
22 an issue, I suggest the Commission treat that sort of
23 allegation as a lost sale allegation, go back to those
24 purchasers and ask them the question, ask the
25 purchaser to comment on that.

1 MR. DURLING: Commissioner Aranoff, this is
2 Jim Durling, just two other points about the record.

3 First, the evidence of incredibly strong
4 demand in 2012 especially the end of 2012, I think
5 when we can talk about the data which we can't here,
6 but when you talk about the data I think what you'll
7 see, and it is consistent with the qualitative
8 testimony you heard from some of these witnesses, that
9 at the end of 2012 they were having trouble getting
10 supply. Right? That's why you would see, kind of
11 more outreach to suppliers, kind of reaching out to
12 people you have not previously seen.

13 So on the volume side I think it's largely
14 about demand. On the price side we can't say much in
15 a public hearing but I think when we address that in
16 post-hearing you'll see that the claim or the
17 implication that prices somehow went up at the end of
18 the period because of the petition effects, can't be
19 squared with the data but we'll have to do that post-
20 hearing.

21 COMMISSIONER ARANOFF: I appreciate that.
22 And for both sides, I think at least for me one very
23 important issue in this case is going to be how I look
24 at the data from the second half of 2012. The statute
25 tells me that I can presume that any improvements in

1 the state of the domestic industry after the petition
2 was filed are due to the petition and I can give them
3 less weight in my determination unless there are facts
4 on the record that can overcome that presumption.

5 So if there are facts on the record that can
6 overcome that presumption, that's where you need to
7 focus.

8 One more question.

9 This is an argument that JBL made in your
10 brief and I think you also made it in your testimony
11 today which was that to the extent that shipments into
12 the U.S. market from Austria have increased during the
13 period, they reflect increased sales to existing
14 customers and that somehow that means the Commission
15 should give them less weight when it's assessing
16 volume effects and causation.

17 Can you walk me through your theory on that?

18 MR. WAITE: Of course, Commissioner Aranoff,
19 if I can get in a position where I can see you.

20 As you heard testimony this afternoon from
21 the panel and as you saw in the briefs that were
22 submitted before the hearing, the Xanthan Gum market
23 in the United States is highly fragmented, and one of
24 the attributes of that fragmentation is the reliance
25 of certain customers on certain suppliers and the fact

1 that the record shows that many customers buy either
2 exclusively or almost exclusively from one supplier or
3 in some limited cases two suppliers, and as a result,
4 those customers, because of their formulations,
5 because of the use of the product in their
6 applications, their reluctance to look at other
7 suppliers because that might cause them to have to
8 reformulate their applications, rely on suppliers and
9 JBL in particular in the food and beverage sector has
10 customers like that. It's in the record and we can
11 fill that out with names and faces in our post-hearing
12 brief.

13 So as a result those customers who rely on
14 JBL purchased additional quantities during 2012 and of
15 course JBL as Mr. Rainville testified, is in constant
16 communication with its customer base, and as indicated
17 to JBL, the need for additional supply for their
18 operations, JBL met those needs and because again of
19 the attenuated competition because of customers
20 relying on specific suppliers, those customers were
21 not in the market looking for anyone else. They knew
22 the supplier, they knew the supplier's product,
23 qualities, reliability, performance, all the other
24 factors. So we believe that's another indication of
25 the attenuated competition in the market, and in our

1 post-hearing brief we can supply you actually with
2 facts to show you where JBL's shipments were during
3 2012 and of those shipments what shipments were going
4 to existing customers, and many of these customers
5 were customers for a decade and where JBL may have
6 been shipping to new customers. You will see that the
7 vast majority of their sales were to this existing
8 customer base.

9 COMMISSIONER ARANOFF: That would be
10 helpful.

11 MR. WAITE: We will do that.

12 COMMISSIONER ARANOFF: with that I don't
13 have any further questions. I do want to thank this
14 panel very much for being with us today.

15 COMMISSIONER PEARSON: Are there further
16 questions? Mr. Pinkert?

17 COMMISSIONER PINKERT: I have perhaps only
18 one more question.

19 You may recall that I asked as my very last
20 question of the first panel a legal question and I'm
21 going to reformulate the question as a practical
22 question.

23 So as a practical matter, do I need to find
24 import injury with respect to both U.S. producers in
25 order to make an affirmative present injury finding in

1 this case?

