

UNITED STATES  
INTERNATIONAL TRADE COMMISSION

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

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Tuesday,  
April 7, 2009

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

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

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I N D E X

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

I N D E X

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



I N D E X

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

I N D E X

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

1 be moving just a bit slowly.

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

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

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

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

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

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

25 This is the problem with the volume and the

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

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

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

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

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

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

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

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

25 Subject imports operate at high capacity

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

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

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

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

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

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

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

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

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

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

20 MR. ELLIS: We are ready.

21 VICE CHAIRMAN PEARSON: Okay. Please  
22 proceed.

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

1 Ingredients of the Archer Daniels Midland Company.

2 Michael, take it away.

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

25                  The reality of the citric acid market today

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

6 Thank you very much.

7 MR. ELLIS: Thank you, Mike.

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

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

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

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

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

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

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

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

1 to meet stricter environmental standards.

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

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

14 MR. ELLIS: Thank you, Eric.

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

1 in Dayton, Ohio, Brazil and Colombia.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 Of this I am sure: With the relief provided



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

6 Thank you.

7 MR. ELLIS: Thank you, Curt.

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

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

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

25 The Department of Commerce found that

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

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

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

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

1 shipments.

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

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

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

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

1 prices of 2006 and 2007.

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

6 MR. ELLIS: Thank you, Andrew.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 China went from being the number eight

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

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

14 Thank you very much.

15 MR. ELLIS: Thank you, Mark.

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

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

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



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

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

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

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

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

1 in productivity.

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

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

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

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

1 achieve uninterrupted production.

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

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

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

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

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

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

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

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

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

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

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

17           MR. ELLIS: Thank you, Jack.

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

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

1 Tab Chemicals, distributor; and now TLC Ingredients.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

9                This concludes my testimony. Thank you.

10               MR. ELLIS: Thank you, Peter.

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

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

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

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

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

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

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

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

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

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

25 When you have a case where both they and we

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



1 shows, subject imports can.

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

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

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

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

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

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

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

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

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

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

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

16 COMMISSIONER LANE: Okay. Thank you.

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

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

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

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

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

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

1 transfers of substrate at cost.

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

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

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

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

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

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

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

21 MR. ELLIS: We call him Andrew.

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

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

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

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

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

14 COMMISSIONER LANE: Okay. Thank you.

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

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

1 reasonable rate of return?

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

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

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

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

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

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

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

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

15                   COMMISSIONER LANE: Okay. Thanks.

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

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



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

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

6 MR. ANDERSON: Yes.

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

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

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

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

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

1 economy with the recent sales numbers.

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

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

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

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

22 COMMISSIONER WILLIAMSON: Okay. Mr.  
23 Anderson?

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

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

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

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

25 So even though we've been in recession for

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

5 VICE CHAIRMAN PEARSON: Commissioner  
6 Pinkert?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 COMMISSIONER PINKERT: Mr. Poulos?

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

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

1 supplies.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

15 VICE CHAIRMAN PEARSON: Mr. Staloch?

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

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

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

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

9 VICE CHAIRMAN PEARSON: Okay. Mr. Poulos.

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

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

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

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

21 MR. STALOCH: Correct.

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

1 MR. STALOCH: Correct.

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

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

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

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

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

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

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

8           MR. ELLIS: Very good.

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

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

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

25           So this would be looking at the fall period,

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

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

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

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

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

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

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

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

1 side?

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

4 VICE CHAIRMAN PEARSON: Okay. Mr. Staloch.

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

10 VICE CHAIRMAN PEARSON: Okay. Mr. Poulos.

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

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

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

25 So I have a lot of empathy for the situation

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

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

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

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

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

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

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

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

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

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

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

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



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

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

7 MR. STALOCH: Cost, plus a return.

8 COMMISSIONER LANE: Okay.

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

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

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

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

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

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

3 COMMISSIONER LANE: Okay. Thank you.

4 MR. POULOS: We will be very specific.

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

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

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

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

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

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

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

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

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

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

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

1 limited.

2 COMMISSIONER LANE: Okay.

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

9 COMMISSIONER LANE: Okay. Did you --

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

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

20 Would you please comment on that.

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

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

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

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

11          MR. ANDERSON: Yes.

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

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

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

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

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

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

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

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

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

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

14 COMMISSIONER LANE: Okay. Thank you.

15 VICE CHAIRMAN PEARSON: Commissioner  
16 Williamson.

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

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

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

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

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

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

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



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

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

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

10 (Laughter.)

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

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

14 (Laughter.)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 contract markets.

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

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

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

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

1 citric.

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

4 COMMISSIONER WILLIAMSON: Thank you for  
5 those answers.

6 VICE CHAIRMAN PEARSON: Commissioner  
7 Pinkert.

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 COMMISSIONER PINKERT: Thank you.

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

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

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

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

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

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

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

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

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

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

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

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

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

19 VICE CHAIRMAN PEARSON: Those are relatively  
20 lower.

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

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

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

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

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

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

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

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

1 substantiate that?

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

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

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

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



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

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

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

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

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

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

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

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

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

1 and see if they can explain the difference.

2 VICE CHAIRMAN PEARSON: Okay.

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

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

13 VICE CHAIRMAN PEARSON: Okay.

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

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

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

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

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

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

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

18 VICE CHAIRMAN PEARSON: V-47.

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

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

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

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

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

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

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

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

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

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

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

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

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

25 VICE CHAIRMAN PEARSON: Did you have

1 something to add, Mr. Baroni?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5                   MR. ANDERSON: Right.

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

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

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

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



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

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

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

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

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

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

1 support mechanism that Pete talked about.

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

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

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

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

22 COMMISSIONER LANE: Yes.

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

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

1 price escalator?

2 MR. BARONI: ADM does not.

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

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

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

10 MR. BARONI: In what regard?

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

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

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

25 MR. ELLIS: Commissioner Lane, can we

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

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

7 MR. ELLIS: That's correct.

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

10 VICE CHAIRMAN PEARSON: Commissioner  
11 Williamson.

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

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

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

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

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

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

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

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

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

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

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

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

15 COMMISSIONER WILLIAMSON: Okay.

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

19 COMMISSIONER WILLIAMSON: Okay.

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

1 that helps explain it.

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

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

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

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

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

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

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

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

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

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

21          COMMISSIONER WILLIAMSON: Mr. Poulos.

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



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

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

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

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

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

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

1 But there are some substitutes as I understand them.

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

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

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

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

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

21 VICE CHAIRMAN PEARSON: Commissioner  
22 Pinkert.

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

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

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

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

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

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

25 But in fact European pricing was increasing

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

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

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

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

1 the European case?

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

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

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

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

21 COMMISSIONER PINKERT: Thank you.

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

1 they are going to buy from you.

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

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

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

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

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

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

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

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

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

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

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

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

3 VICE CHAIRMAN PEARSON: Mr. Poulos.

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

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

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

24 (Laughter.)

25 MR. ELLIS: Because that would have improved



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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 VICE CHAIRMAN PEARSON: Okay. Well Mr.

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

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

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

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

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

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

15 MR. ELLIS: Of course.

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

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

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

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

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

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

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

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

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

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

22 MR. ELLIS: Okay, thank you.

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

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

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

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



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

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

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

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

19 COMMISSIONER LANE: Okay --

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

25 COMMISSIONER LANE: Okay, did such contracts

1 create a cost price squeeze in 2007 or 2008?

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

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

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

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

12 MR. STALOCH: That would be the same.

13 COMMISSIONER LANE: And Tate & Lyle?

14 MR. POULOS: And the same.

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

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

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

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

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

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

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

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

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

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

1 to end users?

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

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

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

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

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

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

7 COMMISSIONER LANE: Okay, thank you.

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

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

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

19 MR. POULOS: We have in the past.

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

23 COMMISSIONER LANE: Okay, thank you.

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

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

4 Could you please comment on this argument?

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

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

19 VICE CHAIRMAN PEARSON: Commissioner  
20 Williamson.

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

24 VICE CHAIRMAN PEARSON: Commissioner Pinker.

25 COMMISSIONER PINKER: I too would like to

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

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

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

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

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



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

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

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

1 discuss the final results in our posthearing brief.

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

4 MR. ELLIS: We don't know.

5 MS. ALVES: Thank you.

6 MR. ELLIS: Thank you.

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

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

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

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

24 //

25 //

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

1 and oral hygiene products.

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

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

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

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

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

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

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

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

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

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

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

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

1 recite here, but are discussed in detail in the  
2 Respondent's confidential briefs. I can say however  
3 that there is voluminous evidence of intense intra-  
4 U.S. industry competition during those negotiations  
5 that has been the most powerful factor setting the  
6 price level for the vast majority of the U.S.  
7 producers' volume.

8           What has been the effect of the subject  
9 imports in setting the level of these contract prices?  
10 The Commission should keep two points clearly in mind.  
11 First, the subject imports have overwhelmingly  
12 oversold the U.S. producers in such contract sales and  
13 in all of the other quarterly pricing categories  
14 involving more than a de minimis volume of the U.S.  
15 producers' shipment. As shown in my exhibit imports  
16 from Canada oversold the U.S. producers in 35 of the  
17 total 48 such quarters. Imports from China oversold  
18 the U.S. producers in 45 of the total 60 such  
19 quarters.

20           I emphasize that this overselling covers  
21 virtually all of the U.S. industry's volume. Clearly  
22 the subject imports are not suppressing the U.S.  
23 producers' prices. This conclusion is supported by  
24 the purchasers' responses to the domestic industry's  
25 lost sales and revenue allegations. First, despite

1 the large number of U.S. producer allegations, the  
2 confirmed allegations account for only an extremely  
3 small portion of total U.S. producers' shipments. In  
4 other words there is no evidence of significant lost  
5 sales or revenues due to the subject imports.

6 Second, very frequently it appears that the  
7 U.S. producers believe that they are competing with  
8 subject imports when in fact they are competing  
9 against each other. In effect the price suppression  
10 that the U.S. producers report is fundamentally due to  
11 the intra-U.S. industry competition, not due to the  
12 subject imports which have been overselling the U.S.  
13 producers by substantial overselling margins. Thank  
14 you.

15 MR. SMITH: Good afternoon. My name is Matt  
16 Smith. I'm a Senior Purchasing Manager at Proctor &  
17 Gamble responsible for all of P&G's purchases of  
18 citric acid for consumption in North America. With me  
19 today is Jim Hodges, who is the Purchase and Group  
20 Manager of P&G responsible for global citric acid  
21 purchases. P&G is a major U.S. and international  
22 industrial user of citric acid. P&G purchases citric  
23 acid globally for use in plants located in the United  
24 States, Europe, Asia, and Latin America.

25 We estimate that P&G accounts for more than



1 10 percent of the citric acid consumed in the United  
2 States and that P&G is one of the top two purchasers  
3 of this product globally. We use citric acid in  
4 liquid detergents including Tide, Gain, and Cheer,  
5 beauty care products including Head and Shoulders and  
6 Pantene, and oral care products including Crest and  
7 Scope. Detergents for fabric care account for more  
8 than 90 percent of the citric acid that we purchase on  
9 an annual basis.

10 P&G purchases citric acid from the three  
11 domestic producers, from JBL Canada, and from three  
12 producers in China. All the suppliers of citric acid  
13 to P&G must be qualified to supply the product. That  
14 process can require six to nine months for the citric  
15 acid used in detergents and much longer for oral care  
16 and beauty care products. Qualification process  
17 involves inquiry into the input, producing the final  
18 product, and testing the final product for a period of  
19 time to ensure stability and effectiveness.

20 No Chinese supplier is qualified to supply  
21 our oral care or beauty care products. Given our very  
22 large annual requirements, in order to ensure  
23 reliability of supply and to minimize the very real  
24 risk of plant disruptions, P&G has learned that it  
25 must diversify its source of supply to a number of

1 different producers both inside and outside the United  
2 States. Shutting down one of P&G's plants even for a  
3 day due to a shortage of this important ingredient  
4 could cost the company millions of dollars in sales.

5 In addition to our U.S. business P&G also  
6 has global supply relationships with a number of the  
7 U.S. and foreign citric acid suppliers that it seeks  
8 to maintain over the long term. P&G has two major  
9 plants making detergents for fabric care in the United  
10 States, one at Lima, Ohio and the other at Alexandria,  
11 Louisiana. One hundred percent of the citric acid  
12 used in detergents is fed into our production process  
13 as a solution.

14 P&G purchases citric acid in three forms,  
15 citric acid in solution, monohydrate, and anhydrous.  
16 Both the monohydrate and anhydrous forms must be  
17 converted to a solution prior to entering our  
18 production process. There is significant different in  
19 the citric acid that is available to us from Canada  
20 and the citric acid that is available to us from  
21 China. The vast majority of the citric acid we buy  
22 from Canada is purchased in solution form. There is a  
23 direct rail connection between JBL's plant in Canada  
24 and our plants in Ohio and Louisiana, enabling us to  
25 purchase citric acid in solution from JBL in specially

1 lined tank rail cars.

2 In addition, the lead time on purchases from  
3 JBL is typically two weeks or less. This allows  
4 minimization of the inventory at our detergent  
5 producing plants. In the cases of our purchases from  
6 China on the other hand the product is shipped to P&G  
7 in monohydrate or anhydrous dry form. This product  
8 must then be dissolved in a liquid before it enters  
9 our process, adding cost and complexity to the use of  
10 the Chinese product.

11 In addition the lead time between order and  
12 delivery is a minimum of 60 days, and the lengthy  
13 supply chain makes the possibility of delays even more  
14 likely. The product from China must also be  
15 warehoused in the United States, increasing its cost.  
16 Because P&G takes citric acid in solution some of the  
17 U.S. manufacturers can minimize their cost and the  
18 price to P&G by shipping solution to P&G and thereby  
19 eliminating the energy cost necessary to fully dry the  
20 product.

21 Other U.S. manufacturers can increase output  
22 and reduce scrap by dissolving the anhydrous citric  
23 that does not meet mandated particle sizes. They then  
24 ship the solution. This allows them to dry batches of  
25 citric acid faster, lowering the overall cost of

1 production, knowing that the offspent particles  
2 produced in this way can be dissolved and sold to P&G.  
3 Otherwise these particles would have to be dissolved  
4 and redried for sale to markets requiring the  
5 stringent particle sized powder.

6 Some companies take advantage of this  
7 processing flexibility more than others, allowing them  
8 to offer lower prices in the market. During the  
9 period of investigation, P&G typically agreed to  
10 annual contracts with its U.S. suppliers before  
11 contracting with import sources to fill out the volume  
12 we could not place with the U.S. suppliers. The  
13 contracts with the U.S. producers are normally  
14 negotiated between the October to December timeframe.

15 Contracts specify a fixed price and a fixed  
16 quantity that can be ordered by P&G at that price.  
17 P&G then issues purchase orders against the contract  
18 for supply to its manufacturing plants. P&G prefers  
19 to fill its needs with the annual contracts and will  
20 only go to the spot market if emergencies arise.  
21 P&G's preference for annual contracts stems from the  
22 fact that its volume requirements are stable or  
23 increasing from year to year, and short term  
24 purchasing opens the door for short term,  
25 opportunistic higher pricing by suppliers.

1           It is our understanding that one of the  
2 reasons why domestic producers like to engage in  
3 annual contracts and not in contracts for longer  
4 periods of time is that they are able to lock their  
5 physical forward purchasing of corn at a reasonable  
6 overhaul cost for a period of one year. We understand  
7 that the domestic producers engage in ward physical  
8 delivery contracts in order to ensure that the annual  
9 pricing that they agree with us is certain to produce  
10 a profit.

11           All three of the domestic suppliers have  
12 told us at one time or another that they lock in corn  
13 costs associated with our annual contracts at the time  
14 of fourth quarter negotiations. More than one  
15 domestic producer has told us that we can lock in the  
16 cost of corn for a year for purposes of a cost plus  
17 contract if we wish to go that route. All three have  
18 told us that they have separate buying groups outside  
19 of their citric division that manage their forward  
20 purchase and risk management positions for corn.

21           None of the producers come to us during the  
22 course of a year and told us that they made a mistake  
23 and the price they locked with us was giving them  
24 trouble because of cost increases. We understand this  
25 is the case because the cost of corn is locked in at

1 the time of fourth quarter negotiation. We've  
2 reviewed the public version of the Staff report from  
3 the preliminary determination and noted with  
4 considerable surprise that the domestic industry is  
5 reporting operating losses from 2005 to 2007.

6 We are concerned that some aspect for the  
7 domestic industry's true cost of corn is not being  
8 reflected in these data. For example, is it possible  
9 that the corn purchase through the physical forward  
10 purchasing contracts in other divisions of the three  
11 domestic manufacturers is not being passed through to  
12 the citric acid division for some reason? Or that the  
13 financial hedging gains are not being passed through?

14 We are also aware that 30 to 40 percent of  
15 the cost of corn is recovered by the corn processor as  
16 a byproduct credit, and we are concerned that these  
17 netbacks are not reflected in the domestic producers'  
18 reported raw material cost in the citric acid  
19 divisions. In the middle of 2007 one U.S. producer  
20 requested that P&G take more citric acid solution at  
21 the contract price previously established during the  
22 fourth quarter of 2006. This request is not  
23 consistent with a supplier that is losing money on  
24 sales to P&G.

25 P&G has found that it is the U.S. suppliers

1 that are offering the lowest prices in the  
2 marketplace. Between 2005 and 2008 the average  
3 delivered price of our domestic suppliers was lower  
4 than the average delivered price for citric acid from  
5 Canada and China in every year. Furthermore there was  
6 a significant difference in the price being offered by  
7 suppliers in the market.

8 In each year of the period of investigation  
9 at least one U.S. supplier was the clear price leader  
10 in the market. Partly for this reason, and because of  
11 the U.S. suppliers' ability to deliver solution to our  
12 plants, P&G would have liked to increased its  
13 purchases of domestic citric acid but is unable to do  
14 so because the volume constraints imposed on P&G by  
15 the domestic industry.

16 There are a higher risks inherent in the  
17 longer supply chain from the plants in China as  
18 opposed to the plants in the United States. More and  
19 more difficult communication is necessary, there is  
20 more risk of delayed shipments, there is more  
21 difficulty in returning the product that does not meet  
22 our specification. If P&G were able to source all of  
23 its requirements from the domestic market I would say  
24 that the price the Chinese imports would have to be at  
25 least 10-15 percent lower than the price charged by

1 the U.S. producers to make the Chinese product more  
2 attractive on a commercial basis.

3 P&G takes citric acid solution at its plants  
4 in Lima, Ohio. P&G does not have any dissolving  
5 equipment at this plant. As a result, as a practical  
6 matter we cannot take anhydrous or monohydrate dried  
7 citric acid into production at Lima. While we could  
8 take dry powder and have it dissolved at a separate  
9 location, the cost of doing so would be prohibitive.  
10 For this reason most of the competition for the Lima  
11 is between the three domestic producers.

12 While we can take material from JBL, JBL  
13 material is always higher priced than the domestic  
14 product, and so the primary competition is between the  
15 domestic producers. As I mentioned, P&G's policy is  
16 to source from multiple suppliers to ensure stability  
17 of supply and minimize the risk of plant disruption.  
18 We are very fortunate to have done so given the  
19 disruptions to the domestic supply that took place in  
20 2008.

21 First from January to June, 2008 one  
22 domestic producer reported that it faced challenges in  
23 building inventory that it needed to satisfy the  
24 demand in the beverage industry during the summer  
25 months. As a result that producer asked us to reduce



1 our offtake of our annual contract by up to 50  
2 percent. While we could not meet that request we did  
3 agree to a temporary reduction in shipments of at  
4 least 30 percent.

5 Another domestic producer had a critical  
6 situation at their plant in the spring resulting in an  
7 outage. It is our understanding that this producer  
8 experienced similar outages both in 2004 and most  
9 recently in January of 2009. That producer ended up  
10 supplying less than half of their agreed to volume for  
11 2008. We went to the third domestic producer and  
12 asked them to meet this volume shortfall, and they  
13 informed us they had no material available.

14 In the middle of the year, moreover, we  
15 changed the formula of one of our products and went to  
16 the domestic industry to ask it to increase supply to  
17 us in order to meet the added demand. None of the  
18 U.S. suppliers would agree to this increase above  
19 their contracted volumes. We understood from these  
20 conversations that the domestic industry was entirely  
21 sold out in 2008. Therefore we had no choice but to  
22 increase our purchases of subject imports.

23 Without those import P&G would have had to  
24 shut down one of its plants. After the shortfalls in  
25 2008 it was P&G's goal to increase purchases from the

1 domestic industry in 2009. However one U.S. producer  
2 would not even quote on 2009 business and one would  
3 only quote on volume higher than volume in the  
4 previous year if P&G would agree to accept material  
5 supplied by a foreign plant. The third company  
6 offered a extraordinary price increase on a take it or  
7 leave it basis with just a two-week period to accept  
8 or reject the offer.

9 P&G publicly reported a 4 percent decline in  
10 our sales in our fabric and household care business  
11 during October to December, 2008 due to a reduction in  
12 our Tide detergent shipments. This reduction was  
13 primarily caused by P&G's customers reducing their  
14 inventories in an attempt to lower their working  
15 capital, thus conserving cash. This reduction in  
16 inventory is expected to only be temporary. In fact  
17 P&G has already begun to see increases in orders from  
18 our customers, and we are working to get our liquid  
19 laundry detergents business back to the normal  
20 historical growth rates of 8-10 percent year on year.

