Before the
UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

IN THE MATTER OF **CITRIC ACID AND CERTAIN CITRATE SALES FROM CANADA AND CHINA**	**ITC Inv. Nos. 701-TA-456 and 731-TA-1151–1152 (Review)**

TESTIMONY OF JOE DORN

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I will now address why revocation of the orders would result in the recurrence of material injury to the domestic industry.

As you know, no Chinese producer has responded to the Commission's questionnaire or provided any information or argument that would suggest that revocation as to China alone would not be injurious. JBL Canada appears to concede that revocation as to China alone would be injurious. That is why it argues so strongly for de-cumulation.

Thus, with no one in the building taking a contrary position with respect to China, I will focus our remaining time on why revocation as to Canada alone would lead to recurrence of material injury.

To begin with, as explained in the Statement of Administrative Action ("SAA") accompanying the Uruguay Round Agreements Act, the Commission must consider its prior injury determination, because the period of investigation ("POI") is "the most recent time during which imports of subject merchandise competed in the U.S. market free of the discipline of an order. . . . If the Commission finds that pre-order conditions are likely to recur, it is reasonable to conclude that there is likelihood of continuation or recurrence of injury." (page 884) The SAA further provides that "an improvement in the state of the industry related to an order . . . may suggest that the state of the industry is likely to deteriorate if the order is revoked." (page 884).

Following those directives from the SAA, and applying the three statutory factors of volume, price effect, and adverse impact, it is clear that revocation as to Canada alone would lead to recurrence of material injury.

Starting with the initial statutory factor, the volume of imports from Canada would be significant if the order were revoked.

Exhibit 11 shows the trends in JBL Canada's citric acid capacity and exports to the United States during the POI and the POR. As you will see, the imposition of preliminary duties in November 2008 and the order in May 2009 had a significant restraining effect on the volume of imports in 2009 and thereafter.

JBL Canada has greater ability and motivation to increase exports to the United States in the reasonably foreseeable future than it had during the POI.

First, as is shown on **Exhibit 12**, JBL Canada is as export oriented today as during the POI. It is not just export-oriented, its exports are focused on the United States. JBL admits that it built its plant in Canada to have close access to large U.S. purchasers of citric acid. Thus, notwithstanding China's far greater capacity, JBL Canada poses as much of an immediate threat to the U.S. industry as China.

Second, as shown on **Exhibit 13**, JBL Canada has more capacity now than in 2008. With the most modern plant in North America, JBL Canada is very likely to have higher depreciation expenses and thus higher fixed costs than any U.S. producer. Thus, it is highly motivated to maximize its exports to the large, contiguous U.S. market.

Third, while JBL Canada exports to other countries, it has an economic motivation to shift those exports to the higher price U. S. market if the order is revoked. This is shown on **Exhibits 14** and **15**. That shift could come immediately, as the major purchasers conduct business with JBL on a regular basis throughout the world.

Fourth, as is shown on **Exhibit 16**, Chinese exports to Canada have increased significantly since the U.S. order was imposed. These imports from China have suppressed Canadian market prices and made the U.S. market all the more essential to JBL Canada.

In sum, the size, proximity, and prevailing market prices relative to other potential export markets make the U.S. market a vital market for JBL Canada. It has more ability and motivation to serve this market going forward than it had in 2008.

Turning to the next statutory factor, imports from Canada would have significant negative price effects if the order were revoked.

During the POI, imports from Canada undersold the domestic like product in 63 percent of pricing comparisons and acted as a cap on U.S. producers' prices. As a result, the domestic industry could not raise prices to the level needed to break even, much less to earn any operating profit.

The petition and the preliminary and final measures led to increased prices for imports from Canada. **Exhibit 17** shows the change in the AUV of imports from Canada from the POI to the period of review ("POR"). The Commission should consider whether the extent of underselling declined after the petition was filed and after the preliminary and final measures were imposed.

If the order were revoked, the extensive underselling that occurred during the POI would rapidly recur. JBL Canada would increase its exports to the United States to maximize its profits. Because demand is not increasing, it would have to increase its market share to increase its sales. To do that, it would have to undercut the prices of the domestic like product.

In fact, JBL Canada would likely undersell even more than it did during the POI, because it would have to compete more with non-subject imports now than it did then and because the "exceptionally strong demand conditions" of the POI are no longer present.

As shown on **Exhibits 18 and 19,** U.S. prices for imports from Canada and the domestic like product are closely linked. The large purchasers who source from both Canada and the United States would surely require U.S. producers to match the prices they receive from JBL Canada. Any reduction in Canadian prices would lead to lower prices for U.S. producers.

Turning to the final factor, revocation of the order on Canada would have an adverse impact on the domestic industry.

The higher volume of low-priced imports from Canada would take market share from the domestic industry, as it did during the POI. This would cause capacity utilization to decline and per unit fixed costs to increase. U.S. producers would have to respond by reducing their prices to avoid further lost sales to keep their plants in continuous production.

Profitability would quickly decline as a result of lower sales revenues due to lower prices and sales volume and higher per unit fixed costs due to lower production. The domestic industry's operating income increased from negative $8 million in 2008 to positive $98 million in 2009 due to the elimination of the unfair pricing. Profits would fall just as quickly if the order were revoked. With declining financial results, the domestic industry would sharply reduce capital expenditures to the low levels of the POI.

JBL Canada argues that the domestic industry is profitable now, is not vulnerable, and thus does not need the protection of the order. The SAA, however, makes clear that where the improved condition of the industry is related to the order, that is a reason to continue the order, not to revoke it. Moreover, the domestic industry is vulnerable within the meaning of the SAA, because it is "susceptible" to material injury by reason of dumped imports. (page 885).

First, the commodity nature of the product, the price sensitivity of sales negotiations, and the imperative to maintain high operating rates means that the domestic industry's financial condition can change dramatically in a short period of time. For example, the industry's operating income fell 41 percent from 2012 to 2013, largely due to non-subject imports and circumvention of the orders on China.

Second, the U.S. producers and JBL Canada compete for sales to a limited number of large volume purchasers. With no pricing discipline in effect, JBL Canada could quickly undercut U.S. producers' prices to take volume from these important "baseload" accounts.

Third, in contrast to robust demand conditions during the POI, demand is projected to decline in the reasonably foreseeable future. That would intensify competition for available sales volume if the order were revoked.

That concludes our direct presentation.