2 MR. PORTER: It's a good question,
3 Commissioner Pinkert, and we'll give it a stab now but
4 of course we'll address it more in post-hearing.

5 MR. DURLING: This is Jim Durling. I think
6 there are two ways to think about it, Commissioner
7 Pinkert. For one part of the analysis the statute
8 requires you to look at the industry as a whole, so at
9 some level you have to ground your analysis in the
10 condition of the industry as a whole. So even though
11 there are some challenges with reconciling what may be
12 kind of inconsistent trends between individual
13 suppliers, at the end of the day the statute says
14 industry as a whole.

15 That being said --

16 COMMISSIONER PINKERT: That's why I made the
17 question about a practical application.

18 MR. DURLING: But where it fits in the
19 statutory framework, and this is the way we've tried
20 to frame our argument, is that looking at the trends
21 between the two domestic producers, between the
22 different, either between or among depending on how
23 many market segments you're looking at, looking at
24 that disaggregated result in our view is a critical
25 part of your making a statutorily based conclusion

1 about causation. Because in our view whatever your
2 evaluation of the condition of the industry as a
3 whole, your evaluation of whether that condition can
4 be linked to subject imports is very much caught up in
5 fully understanding exactly what kind of interplay is
6 there among market segments and among suppliers in the
7 U.S. market.

8 In particular, it links back to the
9 question I think both sides will be addressing at
10 length which is what do we do about ADM? In our view
11 you could not make a statutorily correct conclusion
12 about causal link without having considered that
13 interplay and making sure that you in an appropriate
14 way have taken that into account in your analysis.

15 In our view the statute does not permit you
16 to impose trade relief against a domestic industry if
17 the record evidence shows that the domestic industry
18 for lack of a legal term I'll call it they shot
19 themselves in the foot situation. If the record
20 evidence shows that the domestic industry shot
21 themselves in the foot, or using a less value-laden
22 term, if they simply made certain choices. If the
23 record evidence shows certain choices which lead
24 inexorably to certain trends in the data, in our view
25 you can't find a causal link. You can sort of,

1 thinking back to some of our slides, if we were able
2 to show, let me pose a hypothetical. If we were able
3 to show that all of the decline was because of a
4 decision that everyone could agree had absolutely
5 nothing to do with subject imports, that decision no
6 matter what it does to the domestic industry trends,
7 that decision has nothing to do with subject imports.

8 In our view the statute doesn't allow you to blame
9 subject imports for a decision that the domestic
10 industry made on its own.

11 So that's in our view the way you can kind
12 of square this requirement in the statute to continue
13 to consider the industry as a whole, but also
14 recognize these competitive dynamics, whether it's
15 intra-industry competition between the two domestic
16 suppliers, or kind of intra-segment competition or
17 attenuated competition among the segments. That's how
18 you can reconcile the two.

19 COMMISSIONER PINKERT: I know you're trying,
20 but I don't think you answered my question.

21 Perhaps you can come back to it in the post-
22 hearing. But is there anybody else who would like to
23 take a stab at it?

24 Perhaps I can formulate it as a
25 hypothetical.

1 If I were to conclude that there was import
2 injury but it only affected one of the domestic
3 producers then what should the result be under your
4 analysis of the statute?

5 MR. DURLING: That question is actually
6 simple. At the end of the day if you find a causal
7 connection you then have to step back and say okay,
8 here's my causal link. It's to a particular cosmetic
9 supplier. Then you step back, you have to look at the
10 industry as a whole because part of your analysis has
11 to be okay, there is a domestic producer that has been
12 injured under your hypothetical, but how does that
13 relate to the condition of the industry as a whole?

14 And put differently, Commissioner Pinkert,
15 if you have one company that's doing well and one
16 company that's suffering, if at the end of the day you
17 have a combined industry trend that for all the other
18 reasons you're considering does not show adverse
19 trends, in our view finding injury to a company that
20 does not rise to the level of injury to the domestic
21 industry as a whole would not be legally sufficient.

22 You may find injury to the one company but
23 at the end of the day your statutory requirement is to
24 step back and say okay, given that, do I still find
25 that the industry as a whole has been injured by

1 subject imports. If you can't reach that ultimate
2 conclusion about the industry as a whole, in our view
3 you could not use injury to one company to justify an
4 affirmative determination. You've got to do that
5 second step.