21 P&G is or has contemplated additional uses  
22 of citric acid such as replacing phosphates with  
23 citric acid in dishwasher detergent. However the lack  
24 of available domestic supply is a major concern as P&G  
25 makes its decisions about these new initiatives. If

1 P&G concludes that there will not be adequate domestic  
2 supply it will force P&G to look at other formulations  
3 or technologies to solve these problems.

4 As I mentioned before, P&G is also active in  
5 purchasing citric acid for use in its plants in E.U.,  
6 including plants in Italy, Spain, United Kingdom,  
7 Czech Republic, Belgium, France, and Germany. As such  
8 we are familiar with the effect of the antidumping  
9 petitions filed by JBL in the E.U. on the trade  
10 volumes from China. As the Commission is no doubt  
11 aware, the E.U. is a major market for Chinese citric  
12 acid, accounting for more than 300,000 tons of Chinese  
13 exports per year.

14 In the E.U. antidumping investigation the  
15 preliminary determination on June 3rd, 2008 assessed a  
16 antidumping duty in the amount of 13-49 percent. In a  
17 decision announced on December 2nd, 2008, Commission  
18 accepted price undertakings from Chinese producers and  
19 permitted entry of goods duty free as long as they  
20 were priced above the minimum import price set by the  
21 Commission. In our experience, after the undertaking  
22 Chinese imports as a whole are entering the E.U. in  
23 the same volumes as previously but at higher prices.

24 There has been no volume effect because  
25 there is insufficient capacity in the E.U. or from

1 third country suppliers to meet the E.U. demand. P&G  
2 itself is continuing to buy from Chinese producers at  
3 the same volume it purchased before the provisional  
4 measures were announced. P&G to use the global supply  
5 demand position is balanced to tight. We estimate  
6 global demand to be between 92-95 percent of the  
7 global producers' effective capacity to produce citric  
8 acid.

9           It is for this reason that P&G has entered  
10 into discussions with several suppliers, including two  
11 in North America, regarding capacity expansions to  
12 supply product dedicated to P&G's use. In one case  
13 involving a North American producer the talks are  
14 still ongoing. If we had considered global capacity  
15 to be in an oversupply position we would not have  
16 entered into these talks in the first place.

17           In addition we've been independently  
18 approached by other parties who are interested in  
19 building citric acid facilities. These actions  
20 support P&G's view that global citric acid capacity is  
21 not in an oversupply situation as we believe these  
22 companies involved would not be interested in  
23 investing in the markets that are already  
24 oversupplied. Thank you for the opportunity to  
25 testify here today. I'd be pleased to answer any

1 questions you may have.

2 MR. TAYLOR: Good afternoon. For the record  
3 my name is Barry Taylor, and I'm the Purchasing  
4 Director for Pepsi Worldwide Flavors representing  
5 PepsiCo. Although I'm based in Ireland I have global  
6 responsibility for PepsiCo's purchases of certain  
7 materials used in its beverage production in the  
8 United States as well as Europe. I've been working  
9 with PepsiCo for more than 20 years and moved into my  
10 current role during a restructuring of the company in  
11 2006.

12 Because PepsiCo is such a large purchaser of  
13 citric acid, we thought you would be interested in the  
14 company's purchasing practices. My experience with  
15 the company has also given me insights into the  
16 overall market for citric acid globally. Citric acid  
17 is a hugely important ingredient to PepsiCo and is  
18 used in many of its core important brands. First,  
19 PepsiCo has a strong policy of obtaining its materials  
20 from multiple sources.

21 We absolutely have to maintain a continuous  
22 supply of materials meeting our strict quality  
23 requirements to maintain our production of beverages.  
24 Any supply interruption or the procurement of below-  
25 standard materials would be disastrous. Citric acid

1 is no exception to this rule. As with all our  
2 materials we require our citric acid suppliers to  
3 undergo an extensive qualification process. This is  
4 crucial for PepsiCo for our own quality requirements  
5 as well as food safety reasons.

6 We qualify both the supplier and the  
7 product. This qualification process is no mere  
8 formality. It typically takes 6 to 9 months and  
9 involves detailed documentation and multiple audits of  
10 prospective suppliers' facilities. In most cases this  
11 results in the supplier changing its process in some  
12 way. Not all suppliers pass this process and qualify  
13 for PepsiCo's business.

14 As reflected in our questionnaire responses  
15 we purchase citric acid from domestic producers, we  
16 purchase subject imports, and we purchase nonsubject  
17 imports. We purchase from all of these multiple  
18 sources to make certain that we have sufficient supply  
19 for our beverage production both in the short term and  
20 long term. While the domestic producers make up a  
21 large portion of the PepsiCo volume, in some cases  
22 there has been reluctance to grow their position  
23 substantially.

24 In the negotiations completed in 2008 for  
25 2009 purchases, we faced a number of challenges in

1 getting some of the domestic producers to agree to  
2 sell us additional amounts of citric acid. Continuity  
3 of supply is of paramount importance to PepsiCo. The  
4 citric acid market has been increasing in the last  
5 number of years and with no domestic increases in  
6 capacity coming downstream, the domestic producers do  
7 not have sufficient capacity to support market needs.  
8 For that reason PepsiCo has turned to imports as a  
9 supplemental supply source.

10 From our perspective there are several  
11 drawbacks to imports, particularly from China.  
12 There's a long lead time from order to delivery, there  
13 is a much longer distance to travel which can  
14 contribute to issues such as caking. However, the  
15 imports have one overarching virtue. They are  
16 available to meet shortfalls in domestic citric acid  
17 supply.

18 So to be certain that our supply  
19 requirements are achieved we purchase imported citric  
20 acid in addition to our domestic purchases. We really  
21 have no other choice if we want to ensure an  
22 uninterrupted, stable supply of citric acid required  
23 for our production operations. We heard the domestic  
24 industry this morning assert that the imports are  
25 responsible for undercutting domestic prices. I

1 disagree with this position as a factual matter.

2           PepsiCo's experience has been that the  
3 domestic producers are so competitive with each other  
4 that they push prices down, not necessarily the  
5 imports. We provided confidential pricing details in  
6 our purchaser's questionnaire response that  
7 corroborates this point. Of course PepsiCo takes  
8 price into account in its purchasing decisions, but  
9 not in the way we heard in this morning's testimony  
10 concerning purchasing decisions.

11           As I mentioned, product quality and  
12 availability are the paramount concern. Of course  
13 PepsiCo seeks a competitive price, but we also seek  
14 price stability, which is why we endeavor to enter  
15 into long term contracts with suppliers where  
16 possible. For 2009 PepsiCo is purchasing citric acid  
17 from subject countries, which demonstrates that while  
18 price is important it is not the only consideration.

19           I would like to comment on several points  
20 relating to the supposed threat of material injury.  
21 First, PepsiCo does anticipate flatter, slightly  
22 declining volume for its beverage products in the  
23 current economic environment. But longer term we  
24 expect demand for our beverages, and hence our demand  
25 for citric acid, to resume its rise. Second, the



1 recent antidumping price undertaking entered into  
2 between Chinese exports and the European Union will  
3 not deflect any Chinese product to the United States.

4 The flow of price that the Chinese exports  
5 agreed to is below current price levels for the E.U.  
6 source product. It has been a nonfactor in  
7 negotiating our citric acid purchases for Europe.  
8 Moreover, as in the United States, the domestic citric  
9 acid industry in Europe lacks sufficient productive  
10 capacity to meet demand. Chinese and Canadian imports  
11 make up the difference.

12 Indeed the reason the European Union agreed  
13 to the price undertaking was to make certain that  
14 these necessary imports from China could continue. As  
15 your investigation has shown Europe is a far larger  
16 market for Chinese citric acid than the United States.  
17 I fully expect that relationship to continue. Thank  
18 you.

19 MR. HOFMANN: Good afternoon. My name is  
20 Klaus Hofmann, I am Senior Vice President for Global  
21 Procurement of Reckitt Benckiser. We are the global  
22 market leader in household cleaning products excluding  
23 laundry detergents with annual sales of over \$12  
24 billion. Our brands include Electrosol, Lysol,  
25 Woolite, Spray n' Wash, Easy Off, and Resolve. Citric

1 acid and citrates are major components in our  
2 automatic dishwashing detergents and are also used in  
3 lower dosage in laundry detergents and surface  
4 cleaning products.

5 Reckitt's U.S. operations currently use  
6 these inputs at its plants in Mississippi and  
7 Missouri. Our primary concern in sourcing citric acid  
8 and citrates are first, reliability and security of  
9 supply, and secondly, quality and product  
10 specifications. All potential suppliers must undergo  
11 an internal qualification process that takes roughly  
12 six months. To ensure that our factory is supplied on  
13 a regular and reliable basis we only purchase through  
14 medium and long term contracts. We avoid spot  
15 purchases.

16 The U.S. market for automatic dishwashing  
17 detergents has move toward the highly concentrated  
18 monodose tablets. These concentrated powders use more  
19 citric acid, increasing our demand. From 2006 to 2008  
20 our purchases of citric acid for our U.S. operations  
21 have increased by almost 80 percent. In 2005 and 2006  
22 we purchased citric acid exclusively from Tate & Lyle.  
23 We prefer to purchase domestically for security and  
24 planning reasons.

25 In 2007 we began to purchase small volumes

1 of citric acid from Jungbunzlauer in Canada only after  
2 U.S. producers refused to offer sufficient quantities  
3 to us. We purchased trisodium citrate from Israeli  
4 producer as we had not been able to qualify a U.S.  
5 producer yet. It is critical that the Commission  
6 understand that the short supply situation that has  
7 existed in the United States and that continues now  
8 even during the economic slowdown installed U.S.  
9 production capacities insufficient to meet demand and  
10 remain so today.

11 Under these supply conditions U.S. producers  
12 have shown little interest in meeting the needs of  
13 small to mid-size purchasers like Rickett, preferring  
14 instead to focus on large food and beverage  
15 purchasers. Citric acid and citrate supply was  
16 extremely tight worldwide in 2008, and prices were  
17 increasing dramatically. We estimate the global  
18 operating capacity rate at above 90 percent and market  
19 growth at 6-8 percent annually even in today's adverse  
20 economy.

21 Although we had an annual supply contract  
22 with Tate & Lyle, they approached us in the summer of  
23 2008 and proposed to buy out our contract. We  
24 refused. They were our dominant supplier for citric  
25 acid. However, Tate & Lyle's sales director, Curtis

1 Poulos, told us that they would not be able to meet  
2 our volume requirements in the 2009 contract year. We  
3 were told explicitly that they expected demand to  
4 exceed their supply, they wanted to give priority to  
5 larger customers in the food and beverage sector.

6 When we solicited offers for our 2009  
7 contracts, Tate & Lyle reiterated that they would be  
8 unlikely to offer us any volumes and encouraged us to  
9 look elsewhere. ADM told us they were oversold for  
10 2009 but would provide a proposal for whatever volumes  
11 they could. Cargill refused outright to present any  
12 offer. Only at the 11th hour, in mid-January, 2009,  
13 did Tate & Lyle and ADM provide offers, but for  
14 insufficient volumes of citric acid.

15 We concluded contracts with both companies  
16 at the inadequate volumes offered and scrounged to  
17 meet our additional requirements from distributors for  
18 the U.S. producers that refused to meet our needs  
19 directly. We are now paying some two to three times  
20 the prices we paid just last year. We also were able  
21 to qualify ADM for trisodium citrate and began  
22 purchasing that material from them, reducing our  
23 imports from Israel. Our already tenuous supply  
24 situation however is about to get much much worse.

25 Some seven states have enacted laws

1 requiring us to eliminate the use of phosphates in our  
2 dishwashing detergents. Due to the geographic  
3 diversity of these states and the nature of our  
4 distribution system, the effect is to create a  
5 nationwide requirement. After July 1, 2010, we will  
6 no longer be permitted to stock our current electrical  
7 powder products.

8           We have a new formulation which largely  
9 eliminates elemental phosphorous but instead uses  
10 relatively large volumes of trisodium citrate in  
11 addition to citric acid, representing roughly 20  
12 percent of the material cost. We need to increase  
13 dramatically our purchase of trisodium citrate over  
14 elevenfold while our purchase of citric acid will  
15 continue unchanged. Overall the total volume of our  
16 purchase of citric acid and citrates will increase  
17 roughly fourfold.

18           We have been trying to sign up suppliers  
19 willing to meet this incremental demand but have been  
20 unable to line up any offers from U.S. producers. I'm  
21 not talking about last year. I'm talking about the  
22 first quarter of this year. We cannot get any offers  
23 from U.S. producers at any price. Tate & Lyle does  
24 not produce citrates at all. That leaves just ADM and  
25 Cargill. Most companies have told us they do not have

1 the capacity to supply us. Our only option is  
2 imports.

3 The global supply situation remains tight  
4 and could worsen considerably. Restrictions or the  
5 complete ban on phosphates in dishwashing detergents  
6 are under active consideration in the European  
7 community. This would have an enormous impact on  
8 worldwide demand. Our estimate is that if an EC  
9 phosphate ban were implemented, automatic dishwashing  
10 applications alone would require in Europe additional  
11 volumes of citrus acid and citrates equal to 10  
12 percent of current global capacity.

13 Given the dire supply situation in the  
14 United States, I urge the Commission to reach a  
15 negative determination. Thank you.

16 MR. PENSAK: Good afternoon. My name is Tom  
17 Pensak, and I am a business director for Vertellus  
18 Specialty Materials. Vertellus is a mid-sized  
19 specialty chemical company that has five domestic and  
20 four foreign production facilities. We make about 500  
21 chemical products, and we are the sole U.S. supplier  
22 for many of them.

23 A good example is our production of citrate  
24 esters which our plant in Greensboro, North Carolina,  
25 is the only significant domestic supplier. Indeed,

1 there are only a few suppliers of citrate esters in  
2 the world.

3 Citrate esters are principally used as  
4 plasticizers to soften and add flexibility to a wide  
5 range of plastic products, from toys to very  
6 sophisticated medical tubing.

7 Because most toys today are made in Asia, we  
8 have exported many of our citrate esters to those  
9 markets. Citrate esters are acceptable substitutes  
10 for phthalates which have been widely used as  
11 plasticisers.

12 Because of the recent health and safety  
13 restrictions on the use of some phthalates, demand for  
14 citrate esters have increased, thus the future of  
15 Vertellus' citrate esters business should be quite  
16 promising.

17 Instead, this year we have been forced to  
18 reduce our production of esters. This is because each  
19 of the three domestic producers of citric acid, which  
20 is the essential material input for citrate esters,  
21 has refused to sell under contract to Vertellus for  
22 2009.

23 Over the years, Vertellus has mainly relied  
24 on the petitioners to meet our citric acid needs. In  
25 2006, we purchased 76 percent of our needs from Tate &

1 Lyle and ADM under separate one-year contracts  
2 negotiated in the fall of 2005.

3 That year, as we sourced only eight percent  
4 of our needs from China under a similar one-year  
5 contract which was the last such contract we have  
6 entered for citric acid imports from any foreign  
7 country, we sourced the remaining 16 percent on a spot  
8 market during the course of 2006 with product from  
9 China, Thailand, and Columbia. Of course, none of  
10 these spot sales had any influence on the volume or  
11 price we contracted for in the fall of 05.

12 In the fall of 06, Tate & Lyle and ADM were  
13 the only two suppliers that bid for our 07 citric acid  
14 business. We received no contract bids for imports  
15 from China or any other country. We ultimately  
16 accepted a two-year contract with Tate & Lyle which  
17 supplied 94 percent of our 07 needs.

18 We sourced less than one percent in 07 from  
19 China and the remainder from Thailand and Columbia,  
20 all on a spot basis well after we negotiated the Tate  
21 & Lyle contract.

22 In 2008, Tate & Lyle met 90 percent of our  
23 citric acid needs under the second year of our  
24 contract, but by July, the company's normal one-week  
25 delivery lead time had grown to ten weeks which forced



1 us to substitute spot purchases of citric acid imports  
2 to meet some of our orders. Still our spot purchases  
3 from China accounted for less than two percent of our  
4 08 needs.

5 On October 8th of last year, I met with two  
6 Tate & Lyle representatives including Mr. Poulos who  
7 testified earlier today for the petitioners. I had  
8 expected that we would be negotiating the price and  
9 quantity terms for a new contract for 2009.

10 I was aware that in recent months the spot  
11 price for citric acid had sharply increased. It was  
12 significantly higher than our soon to expire two-year  
13 contract. Nevertheless, I was prepared to renew with  
14 Tate & Lyle at the prevailing prices.

15 But I never had the chance for Mr. Poulos  
16 announced that his company no longer viewed Vertellus  
17 as a strategic customer and, thus, was unwilling to  
18 provide Vertellus with any citric acid in 2009  
19 regardless of the price that Vertellus might pay.

20 I was stunned by Mr. Poulos' statement. We  
21 had enjoyed a 20-year relationship with Tate & Lyle.  
22 I asked whether he understood that his refusal to  
23 supply Vertellus would put our entire esters business  
24 at risk, and he acknowledged that it did.

25 Mr. Poulos also predicted that neither

1 Cargill nor ADM would provide us with any citric acid  
2 for 2009. When we later contacted those companies, we  
3 learned that he was right. None of the petitioners  
4 would sell to us in 2009.

5 Tate & Lyle did allow us to take delivery in  
6 the first quarter of 09 of our unshipped contract  
7 quantity for 08 that had built up due to its shipment  
8 delays last year.

9 In January, we agreed to purchase from Tate  
10 & Lyle at the going market rate a significant amount  
11 of food grade citric acid that had been rejected by  
12 its customer in Mexico but which Tate & Lyle could no  
13 longer sell in the U.S. to its preferred food and  
14 beverage customers. But otherwise, Tate & Lyle has  
15 completely cut off Vertellus for 2009, as have the  
16 other two petitioners.

17 The petitioners' boycott did not result from  
18 their inability to supply Vertellus for Petitioners  
19 admit at page 84 of their pre-hearing brief that they  
20 have been unable to achieve full capacity utilization.

21 So the petitioners do, in fact, have the  
22 ability to supply Vertellus' relatively small needs.  
23 As Mr. Poulos made clear, Tate & Lyle cut us off  
24 because Vertellus is unimportant relative to its large  
25 food and beverage customers. ADM and Cargill

1       apparently share this view of Vertellus.

2                   But if this is truly the case, why are the  
3       petitioners demanding that market closing duties be  
4       imposed on Chinese and Canadian imports, Vertellus'  
5       only viable alternative sources for citric acid?

6                   These imports clearly had nothing to do with  
7       the Petitioners' decision to abandon Vertellus and  
8       apparently many other small industrial users of citric  
9       acid.

10                   The petitioners, thus, will gain nothing if  
11       Vertellus and other similarly situated companies which  
12       depend on stable citric acid supplies are denied  
13       access to those imports.

14                   Viewed in this context, the petitioners'  
15       abandonment of Vertellus and the other relatively  
16       small citric acid users shows that there is something  
17       very wrong with their case. Thank you.

18                   MR. BLOOM: Good afternoon. I'm Robert  
19       Bloom, president and CEO of FBC Industries. FBC is a  
20       manufacturer of liquid food ingredients headquartered  
21       in Schaumburg, Illinois. FBC employs more than 25  
22       people.

23                   Among the products FBC manufactures is  
24       liquid sodium citrate. The principal raw material for  
25       producing liquid sodium citrate is citric acid. FBC

1       pioneered the development and manufacture of liquid  
2       sodium citrate which we sell to food manufacturers.

3               All sodium citrate starts out in a liquid  
4       form. Most U.S. producers have invested in expensive  
5       drying and crystallization equipment to produce dry  
6       sodium citrate. By avoiding this step, we can sell  
7       our liquid sodium citrate at competitive prices even  
8       after accounting for the higher cost of  
9       transportation.

10              The liquid form also offers advantages of  
11       ease of handling, stable concentration, and precise  
12       metering. There is no substitute for citric acid in  
13       the production of sodium citrate therefore the  
14       security and reliability of supply is the most  
15       important consideration in selecting a citric acid  
16       supplier.

17              Because we sell to food manufacturers, the  
18       quality, purity, and safety of the product are  
19       essential. Cost is important but only after the first  
20       two criteria have been satisfied.

21              In addition, FBC insists on having multiple  
22       qualified sources of supply and in order to protect  
23       itself against supply disruptions. During the  
24       2006/2008 time frame, FBC purchased citric acid from  
25       U.S. domestic producers, Chinese importers, and from

1 Canada.

2           Given the opportunity, FBC would prefer to  
3 purchase most of its citric acid supply domestically.  
4 The domestic producers are well known long-established  
5 suppliers who are easy to qualify.

6           FBC before we buy citric acid we first have  
7 to qualify the producer which in most cases is an on-  
8 site inspection and audit of their manufacturing  
9 facilities and laboratories.

10           The qualification for us takes roughly 30  
11 days. We examine all aspects of their operation,  
12 including cleanliness, equipment size, age,  
13 qualifications of the operators and technicians.

14           A supplier must also have sufficient energy  
15 resources, a sufficient volume of output to service  
16 our requirements, and be a reliable supplier and must  
17 meet ISO, FCC, Kosher, and other requirements.

18           From 1999 to 2008, I personally inspected  
19 between 15 and 20 plants in China, and we only  
20 approved four or five. Currently only three producers  
21 are approved to supply us.