6 COMMISSIONER PINKERT: Thank you. I've got
7 other lawyers on the panel. Would anybody else like to
8 address that either here or in the post-hearing?

9 MR. O'BRIEN: Yes, Commissioner, we'll
10 address it in the post-hearing brief.

11 MR. WAITE: We shall as well, Commissioner.

12 COMMISSIONER PINKERT: Thank you very much.
13 With that I have no further questions.

14 Thank you, Mr. Chairman.

15 COMMISSIONER PEARSON: Are there any other
16 questions from the dais?

17 Seeing none, do members of the staff have
18 questions for this panel?

19 MS. HAINES: Elizabeth Haines. Staff has no
20 questions.

21 COMMISSIONER PEARSON: Does counsel for the
22 domestic industry have any questions for this panel?

23 MR. CLARK: We do not. Thank you, Mr.
24 Chairman.

25 COMMISSIONER PEARSON: In that case then I

1 get to advise of the time remaining.

2 Those in support of the petition have 14
3 minutes left from direct presentation plus five
4 minutes for closing, a total of 19.

5 Those in opposition have one minute left
6 from the direct testimony and five minutes from
7 closing for a total of six.

8 So with that, let's adjourn this panel. You
9 may return to your seats and let's prepare to move to
10 closing.

11 And let's follow our normal custom unless
12 there's an objection, and we'll combine the times.
13 Does that work okay for everyone?

14 MR. CLARK: Yes, Mr. Chairman, no objection.

15 I'd like to ask one favor, though. With the
16 goal of not using all of our 19 minutes for closing
17 and rebuttal, may I have two minutes to very quickly
18 confer with my colleagues?

19 COMMISSIONER PEARSON: That's probably fair.
20 We never subtract points from anyone who uses less
21 than their fully allocated time. So yes, go ahead and
22 take two minutes.

23 MR. CLARK: We will respect that. Thank
24 you.

25 (Whereupon, a brief recess was taken.)

1 COMMISSIONER PEARSON: Welcome back, Mr.
2 Clark.

3 MR. CLARK: I apologize if I ran slightly
4 over.

5 COMMISSIONER PEARSON: We'll grant you a
6 little. We cut each other some slack fairly often up
7 here, as you can tell.

8 MR. CLARK: Thank you.

9 For the record, Matt Clark of Arent Fox,
10 counsel for the Petitioner.

11 I'm going to go through a series of points,
12 but the one I'm going to start with is actually the
13 last point of the afternoon session which was a legal
14 question. So I'm on relatively safer ground on a
15 legal question, I hope.

16 The question was, in a hypothetical domestic
17 industry consisting of two producers and I find injury
18 for one producer but not the other, what do I do under
19 the statute?

20 The answer to that question is if the
21 domestic producer that is injured is the predominant
22 producer, accounts for the predominant share of
23 domestic production, under the statute the industry as
24 a whole is materially injured and it yields an
25 affirmative determination.

1 The statute is directed at domestic
2 production as a whole. If you have a domestic
3 producer that has standing on that basis and that
4 domestic producer demonstrates injury alone based on
5 the totality of the record, then the domestic industry
6 as a whole has suffered material injury so your
7 determination in that instance must be an affirmative
8 determination.

9 I want to go through now a series of the
10 points and these I think I can do in well less than
11 the allotted time.

12 There was quite a lot of discussion with the
13 witness from Halliburton so I'm going to start there.

14 We will document this in the post-hearing brief, but
15 I will tell you a summary of the situation now.

16 The assertion that was made is that CP Kelco
17 is not prepared, is not committed to supply volume.
18 During 2012 we worked with Halliburton and we offered
19 to supply Halliburton large volumes. What they asked
20 for for long term supply. We thought we were going to
21 consummate a transaction but they made a decision at
22 the end of 2012 that they were not interested in
23 entering into a long term supply deal with CP Kelco
24 for oil field supply and we will provide you
25 documentation to that effect.

1 Sticking with Halliburton, you heard the
2 comment that Halliburton does buy from CP Kelco on a
3 spot basis. The ability of Halliburton to purchase
4 from CP Kelco on a spot basis demonstrates one very
5 critical fact that was asserted against the domestic
6 industry. The domestic industry has no available
7 supply. If the domestic industry has no available
8 supply how are we able to respond on a spot basis year
9 after year after year to a customer like Halliburton?

10 Sticking with the oil field. A comment was
11 also made that it is critically important that private
12 label supply be available. That is that vendors are
13 prepared to package their Xanthan Gum in private
14 label bags.

15 We had this discussion also during the
16 preliminary phase and the same point was made and we
17 thought that we had dealt with it. The material that
18 we supply to Halliburton and that we supply to other
19 oil field customers is private labeled. We do private
20 label. We have done private label since the inception
21 of the oil field market and we were there at the
22 inception of the oil field market.

23 Private label is not a challenge, it is a
24 standard part of our business. We are committed to
25 it. We participate in it. And not only in Xanthan

1 Gum but in the other hydrocolloids that are used in
2 the oil field sector.

3 A few comments about Grinding and Sizing.
4 Comment was made that CP Kelco doesn't come to us. We
5 scratched our heads over this one. Grinding and
6 Sizing has our price list. They have been told that
7 they are free to place orders any time that they want.

8 There is, however, a market reality and the market
9 reality is that Grinding and Sizing is also a
10 competitor. There are customers that we compete to
11 sell to. So that Grinding and Sizing does not order
12 from us is a choice that they have made. We have
13 never refused an order from Grinding and Sizing.

14 There was some discussion around global food
15 companies and Mr. Marzulli provided a very helpful and
16 we think accurate description of the RFQ process. If
17 you think about his testimony, and there was a similar
18 comment made by Mr. Rainville. Global food companies
19 will issue RFQs and then they will begin a process of
20 qualification. This is in the context where allegedly
21 price means nothing and qualification means
22 everything.

23 If the RFQ goes out to companies who are not
24 qualified, what are they going to get back other than
25 price that will induce them to begin the qualification

1 process?

2 So the very notion that global food
3 companies would enter into blind RFQs with vendors
4 that are not qualified tells you what the role of
5 price is because frankly there would be no other
6 sorting criteria if they have not qualified these
7 vendors.

8 The other reality on price that you heard,
9 Mr. Bowman testified to this earlier in the day. CP
10 Kelco sells to a large number of global food
11 companies. You've seen that in our questionnaire
12 response. It is a repeated pattern that we are able
13 to secure supply from those customers, but not for
14 their U.S. locations. We were able to secure supply
15 at prices that are attractive to their export
16 locations but for their North American, for their U.S.
17 locations, lower prices are prevailing. Obviously we
18 are selling to a global spec. We're supplying their
19 other locations. So once again, the reality is just
20 that fact, that price is critical.

21 The argument was made that if There is a
22 dumping order the marketplace will be in a world of
23 hurt. We have difficulty with this concept as well.
24 The purpose of the dumping order will be to restore
25 fair value prices. If price is irrelevant and because

1 Xanthan Gum is such a small component of cake mixes
2 and even not really critical for most drilling fluids,
3 why is it that the world would be, the marketplace
4 would be in a world of hurt if there were fair prices?

5 If prices were to increase to correct the amount of
6 dumping?

7 It's inconsistent to say that price is
8 irrelevant and that Xanthan Gum is a minor component.

9 But to also imagine that in the event of a dumping
10 order There would suddenly be short supply and then
11 that price would in that circumstance matter. The
12 reality is, price does matter. Price is critical.
13 That's the reason for CP Kelco that we have seen a
14 change from the darkness to the sunshine, as Mr.
15 Bowman put it, in 2012. The marketplace is different
16 for the domestic industry in the second half of 2012.
17 your record shows that. The testimony that you heard
18 demonstrates that.

19 The principal argument we heard this
20 afternoon is that the domestic industry should be
21 certainly content and arguably happy that it has a
22 flat share of a rising market. The domestic industry
23 is not content that when the U.S. market is rising
24 that we find ourselves unable to gain share, that
25 price continues to fall, that we see better pricing

1 selling to the exact same customers and export
2 markets. Price does matter and we're not content to
3 have only a flat share of a rising market, in
4 particular when the reason we have that flat share is
5 because having filed the petition in this case we were
6 able in response to market demand for customers
7 concerned about the price effect of the order, to move
8 old inventory. Inventory that as you heard from Ms.
9 McConnell was building up and filling warehouses when
10 trucks were not backing up to the dock.