22           A second advantage of domestic suppliers is  
23 a much shorter supply chain meaning our inventory  
24 costs are much lower. For Chinese suppliers, we have  
25 to assume at least eight weeks lead time compared with

1 two weeks at the most for domestic manufacturers.

2 This means we need to have at least eight  
3 weeks worth of inventory in our warehouse. Given the  
4 quantities of citric acid we need for our  
5 manufacturing operation, the incremental cost of  
6 keeping an eight-week inventory versus a two-week  
7 inventory is substantial.

8 Despite these advantages of domestic supply,  
9 during the past three years we have been forced to  
10 increase our dependence on imported citric acid from  
11 China.

12 ADM and Cargill both produce and sell dry  
13 sodium citrate that competes with liquid sodium  
14 citrate that we are producing. These two companies,  
15 therefore, have no interest in supplying us. When we  
16 have contacted them in the past with requests for  
17 quotations, they did not even bother to respond.

18 Tate & Lyle did supply us with some of our  
19 citric acid needs in the past including the year 2008.  
20 Tate & Lyle prices have always been competitive and in  
21 many cases lower than the price of Chinese suppliers.

22 In 2008, Tate & Lyle was by far the lowest  
23 cost supplier to FBC. Tate & Lyle agreed to a  
24 contract at a very competitive price in November of  
25 2007 and held that price for 2008 despite the fact

1 that our Chinese suppliers were demanding price  
2 increases in 2008 to account for higher raw material  
3 costs.

4 Our plan in 2009 was to increase our  
5 purchases from Tate & Lyle, however, when we contacted  
6 Tate & Lyle in late 2008 to request pricing and  
7 available volumes for 2009, they kept putting us off.  
8 Eventually, Tate & Lyle told us they would not sell us  
9 any citric acid in 2009 because they had determined as  
10 a matter of corporate strategy to focus on supplying  
11 end-users in the food and beverage section.

12 As a result, FBC has been scrambling to  
13 locate additional supply. As in the past years, AdM  
14 and Cargill have not even responded to our request for  
15 quotations. We therefore have no choice but to rely  
16 completely on imports for our supply.

17 Please understand, the domestic producers  
18 have every right to operate their business as they see  
19 fit and to direct their available capacity to the  
20 market segments that they regard as the most  
21 advantageous.

22 Because the U.S. demand for citric acid far  
23 outstrips domestic supply capacity, they have the  
24 ability to pick and choose their customers in this  
25 manner.

1           It is fundamentally unreasonable, however,  
2           for the domestic producers to then come before this  
3           Commission demanding duties on imports that the rest  
4           of the market depends on.

5           The domestic market targets the largest food  
6           and beverage end-users for large annual supply  
7           contracts each year. To get this business, they offer  
8           attractive prices and agree to hold prices fixed for  
9           the year.

10           It is the competition for annual contracts  
11           among the three U.S. producers that sets the price  
12           level in the market. Imposing tariffs on imports from  
13           China and Canada will needlessly penalize FBC, a U.S.  
14           manufacturer, by denying us access to the citric acid  
15           we need to run our business of which the domestic  
16           producers refuse to sell to us. Thank you, and I'll be  
17           happy to respond to questions.

18           MR. CAMERON: Thank you, Mr. Vice Chairman.  
19           That concludes our testimony.

20           VICE CHAIRMAN PEARSON: Well, permit me to  
21           extend my welcome to the Respondents' panel. It's  
22           good to have all of you here representing a diverse  
23           cross section of users of citric acid.

24           We will begin the questioning this afternoon  
25           with Commissioner Williamson.



1                   COMMISSIONER WILLIAMSON: Thank you, Mr.  
2 Vice Chairman. I too want to express my appreciation  
3 to the witnesses for taking time from their businesses  
4 to come here to give us their testimony today.

5                   The parties, I mean the petitioners and now  
6 the respondents have all given us conflicting  
7 arguments and information about whether the current  
8 economic turmoil will have a negative impact on demand  
9 for citric acid.

10                  Any suggestions on how the Commission should  
11 resolve this issue?

12                  MR. CAMERON: Well, I think initially before  
13 these guys start, I would observe that I'm not sure  
14 there is as much conflict as you would expect. First  
15 of all, we are not predicting anything very severe,  
16 but if you heard the testimony of the petitioners,  
17 they're booked up for this year.

18                  As you've heard from the witnesses here,  
19 there are witnesses here who are unable to get supply  
20 from the domestic industry. So for an economic  
21 downturn in which there is dire consequences that have  
22 been predicted, they're operating at full capacity.

23                  So that seems to be antithetical to what  
24 much of the economy is going through. I heard some of  
25 the words, but when you really got down to the bottom

1 of it, they've already done their contracts for 2009.  
2 That's in the book. So I'm not sure that they are  
3 predicting that -- I'm not sure that they can sustain  
4 a prediction that somehow the economy is killing them.

5 MR. BUTTON: Commissioner, I believe you've  
6 heard the purchaser witnesses talk a little bit about  
7 their expectations for demand including a view that  
8 there may be a flat market in 2009, perhaps a slight  
9 decline in some aspects of it, but with continued  
10 growth in 2010.

11 You've also heard some indications, and  
12 you've read in the brief indications, that citric acid  
13 is used in products whose demand tends to be at least  
14 mildly counter-cyclical in terms of the food and  
15 beverage side.

16 Additional instructive examples can be found  
17 from history. In the prior recessions -- and we  
18 provided some data to you in our briefs on that --  
19 citric acid demand has remained durable even in prior  
20 economic softenings.

21 MR. HOFMANN: Speaking for our business, we  
22 definitely don't see a downturn in the use of citric  
23 acid or citrates. As a business, we are growing  
24 double digits in the areas where we compete. We use  
25 citric acid mainly in Europe. We definitely do not

1 see a downturn in the usage of citric or citric acid  
2 or citrates.

3 COMMISSIONER WILLIAMSON: Have there been  
4 any predictions about this re-shifting from the citric  
5 acid because of the getting rid of phosphates in a lot  
6 of the detergents? I just heard a story this morning  
7 on NPR about people being unhappy that it doesn't  
8 clean as well, but it seems that the laws are going  
9 into effect.

10 MR. HOFMANN: Indeed, there are two things  
11 to take into account. In North America, and I'm not  
12 speaking for Reckitt Benckiser alone. I know that our  
13 competitors are in exactly the same situation. We  
14 will have to move out of phosphates to ordinary  
15 dishwashing, and there aren't many options we are  
16 aware of, and citrate is probably the lead one.

17 It is very easy to calculate what sort of  
18 volumes will be needed because we know what our market  
19 shares are, and if you go to Europe, which is a far  
20 bigger market for us, as I said, we estimate that it's  
21 roughly 10 percent of the total global capacity which  
22 will be needed in Europe alone once a decision is  
23 taken. And I'm sure both P&G and others are building  
24 up to this.

25 COMMISSIONER WILLIAMSON: Okay. Sure, go

1 ahead.

2 MR. SMITH: We are their competition in the  
3 United States, and I confirm that July 1 we have to  
4 exit out of phosphates, so all our products that we  
5 have -- or July 1, 2010, we have to have all our  
6 products with phosphates in them off the shelves.

7 So we're going to start seeing a reduction  
8 in the phosphate usage beginning early 2010 if not  
9 late 2009. The next best formulation strategy would  
10 be citrates in the formulas.

11 The phosphate market and the other dish  
12 business is about 100,000 tons a year. We're not  
13 saying it would be a one-to-one replacement, but that  
14 is a significant volume that we have to replace with  
15 other materials.

16 MR. LAFAVE: I'd just point out that 100,000  
17 tons is 200 million pounds, so it is a very  
18 significant portion of current consumption.

19 COMMISSIONER WILLIAMSON: What, we have to  
20 wash our clothes more often because they don't get as  
21 clean as often? We take that into effect.

22 MR. SHOR: Keep in mind we're not talking  
23 about clothes. We're talking about automatic  
24 dishwashing detergents because the clothes shipped out  
25 of phosphates in the 1970's.

1           COMMISSIONER WILLIAMSON: So it's just  
2 dishwashing detergent?

3           MR. SHOR: Just dishwashing detergent.

4           COMMISSIONER WILLIAMSON: Okay. Thank you  
5 for that clarification. Anything else on this demand?

6           MR. TAYLOR: I think from a PepsiCo point of  
7 view and beverage, we are and I'm predicting it will  
8 stay flat to slightly decrease in demand, but again,  
9 we're hoping that that will start to rise again in the  
10 long term. And you know, if we've got a good summer  
11 this year, despite the recession, that would turn  
12 around this year.

13          COMMISSIONER WILLIAMSON: Okay. Thank you.

14          MR. PENSAK: Tom Pensak for Vertellus. As I  
15 indicated in my testimony, our business -- we serve a  
16 broad array of end uses. Some are relatively  
17 insensitive to recessionary climate such as medical  
18 applications, however other applications like the toy  
19 market does have sensitivity to economic downturn.

20                 However, our business is actually growing  
21 and we project will continue to do so for the long  
22 haul. That's part of our issue in terms of the  
23 constraint, but that's because of the substitution  
24 of chemistries for phthalates, some grades of which  
25 have been regulated out or there are sensitivities for

1 their continued use.

2 And our citrate esters derived from citric  
3 acid represent low toxicity profile materials that are  
4 looked upon very favorably for substitution. So  
5 directionally, our business should grow despite  
6 economic pressures.

7 COMMISSIONER WILLIAMSON: Okay. Thank you  
8 for all of those answers. It's very helpful.

9 A specific question for P&G. It may have to  
10 be for counsel in post-hearing -- either now or in  
11 post-hearing, please respond to the information  
12 contained at page 81 of Petitioners' brief. And then  
13 let your counsels aware of that.

14 MR. LAFAVE: Yes, we will to the extent that  
15 we can without -- I haven't looked at the material,  
16 but there was a question this morning that raised a  
17 question in my mind as to how they were going to  
18 answer that question without breaching the APO, but  
19 assuming that we can find an answer without breaching  
20 the APO, we will.

21 COMMISSIONER WILLIAMSON: Or if counsel can  
22 help in terms of giving me something post-hearing,  
23 that would be appreciated.

24 MR. LAFAVE: Yes. I'm counsel to P&G, and  
25 we will respond.

1 COMMISSIONER WILLIAMSON: Oh, excuse me.  
2 I'm sorry. Okay.

3 MR. LAFAVE: We will respond in a post-  
4 hearing brief.

5 COMMISSIONER WILLIAMSON: Okay. Thank you.  
6 Sorry. It's hard to see all the names here. Okay.

7 VICE CHAIRMAN PEARSON: The court reporter  
8 should know that that's Mr. Lafave who's been  
9 speaking.

10 COMMISSIONER WILLIAMSON: Thank you. This  
11 may also have to be for post-hearing, so if each of  
12 the purchasers could indicate which, if any, producers  
13 it is currently in the process of qualifying as a  
14 supplier. That may be something that's most  
15 appropriate by post-hearing.

16 MR. CAMERON: You want to know if there's  
17 anybody that they are doing so in the future, right  
18 now, that they are not qualified right now, right?

19 COMMISSIONER WILLIAMSON: Correct.

20 MR. CAMERON: Okay. I don't think that  
21 should be a problem. I'm sure they'll do that. I  
22 would note that I think all of the purchasers on this  
23 panel have responded to questionnaires.

24 COMMISSIONER WILLIAMSON: Okay.

25 MR. CAMERON: Purchaser questionnaires, so

1 that I think that a lot of the detail is in the  
2 purchaser questionnaires, and to the extent that it  
3 isn't we will do that.

4 COMMISSIONER WILLIAMSON: Okay. Thank you.

5 Approximately what share of the market  
6 demand does a non-GMO citric acid account for? Does  
7 anyone have an idea?

8 MR. CAMERON: How about if we try and find  
9 an answer for you. If we can find one, we'll put it  
10 in our post-hearing brief.

11 COMMISSIONER WILLIAMSON: Good. Thank you.

12 MR. CAMERON: Does that work for you?

13 COMMISSIONER WILLIAMSON: That'll be fine.

14 MR. CAMERON: Thank you.

15 COMMISSIONER WILLIAMSON: Lastly for JBL, do  
16 you know the ultimate use of the products you sell to  
17 U.S. distributors? What extent do you know when you  
18 sell it to a U.S. distributor how the product is going  
19 to be used.

20 MR. RAINVILLE: In many cases, no we do not.  
21 In estimates, we may have a general idea, and we  
22 believe they sell to the market in consistent  
23 percentages as the direct customers. But no, we don't  
24 know in a complete picture of what our distributor,  
25 what market that distributors sell into.



1 MS. MENDOZA: This is Julie Mendoza.

2 COMMISSIONER WILLIAMSON: Yes, sure.

3 MS. MENDOZA: I consulted with our witnesses  
4 from China, and they had the exact same answer. They  
5 often know who the distributor's end-user market is,  
6 but they wouldn't necessarily know what the exact use  
7 is.

8 COMMISSIONER WILLIAMSON: Okay. Thank you.

9 MR. CAMERON: Commissioner Pinkert.

10 COMMISSIONER PINKERT: Thank you, Mr. Vice  
11 Chairman, and I'd like to thank the panel for being  
12 here and for helping us understand what's going on in  
13 this industry.

14 I'd like to begin with Mr. Shao. In your  
15 statement, you said that the EU's own citric acid  
16 industry under the arrangement that's been arrived at  
17 would only be able to meet about 75 percent of  
18 European demand if operating at full capacity.

19 I'm wondering, do you know if they've been  
20 able to meet 75 percent of European demand?

21 MR. SHAO: So I want to know that to the EU  
22 and the local, the producer, and the only kind of  
23 supply is 75 percent of due to demand in the local  
24 market.

25 MS. MENDOZA: And basically their

1 experience, they've explained to us, has been in the  
2 past that in fact they've not been able to supply even  
3 up to the 75 percent of the market.

4 MR. CAMERON: Commissioner, I'm sure you're  
5 aware of this, but the 75 percent figure was taken  
6 straight out of the EU notice, so that was part of  
7 their fact finding.

8 COMMISSIONER PINKERT: Well, do you regard  
9 that as some sort of a cap, or is that a prediction,  
10 or how should I understand that?

11 MR. CAMERON: No, actually -- oh, no. Not  
12 at all. Oh, if that was your question, I apologize.  
13 No. What we looked at it is was evidence of why it  
14 was.

15 As it was explained to us, the fact that the  
16 EU would actually enter into price undertaking  
17 arrangements with the Chinese was actually somewhat  
18 unusual, and the motivation for their doing so was  
19 that the EC commission had recognized the structural  
20 shortfall within the market.

21 Now, the price undertakings have no volume  
22 limits, so it's not like they're saying well, okay, so  
23 you have up to 25 percent and after that you're cut  
24 off. There's no limitations like that at all.

25 It was part of the reasoning process. When

1 you read their notice that, if you read through it,  
2 they say, well, one of the reasons that we're entering  
3 into this is that there's a structural shortfall in  
4 the market.

5 Our consumers need the citric acid and,  
6 therefore, we're entering into this. It sets a  
7 minimum price level, and that's it. So that's the  
8 reason that -- but that's the reason that we said  
9 that, and we cited their thing.

10 But there is absolutely no volume limitation  
11 which I believe is why the witnesses are saying, you  
12 know, there's not going to be a diversion of former EU  
13 supply, the largest market for the Chinese. That's  
14 not all of a sudden going to change.

15 The EU has insured that, in fact, they can  
16 get all the supply they need of Chinese citric acid  
17 because that market is going to continue to grow, as I  
18 think that Reckitt is testifying.

19 MR. HOFMANN: Let me respond. What we are  
20 seeing is the capacity shortfall in Europe is  
21 significantly higher than what it is in North America,  
22 so we still see similar to our competitors, similar  
23 volumes of Chinese material coming into the EU.

24 COMMISSIONER PINKERT: Well, the reason I  
25 asked the question is because if one assumes that

1 looking to the future there is a lot of Chinese  
2 capacity that has to go somewhere, is there a de facto  
3 limit on how much of that capacity can go into the  
4 European market?

5 I understand that you're saying there's no  
6 de jour rate limit, but I'm wondering whether there's  
7 some sort of de facto limit on that.

8 MR. CAMERON: We are not aware of any, but  
9 anybody else have a view on that? You know the EU.

10 MR. TAYLOR: Yes. There is no limit as to  
11 what portion of the Chinese material can go into  
12 limit. It's as if the 75 percent is a notional  
13 capacity that the European suppliers can actually run  
14 at.

15 So you could have the Chinese, you know,  
16 entering after 50 percent of the market at some stage  
17 in the future.

18 MS. MENDOZA: My understanding, just to  
19 clarify, is that the 75 percent figure is a finding  
20 from their investigation about the nominal ability to  
21 even supply the market let alone, you know, what the  
22 actual ability to supply is.

23 I think given the testimony about growth in  
24 the European market, I don't think there is any de  
25 facto limit.

1 COMMISSIONER PINKERT: Thank you.

2 Now, I'd like to ask a question to the  
3 purchasers who testified about various limitations  
4 that were expressed to them by the domestic industry.

5 You heard the testimony of various companies  
6 in the domestic industry this morning about  
7 allocations, and I think the response I got was, well,  
8 we met all of our legal requirements, all of our  
9 contractual requirements.

10 Is that inconsistent with the testimony that  
11 you all have given today about limits that were,  
12 perhaps, de facto limits on how much the domestic  
13 industry would supply you?

14 MR. SMITH: Matt Smith from P&G. One of the  
15 U.S. producers met their contractual requirements.  
16 The other two did not from both a timing period  
17 standpoint and volume standpoint, and the one that met  
18 had the smallest volume allocation.

19 MR. PENSAK: Tom Pensak, Vertellus. When  
20 you're pushed back from normal one-week lead time to a  
21 10-week lead time, most people in my industry would  
22 consider that an allocation of sorts.

23 Certainly your normal rate of take of  
24 product is significantly cut back, and that really put  
25 us in a position where we had to go out in the spot

1 market to supplement that missing supply. Now, as I  
2 also testified, that was made up by spilling over into  
3 the first quarter of 09.

4 But how we define allocation in the chemical  
5 business, I would say that we were put on an  
6 allocation for that period, unofficially, but  
7 certainly practically speaking.

8 MR. HOFMANN: On our side, as I've said in  
9 the testimony, we have been asked whether we will be  
10 willing to effectively serve back existing contracts.  
11 We had to say no. So following this, the supplier  
12 shipped all the volumes in the -- however, for 2009  
13 onwards, we had this issue that we just could not get  
14 the volumes.

15 MR. SHOR: Maybe there's a bit of a semantic  
16 issue here from the purchasers' perspective at least  
17 for Reckitt. It's clear that in 2009 we were offered  
18 less volumes than our 2008 contracts. Is that an  
19 allocation, or is that meeting contractual terms?

20 Yes, they met their contractual terms, but  
21 they wouldn't continue them into the next year. So,  
22 we are not able to secure the volumes we wanted this  
23 year.

24 MR. CAMERON: Commissioner, if I may, with  
25 all due respect, I think they limited their response

1 to you with -- and they cut that off with respect to  
2 2008.

3 They didn't say anything about 2009, and  
4 what they were saying is that they had met all their  
5 contractual obligations for 2008 which also was not  
6 true.

7 But putting that part aside, a lot of this  
8 testimony is with respect to what happened in the  
9 price negotiations for 2009. In other words, the  
10 threat period that we're looking at and what you're  
11 hearing is people who said what allocation? I didn't  
12 get any allocation. Then some did get a lesser  
13 allocation.

14 I don't believe we heard any testimony about  
15 what they did or didn't do with respect to allocations  
16 in 2009. I think they kind of dodged the issue.

17 MS. LUTZ: If I can just add -- Jennifer  
18 Lutz with ECS. The issue -- P&G certainly did not get  
19 its full volume, so there were shortages there. But  
20 as the representative from Vertellus noted, a delay is  
21 just as bad.

22 If we're going back to you're buying a car  
23 example, well, what if you're buying gas to drive your  
24 car and you can't get any this week. You can get it  
25 next month, but that doesn't help you if you need to

1 go somewhere now.

2 And these companies need to keep their  
3 production operating consistently, so if they don't  
4 have supply when they expect it, that's a shortfall.

5 MR. SMITH: And just looking beyond what  
6 happened in 2008 with the one production outage that  
7 was addressed, we did get confirmation there was  
8 another supplier that had production issues in 2008.

9 But then also if you looked at 2004, and  
10 most recently in January of 2009, the Petitioners had  
11 communicated to P&G that there were also production  
12 outages at those times too.

13 COMMISSIONER PINKERT: Thank you. I just  
14 wanted to follow up on Ms. Lutz's testimony for a  
15 moment.

16 You said that if you're not able to get the  
17 material when you expect it, is there some sort of a  
18 standard expectation, or is there some sort of a  
19 contractual expectation that was not able to be met?

20 MS. LUTZ: Well, I think the witness from  
21 Vertellus said their normal one-week time frame went  
22 to 10 weeks, so I don't know -- I've never seen their  
23 contract so I don't know what the expectation is or  
24 what's in the contract. But clearly their  
25 expectations, what they had come to expect given past



1 performance, was not met.

2 COMMISSIONER PINKERT: Thank you.

3 MR. PENSAK: I'd just like to add that, I  
4 mean, typically when you enter into these supply  
5 contracts, lead time is a primary consideration, and  
6 it's discussed and agreed upon between the supplier  
7 and the purchaser. And in our case, a normal one-week  
8 lead time is considered and agreed to be the normal  
9 lead time from order placement to delivery. Clearly  
10 when it goes 10 times that amount, that's outside the  
11 scope of the agreement.