11 When did that change? That changed for CP
12 Kelco in the second half of 2012.

13 What's different about the second half of
14 2012 than the first half of 2012? The petition in
15 this case.

16 There's no other change in relevant fact.

17 The observation was made that there's no
18 allegation of critical circumstances in this case so
19 therefore there really can't be a trade effect. It
20 was interesting to note on one of the slides that the
21 Respondents presented what a surge of imports there
22 was in the second half of 2012. I suppose some people
23 would imagine that that's also disconnected to the
24 petition, but of course our information including from
25 customers is that it is not. To the contrary, people

1 were moving merchandise as rapidly as they could.

2 Mr. Bowman spoke to you about critical
3 circumstances and explained that when Fufeng in
4 particular changed their terms of sale and they put
5 the burden of critical circumstances, duties, on top
6 of their customers, CP Kelco looked at the
7 circumstances and said we are not going to level an
8 allegation that would only affect customers. We're
9 already seeing an effect in the marketplace. We don't
10 need to go down the path of critical circumstances.
11 All you saw on that slide, the acceleration of imports
12 in the second half of 2012 was another direct response
13 to the petition in this case.

14 I'll ask again, if price is irrelevant and
15 Xanthan Gum such a minor component of formulations?
16 Why was there so much panic? Why was there so much
17 concern? Price matters. It always matters.

18 There was a little discussion around the
19 subject of Guar. Not a lot of discussion, just a
20 little. I'd point you to Exhibit 2 to our pre-hearing
21 brief. We provided you with some time series and
22 information about Guar and the history of Guar
23 pricing. What you may recall is that the spike in
24 Guar prices actually took place just about exactly at
25 the time of the preliminary conference in this case

1 and you can see the trend in our exhibit for Guar
2 prices.

3 What you'll also see is that most of the
4 reformulations that were described earlier in the food
5 area, those were not efforts to introduce Xanthan Gum
6 in place of Guar because Xanthan Gum is relatively
7 expensive. That functionality for Guar very much like
8 Mr. Viala's demonstration today, you will recall that
9 two of the vials were Guar and CMC. You will also
10 recall that those are the two vials that behaved
11 identically.

12 So the substitution effect to the extent
13 that people really did reformulate the products that
14 they were looking at in the main were CMC and Starch.

15 It is not Xanthan attempt to reformulate.

16 Finally, and this is a critical point that
17 I'll touch on very briefly. We began here and it is
18 important to keep in mind, and that is Fufeng. The
19 world's largest producer, the largest producer in
20 China.

21 Fufeng's annual report speaks for itself. I
22 agree that the Commission staff, being its typical
23 diligent self, did everything it could to compile a
24 complete record. It did not receive complete
25 cooperation in that regard.

1 I encourage you to look at what is on the
2 record as the Fufeng response and look at it and ask
3 how much of the information contained there in fact
4 came from Fufeng and deals with the most critical
5 periods of the period of investigation.

6 When you look at that and you look at what
7 is in their annual report, you can only conclude that
8 the capacity numbers reflected in the staff report
9 through no fault of the staff, are incomplete and
10 dramatically understate not only capacity as we sit
11 here at the beginning of 2013, but the capacity
12 profile for the world's largest producer when they get
13 to the end of 2013 which is when they will complete
14 phase two, recalling that their own testimony is that
15 they completed phase one of the expansion at the end
16 of 2012. Phase two of the expansion is a 2013 event.

17 Hopefully I've come in well under my
18 allotted time. I appreciate very much your patience
19 and on behalf of myself and CP Kelco, our employees in
20 San Diego and Okmulgee, we look forward to a careful
21 deliberation, thoughtful decision, and we anxiously
22 await the Commission's finding. Thank you so much for
23 your time and your attention.

24 COMMISSIONER PEARSON: Thank you, Mr. Clark.
25 Mr. McCullough and Mr. Waite?

1 MR. McCULLOUGH: Thank you. We have a
2 little bit less time than the other side, so I'm going
3 to make this quick and then pass it over to my
4 colleague. I'd just make a handful of basic
5 observations.