12 COMMISSIONER PINKERT: Thank you.

13 Thank you, Mr. Vice Chairman.

14 VICE CHAIRMAN PEARSON: Most of your firms,  
15 those of you who purchase citric acid, also purchase  
16 multiple other inputs for use in the manufacture of  
17 various products, so you know things about other than  
18 citric acid or if not you, others in your firms do.

19 My question is whether citric acid is  
20 uniquely difficult to come by or rather has there been  
21 a unique track record of lack of reliability with  
22 citric acid compared to some other products. Can you  
23 give me a sense for that, please?

24 MR. BLOOM: Bob Bloom with FBC. We buy a  
25 number of chemicals in fairly sizable quantities, and

1 it's my sense that until maybe October of last year,  
2 citric acid -- we knew where it was coming from. We  
3 could get it. There wasn't really a problem.

4 We were able to pass some price increases  
5 along as they came to us to our customers, the food  
6 industry. And it really didn't get -- and with this,  
7 we're buying other products that are somewhat on  
8 allocation, but nevertheless available.

9 And all of a sudden just out of the clear  
10 blue, we wind up with one of our major suppliers and a  
11 domestic supplier just cutting us off with no  
12 preamble.

13 VICE CHAIRMAN PEARSON: Okay, but you have  
14 had experience with some other inputs that at times  
15 were difficult to obtain for one reason or another?

16 MR. BLOOM: Over the 50 years I've been in  
17 this business, yes. But there's been a lot of -- it's  
18 a cyclical -- you know, particularly core alkali  
19 industry which we buy a lot of caustic soda and soda  
20 ash, things of that sort.

21 COMMISSIONER PINKERT: Other comments,  
22 comparisons that purchasers can make?

23 MR. HOFMANN: Klaus Hofmann, Reckitt  
24 Benckiser.

25 We are familiar with these situations, and

1 as most of us we will be prepared. So we've got what  
2 we call an active mono-sourcing program in place where  
3 we identify critical commodities or critical  
4 materials.

5 And on this one, we have alternative supply  
6 options in place so should something happen in one  
7 part of the world, we can move very quickly under  
8 normal circumstances to another supplier.

9 Is citric acid seen or has citric acid been  
10 seen as highly critical in the past if I go more than  
11 two or three years back? No because the capacity is  
12 there.

13 However, it's for the first time. But we --  
14 and also for the future that we are faced with a  
15 situation where we just can't get the material in  
16 North America or India specifically.

17 VICE CHAIRMAN PEARSON: Mr. Lafave? Mr?

18 MR. HODGES: Jim Hodges, Proctor and Gamble.

19 I would answer the question very similar to  
20 Klaus. Part of the problems we've had with citric  
21 acid in the past have formed our policy with the  
22 number of qualified suppliers and sources that we have  
23 globally.

24 P&G has a very large number of citric acid  
25 suppliers approved, probably more than most, because

1 of some of the issues we have. We balance those  
2 issues with our inventory position and other tactics.

3 One of the things you'll see on the order  
4 pattern from 2008. Once we had some of the challenges  
5 in 2008, we increased our orders of subject imports.  
6 This is pure supply.

7 What that also causes us to do is based on  
8 the lead time. Once you make those commitments, you  
9 put material in route, so then you'll see a ripple  
10 affect of inventories going up and down as we place  
11 those orders to cover any short-term issues that we  
12 see.

13 I would say in late 2007/2008, we saw more  
14 issues with having the flexibility inside our North  
15 American supply chain where we had to rely more on  
16 imports.

17 Prior to 2007, if we had an issue with one  
18 supply chain, we could typically go to another North  
19 America producer to relieve that. We've lost that  
20 flexibility in 2007 and 08.

21 COMMISSIONER PINKERT: Does anyone else have  
22 any thoughts about the challenge of obtaining citric  
23 acid compared to other inputs that you might use in  
24 your production processes?

25 Mr. Cameron?

1           MR. CAMERON: Vice Chairman, I would just  
2     like to note that this discussion that we've had about  
3     lead times, whether it be from P&G or from the other  
4     witnesses gets to a critical issue that was noted  
5     repeatedly in the purchaser questionnaires as one of  
6     the reasons that people like -- why purchasers prefer,  
7     if they can get it, domestic supply.

8           Lead times are a very useful thing. It's  
9     not useful if you're expecting a week and it goes out  
10    to ten weeks, but certainly lead times is a critical  
11    non-price factor. It is one of the reasons that you  
12    see overwhelmingly U.S. purchasers preferring U.S.  
13    supply. It's because it's generally considered more  
14    secure. That's the reason they go there first.

15           VICE CHAIRMAN PEARSON: Ms. Lutz?

16           MS. LUTZ: I think the petitioners  
17    acknowledged this in their pre-hearing brief. It  
18    thought they put it kind of poetically when they  
19    talked about the mysteries of the biological process  
20    in manufacturing citric acid that there are things  
21    they just can't control.

22           So I think they acknowledge that this might  
23    be a potentially riskier supply chain.

24           VICE CHAIRMAN PEARSON: Okay. I'm still not  
25    sure, based on what I'm hearing, whether you think

1 that there's fundamentally more of a challenge  
2 obtaining a regular supply of citric acid than some  
3 other products.

4 I think part of what I'm hearing is that as  
5 long as there is access to imports that it's possible  
6 to deal with the uncertainties that might exist  
7 regarding domestic supplies of citric acid.

8 Mr. Taylor?

9 MR. TAYLOR: I think it certainly makes our  
10 life a lot easier. I mean, we haven't had any  
11 situations in the last few years where we've had  
12 outages.

13 We have, however, had situations where we've  
14 had a tightness, and because of the fact that we're  
15 working with products that are very, very heavily  
16 weather dependent that you can't really forecast, that  
17 tightness does create supply chain issues for us and  
18 has done so.

19 You know, we need to do things like  
20 build/invent really and use multiple sources so that  
21 if we are having a tightness from one that we can use  
22 a second, or a third, or a fourth as the case may be.

23 VICE CHAIRMAN PEARSON: Have you had any  
24 experience at PepsiCo with shortages of or tightness  
25 of supply of high fructose corn syrup, for instance?

1           MR. TAYLOR: I can't answer that because I'm  
2 not involved in the purchase of high fructose corn  
3 syrup, so.

4           VICE CHAIRMAN PEARSON: Mr. Smith?

5           MR. SMITH: I'd just like to confirm your  
6 question that, yes, we do buy subject imports because  
7 of the issues we have with North American supply of  
8 citric acid and our lack of flexibility when it comes  
9 to our formulations.

10          VICE CHAIRMAN PEARSON: Mr. McGrath?

11          MR. McGRATH: Vice Chairman, yes, I think  
12 you've hit on a point here. I mean, a lot of -- maybe  
13 none of us would be here today if there were adequate  
14 capacity of the U.S. producers in this market.

15                 But the fact is that a good portion of the  
16 market is served by imports and has to be served by  
17 imports because of the not just marginally inadequate  
18 capacity but great inadequate capacity that the U.S.  
19 producers have out there currently.

20          VICE CHAIRMAN PEARSON: Okay.

21          MR. SMITH: So you have a situation where,  
22 you know, one of three producers has some kind an  
23 outage, an accident, that only lasted for a couple of  
24 days, a week, but in this industry it's a major crisis  
25 and all of a sudden everybody is on allocation, and

1 people are scrambling in the spot market to pay prices  
2 at two or three times what they're used to being paid.

3 VICE CHAIRMAN PEARSON: Okay, but if the  
4 petitioners in their post-hearing brief make an  
5 argument that, hey, some supply disruptions are just  
6 endemic with life itself. It's there. You're going  
7 to have it in all products.

8 What we're seeing now in citric acid or at  
9 least what Respondents are seeing because I don't  
10 think the petitioners were seeing much of it -- but  
11 what's being seen now is fairly normal, it's a short-  
12 term hiccup, get over it and ignore the grousing that  
13 we're hearing here this afternoon.

14 How do you respond to that, Mr. Button?

15 MR. BUTTON: Well, I believe Mr. Vice  
16 Chairman what you're seeing here is a pattern. You're  
17 seeing a pattern of the inability to supply both in  
18 the sense of a shortage -- you heard about disruptions  
19 in 2004, 2008, 2009.

20 But in addition, there have been  
21 allocations, refusals to supply promised amounts or to  
22 provide them when they're needed, or to simply stop  
23 being a provider at all.

24 It is this pattern which makes it unusual  
25 and difficult to bear for the purchasers here, and



1 that's why you see a story that -- perhaps of  
2 different flavors but all of which is the inability to  
3 get supply when they need it that they can't do  
4 without.

5 VICE CHAIRMAN PEARSON: Okay, but in  
6 fairness, most of the pattern I'm seeing is in  
7 relatively recent months. I don't see it clearly  
8 throughout the POI, and that's kind of why I'm asking  
9 about it.

10 But my light has turned red, so I probably  
11 should pass. Did you have something quick to add, Mr.  
12 Smith?

13 MR. SMITH: Just what I commented before.  
14 Previous to the POI though, there was a major outage  
15 in 2004, and we had to scramble to get supply in order  
16 to ensure our plant stayed operational at that point.

17 So there has been a history of outages.  
18 It's not just the outages though. It's the allocation  
19 that also impacts our business because our business --  
20 we have to respond quickly to our customers like Wal-  
21 Mart and Target when they drop unannounced orders on  
22 us.

23 So we need that from our customers, that  
24 kind of support, and one-twelfth of our annual  
25 allocation does not provide that support.

1                   VICE CHAIRMAN PEARSON: Okay, and so within  
2 the memory of people here, there have been other  
3 issues. I hear you.

4                   Commissioner Lane?

5                   COMMISSIONER LANE: Dr. Button, I'd like to  
6 start with you. On your exhibit number 3, exactly  
7 what percent of the total volume of U.S. producers,  
8 U.S. shipments, is represented in the price  
9 comparisons you discussed in Exhibit 3?

10                  MR. BUTTON: I believe it's going to be  
11 coming on in a moment. In exhibit 3 is a presentation  
12 as described in it of the volume in all pricing  
13 categories were -- each intervals where pricing  
14 category is greater than a de minimis amount, greater  
15 than approximately one percent.

16                  COMMISSIONER LANE: I'm sorry. What was  
17 that percent?

18                  MR. BUTTON: Greater than one percent. This  
19 is the under or over selling occurring in any of the  
20 16 pricing categories. The pricing categories as you  
21 might recall would be, for example, product number  
22 one, end-user contract, end-user distributor,  
23 distributor contract, distributor spot, and so forth.  
24 There's 16.

25                  So of those 16, what are the ones that had a

1 volume of U.S. producers total shipments greater than  
2 one percent?

3 Now, when we showed this to the staff to get  
4 approval to show at this point, there were certain  
5 restrictions on us in terms of APO data. We will be  
6 pleased to give you an exact figure in the post-  
7 hearing brief, but I can tell you it is the  
8 overwhelming majority of the volume of the U.S.  
9 producers.

10 COMMISSIONER LANE: Okay. I would like to  
11 have that in the post-hearing.

12 Yes, Mr. Cameron?

13 MR. CAMERON: Commissioner, if you would  
14 refer to page 35 of the Chinese Respondent's brief, in  
15 the top paragraph you will see that number, and it is  
16 well over 90 percent.

17 MS. MENDOZA: If I could just add,  
18 Commissioner, also that it's actually an exhibit to  
19 our brief with the complete data.

20 COMMISSIONER LANE: It is in exhibit? Okay.  
21 Thank you. Thank you.

22 MR. BUTTON: Madam Commissioner?

23 COMMISSIONER LANE: Yes?

24 MR. BUTTON: As you point out this exhibit,  
25 perhaps you recall that it was the topic of comment by

1 the petitioners' economist, and notice the overselling  
2 margins.

3 If you recall, the comment was is the  
4 overselling margins here are so small -- they were  
5 razor thin, I think was the commentary -- that they  
6 should be ignored by you or discounted by you.

7 I would point out that the overselling  
8 margins of three percent and 14 percent for Canada and  
9 China, respectively, are indeed larger than the  
10 underselling margins at that same period of time and  
11 for those same countries.

12 And if you look at the public staff report,  
13 the public staff report says the average underselling  
14 margin for China and any of those cases where China  
15 did undersell was 15 percent, approximately the same  
16 order of magnitude here as the overselling margin.

17 These seem to be substantial. It would be  
18 hard to say that you should place emphasis on the  
19 underselling margins and ignore overselling margins of  
20 the same magnitude.

21 COMMISSIONER LANE: Okay. Thank you.

22 MR. LAFAVE: If I might just add,  
23 Commissioner?

24 COMMISSIONER LANE: Yes.

25 MR. LAFAVE: This is Art Lafave.

1           In Mr. Smith's testimony this afternoon, he  
2 mentioned that due to the supply chain complexity of  
3 imports from China that they would really have to be  
4 priced at 10 to 15 percent below the domestic market  
5 price in order to be commercially attractive.

6           So when you're seeing overselling margins of  
7 14.3 percent on average in the high-volume categories,  
8 that's really quite a dramatic swing from there to  
9 where they'd have to be in order to be commercially  
10 attractive aside from the necessity to buy the product  
11 since it's not available from the domestic industry.

12           COMMISSIONER LANE: Okay. Thank you.

13           Dr. Button, maybe I'll stay with you. Would  
14 you please respond to the petitioners' allegations at  
15 page 49 of their brief that the data for pricing  
16 products four and five, which are sodium citrate and  
17 potassium citrate are anomalous because they are not  
18 broken out between spot and contract prices.

19           MR. BUTTON: I disagree with that  
20 perspective. And let me just direct you to the  
21 preliminary investigation and when that type of  
22 division was not made in the pricing data. And the  
23 record showed there was significant overselling, major  
24 overselling, by the subject imports.

25           And it, we believe, did give an accurate

1 indicator of a meaningful commercial activity in it.  
2 Those pricing data have been split up for products  
3 one, two, and three, and what is the message that you  
4 get?

5 As Mr. Cameron has mentioned with respect to  
6 over 90 percent of the volume of the U.S. producers is  
7 facing situations where the imports have oversold  
8 them.

9 Products four and five are situations where  
10 there is, you know, great overselling. And it's my  
11 expectation that the conclusion you would get would be  
12 no different if you did split it between contracting  
13 spot.

14 I would let individual purchasers describe  
15 their circumstances, but I see no reason for ignoring  
16 what appears to be important and valid data.

17 MR. CAMERON: Commissioner?

18 COMMISSIONER LANE: Yes.

19 MR. CAMERON: Two things. First I think the  
20 observation was made this morning that one of the  
21 reasons that they did not split it up which I think is  
22 correct is that the volumes involved in aggregate are  
23 not all that great.

24 So you know, you're trying to avoid spurious  
25 comparisons which, in fact, is what happens with a lot

1 of the comparisons that came out in the spot market.  
2 I mean, you have nominal underselling. Do you have  
3 any meaningful commercial competition? And that's the  
4 whole point.

5 And I think that actually the data that you  
6 have for four and five stands on its own, and I don't  
7 think -- actually, I think that they sliced and diced  
8 the data in order to carve out the spot prices.

9 I think the results are the same by and  
10 large with respect to the pricing data for the end-  
11 user contract market, and the only thing that they  
12 have done is taken out volumes of imports which  
13 actually weren't competing in a market in which the  
14 domestic industry is not meaningfully participating.

15 So I think that the Commission has done a  
16 yeoman's job in actually trying to get the pricing  
17 data, to answer the questions that have been raised,  
18 and now after having gotten virtually everything that  
19 they requested, they see the data and now they're  
20 still running away from the data.

21 Well, this is the database that they helped  
22 create. I mean, I as stunned. I wasn't sure that  
23 there was any more slicing and dicing that the  
24 commission could have done. Thank you.

25 COMMISSIONER LANE: Okay. Thank you.

1 I'll just stick with you, Mr. Cameron.

2 MR. CAMERON: Oh-oh.

3 COMMISSIONER LANE: No, this is -- would you  
4 discuss any significant differences that you see in  
5 the data between the preliminary phase and the final  
6 phase of these investigations?

7 MR. CAMERON: Hold on for a second.

8 COMMISSIONER LANE: Other than the pricing  
9 products.

10 MR. CAMERON: You know, we don't really see  
11 very much in terms of differences. The most critical  
12 thing that happened in the preliminary that we had  
13 seen was that there was uniform overselling.

14 Now what comes out as well, it's strong  
15 overselling. It's not total, but it's still strong in  
16 those categories. And I think that is really about  
17 the only thing that we have seen.

18 But if the Commission has seen other things  
19 that you would like us to discuss, we're more than  
20 happy to do that.

21 COMMISSIONER LANE: Okay, thank you. I have  
22 one real quick question of Mr. Hodges.

23 Does Proctor and Gamble, and I'm sure you  
24 said this and maybe my mind was just wandering a  
25 little bit. Do you source your product from both the



1 domestic industry and the subject imports?

2 MR. HODGES: Yes, ma'am, we do.

3 COMMISSIONER LANE: Has that changed over  
4 the period of investigation? Have you always sourced  
5 from both the domestic and the Chinese and the  
6 Canadian?

7 MR. HODGES: Over the period of  
8 investigation, we increased our production, our  
9 purchases, from North American producers. We  
10 originally were two of the North America plants with  
11 subject imports. In 2008 we purchased from all three  
12 producers in North America and subject imports.

13 COMMISSIONER LANE: Okay. Thank you.

14 MS. MENDOZA: Commissioner Lane, can I just  
15 add one remark to your previous question?

16 COMMISSIONER LANE: Yes.

17 MS. MENDOZA: And that is that it's detailed  
18 in our brief, and we really can't go into it here, but  
19 another distinct difference that we noted between the  
20 preliminary and the final record related to the raw  
21 material costs reported by the domestic industry.

22 COMMISSIONER LANE: Okay, thank you.

23 VICE CHAIRMAN PEARSON: Commissioner  
24 Williamson.

25 COMMISSIONER WILLIAMSON: Thank you, Mr.

1 Vice Chairman.

2 Mr. Hodges, you seem to indicate in your  
3 testimony that -- first that the market was -- shall  
4 we say -- fine in terms of availability up until 2007,  
5 that things seemed to change in 2007 and 2008.

6 And I was particularly wondering what was  
7 happening in 2007. There's been a lot of talk about  
8 what was going on in 2008. Did I get that impression  
9 right?

10 MR. HODGES: I don't know if it's  
11 necessarily market change or behavior change. In the  
12 past, and as Mr. Smith alluded to the outage in 2004,  
13 we were able to cover that outage with North American  
14 Supply. I won't use the word "outage". We see  
15 availability issues on the spot period of time basis;  
16 so is an order available this month that we need or  
17 next month that we need?

18 We've typically been able to juggle our  
19 North America plants because of their proximity to  
20 allow that to cover the short term need. In late 2007  
21 and 2008, we haven't had the ability to use North  
22 American producer's material to cover issues. We  
23 either had to rely on inventory or subject imports to  
24 cover those outages.

25 COMMISSIONER WILLIAMSON: What was the cause

1 of the shortage in 2004, and how long did it last?

2 MR. SMITH: We don't have specifics on the  
3 actual outage. Actually, in our pre-hearing brief, we  
4 do have communications that discuss the outage.  
5 Nothing was formally announced, although we did ask  
6 for it at that time.

7 We have been recently told that the outage  
8 in 2008 was very similar to the outage in 2004, as far  
9 as a power issue. But we don't have formal  
10 communication documenting that, beyond emails.

11 COMMISSIONER WILLIAMSON: The signs you saw  
12 in early 2007 or late 2007, can you detail more? What  
13 I'm trying to get an understanding on is, did people  
14 anticipate that there was going to be short supply in  
15 the U.S., or what people are alleging is really a  
16 short supply?

17 MR. HODGES: I think one of the things  
18 that's hard to understand -- and this is what we  
19 hypothesize back in Cincinnati is -- was the  
20 availability issue driven by market tightness or by  
21 certain customers trying to get ahead of the  
22 increasing corn prices that you saw during that  
23 period, where they were building their inventories to  
24 cover some of their 2008 needs in advance.

25 So I can't point to the exact reason why

1 things were tight in late 2007. But I do know that it  
2 was difficult to go to North America producers, when  
3 we either had short term needs or new initiative  
4 demands. The availability was just not there.

5 COMMISSIONER WILLIAMSON: Mr. Smith?

6 MR. SMITH: Specific to the negotiations for  
7 2008 that were had at the end of 2007, we heard this  
8 morning how rumors of potential anti-dumping in the  
9 U.S. came into those negotiations. I can confirm that  
10 at no point in our negotiations with the Petitioners  
11 were we talking anti-dumping for the U.S. market on  
12 citric acid on subject imports.

13 So that was a non-event in our negotiations;  
14 and most of the discussions that we have in our  
15 negotiations are around cost and cost changes versus  
16 previous years.

17 COMMISSIONER WILLIAMSON: You said you did  
18 not do anything about anti-dumping?

19 MR. SMITH: No, there was no indications  
20 from U.S. producers, Canadian, or even Chinese  
21 producers of anti-dumping in the United States.

22 COMMISSIONER WILLIAMSON: Thank you; Mr.  
23 Button, do you want to add something?

24 MR. BUTTON: Commissioner Williamson, the  
25 point you raise is, I think, a very important economic

1 issue for the case; and it goes to what was the most  
2 important thing shaping prices, going into 2008, about  
3 which there is much discussion. The answer is, the  
4 fixed price, one year contract negotiations that  
5 occurred in the fourth quarter of 2007.

6 Now there are a couple of explanations that  
7 have been offered. You've heard this morning the  
8 discussion by the Petitioners that had to do with  
9 similar knowledge or rumors that a case in the United  
10 States would be filed. What was the basis for that?  
11 Well, on September 4th, a case was filed in Europe.  
12 It wasn't decided. Margins were issued. No order was  
13 in place. There was a filing. That's the only fact.

14 What was going on in the United States?  
15 What do the Petitioners say in public portions of  
16 their brief? How far do they go, on page 61, in  
17 describing it?

18 What they say is, the producers "began to  
19 study the possibility of a case." They go on to say,  
20 "A case was being seriously considered." That's not  
21 very definitive on their side. They didn't know what  
22 they were doing. There's nothing in the purchaser  
23 questionnaires suggesting any knowledge by the  
24 domestic purchasers that a case was out there.

25 What was happening? In 2007 -- beginning in

1 2006, but extending into 2007 -- there was a  
2 substantial increase in the basic raw material to make  
3 the product. So at the fourth quarter of 2007, as  
4 they looked to negotiate 2008 prices, that was what  
5 was on the minds of both the producers and the  
6 consumers; how do get a price that would cover  
7 increased raw material costs, and that's what they  
8 did. They all negotiated that price.

9 So the price going into first quarter 2008  
10 was a higher price; not because the U.S. consumers,  
11 the purchasers, became any less vigilant in their  
12 negotiations. Rather, they were recognizing the real  
13 raw material cost increase. It was not because the  
14 Chinese had decided to be, I think the phase was,  
15 "more moderate" in their behavior. This had to do  
16 with the commercial realities of price and revenue.

17 In 2008, as shown for the first quarter, as  
18 shown by the Petitioner's Exhibit Number 1, you'll see  
19 that they moved into a profit position; and they  
20 stayed in that profit position for another quarter.  
21 The most important price for the largest piece of  
22 their volume was that contract price negotiated in the  
23 last quarter of 2007. That's the fundamentals of the  
24 economics that shaped the profitability in early 2008.

25 COMMISSIONER WILLIAMSON: And you're saying

1 that what drove their ability to get that price was  
2 the anticipated prices?

3 MR. BUTTON: Well, it was the higher raw  
4 material prices; and from what you've heard here  
5 around the table, the general tightness of the market.

6 Now one of the Commissioners this morning  
7 raised another question concerning spot prices; and  
8 the producers said, you know, one of the things about  
9 spot prices is that it's an indicator of market price  
10 trends. When spot prices are higher, then it's likely  
11 that there's a tightness in the market. When spot  
12 prices are lower, then there's over-supply.

13 Well, if you look at the quarterly pricing  
14 data, what do you find in this period? Uniformly, the  
15 spot prices are higher than the contract prices. The  
16 message there is the market is tight; and thus, the  
17 contract negotiations resulted in a higher contract  
18 price reflecting the economic realities.

19 COMMISSIONER WILLIAMSON: Thank you; you  
20 just anticipated my next question. Because I was  
21 about to ask about your view on the spot prices in  
22 relationship to the contract prices; the question I  
23 asked this morning.

24 MR. BUTTON: Yes, sir, right.

25 COMMISSIONER WILLIAMSON: Is there anything

1 more you want to add to that?

2 MR. CAMERON: Did you get an answer this  
3 morning? Because I didn't hear it.

4 (Laughter.)

5 COMMISSIONER WILLIAMSON: Well, I did raise  
6 it.

7 MR. CAMERON: No, it's a good question. I  
8 think that the answer is quite clear. They are  
9 separate markets; and try as they might, I mean, the  
10 witness from Tate & Lyle was honest enough to say,  
11 look, we play in the contract market.

12 They did hint that it had to do with pricing  
13 discovery and pricing intelligence; which I believe,  
14 if you look at the descriptions of what happened in  
15 the lost sales, you will see that they need to work on  
16 that. There is no real relationship. The spot market  
17 is a separate market. You can't say, as has been  
18 implied, well, the spot market is taking business away  
19 from our contract sales.

20 Now how is that, if the contract sales are  
21 being negotiated six months to a year ahead, and the  
22 spot prices are higher, and that's clear from the  
23 record? So exactly what is it? I think that that's  
24 what you got in the story this morning.

25 COMMISSIONER WILLIAMSON: I don't know. I



1 thought Mr. Button was sort of along the same line.  
2 But maybe you want to clarify.

3 MR. SMITH: Just with respect to the spot  
4 prices discussion, in our annual negotiations, we do  
5 not discuss spot prices. It's a contract for one  
6 year, typically, and we do not talk where spot prices  
7 are ending up. That typically should not influence  
8 our decisions. The discussions mostly focused around  
9 the cost and the cost changes.

10 COMMISSIONER WILLIAMSON: Okay, I'm getting  
11 conflicting views. Mr. Button, this is what I'm  
12 saying. It is a signal of market demands applied,  
13 which I assume you take into account when you  
14 negotiate your contracts.

15 MR. BUTTON: What I'm saying is, as an  
16 economist and not negotiating a contract there -- if  
17 I'm an economist, and I look at contract prices and  
18 spot prices and some of these at the time they're  
19 negotiating, what does it tell me about the state of  
20 the current market? Is it an over-supply, or is the  
21 supply tight?

22 As an economist, what it tells me is the  
23 market is tight, if the spot price is high, in this  
24 product or other products. That's not in conflict  
25 with what P&G does as an negotiating strategy, dealing

1 with its customers.

2 COMMISSIONER WILLIAMSON: Okay, I'll have to  
3 come back to this, because I think they have some  
4 economists on staff; thank you. Thank you, Mr.  
5 Chairman.

6 VICE CHAIRMAN PEARSON: Commissioner  
7 Pinkert?

8 COMMISSIONER PINKERT: Thank you; staying  
9 with you, Dr. Button, you've testified about your  
10 understanding of what was going on in the market in  
11 the United States toward the end of 2007. I'm  
12 wondering, is there a way to grapple with this  
13 question of whether there was an immediate market  
14 reaction in the United States to information about the  
15 European investigation?

16 MR. BUTTON: I believe the way to grapple  
17 with it is to ask whether there's any factual basis  
18 for the speculation that it has a significant impact;  
19 and I don't think there is.

20 The way it could have an impact is if the  
21 market participants were themselves to believe that  
22 supply in the United States market was going to become  
23 increasingly tight because of a U.S. trade action.

24 As we find the text of the brief from the  
25 domestic industry, it indicates that they were only

1 beginning to study the possibility of doing so, such  
2 that at this point, it doesn't seem that the U.S.  
3 producers themselves even knew exactly what they were  
4 going to do. The purchasers themselves don't know  
5 whether that's going to happen. That is not going to  
6 affect their behavior.

7 So I believe what you're facing here is a  
8 situation of speculation based on a circumstance of no  
9 substantial data. The data that you do have are  
10 commentaries with respect to the actual price in the  
11 market, the cost of raw materials; and the commentary  
12 you've heard from others is the supply as being tight.

13 COMMISSIONER PINKERT: Not to belabor the  
14 point; but is the pricing data in the U.S. market  
15 consistent with both your explanation and the  
16 explanation offered, in terms of the affect of the  
17 filing of the European investigation?

18 MR. BUTTON: Well, no; I believe for your  
19 purposes, in terms of the causation nexus, the answer  
20 is explicitly no. What I'm telling you is that in the  
21 first quarter of 2008, you had a change in the  
22 domestic price, which came in order to benefit the  
23 domestic producers.

24 And what I think happened, you know, and it  
25 may have happened at that point, is that at the

1 beginning of 2008, they were successful in perhaps  
2 covering their raw material costs better than they had  
3 in the past. In the negotiations, the corn prices,  
4 you know, that were higher were now more reflected in  
5 the prices; and the fact that there was this tightness  
6 in the market, and that the various characters  
7 involved in the negotiations respond to these.

8 Assuming that there's essentially a six  
9 month anticipation of a dumping case, it seems to be a  
10 stretch in terms of the Commission's ability to look  
11 for a real foundation for economic changes in the U.S.  
12 market.

13 COMMISSIONER PINKERT: Thank you; now I have  
14 a question for Mr. Waite and Mr. Rainville, and it's  
15 about your exhibit that is Dr. Buttons' Exhibit Number  
16 3. Maybe we can put Exhibit Number 3 back up.

17 I think you noticed what it says for Canada  
18 and what it says for China there; and I'm wondering if  
19 that is consistent or inconsistent with your testimony  
20 about the premium product?

21 MR. WAITE: Commissioner Pinkert, Fred Waite  
22 on behalf of Jungbunzlauer -- perhaps I could start  
23 with a response to your question, and Mr. Rainville  
24 may decide to add to that from his experience in the  
25 market.

1           We believe that this information is  
2 consistent with both the view of Jungbunzlauer -- that  
3 it sells a premium product at a premium price, that is  
4 also confirmed, as the Petitioners alluded to this  
5 morning in the Purchaser's questionnaire responses,  
6 when they were asked about who is the price leader  
7 and, in particular, who's the price leader when the  
8 price goes down.

9           You may recall that the response was that  
10 the Petitioner said that in those responses, the  
11 purchasers uniformly mentioned China.

12           What they didn't tell you -- perhaps because  
13 you didn't ask -- is that those same purchasers also  
14 identified Jungbunzlauer as a price leader -- but the  
15 price leader when the price goes up -- and that  
16 Jungbunzlauer is a high priced supplier to the U.S.  
17 market.

18           Now the exhibit that you're looking at,  
19 which shows incidents of over-selling by the Canadian  
20 product compared with the U.S. producers U.S. pricing,  
21 we believe confirms that. But we actually believe  
22 this understates it.

23           We, in our brief, selected those markets  
24 where the U.S. industry is most heavily engaged. We  
25 did not use the same parameters that Mr. Button did --

1 I'm sorry, that Dr. Button did. We looked at those  
2 markets where the overwhelming majority of U.S.  
3 purchasers reported their pricing data on the basis of  
4 quantity.

5 What you saw in our brief is that the  
6 incidents of over-selling is even more significant,  
7 both in terms of the comparison periods -- that is the  
8 number of comparison periods where the Canadian  
9 product over-sells the U.S. products, as well as  
10 margins of under-selling. Did I say under-selling --  
11 over-selling; I'm sorry.

12 COMMISSIONER PINKERT: Mr. Rainville, do you  
13 wish to add anything to that?

14 MR. RAINVILLE: I certainly agree with  
15 Attorney Waite. We do participate though in the  
16 annual contract bids with the U.S. domestics, and we  
17 are very often or nearly all the time told by these  
18 people that we are the highest priced product.

19 As a result, we have a significantly high  
20 failure rate in obtaining these contracts, which is  
21 why a significant portion of our volumes end up with  
22 distributions in the spot markets of the United  
23 States.

24 COMMISSIONER PINKERT: Dr. Button?

25 MR. BUTTON: Commissioner, specifically,

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1 with your focus on this chart and on the issue of the  
2 2008 pricing, this morning, the Petitioners were  
3 indicating that the issue of over-selling and the like  
4 only occurred in 2008. It was a phenomenon brought on  
5 by the filing of the petition.

6 Let me just note, and we will provide you  
7 additional data in the post-hearing brief, that the  
8 over-selling that you see continues to exist, if you  
9 exclude 2008 and just use 2006 and 2007.

10 COMMISSIONER PINKERT: Thank you; Mr.  
11 Cameron?

12 MR. CAMERON: Yes, I'd just like to note  
13 that with reference to the statement about the Chinese  
14 being the price leader when the market goes down was  
15 in relationship to what? It was in relationship to  
16 the spot market.

17 I find it curious that the Petitioners would  
18 use as a causal connection to try and make their price  
19 case, with respect to comments on a market that they  
20 don't really commercially participate in. That  
21 actually was the point that we made in the  
22 introduction, and that's a point that we're making  
23 here.

24 Because, in fact, the Chinese have over-  
25 selling in the same markets that the Canadians have

1 over-selling in, and in the markets that the United  
2 States producers are, by and large, participating in.

3 So what are we talking about here? You  
4 know, that's where we get to this question of, what is  
5 the causal nexus that we're talking about in terms of  
6 volume and price?

7 And what they really are saying is that  
8 Exhibit 1 -- this is the one which is an ITC graph  
9 chart that has about, I don't know, 20 cases that  
10 you've done over some period of time, and basically  
11 saying, well, there are imports in the market. You  
12 know, when these are the conditions, you're supposed  
13 to vote affirmative on. Well, I mean, I get it. But  
14 I don't think it's relevant.

15 COMMISSIONER PINKERT: Okay, now back to Mr.  
16 Waite for a moment, is there disagreement on this  
17 panel regarding the issue of cumulation?

18 MR. WAITE: There's certainly no  
19 disagreement on this panel back here on the issue of  
20 decumulation; no, Commissioner Pinkert. And I believe  
21 you'll also find that in their pre-hearing brief, our  
22 friends from P&G also advanced a decumulation  
23 argument, as well.

24 COMMISSIONER PINKERT: So is the answer to  
25 my question, yes?



1           MR. WAITE: I think you may want to address  
2 that to Brother Cameron.

3           COMMISSIONER PINKERT: Brother Cameron?

4           MR. CAMERON: Commissioner, we are not  
5 fighting decumulation. We are not advocating it one  
6 way or the other. We believe that the outcome,  
7 regardless of whether you cumulate or decumulate,  
8 should be the same. It should be no injury and no  
9 threat.

10           So we're not advocating decumulation. But  
11 if that's what you decide to do, fair enough. But  
12 we're not going to run away from the record here. I  
13 don't think that the record necessarily -- the  
14 Commission didn't decumulate it at the preliminary  
15 and, therefore, we didn't really look at it like that.

16           COMMISSIONER PINKERT: For the post-hearing,  
17 you may wish to comment on the issue of cumulation for  
18 threat purposes and, specifically, on volume and price  
19 trends.

20           MR. CAMERON: We'll be glad to do so,  
21 Commissioner; thank you.

22           COMMISSIONER PINKERT: Thank you; and you  
23 may wish to do that, as well, Mr. Waite.

24           MR. WAITE: We will do that, Commissioner.

25           COMMISSIONER PINKERT: Thank you; thank you,

1 Mr. Chairman -- Vice Chairman.

2 VICE CHAIRMAN PEARSON: Old habits die hard,  
3 don't they? Mr. Smith, you made the argument that the  
4 global supply demand balance seems to be balanced and  
5 relatively tight; and you have, I think, quite a few  
6 touch points to make those observations within the P&G  
7 network.

8 How do we account then for estimates of  
9 substantial excess capacity in China? In our staff  
10 report, Table 7-7 on page 7-13 -- and that's available  
11 in the public version -- we're showing excess capacity  
12 in China of around 360 million pounds, which is not  
13 inconsequential. If all of that was to land on the  
14 U.S. doorstep next week, I think most of us would see  
15 that as a significant increase.

16 So do you doubt the Chinese numbers; or are  
17 there other reasons why we should not see that much  
18 capacity as a potential problem for the U.S. industry?

19 MR. HODGES: Yes, this is Jim Hodges,  
20 Procter and Gamble -- the way I calculated that and  
21 gave some guidance to Mr. Smith for his testimony is,  
22 if you look at the name plate capacity in all the  
23 facilities globally, your conclusion may be accurate.

24 But if you look at a realistic operating  
25 rate that producers globally run at, in the 91 to 95

1 percent range, then the market gets to the balanced to  
2 tight position.

3 If all the producers around the globe,  
4 including the producers in North America and Europe,  
5 were able to run at 100 percent, we would definitely  
6 have that over-supply position. But through our  
7 experience, we haven't had a producer in any region  
8 able to demonstrate running rates consistently above  
9 the 91/92 percent rate.

10 VICE CHAIRMAN PEARSON: Okay, are thee any  
11 other observations on that question? Mr. Rainville,  
12 do you have any comments on how hard a plant can run?

13 MR. RAINVILLE: Well, as I noted in my  
14 testimony, Jungbunzlauer's plant is state-of-the-art  
15 and the newest plant certainly in North America. As a  
16 result, we do achieve run rates greater than 95  
17 percent consistently year after year.

18 VICE CHAIRMAN PEARSON: Would the same thing  
19 be true for JBL's older facilities in Europe or  
20 elsewhere?

21 MR. WALDERS: I think we'd have to check  
22 with the facilities in Europe, with the headquarters  
23 in Switzerland on that, Vice Chairman. Mr. Rainville  
24 is very knowledgeable of the North American market --  
25 the United States, Mexico, and Canada -- but he does

1 not get involved in marketing in Europe. But we could  
2 find that information for you.

3 But as Mr. Rainville said, and as you've  
4 seen in JBL's -- Jungbunzlauer's -- responses to the  
5 Commission's questionnaires, the facility at Port  
6 Colburn in Canada has operated at or near 100 percent  
7 capacity utilization rates during the entire POI,  
8 continuing through today.

9 As Mr. Rainville also mentioned, it's  
10 important for these plants to operate at as high  
11 capacity utilization as possible. That's the most  
12 efficient way that these plants can be operated.  
13 Certainly, that's the objective of the plant at Port  
14 Colburn.

15 VICE CHAIRMAN PEARSON: Okay, well, for  
16 purposes of the post-hearing, I would appreciate  
17 learning what you could about the other facilities.  
18 Let me turn to Mr. Taylor.

19 MR. TAYLOR: Yes, I think having  
20 responsibility for the purchase of citric acid around  
21 the globe, I would have to say that, as I said  
22 already, we have seen a tightness. We've seen a  
23 tightness in supply. We've seen an increase in lead  
24 time; and this is from numerous sources around the  
25 world.

1           I think that would signify that there's not  
2 as much over-capacity as maybe you're indicating. We  
3 do tend to see various suppliers running at very, very  
4 high utilization rates.

5           MS. MENDOZA: Vice Chairman?

6           VICE CHAIRMAN PEARSON: Yes.

7           MR. MENDOZA: If I could just add one  
8 comment in terms of that.

9           VICE CHAIRMAN PEARSON: Ms. Mendoza.

10          MS. MENDOZA: Yes, thank you; I think that  
11 Petitioners talked a lot this morning about capacity  
12 and global capacity and Chinese capacity. But the  
13 fundamental problem with their argument is the same  
14 problem they have with their present injury argument,  
15 which is that they have not established any causation.

16          I think if you look at the tables, even the  
17 public tables that are in the staff report, at the  
18 proportions that were supplied to the Chinese market  
19 versus exports to other markets and to the U.S., what  
20 you saw over the period was a very flat pattern, in  
21 terms of which markets were being supplied with that  
22 capacity. So we would argue that the mere presence of  
23 capacity does improve injury or threat of injury.

24          VICE CHAIRMAN PEARSON: Well, I would agree  
25 with that in concept. But I am trying to understand

1 better how much capacity is out there that might be of  
2 concern; Mr. Cameron?

3 MR. CAMERON: Mr. Vice Chairman, one other  
4 thing with respect to the Chinese capacity is that I  
5 believe that there are some adjustment to that  
6 capacity that we can discuss in our post-hearing brief  
7 in confidence. I think we mentioned them in our pre-  
8 hearing brief. But it's important to understand that.

9 VICE CHAIRMAN PEARSON: Okay, thank you; and  
10 that may prevent the need of asking Mr. Shao the  
11 question directly about that. Because if there is  
12 additional information available regarding Chinese  
13 capacity --

14 MR. CAMERON: We will be glad to give it,  
15 and he would not be the person that gives it to you.

16 VICE CHAIRMAN PEARSON: Okay.

17 MR. CAMERON: Thank you.

18 VICE CHAIRMAN PEARSON: Mr. Rainville, does  
19 JBL America see itself as an integrated part of a  
20 single North American industry? Another way of asking  
21 the question is, why was the plant build in Canada?  
22 And there may be some public reasons that you can  
23 mention and some post-hearing reasons. But I'd be  
24 curious what your thoughts are.

25 MR. WAITE: In order to preserve Mr.

1 Rainville's position within JBL, perhaps I should  
2 respond to that question.

3 VICE CHAIRMAN PEARSON: We want Mr.  
4 Rainville to remain employed, yes.

5 MR. WAITE: We would very much like to see  
6 that, as well. There were a number of reasons. We  
7 can provide you with a very comprehensive discussion  
8 in our post-hearing brief.

9 However, there are a number of factors that  
10 I think we can refer to publicly, Mr. Vice Chairman,  
11 that may be helpful at this point. JBL certainly did  
12 look at the North American market, at the North  
13 America territory, as an opportunity to build their  
14 new plant. They did look at a number of locations.  
15 There were a number of factors that went into their  
16 decision.

17 For example, if you visited the plant in  
18 Port Colburn, you will see within 150 meters of that  
19 plant is a wet corn processing mill, owned and  
20 operated by Casco, which is a Canadian subsidiary of a  
21 U.S. corn producing company.

22 What that means is that glucose can be piped  
23 directly from the Casco plant into JBL's facility;  
24 obviously an advantage, both in terms of convenience,  
25 reliability of supply, long-term planning, security,

1 in their production.