6 I know CP Kelco came in here today and is
7 complaining about the absence of Fufeng, but honestly,
8 the bigger problem and the real problem is the absence
9 of ADM. You heard all the questioning today. We know
10 where it's going. We know where the data is on the
11 record. ADM's absence is a big problem. They're a
12 big part of the story to tell about this case. We're
13 going to continue filling in the gaps in post-hearing
14 much like we did in our pre-hearing brief.

15 The second point I wanted to make is that
16 Kelco is having a hard time keeping to the POI to tell
17 its injury story. We're still hearing about capacity
18 closures pre-POI. Honestly, we addressed a lot of
19 this in the preliminary phase, factually, showing how
20 there's no connection with those closures and subject
21 imports. I don't know that it's even relevant.
22 Indeed, some of these capacity closures occurred
23 outside the United States.

24 But we haven't heard any rebuttal to that
25 but we have heard a different story today about well,

1 I believe it was the President for Kelco explaining
2 that what happened pre-POI is really context for what
3 could happen to us. And so it's really couching this
4 as really a threat case, and honestly, the data, and
5 Commissioner Pearson sort of picked up on that, and
6 really, the data on current injury and what you're
7 looking at that's consistent with the idea that really
8 the only case you can bring at this point is threat of
9 injury.

10 If you go to the threat factors and you look
11 at the case in the record, the threat case just does
12 not stand up.

13 One other point, I think I heard today about
14 the China plant again, we heard a little bit about it
15 in the prelim, heard it again today. I think to
16 myself, this is maybe the first time I've actually
17 heard a Petitioner blame a really bad due diligence
18 job on subject imports. Not that the plant is not
19 relevant and what happened there because it is
20 relevant. you have a company with a global production
21 base. It requires questions about when you produce,
22 where you produce, what you produce and why you want
23 to do it the way you want to do it. And when you
24 disrupt that business strategy it causes problems. I
25 submit that if you look at the public record and also

1 the BPI record about Kelco's assets and see what's
2 going on and the challenges they face, I think there's
3 another part of the story that hasn't been told here
4 today and that they haven't told.

5 Finally, again the Petitioners' whole
6 explanation about petition effects just doesn't work.

7 I think the data bears that out. They are trying to
8 assess this in a vacuum, totally ignoring the fact
9 that There is growing demand in this market and
10 elsewhere which you have to take into account to
11 address things like increasing imports and also
12 increasing invitations to bid.

13 On that point I'll pass it over to Mr.
14 Waite.

15 MR. WAITE: I will make my comments without
16 taking a breath.

17 I think all sides are agreed that the
18 Xanthan Gum market is not a commodity product market.

19 We've shown that the segmented market segments on a
20 number of grounds lead to attenuated competition.
21 Apparent domestic consumption increased by 35 percent
22 during the POI. The market share for the domestic
23 industry was stable, which means that their shipments
24 were increasing. Their prices increased over the
25 period.

1 The U.S. industry was profitable throughout
2 the POI and we submit that on this record there is no
3 material injury as a result of imports of subject
4 merchandise.

5 On threat, again we submit that JBL -- that
6 is Austria -- does not pose a threat to the U.S.
7 industry. JBL operates at high capacity utilization
8 rates. It's not increased its capacity since the
9 bottlenecking exercise in 2011. There are no plans to
10 increase capacity in the future. It is focused on the
11 food and beverage market in the United States. It has
12 a loyal group of customers to whom it sells.

13 And in summary I would say, paraphrasing
14 both Commissioner Pearson as well as Admiral Stockdale
15 in the 1992 Vice Presidential debates. Why am I here?

16 Thank you.

17 COMMISSIONER PEARSON: Okay. The closing
18 statement. In accordance with Title 7 of the Tariff
19 Act of 1930 post-hearing briefs, statements responsive
20 to questions and requests of the Commission and
21 corrections to the transcript must be filed by May 30,
22 2013.

23 Closing of the record and final release of
24 data to parties on June 13.

25 And final comments are due on June 17.

1 Thank you all very much. This hearing is
2 adjourned.

3 (Whereupon, at 4:36 p.m., the hearing in the
4 above-entitled matter was adjourned.)

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CERTIFICATION OF TRANSCRIPTION

TITLE: Xanthan Gum from Austria and China
INVESTIGATION NO.: 731-TA-1202 and 1203 (Final)
HEARING DATE: May 23, 2013
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: May 23, 2013

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: Gabriel Gheorghiu
Signature of Court Reporter