2 They're also located within a short walk of  
3 the Wellin Canal, which offers not only transportation  
4 possibilities, but also water, which is an important  
5 component in the production of citric acid.

6 It's geographic location -- obviously, it's  
7 close to major markets throughout North American;  
8 certainly, Ontario, the Midwest, New York State, and  
9 Pennsylvania. I believe I've seen publicly  
10 acknowledged that within 500 to 800 miles of the  
11 plant, there's probably 80 percent of the consumption  
12 of citric acid in North America.

13 Why Canada, rather than the United States --  
14 well, because JBL is a European company, Austrian  
15 owned, Swiss headquartered. Plants in Germany,  
16 France, and elsewhere look at North America as a  
17 unified market; and certainly feel that they are part  
18 of the North American market.

19 The notion that they are somehow foreign or  
20 different, or operating a different way than, for  
21 example, their fellow European competitors at Tate &  
22 Lyle, is probably a concept that they would find  
23 perplexing and maybe even offensive.

24 Certainly, as you can see in their responses  
25 and in the data collected by the Commission staff on



1 pricing, on marketing, they operate in a very  
2 responsible, long-term way; and once again, to refer  
3 to the pricing data collected by the Commission staff,  
4 it certainly shows that they are not coming into this  
5 market trying to seize market share with low prices.  
6 In fact, it's just the opposite.

7 VICE CHAIRMAN PEARSON: Mr. Rainville, a  
8 quick follow-up, do you see JBL as competing most  
9 closely against subject imports from China or other  
10 non-subject imports; or do you see your major  
11 competitors as the U.S. domestic manufacturers?

12 MR. RAINVILLE: On a long-term contract  
13 basis or full year contract basis, we see our  
14 competition as being the U.S. domestic producers.

15 VICE CHAIRMAN PEARSON: Okay.

16 MR. RAINVILLE: And to add to what Mr. Waite  
17 said, if you don't mind, my office in Boston,  
18 Massachusetts has been there for over 20 years,  
19 servicing the U.S. market, but also Canada and Mexico,  
20 selling Jungbunzlauer's citric acid. That material  
21 came from Austria, as I mentioned earlier.

22 We did not enter this market in 1992. We  
23 entered many years prior to that; and when that plant  
24 was built in Canada, the purpose was absolutely to  
25 serve the entire North American market.

1                   VICE CHAIRMAN PEARSON: Okay, thank you very  
2 much; Commissioner Lane?

3                   COMMISSIONER LANE: Mr. Cameron, this may be  
4 for you. But you may direct it towards someone else,  
5 if you want to.

6                   One of the issues in this case is the  
7 relative prices within the contract market. The  
8 domestic industry maintains that purchasers are using  
9 the threat of massive subject import capacity to  
10 negotiate lower contract prices. Is it possible that  
11 the mere threat of such massive subject imports would  
12 force the domestic producers to lower their prices in  
13 the contract market that they find most attractive?

14                  MR. CAMERON: Let me start, and I think that  
15 all of the purchasers here would like to participate  
16 in the answer to your question.

17                  No, I think the answer is that no, that is  
18 not realistic. I think the evidence of that is  
19 twofold. Number one, if you look at the purchaser  
20 questionnaires, there is overwhelming preference for  
21 domestic producer supply.

22                  Well, why is that? In other words, if you  
23 have that preference for U.S. producer supply, does  
24 that mean that you can just go tomorrow and say, well,  
25 I'm going to go buy from what's-her-name over in

1 China? Well, I think the answer to that is no.

2 The reason is that they prefer the short  
3 lead time, the short supply chain, and other things  
4 that have been noted. That's one reason that the  
5 United States industry is the price leader in this  
6 market and not the imports. That's one of the reasons  
7 that they are preferring the domestic supply.

8 So the idea of the mere threat of capacity -  
9 - which I think is the basic argument, right -- I  
10 don't see it, and I don't think you see it in the  
11 numbers, either. If that were the case, I think you  
12 would see under-selling in that market, and you're not  
13 seeing that.

14 You're seeing that the domestic industry --  
15 you know, look at the industries that we look at in  
16 this context. They're not operating at full capacity,  
17 you know. The buyers are going in saying, well, I'm  
18 going to get somebody else and they do. So the  
19 industries end up at 75 or 50 percent capacity, which  
20 is what you're hearing today.

21 Well, what is the situation with the U.S.  
22 industry? They are at full capacity and turning away  
23 orders. So I think the answer to that is, that's not  
24 happening, and there's absolutely no evidence on the  
25 record that it is. But I'd like to hear from some of

1 the purchasers.

2 MR. SMITH: From P&G's perspective, how our  
3 negotiations operate is, we like to approach the  
4 negotiations in a very principled way. Incumbency  
5 plays a valuable role in who we give business to.

6 So if a supplier is supplying 5,000 tons to  
7 P&G one year, they'll have every opportunity to have  
8 that same volume the next year. We start the  
9 discussions, again principally, based on cost changes  
10 from the previous year -- what we've seen in the  
11 market, what they've seen in the market; and we use  
12 that as the foundation for the price discussions.

13 We don't shop the prices around. We don't  
14 bring a quote from China in and say, if you don't beat  
15 this price, you're not getting the business. We try  
16 to understand and work with our suppliers over a  
17 period of time to come to an agreement where they're  
18 supplying to P&G for the long term. Because  
19 ultimately, it's to our advantage to have more  
20 suppliers than less; and we want to make it long-term  
21 valuable for the suppliers, also.

22 MR. TAYLOR: I think it's similar from a  
23 PepsiCo point of view. We tend to have long-term  
24 relationships with our suppliers, and don't tend to  
25 change the purchasing pattern hugely year over year

1 predominantly because, you know, continuity of supply  
2 is paramount.

3 We will make certain modifications, year  
4 over year, and price will become a minor factor in the  
5 change. But really, it doesn't play a big factor.

6 COMMISSIONER LANE: Okay, does anybody else  
7 want to respond to that? Well, I would like to hear a  
8 response from either Dr. Button or Dr. Magrath on that  
9 argument.

10 MR. BUTTON: Well, the key issue in  
11 negotiations is whether if an over-hang is credible or  
12 not. The reasons you have here to doubt that the  
13 over-hang is a credible determinant of how price  
14 negotiations will go is whether the U.S. purchasers  
15 really are themselves convinced, motivated simply by  
16 price.

17 In fact, what you've been hearing through  
18 the couple hours from the U.S. purchasers is the  
19 importance for them of non-price factors, such as  
20 reliability, availability, and the convenience and  
21 assuredness of having relatively near, geographically  
22 near, supplies of the product, which they need so very  
23 much.

24 I think the other aspect of this, just on  
25 the imperial basis, is that it shows that the threat

1 of the foreign capacity is not credible as the over-  
2 selling data. How is the foreign capacity going to  
3 cause a suppression of the prices if it, in fact, is  
4 consistently higher?

5 COMMISSIONER LANE: Okay, thank you;  
6 approximately how many purchasers of citric acid are  
7 in the United States, and how many of these are large  
8 end users and how many are large distributors?

9 MR. CAMERON: Well, I mean, I believe the  
10 staff has identified the largest purchasers as four;  
11 and if you want to look at, it depends on your level  
12 of aggregation. Then you go up to about 16. There  
13 are five distributors, do you think -- five major  
14 distributors. But the best estimate that we have  
15 obviously is in the staff report. But that's not  
16 going to get to the small purchasers.

17 COMMISSIONER LANE: Okay, thank you.

18 MR. CAMERON: I mean, we'll try and get you  
19 some more. But I think the staff report and what  
20 you've done is actually the best that we've seen.

21 COMMISSIONER LANE: Okay, thank you; in  
22 various places in Petitioner's pre-hearing brief and  
23 in the testimony this morning, the Petitioners refer  
24 to a time series that begins in 1999 and 2005 to the  
25 current period, or to the period for which data were

1 collected in these investigations -- 2006, 2007, and  
2 2008.

3 Why should the Commission take into  
4 consideration data that do not necessary correspond to  
5 the data collected in its final phase questionnaires,  
6 and that cover a longer period that pre-dates the  
7 period covered by the questionnaires?

8 MR. CAMERON: Well, Commissioner, you  
9 shouldn't; and I believe that the Commission practice  
10 has been to look at the data collected in the  
11 questionnaire data over the POI.

12 One reason that you do that is because the  
13 data collected over the POI is complete with respect  
14 to essentially, you guys understand and have  
15 understood for many years that these are complicated  
16 issues. Therefore, you seek answers, not from one  
17 single source. It's not just, well, production was up  
18 so that must be the answer; or, they lost money --  
19 okay, well, that must be the answer.

20 You don't look at it like that. You look at  
21 it on a very broad basis. You collect information  
22 from producers. You collect information from  
23 importers, and you collect information from  
24 purchasers.

25 Once you've done that, you have a rather

1 complete database, and you are then checking the data  
2 against each other to see exactly how things make  
3 sense. That's the reason that you generally tend to  
4 use the POI.

5 What I've found to be rather surprising was  
6 the extent to which, (A) the Petitioners had really  
7 had gotten quite a bit of input into the questionnaire  
8 process, which is fine. I mean, that's the normal  
9 deal; and they were successful at it and there were  
10 many changes made in the questionnaire. But after all  
11 the data came back, they're still running away from  
12 the record.

13 This kind of gets at, if I may, earlier you  
14 asked whether or not there had been any differences  
15 between the preliminary and now. Well, I guess  
16 another difference is that 2005 was included there,  
17 and it is not now because it's not part of the POI.  
18 Of course, you didn't have purchaser questionnaires in  
19 the 2005 database.

20 But the other thing that has changed, and I  
21 apologize for my slowness in responding to your  
22 question, is there were obvious cost anomalies that  
23 occurred in the data that we have discussed in our  
24 pre-hearing brief that we really can't discuss.

25 And we also heard testimony this morning



1 from the consultant for the Petitioners that they had  
2 re-calculated essentially the raw material costs, and  
3 included other things in raw material costs that they  
4 had not in the preliminary determination.

5 So I think that you have a good database.  
6 Really, the reason they're doing this is, they don't  
7 like 2008. Well, why don't they like 2008? Well,  
8 they don't like 2008 because it's difficult for them  
9 to argue that their pricing was affected by a petition  
10 that was filed in April of 2008, when virtually all of  
11 their prices were negotiated in late 2007, and it  
12 appears to have been related to increases in corn  
13 costs, which is fine.

14 But of course, they had no problem in  
15 getting their price increases, as shown in the first  
16 quarter of 2008, which you already had seen in the  
17 preliminary determination. But again, I think that's  
18 what they're doing. They are running away from the  
19 data.

20 You've got a solid database. The staff has  
21 worked extraordinarily hard to gather the data; and we  
22 don't think there's any reason for you to be doing  
23 anything else.

24 COMMISSIONER LANE: Dr. Button?

25 MR. BUTTON: Thank you, Commissioner. I

1 agree with Mr. Cameron what Mr. Cameron said about the  
2 appropriateness of using the data. However, I can't  
3 resist pointing something out in the data if you have  
4 Exhibit 12 with you in its full color.

5           During the discussion as to the  
6 meaningfulness of this I would direct you to the left-  
7 hand side where you see a decline in what is shown to  
8 be the net income, the profitability of the domestic  
9 industry from a relatively high level on the far left  
10 side down into the negative points and it's red as  
11 imports rose. We were told that nothing else had  
12 changed, just the increase in the imports.

13           But if you look closely at the period from  
14 first quarter 1999 through first quarter 2002 you see  
15 all the black dropping, the profitability falling to  
16 zero. But a period where in essence the subject  
17 imports are flat. There's one spike up, then it goes  
18 farther down. You have a very dramatic change in the  
19 financial circumstances of the domestic industry at a  
20 time when the subject imports are relatively flat.  
21 That is not a good causal connection.

22           Thank you.

23           COMMISSIONER LANE: Okay, thank you.

24           Mr. Vice Chairman, I'll wait until my next  
25 round. Thank you.

1                   VICE CHAIRMAN PEARSON: Commissioner  
2 Williamson?

3                   COMMISSIONER WILLIAMSON: Thank you, Mr.  
4 Vice Chairman.

5                   I was wondering how the Respondents would  
6 reply to the Petitioners' assertion at pages 79 to 84  
7 of their brief that the domestic industry has been  
8 unable to make "lumpy types of capital investment  
9 needed to build additional capital because imports  
10 have been injuring them for a number of years." I was  
11 wondering if you have any response to that.

12                  MR. BUTTON: Well, I would respond with the  
13 following. It's one thing to have the capital to make  
14 it, it's another thing to assert a particular cause as  
15 to what happened.

16                  Secondly, I would note the commentary by the  
17 domestic industry that they have not been able to make  
18 a sufficient ROI, return on investment, for a very  
19 long period of time.

20                  Then I recall this morning's discussions  
21 about how their internal profitability is in fact  
22 determined based on transfer prices, hedging  
23 strategies, all of which remain something of a  
24 mystery. And Commissioner Lane has asked a series of  
25 probing questions to try and get more information

1 about these things which were not on the record.

2           It comes down to why is there profitability.  
3 Let's look at the cost side. We've talked a lot about  
4 the pricing side from our point of view that the  
5 subject imports have not suppressed that price. But  
6 on the cost side, where did the corn come from? What  
7 happened to the corn by-products of milling and  
8 producing it? About 30 to 40 percent of the value of  
9 that? How did it get assigned among the various other  
10 divisions to which the starch material is to go?

11           There was a discussion back and forth as to  
12 how it was priced internally, about cost plus a  
13 markup. It sounded like there was cost plus a markup  
14 in the internal books, but Petitioners indicated they  
15 believed they had been careful in removing the markup  
16 in providing the questionnaire data.

17           Well, that may not be all.

18           What about the benefits or problems with  
19 hedging? If the corn had been hedged they should have  
20 been able to lock in a predictable cost. All three US  
21 producers told you this morning that at the time they  
22 negotiate their contracts to sell the citric acid they  
23 can know what the cost of their corn is going to be.

24           Why then the variability? Why then the  
25 losses? What happened to these other financial

1 aspects, the byproducts and things of that nature and  
2 the transfer pricing?

3 I find it somewhat confusing to confront,  
4 let's say I find it puzzling that the domestic  
5 industry has the financial outcome it has in a  
6 situation where they have the means to protect  
7 themselves but they don't.

8 COMMISSIONER WILLIAMSON: Thank you.

9 For JBL, I was wondering, do you agree or  
10 want to comment on the Petitioners' argument this  
11 morning regarding the impact of the new JBL plant on  
12 US investment.

13 MR. WAITE: Yes. Thank you, Commissioner  
14 Williamson.

15 We'd like to think about that because we  
16 don't fully understand what the Petitioners may be  
17 getting at. I'm not an economist, I only took Econ  
18 101, 102 and 304 in college, but when I looked at the  
19 chart of subject import volumes and US producers' net  
20 income that the Petitioners presented this morning and  
21 saw all of those black columns at about the same time  
22 that JBL was making its decision to consider, plan,  
23 design and build a new facility in North America, I  
24 would suppose that the domestics had pretty deep  
25 pockets at that point looking at this chart. Why they

1 didn't make a similar decision to upgrade their  
2 operations, to perhaps consider new operations whether  
3 in the United States or Canada, I simply can't answer  
4 that question.

5           Because JBL, in looking at its global  
6 interest, it's always considered itself one of the  
7 global leaders in the production of citric acid, it's  
8 taken great pride in that. While JBL was making a  
9 decision to try to secure its future in this industry,  
10 I'm simply not in a position to speak as to why the  
11 domestic industry did not make a similar decision.

12           COMMISSIONER WILLIAMSON: Anything you can  
13 provide post-hearing will be helpful.

14           MR. RAINVILLE: May I make one additional  
15 comment?

16           COMMISSIONER WILLIAMSON: Sure.

17           MR. RAINVILLE: Dan Rainville from  
18 Jungbunzlauer.

19           When we did open our plant in Canada we were  
20 importing from Austria, so those imports were, we  
21 ceased those imports when Canada opened, and then we  
22 started importing into the United States from Canada.

23           COMMISSIONER WILLIAMSON: Thank you.

24           Just a technical thing, Mr. Waite. I wonder  
25 if there's a typo on the last line of the text on page

1 34 of your brief, and if you can take care of that  
2 post-hearing.

3 MR. WAITE: There is a typo on that last  
4 line on that page. We regret it very much and we will  
5 take care of it in our post-hearing brief. Thank you,  
6 Commissioner Williamson.

7 COMMISSIONER WILLIAMSON: Thanks.

8 A question I asked this morning, can  
9 Respondents discuss the extent to which your US citric  
10 acid sales or purchases are part of a larger  
11 negotiation process that involve sales or purchases to  
12 other markets. The Petitioners said that wasn't the  
13 case, but I was wondering since we do have global  
14 companies here.

15 MALE VOICE: Can you repeat the question,  
16 please?

17 COMMISSIONER WILLIAMSON: To what extent are  
18 your US citric acid sales or purchases are part of a  
19 larger negotiation process that involves sales or  
20 purchases for other markets, or that involve sales or  
21 purchases of products in addition to citric acid,  
22 concerning citric salts.

23 MR. HODGES: Jim Hodges, Proctor & Gamble.

24 None of our citric acid negotiations  
25 globally are linked to any other products that

1 companies that supply citric produce.

2 COMMISSIONER WILLIAMSON: Thank you.

3 Mr. Taylor?

4 MR. TAYLOR: That also tends to be the case  
5 for PepsiCo where we have different divisions  
6 purchasing certain materials, i.e. like high fructose  
7 corn syrup, as do some of the other Petitioners.

8 MR. HOFMANN: Same for us.

9 COMMISSIONER WILLIAMSON: Thank you.

10 For the Chinese Respondents, I was  
11 wondering, and you may have to do it post-hearing,  
12 what exactly is provided for in the price undertaking  
13 that the EU, with the EU? And particularly if you can  
14 give post-hearing the prices that are involved.

15 MS. MENDOZA: We'd be happy to respond to  
16 that in our post-hearing brief. It's going to depend,  
17 obviously, by individual producers.

18 COMMISSIONER WILLIAMSON: Thank you.

19 Again, Chinese Respondents. Petitioners  
20 argue at pages 62 to 65 of their brief that exports  
21 from China to EU and US markets surged in periods  
22 prior to the imposition of the provisional preliminary  
23 duties. I was wondering if you could comment on that.

24 MR. CAMERON: I found the description rather  
25 interesting. We will comment in our post-hearing



1 brief. I think it was quite an over-simplification of  
2 what has occurred, but we'll be glad to comment.

3 COMMISSIONER WILLIAMSON: Okay. Another  
4 question for Respondents.

5 Do any of you know of instances in which  
6 firms have chosen formulations not using citric acid  
7 because of difficulties in obtaining citric acid or  
8 the high price of citric acid? Or other reasons not  
9 related to the quality of the final product?

10 MR. HOFMANN: We have a situation where it  
11 is extremely difficult to replace the material, so the  
12 answer is no.

13 COMMISSIONER WILLIAMSON: Thank you.

14 Any other --

15 MR. HODGES: Jim Hodges, Proctor & Gamble.

16 From our perspective, we've had two  
17 projects, one a new initiative where the business  
18 asked us for increased citric acid or citric salt and  
19 we gave them guidance to pursue other chemistries  
20 because of availability and price. And one  
21 formulation this year we did reduce citric acid in a  
22 non-laundry brand because there was an alternative  
23 chemistry that gave some better performance options.

24 COMMISSIONER WILLIAMSON: Okay, thank you.

25 Thank you, Mr. Vice Chairman.

1                   VICE CHAIRMAN PEARSON: Commissioner  
2 Pinkert?

3                   COMMISSIONER PINKERT: Thank you, Mr. Vice  
4 Chairman.

5                   Mr. Cameron, on pages 54 and 55 of the  
6 Chinese Respondent brief you referenced what you call,  
7 and I quote, "the rest of the industry". I can't be  
8 more specific about this in a public setting, but what  
9 I want to ask you, and you can answer this either here  
10 or in post-hearing, is it your contention that the  
11 rest of the industry is doing well in the face of  
12 import competition?

13                   MR. CAMERON: Yes, it is, and we'll be glad  
14 to expound on it in the post-hearing brief because  
15 it's very difficult to say anything much more than  
16 that.

17                   COMMISSIONER PINKERT: Could you, when you  
18 do that, give us some sense of the historical context  
19 in which you make the judgment that they are doing  
20 well in the face of import competition?

21                   MR. CAMERON: Certainly. No problem.

22                   COMMISSIONER PINKERT: Thank you.

23                   Another question. This could be Mr. Cameron  
24 or any other of the attorneys on the panel. How do  
25 you respond to Petitioner's point about the recent

1 inventory buildup? That is information that was  
2 different in the staff report now than in the  
3 preliminary?

4 MR. CAMERON: The first thing I would say  
5 with respect to the inventory buildup is again, let's  
6 look at the normal expectation in many industries  
7 would be that that is an overhang that is on the  
8 market and would be an immediate threat for 2009. But  
9 that doesn't apply to this situation. Why is that?  
10 Because 2009 is already in the bank as far as the US  
11 industry is concerned with respect to the contracts.  
12 So I don't really find it to be that meaningful.

13 Actually what you're seeing is that a lot of  
14 that's being drawn off now with the increases back to  
15 the EC now that they've got their agreement.

16 COMMISSIONER PINKERT: I used the term  
17 inventory buildup.

18 MR. MAGRATH: Inventory buildup. Which  
19 inventory are you --

20 COMMISSIONER PINKERT: I believe the  
21 testimony earlier today had to do with the Chinese  
22 inventory.

23 MR. MAGRATH: Oh, that's not an issue with  
24 Canada.

25 COMMISSIONER PINKERT: Okay.

1                   Any other comments on the panel about that  
2                   issue?

3                   MR. CAMERON: We would also, by the way, if  
4                   you're going to talk about inventories, I think it's  
5                   only fair to talk about US inventories as well. And  
6                   when you're talking about threat, actually what you've  
7                   heard and you've seen in some of the questionnaire  
8                   responses from purchasers is responses by the domestic  
9                   industry that actually they were not going to be able  
10                  to supply certain amounts because they needed to build  
11                  up inventory for the peak summer months for this  
12                  coming summer, and what you are also seeing, and  
13                  that's publicly available data, that the inventories  
14                  of the United States industry are at a very low point.

15                  COMMISSIONER PINKERT: Thank you.

16                  Just a couple of other questions for Mr.  
17                  Bloom. You refer to the kosher certification process,  
18                  and I wondered if you could explain what that  
19                  involves.

20                  MR. BLOOM: We don't actually do a  
21                  certification on kosher. That is done by a rabbi. We  
22                  require that the suppliers be certified and have a  
23                  kosher label before we can buy from them because our  
24                  customers demand kosher products.

25                  COMMISSIONER PINKERT: Given the season that

1 we're entering into I'm wondering if there's a special  
2 kosher for Passover certification that goes into that.

3 MR. BLOOM: There is.

4 COMMISSIONER PINKERT: Thank you.

5 As far as your testimony about the market  
6 closing rate, can you tell me what you meant by that?

7 MR. CAMERON: Sorry, can you rephrase it?

8 COMMISSIONER PINKERT: I thought what I  
9 heard Mr. Bloom testify to earlier is that there's a  
10 possibility of a market closing antidumping or  
11 countervailing duty rate that could emerge from this  
12 process, and I'm wondering what you might have meant  
13 by that. Did I misunderstand your testimony?

14 MR. CAMERON: Sorry. I don't think that we  
15 said that. I don't think so. I think he was just  
16 saying that obviously he's got more limited sources of  
17 supply and he's worried about getting any supply,  
18 actually.

19 COMMISSIONER PINKERT: Thank you.

20 That's all I have for this round, Mr. Vice  
21 Chairman.

22 VICE CHAIRMAN PEARSON: This is a question  
23 primarily for counsel. I see indications of injury on  
24 this record and I just want to get your reaction to  
25 this sizing up of the case.

1           There has been an increase in volume, both  
2 absolutely and relative to consumption. There are  
3 clear indications of underselling for some pricing  
4 products and those cover commercially meaningful  
5 volumes of product. There are confirmed lost sales.  
6 There has been a decline in employment and in hours  
7 worked. Hourly wages are stagnant. There's a  
8 consistent trail of red ink throughout the POI.

9           So why isn't this an affirmative, either for  
10 present injury or threat?

11           The follow-on question is has anything other  
12 than an increase in price competitive subject imports  
13 changed in recent years that would explain this?

14           I'd hate to have to write an opinion that's  
15 based too heavily on the theory that the real problem  
16 that the industry is dealing with is poorly informed  
17 fratricidal three-way competition. Or perhaps it's  
18 four-way competition depending on how one considers  
19 the role of JBL. Could you comment?

20           MR. CAMERON: Let me start. I'm sure there  
21 are going to be others that want to join in this.

22           First of all, with respect to the  
23 indications of injury, I think that the only  
24 indication of injury are the losses. The increased  
25 import volumes correspond to increases in consumption

1 and the increase in consumption, per force, could not  
2 have been supplied by the US industry and that's clear  
3 from the record.

4 There are indications of underselling that  
5 are limited in the areas in which the US industry is  
6 competing meaningful. In fact it is mostly  
7 overselling. The lost sales is overwhelming a  
8 testimony to the nature of the competition in the  
9 domestic market.

10 When you then combine that with the decline  
11 in employment, we can see the decline in employment  
12 except for one thing. I would suggest to the  
13 Commission, we heard the witness this morning from the  
14 union. The union is from Tate & Lyle, and I do  
15 sympathize with the workers. This is not to go after  
16 them because I do understand their problem. However,  
17 I would ask the Commission to look at the  
18 questionnaire response of Tate & Lyle and then I would  
19 like someone to explain to me how it is conceivable  
20 that unemployment and employment losses at Tate & Lyle  
21 could possibly be tied to imports. I don't think that  
22 can be done.

23 I think it goes to exactly the point that  
24 was made earlier with respect to yes, there were  
25 losses in employment and there were gains in

1 productivity. That, I believe, is the key to that  
2 issue.

3 So at the end of the day you have losses,  
4 which according to the slide show that was presented  
5 to the Commission in its ADM tour, appears to have  
6 been almost forever. And yet there's been on this  
7 record no causal relationship that has been shown  
8 between import volumes when the domestic industry  
9 couldn't satisfy the demand, nor import pricing which  
10 in fact, while there is some underselling, actually  
11 it's not very much.

12 Answer this. In a commodity product, and  
13 we've dealt with commodity products before this  
14 Commission, when was the last time you had a commodity  
15 product where the purchasers didn't overwhelmingly say  
16 the number one criteria, it's price. That's not on  
17 this record.

18 And in a commodity product where the imports  
19 are allegedly decimating the industry when was the  
20 last time you had price leader absolutely,  
21 unquestionably listed as the domestic industry? We  
22 haven't had that.

23 That gets to the point. The point is  
24 there's no causal relationship here between the  
25 imports and what's been happening. What you now have



1 is an absolute shortage situation that the US industry  
2 is basically telling purchasers I'm really sorry. I  
3 know it put you out of business, but it's not my  
4 problem.

5 MR. LAFAVE: If I may, Commissioner. There  
6 has been an increase in the volume of imports but as  
7 Don said, it was based on increases in consumption,  
8 also replacement of non-subject imports. And where  
9 there was a minor increase in market share by imports  
10 in 2008, that was a year in which by all accounts the  
11 industry was in a sold-out condition and many people  
12 here have said they wouldn't have been able to  
13 continue operating their plants had they not been able  
14 to import citric acid.

15 So the trends analysis doesn't support the  
16 notion that the volumes have caused any kind of  
17 injury.

18 As far as the lost sales and lost revenues,  
19 the confirmed ones are minuscule. I submit to you  
20 they don't rise to the level of material injury. And  
21 what's most interesting is that quite a few of those  
22 allegations apparently involve cases where the  
23 domestic industry was fighting with itself. And that  
24 reinforces the point that we've made, which is it's  
25 the domestic industry that's leading prices down,

1 suppressing prices in this market, while the imports  
2 are coming in at overselling margins.

3 So as Don says, there's no causation in this  
4 case.

5 VICE CHAIRMAN PEARSON: So you rather  
6 subscribe to the fratricidal competition theory then.

7 MR. LAFAVE: I absolutely do. I call it the  
8 creative destruction theory, but it's the domestic  
9 industry that's engaged in the creative destruction,  
10 not the imports.

11 VICE CHAIRMAN PEARSON: If there's more that  
12 we should know, let us know in the post-hearing.

13 MR. CAMERON: We'll amplify in the post-  
14 hearing brief, Commissioner.

15 VICE CHAIRMAN PEARSON: Okay.

16 I think this may be my last question for the  
17 purchasers of citric acid that are in the panel.

18 Would it be a problem for your firms if one  
19 or more of the domestic producers was to exit the  
20 business?

21 MR. BLOOM: Absolutely. Even though we  
22 don't buy from them or they won't supply us, it would  
23 cause the rest of the world market to tighten up.

24 VICE CHAIRMAN PEARSON: Mr. Taylor?

25 MR. TAYLOR: Yes, I think it would. I think

1 that goes for anyone, any of the suppliers, and more  
2 specifically any of the US suppliers. From a PepsiCo  
3 point of view, because we really heavily on them to  
4 give us the majority of our citric acid requirements.  
5 We can't afford not to have citric acid in a plant.  
6 The last potential loss in revenue is huge to Pepsi  
7 and therefore we need for them to be in operation.

8 VICE CHAIRMAN PEARSON: Mr. Hofmann?

9 MR. HOFMANN: We are in exactly the same  
10 situation. We would find it very difficult, as  
11 historically we have bought all our volumes in the US.  
12 It's only recently when we started to import from  
13 Canada and it was only on the basis that we were not  
14 able to satisfy the volumes from the US market.

15 VICE CHAIRMAN PEARSON: Mr. Smith?

16 MR. SMITH: From P&G's perspective,  
17 absolutely. We would not want any of the US producers  
18 to exit the market. Not only in the US would that  
19 impact us but also globally. We could not handle the  
20 reduction globally.

21 VICE CHAIRMAN PEARSON: Representing  
22 Vertellus, Mr. Pensak?

23 MR. PENSAK: Mr. Pensak. Thank you.

24 Because none of the US domestics currently  
25 are willing to supply us on the surface, it would seem

1 to be irrelevant. But certainly on a global basis it  
2 could only serve one purpose which would drive pricing  
3 higher, and we would certainly view that as a negative  
4 for our business.

5 VICE CHAIRMAN PEARSON: Do you have any  
6 comment, Mr. Rainville? Perhaps not. If you don't  
7 want to, don't, but otherwise I'd be glad to hear what  
8 you have to say.

9 MR. RAINVILLE: Correct.

10 VICE CHAIRMAN PEARSON: Okay. It should be  
11 an interesting round of pricing negotiations the next  
12 time you all get together, I guess.

13 I think that concludes my questioning.

14 Commissioner Lane?

15 COMMISSIONER LANE: What is the average  
16 shelf life for citric acid and certain citric salts?

17 MR. RAINVILLE: May I try to answer that for  
18 you? Dan Rainville from Jungbunzlauer.

19 Our product shelf life is three years, but  
20 because of the possibility of caking we certainly  
21 warrant that people use the material in a shorter  
22 shelf life than that because we cannot control how our  
23 customers store the material in their own warehouses.  
24 But the shelf life is three years.

25 COMMISSIONER LANE: Thank you.

1           It appears that there's agreement among all  
2           the parties that demand for citric acid is seasonal.  
3           Do you concur? And why is it seasonal?

4           MR. TAYLOR: From a PepsiCo point of view it  
5           is seasonal. Obviously it's going into beverage and  
6           the majority of the beverage we sell is during the  
7           summer period. So it most definitely is normally from  
8           April to July is our busiest time of the year.

9           COMMISSIONER LANE: I sort of figured that  
10          out, but does that mean that you only make your  
11          product in the summer time and you sell it in the  
12          summer time?

13          MR. TAYLOR: No, we make it all year round,  
14          but as I say, we are busier during that time period.

15          COMMISSIONER LANE: So you manufacture more  
16          in the summer?

17          MR. TAYLOR: We make and sell more product  
18          from April to July.

19          COMMISSIONER LANE: Thank you.

20          MR. CAMERON: Commissioner, it all does  
21          revolve around the beverage because of the  
22          significance of the food and beverage market in the  
23          overall demand. So the fact that beverage in the  
24          summer months tends to spike because of the heat I  
25          suspect and because of Pepsi's terrific advertising

1 campaigns, it's able to, but that's what's driving the  
2 seasonal element, I believe.

3 I think that we wash dishes the same all  
4 around.

5 COMMISSIONER LANE: Thank you.

6 I won't comment on the fact that you wash  
7 dishes.

8 MR. CAMERON: That I wash dishes?

9 (Laughter.)

10 MR. CAMERON: Thank you, Commissioner.

11 COMMISSIONER LANE: Okay. You made me lost  
12 my train of thought.

13 Do you agree with Petitioner's assertion at  
14 page 40 to 45 of its brief that the caking problem was  
15 exaggerated because not many questionnaire respondents  
16 identified it as a frequent problem because  
17 unrefurbished, caked, citric acid is useable for all  
18 but a small portion of the US market?

19 MR. CAMERON: Commissioner, we don't believe  
20 that we have exaggerated the caking problem. It is an  
21 issue that exists to a degree, more or less, with some  
22 purchasers than others. We have not said that caking  
23 is the be all, end all of this case. What we have  
24 said is it's another factor. And I believe that Pepsi  
25 can talk about the fact that actually yeah, it's an

1 issue. It's not that it can't be overcome, but  
2 somebody's got to pay money to take care of the  
3 problem. So it's a consideration.

4 MR. TAYLOR: I think from a Pepsi point of  
5 view it absolutely is a problem and has been for the  
6 duration of the time we've been buying material from  
7 China. We've invested a lot of money in the last few  
8 years to overcome the problem and also a lot of  
9 resources at our plants to overcome it as well.

10 So the material does require an extra step  
11 in the process to be able to get it into a form that  
12 we can use easily. So is it insurmountable? No.  
13 Does it cause issues? Absolutely, yes.

14 COMMISSIONER LANE: Yes, sir?

15 MR. LAFAVE: I think 19 of 60 purchasers  
16 indicated, mostly in the food and beverage sector,  
17 indicated that caking or clumping was a very important  
18 issue to them. So it's clear that for at least part  
19 of the market it's a very important issue.

20 The staff report says that the reasons were  
21 that the customers will not accept caked material.  
22 Caked material does not flow properly. Caked material  
23 has caused equipment to break. Caking affects the  
24 weight of the product and requires formulas to be  
25 reworked. Caked product cannot be used in dry blends.

1 And caked product takes longer to melt.

2 So clearly caking is an issue in this case.

3 MR. CAMERON: Commissioner, Mr. Bloom also  
4 has some additional information, but he'd like to  
5 submit it in confidence in a post-hearing brief which  
6 we intend to do if that's okay with you.

7 COMMISSIONER LANE: Yes. That would be  
8 fine. Thank you.

9 MR. CAMERON: Thank you.

10 COMMISSIONER LANE: Petitioners contend that  
11 imports from Canada and China have battered the  
12 domestic industry for a number of years, even prior to  
13 the period of investigation.

14 If true, then isn't that an explanation for  
15 the domestic industry's inability to meet demand in  
16 the US market and its performance?

17 Dr. Button?

18 MR. BUTTON: Thank you. We've touched on  
19 this topic a bit during the prior round in your  
20 questioning, Commissioner Lane. The JBL  
21 representative I believe rather counsel for JBL has  
22 indicated a point of view that during the period shown  
23 in the 1999 during 2001 period when the domestic  
24 industry was making profits, during that kind of  
25 context they chose not to expand their capacity. So



1 there are various factors that one can consider.

2 The issue we believe that is before the  
3 Commission is why is it that the domestic industry is  
4 in the position that it's in? Why does it have  
5 currently a weak financial position?

6 It hasn't had a weak financial position all  
7 along because of the subject imports, we believe,  
8 because the subject imports as we found in prior years  
9 had not increased, were not large. And using their  
10 own exhibit we find a level of negative operating  
11 performance being basically constant, not getting  
12 worse, after the period of 2002 even though the  
13 subject imports rose continuously over time. We don't  
14 see the trend analysis, we don't see the correlation.

15 Then we see the financial performance  
16 improve, commencing in the first quarter of 2008 based  
17 on negotiations in the fourth quarter of 2007. We  
18 come back to the issue of causation and nexus that  
19 we've discussed a good deal this afternoon.

20 So our view is that the inability of the  
21 domestic industry to expand capacity is something that  
22 does relate indeed to how they run their businesses.  
23 There may be other factors. But it does not appear to  
24 relate to the role of the subject imports or the  
25 pricing or the subject imports role in filling demand

1 in the market.

2 COMMISSIONER LANE: Thank you.

3 Mr. Vice Chairman, that's all I have. Thank  
4 you.

5 VICE CHAIRMAN PEARSON: Commissioner  
6 Williamson?

7 COMMISSIONER WILLIAMSON: Thank you, Mr.  
8 Vice Chairman. Just one question.

9 Petitioners assured on page 20 of their pre-  
10 hearing brief that Canada and China are the only two  
11 markets with export dependent producers. They refer  
12 to Exhibit 3 of their brief which is a SRI consumption  
13 report.

14 Do you agree that China and Canada are  
15 export dependent?

16 MS. MENDOZA: Commissioner Williamson, this  
17 is Julie Mendoza for the Chinese Respondents.

18 Actually one of the things that we wanted to  
19 respond in the earlier question about inventories in  
20 China is that in fact the Chinese producers have found  
21 this year that demand has actually been much greater  
22 in China than they had anticipated originally. We'll  
23 be putting information in our post-hearing brief  
24 concerning that. In fact they've seen a substantial  
25 amount of growth in China for the reasons I think Mr.

1 Shao indicated in his testimony.

2 So while it's true that we do supply a great  
3 deal of material to the EU and we also are seeing a  
4 big increase in demand in the Chinese market and they  
5 supply, a significant amount of their production goes  
6 to satisfying that demand in the Chinese market.

7 MR. TAYLOR: I think to add to that point as  
8 well from a PepsiCo point of view, our largest market  
9 and fastest growing market is China currently.

10 COMMISSIONER WILLIAMSON: So that means  
11 you're getting your product from there?

12 MR. TAYLOR: We're using local Chinese  
13 citric acid in the local market and as I said it's  
14 increasing in double digit growth.

15 MS. MENDOZA: I thin Pepsi's referring to  
16 their facilities in China.

17 COMMISSIONER WILLIAMSON: I understand that.

18 MR. RAINVILLE: May I comment regarding  
19 Jungbunzlauer?

20 COMMISSIONER WILLIAMSON: Yes.

21 MR. RAINVILLE: Our plant is in North  
22 America. In my opinion, in Jungbunzlauer's opinion, it  
23 is not in Canada. It was built there to service,  
24 again, the United States and Canada. So we are a  
25 stone's throw from the border, and as we commented

1 earlier, we are within a one day truck drive to the  
2 majority of the citric acid market within the United  
3 States.

4 COMMISSIONER WILLIAMSON: I have to keep  
5 laughing at this because at one point earlier in my  
6 career I remember writing articles about the unified  
7 North American market and it resulted in NAFTA.  
8 That's when I was working with the Port Authority in  
9 New York and New Jersey. So I can't disagree with you  
10 on that point.

11 MR. CAMERON: Commissioner, just one thing.

12 We had mentioned I think in our brief with  
13 respect to the, as Julie mentioned, the growth of  
14 demand in China. Part of the issue is as the  
15 population is growing into middle class, and I think  
16 we've seen that in other areas, where demand has  
17 started to explode in China, as the market matures and  
18 the economy matures. And the types of products that  
19 use citric acid are prime growth markets for the  
20 Chinese market which I believe is what you're seeing.

21 When you combine that with new applications  
22 which you've already heard testimony here today, like  
23 replacing phthalates and replacing phosphates, they  
24 are also planning on being able to supply increasing  
25 segments of the Chinese market.

1                   COMMISSIONER WILLIAMSON: That also raises  
2 the question, I think Mr. Shao talked about some  
3 consolidation in the Chinese industry that would lead  
4 to tighter --

5                   MR. CAMERON: Sure.

6                   COMMISSIONER WILLIAMSON: -- standards.  
7 What does that imply though as companies begin to  
8 qualify? Are you seeing companies that maybe sort of  
9 got pushed out who are now able to improve their  
10 standards so they can come back into the market?

11                  MS. MENDOZA: Yes, actually. In our  
12 confidential brief we discuss one particular  
13 circumstance of a producer who had encountered a  
14 number of environmental problems and no longer is  
15 allowed to export.

16                  COMMISSIONER WILLIAMSON: But my question is  
17 can that producer come back in if he meets those  
18 standards?

19                  MS. MENDOZA: At some point in the future if  
20 they can qualify with all the environmental  
21 requirements. At some point in the future they can  
22 come back and operate their facility. But there's no  
23 indication at this time when they'll be able to do  
24 that.

25                  MR. CAMERON: You also have dynamics in the

1 market. For instance DSM, I believe, DSM shut down  
2 their Chinese facility. They're a European producer.  
3 They had moved to China. They were sourcing out of  
4 China and now they're going to move back and close  
5 down that facility. That is capacity that is simply  
6 being taken out of the market. So there are changes  
7 that reoccurring in China, in part because of tighter  
8 regulations and tighter restrictions.

9 MS. MENDOZA: I think just given the amount  
10 of producers who have been eliminated and who no  
11 longer exist in China. As we were saying, it went  
12 from hundreds of producers to qualified 15 producers  
13 right now in China.

14 COMMISSIONER WILLIAMSON: I was just  
15 thinking with China having the largest stimulus  
16 program, maybe people can come back faster than we  
17 think. That's speculation at this point.

18 MS. MENDOZA: No, and in fact I think that's  
19 right. One of the things that our Chinese producers  
20 were telling us is that the Chinese government has  
21 actually been very active in promoting development in  
22 China and very effectively. In fact they think being  
23 in China you have much less of a feel of any kind of  
24 economic downturn there than you do here.

25 COMMISSIONER WILLIAMSON: By the way, are

1       there any other countries that might be considered  
2       export dependent? Any other suppliers?

3               Are there any other suppliers who one might  
4       consider to be export dependent?

5               MR. HODGES: This is Jim Hodges, Proctor &  
6       Gamble.

7               I think if you look at the way the plants  
8       are and you go by either country or region, you could  
9       say Austria is export dependent because most of the  
10      product made there goes into all the European nations,  
11      not just Austria.

12              COMMISSIONER WILLIAMSON: But that's a  
13      unified market now too, so.

14              MR. HODGES: Well, it goes into this North  
15      America/Europe argument where JBL sits.

16              MR. HOFMANN: There is another producer who  
17      used to be export dependent, the one in Israel.

18              COMMISSIONER WILLIAMSON: Thank you.

19              MR. THOMPSON: Commissioner Williamson?

20              COMMISSIONER WILLIAMSON: Yes.

21              MR. THOMPSON: If the threshold for export  
22      dependence is 25 percent, certainly the US industry  
23      would qualify, it appears.

24              COMMISSIONER WILLIAMSON: Okay. Thank you.

25              I want to thank the witnesses for all of

1 their testimony. That concludes my questions. Thank  
2 you.

3 VICE CHAIRMAN PEARSON: Commissioner  
4 Pinkert?

5 COMMISSIONER PINKERT: Thank you, Mr. Vice  
6 Chairman.

7 Going back to the brief for the Chinese  
8 producers, in that brief it's argued that the Chinese  
9 producers are primarily focused on non-US markets.  
10 You've just testified at some length about what's  
11 going on in China regarding consumption. But I'm  
12 wondering for other non-US markets besides China why  
13 couldn't those exports be shifted to the United States  
14 in the near future?

15 MS. MENDOZA: Part of the testimony you  
16 heard this morning was the fact that they have been  
17 selling into those European markets forever to other  
18 countries.

19 In 2006 they used that, because so many  
20 countries entered the EU at that point in time, since  
21 2006 it's been by far their major export market. But  
22 long before that the countries that now make up the EU  
23 have always been their traditional market. So this  
24 isn't a recent phenomenon that just happened during  
25 this period of investigation. Those have been their



1 traditional markets forever.

2 As we said, they believe that because of the  
3 undersupply in the European market that that's going  
4 to continue to be the case. And if you look at the  
5 data, it's been very stable over the entire period.

6 MR. CAMERON: Actually when you start  
7 thinking about stability, stability in terms of  
8 relationships, I think you've heard this from every  
9 purchaser on this panel, that stability in terms of  
10 supplier relationships is one of the most critical  
11 things in this industry. Therefore, once you have  
12 established the supplier relationship which they have  
13 done in Europe, they're not going to cut it off in  
14 order to divert supply here, for what? To the spot  
15 market? It really doesn't make any sense to do so.

16 I think what you're talking about is in this  
17 industry you're trying to establish long term  
18 relationships. In the case of Europe they don't have  
19 to compete with US producers because they have GMO  
20 material so they're not going to be competing with US  
21 producers in Europe. And they've got a good market.  
22 So why would they want to throw that away?

23 COMMISSIONER PINKERT: Maybe this follow-up  
24 question is more of a question for the economic  
25 consultants, but how would you rank the relative

1       attractiveness of the US market for the Chinese  
2       producers?

3               MR. LAFAVE: Commissioner Pinkert, I would  
4       just add that the percentage of Chinese product coming  
5       to this country as a percent of total sales was around  
6       10 or 11 percent and was declining slightly over the  
7       period of investigation. That doesn't suggest to me  
8       that there's a huge amount of excess capacity there  
9       that could be directed here. If that's the case, why  
10      didn't they do it before?

11             Nor does it suggest to me that they'll do it  
12      in the future.

13             MR. CAMERON: What Art is referring to is  
14      actually one of the things that strikes you about this  
15      case as opposed to many of the Chinese cases that this  
16      Commission sees.

17             Here we're not talking about an unknowable  
18      number of producers with an unlimited capacity that is  
19      poised to descend on the market, and we've see those  
20      cases. I'm not trying to be flip about that. But we  
21      have seen those cases. But that's not what this case  
22      is.

23             In those cases what do we usually see? We  
24      usually see huge margins of underselling, overwhelming  
25      underselling, and we see unknowable capacity and total

1 export dependence on the United States market. Well  
2 none of those actually apply here.

3 The Chinese producers have cooperated with  
4 this investigation, have provided information, will  
5 continue to cooperate with this investigation, and we  
6 know who they are. We know that there's basically  
7 four or five of them that are really the major  
8 suppliers that most of these people trust, so this is  
9 not your typical Chinese case.

10 I think that everything you see on the record in this  
11 case basically testifies to that.

12 COMMISSIONER PINKERT: Is it more expensive  
13 to produce the non-GMO product?

14 MR. CAMERON: I don't think it's a cost  
15 issue. It's a matter of where the corn is. The corn  
16 is not genetically modified corn. It's raised the old  
17 fashioned way.

18 COMMISSIONER PINKERT: So if the price were  
19 right, could you sell the non-GMO product in the  
20 market where GMO product is acceptable?

21 MR. CAMERON: In Europe you can't sell non-  
22 GMO material.

23 COMMISSIONER PINKERT: I understand, but  
24 it's acceptable in this market. Right?

25 MR. CAMERON: Sure.

1 COMMISSIONER PINKERT: Both the GMO and the  
2 non-GMO.

3 MR. CAMERON: Right.

4 COMMISSIONER PINKERT: So if the price were  
5 right could you sell the non-GMO product in the US  
6 market?

7 MR. CAMERON: The Chinese product is GMO.  
8 The US producers have non-GMO -- The other way around.

9 (Laughter.)

10 COMMISSIONER PINKERT: It's late in the day.

11 MR. CAMERON: It's late in the day and the  
12 answer is yes, you can sell it all here.

13 COMMISSIONER PINKERT: Thank you.

14 MR. CAMERON: Sorry.

15 COMMISSIONER PINKERT: Thank you, Mr. Vice  
16 Chairman. That completes my questions.

17 VICE CHAIRMAN PEARSON: Commissioner Lane?

18 COMMISSIONER LANE: I just have one  
19 question. I'll start with Mr. Cameron and then the  
20 other lawyers can add their take on this.

21 Would you discuss the meaning of the Fed  
22 Circuit's opinion in Bratsk and Mittal generally? And  
23 whether or not, what is the relevance of these  
24 decisions to our analysis in this investigation?

25 MR. CAMERON: Commissioner Lane, as in past

1 investigations in which I have appeared here, when  
2 legal questions of a sophisticated nature are  
3 presented I always defer to my partner because she  
4 gives a much more cogent analysis than I do, and I'm  
5 going to defer to Ms. Mendoza.

6 COMMISSIONER LANE: You know? You're  
7 correct.

8 (Laughter.)

9 MR. CAMERON: I know.

10 MS. MENDOZA: Boy, with that lead-in, I  
11 don't know.

12 I think the Federal Circuit has said that  
13 you cannot attribute any affects from non-subject  
14 imports to the subject imports. And as a consequence,  
15 I think the relevant conditions that occurred in this  
16 particular case is that actually subject imports, to  
17 the extent they increased, actually took market share  
18 away from non-subject imports. So non-subject imports  
19 were actually declining as a percentage of domestic  
20 consumption.

21 COMMISSIONER LANE: Anybody else want to add  
22 to that?

23 MR. LAFAVE: I would just add one thing.  
24 That is the ability of non-subject imports to replace  
25 subject imports in this case is extremely limited

1 because the capacity outside of China and Canada is  
2 extremely limited. So that's the other side of the  
3 coin.

4 COMMISSIONER LANE: Thank you.

5 Mr. Vice Chair, that's all I have and I want  
6 to thank this panel for all of your answers. Thank  
7 you.

8 VICE CHAIRMAN PEARSON: Commissioner  
9 Pinkert?

10 COMMISSIONER PINKERT: Nothing further.

11 VICE CHAIRMAN PEARSON: No questions from  
12 the dais?

13 COMMISSIONER PINKERT: But I would like to  
14 thank the panel.

15 VICE CHAIRMAN PEARSON: Have we left any  
16 ground unturned? Or would the Chairman and  
17 Commissioner Okun be pleased with our efforts?

18 COMMISSIONER LANE: They'll be very pleased.

19 VICE CHAIRMAN PEARSON: Well, I don't think  
20 I've completely avoided speaking in sentence fragments  
21 so I may hear something about that.

22 Do members of the staff have questions for  
23 this panel?

24 MR. DEYMAN: Yes, I'm George Deyman, Office  
25 of Investigations. One staff member does have a

1 question.

2 MS. PREECE: This is Amelia Preece,  
3 Economics.

4 I'm still working on this pricing data. It  
5 seems like we've sliced and diced it a lot of times,  
6 but I want to be sure --

7 VICE CHAIRMAN PEARSON: Can you pull the  
8 mike just a little closer please, Ms. Preece?

9 MS. PREECE: I want to be sure to the extent  
10 possible that I get delivered prices and the product  
11 that's fine granular has been eliminated from the  
12 product. I know I've asked this of everybody, but to  
13 the extent that anybody can put any pressure on  
14 anybody who hasn't responded to this yet, I'd really  
15 appreciate it.

16 That's all I have to say.

17 MR. DEYMAN: The staff has no further  
18 questions. Thank you.

19 VICE CHAIRMAN PEARSON: Does counsel for the  
20 Petitioners have any questions for this panel?

21 MR. ELLIS: No questions, thank you.

22 VICE CHAIRMAN PEARSON: Well, I also would  
23 offer my thanks. It's gotten to be a slightly long  
24 day. You have been very patient and shown great  
25 endurance and been really forthcoming with your

1 answers and we very much appreciate it.

2 MR. CAMERON: Thank you very much. We  
3 appreciate your patience.

4 VICE CHAIRMAN PEARSON: Let me just review  
5 the time remaining.

6 For the Petitioners, three minutes from the  
7 direct presentation that could be used for rebuttal,  
8 plus five minutes for closing. A total of eight.

9 Respondents, four minutes from the direct  
10 presentation, five for closing, total of nine.

11 If there's no objection I suggest that we  
12 just lump the chunks of time together so the  
13 Petitioners have eight minutes for rebuttal and  
14 closing and Respondents nine. If no objection?

15 MR. ELLIS: that's fine by us.

16 VICE CHAIRMAN PEARSON: Okay.

17 We certainly don't take adverse inference  
18 against anyone who uses less than the allotted time.

19 Let me dismiss this panel, please shift back  
20 to your other seats, and we will proceed then to the  
21 closing statements.

22 I have received a request for a two minute  
23 break, which we will take right now.

24 (Whereupon, a short recess was taken.)

25 VICE CHAIRMAN PEARSON: Mr. Ellis, are you



1 ready to proceed?

2 MR. ELLIS: Good afternoon. It's been a  
3 long day. I want to extend our thanks to the  
4 Commission and the staff for your attention and  
5 interest during this hearing and also for your hard  
6 work during the investigation. I appreciate  
7 everybody's work.

8 To quote T.S. Elliott, if I may, "In my end  
9 is my beginning." I'd like to go back to the  
10 beginning of a couple of the points we talked about  
11 earlier today.

12 First, there's no doubt that the US industry  
13 is suffering severe injury and has been for the past  
14 several years. The time period over which they have  
15 suffered correlates precisely with the period over  
16 which subject imports increased significantly.

17 The operating losses have been so severe  
18 that the industry has not reinvested in their  
19 facilities, and income does not even cover  
20 depreciation.

21 Moreover, despite the Respondents' claim  
22 that this injury was self inflicted, creative  
23 destruction or whatever phrase was used, this is just  
24 not credible. An error in hedging corn costs, for  
25 example, or a one day or a couple of day plant

1 closure, or vigorous competition among the US  
2 producers might explain the situation if one company  
3 or another had a bad year or another. But the sheer  
4 consistency of the losses and the magnitude of the  
5 losses over the seven years until this investigation  
6 was launched belies that assertion.

7 Dr. Button, I noticed, finds it "puzzling"  
8 that the US industry had the bad financial returns  
9 they reported despite the fact that they were able to  
10 fix their corn costs, but it is not a puzzling point.  
11 It is very clear. The bad returns were not caused by  
12 corns costs or caused by hedging errors. Our  
13 opponents want to find other source of injury and they  
14 can't find it, but they don't want to resist the  
15 actual cause of injury which is the ruinous imports.

16 You have heard claims that quality and other  
17 factors are important in this market, despite the fact  
18 that the product is a commodity and that all major  
19 producers can meet the standards for inclusion in  
20 food, beverage and pharma applications. They fail to  
21 note that a large percentage of purchasers noted that  
22 the Chinese product leads the prices downward, and  
23 that's in Part 5 of the staff report.

24 Although the US industry sometimes is called  
25 the price leader, it's misleading to say it's price

1 leader in leading prices down. The Chinese are the  
2 ones who are leading the prices down. The purchasers  
3 say that. That is perhaps one of the most  
4 illuminating facts on the record.

5 Commissioner Lane asked a very interesting  
6 question, whether purchasers used Chinese prices and  
7 the capacity to drive US prices downward in  
8 negotiations. The answer is yes. That is exactly  
9 what happens.

10 Dr. Button said he thinks a key question is  
11 whether the Chinese capacity overhang is credible.  
12 The answer is, it is credible. It is credible because  
13 it is huge and it is credible because a large quantity  
14 of Chinese product has already entered the United  
15 States at low prices. This is not a theoretical  
16 capacity that's out there somewhere. In fact Mr.  
17 Cameron noted, we know who these people are. We know  
18 the size of their capacity, and it's a very large  
19 capacity.

20 You have also heard the assertion that the  
21 industry's conditions improved during the POI, but the  
22 bulk of that improvement occurred in 2008, the final  
23 year of the POI. And 2008, like it or not, was  
24 clearly affected by the petition and the preliminary  
25 duties. This is precisely the situation anticipated

1 by Congress when they gave you the discretion to  
2 disregard data from the time period covered by the  
3 pendency of the investigation.

4 We continue to submit that far more  
5 illuminating are the data from the three prior years,  
6 '05 to '07, which you have full data for from the  
7 record in the preliminary phase. That data show the  
8 consistent injury and impact of the subject imports.

9 You have also heard about shortages in the  
10 US market or about situations in which US producers  
11 declined requests for additional product, but almost  
12 all that anecdotal evidence that our opponents have  
13 provided on this issue were from 2008 and 2009 with  
14 one example of a shutdown in 2004. At least that's  
15 all I heard.

16 FBC itself in fact said that the issue  
17 really started in October of 2008. That obviously was  
18 what happened after the preliminary determinations  
19 with the department.

20 Other allegations of refusal to supply that  
21 are discussed in opponents' briefs are confidential so  
22 I would just say that they involve efforts by  
23 purchasers to seek more produce from the United States  
24 off cycle, in other words after the contracted amounts  
25 had already been established, but at the contract

1 prices, not at the spot prices that were then  
2 prevailing off cycle. Or those requests were declined  
3 for customer relations reasons, which again I can't  
4 get into, but are unrelated to anything having to do  
5 with alleged product shortages.

6 As to the shortages in supply, why is there  
7 an inadequate US supply? There's no reason to invest  
8 in largescale facilities given the long term high  
9 scale negative returns or operating losses. You heard  
10 that from our panel this morning. We are  
11 acknowledging that if there was as stable, reliable  
12 source of income, an adequate return on investment,  
13 investments would be made.

14 Also we're noting that we don't want to stop  
15 imports, of course, because we recognize that they  
16 must fill in some of the market, but we do not want  
17 the supply of ruinously priced imports that some of  
18 the purchasers you heard from today have negotiated in  
19 the past using, as Commissioner Lane asked, using  
20 Chinese prices and Chinese capacity as a hammer over  
21 the heads of the US industry.

22 On another point, to the extent that you do  
23 consider the 2008 data, I would think again, as we  
24 said this morning, that perhaps the best insight to be  
25 gained from that year is seeing what occurred at the

1 end of the year in negotiations for 2009 deliveries.  
2 Without going through it in detail, we see here for  
3 the first time when subject imports dropped  
4 precipitously because of the preliminary duties  
5 imposed by the Department of Commerce, prices  
6 increased for the first time in years to the point  
7 that the US industry was able to earn a profit.

8 In other words, the subject imports declined  
9 and prices increased.

10 Finally, as to threat. You have heard a lot  
11 of speculation this afternoon, why the mammoth Chinese  
12 production capacity will not come to the United  
13 States. But against this speculation you have some  
14 very clear facts. These facts include the large  
15 quantities of Chinese product that have flooded other  
16 markets causing the closure of production facilities  
17 such as Tate & Lyle and ADM's in Europe. This has  
18 happened. It's a fact.

19 Also what occurred in Mexico at the end of  
20 2008 when the longstanding dumping order there against  
21 imports from China was terminated.

22 Also the relatively small size of the  
23 Chinese domestic market compared to its capacity.  
24 You've heard speculation this afternoon about possible  
25 growth in Chinese domestic consumption in the coming

1 years, but you should note in 2008 consumption in  
2 China declined. That is not a sign that they are able  
3 to absorb the massive capacity that they have built.

4 The same is true with the Canadian capacity  
5 in terms of its small domestic market.

6 In conclusion I would just note that fact,  
7 not supposition, make it very clear that even if you  
8 don't find current material injury, which we do submit  
9 you should, the threat of such injury is imminent and  
10 the statutory prerequisites are satisfied.

11 Thank you very much.

12 VICE CHAIRMAN PEARSON: Thank you, Mr.  
13 Ellis.

14 Mr. Waite, you're the one with the voice  
15 left at this point?

16 MR. WAITE: Some voice left. It's quite a  
17 different perspective up this close, isn't it, Mr.  
18 Vice Chairman?

19 (Laughter.)

20 Mr. Vice Chairman and members of the  
21 Commission. From the Petitioners' pre-hearing brief  
22 and again from the testimony that you've heard today  
23 it appears that Petitioners want this Commission to  
24 ignore the data collected by the staff for the period  
25 of investigation in this case.

1                   Petitioners want the Commission to disregard  
2                   2008 data. Petitioners want the Commission to  
3                   disregard the purchasers who disagreed with lost sales  
4                   and lost revenue allegations made by the Petitioners.  
5                   Most tellingly, Petitioners want the Commission to  
6                   disregard or at least severely discount the pricing  
7                   data as collected by the Commission staff, data in the  
8                   form and organization that was explicitly requested by  
9                   the Petitioners themselves.

10                   However we expect, in fact we know that the  
11                   Commission will place great weight on the record  
12                   evidence that has been diligently collected and  
13                   skillfully organized by the staff in this  
14                   investigation.

15                   I'd like to review briefly with you some of  
16                   the salient facts in this investigation that come  
17                   directly from the record that's been developed.

18                   With respect to supply and demand, it's  
19                   quite clear that Petitioners cannot meet demand in the  
20                   domestic market. In some cases it appears that they  
21                   do not want to meet demand for particular customers,  
22                   especially those who may not be part of their  
23                   strategic marketing plans.

24                   Purchasers need to ensure sufficient supply  
25                   for their operations. To do this, imports are



1 necessary to meet the full demands of the consumers in  
2 this market.

3 Demand has consistently increased over the  
4 period of investigation and purchasers project  
5 increased demand in the near future. This is why so  
6 many purchasers appeared before you today, from the  
7 largest consumers of citric acid in this market to  
8 smaller, more specialized customers. They need this  
9 key ingredient for their operations.

10 Petitioners have claimed that citric acid is  
11 a commodity that is purchased only or solely or  
12 largely on the basis of price. The record shows that  
13 purchasers overwhelmingly reported that other factors  
14 were equally important or even more paramount than  
15 price. Quality, availability, reliability of supply  
16 were mentioned to you repeatedly today by the  
17 purchasers who appeared in this hearing, and they were  
18 mentioned repeatedly in the responses to purchasers'  
19 questionnaires from those who could not make it here  
20 today.

21 The pricing data collected by the Commission  
22 in this investigation show that there is no causal  
23 nexus between subject imports and present material  
24 injury to the domestic industry. It should first be  
25 noted, as I've alluded to earlier, that these data are

1 precisely what the Petitioners asked the Commission to  
2 collect. Petitioners requested the current  
3 subdivisions of pricing data into contract and spot  
4 sales and sales to end users versus distributors.  
5 These data confirm what the Petitioners have told the  
6 Commission in other contacts, that they are focused on  
7 the contract market specifically with end users. This  
8 is where imports compete with them most directly.

9 But the data also confirm that imports  
10 consistently oversold Petitioners in exactly these  
11 types of sales.

12 We all know that discussion of the pricing  
13 data is constrained by confidentiality considerations.  
14 I would therefore obliquely and respectfully urge you  
15 to examine the following features of the pricing  
16 comparisons for the four segments on which data were  
17 collected, that is contract sales to end users, spot  
18 sales to end users, contract sales to distributors,  
19 and spot sales to distributors.

20 First I would ask where are the sales of the  
21 domestic industry concentrated? And secondly, to what  
22 extent are they concentrated in those segments?  
23 Third, in those market segments where the domestic  
24 industry concentrates its sales, what is the incidence  
25 of overselling by imports when compared with the

1 domestic producers?

2 I believe when you look at these questions  
3 and answer them you will find conclusive proof that  
4 imports are not adversely affecting the pricing of the  
5 domestic industry.

6 I would also urge you to look at those  
7 market segments where imports may be underselling the  
8 domestic industry. Again, consider the amount of  
9 citric acid the Petitioners reported as selling into  
10 those market segments, both in absolute terms and as a  
11 percentage of the domestic industry's total sales.

12 I respectfully submit to you that the  
13 pricing data in this investigation show that imports  
14 are not having an adverse affect on the Petitioners  
15 and that they are not causing material injury to the  
16 domestic industry.

17 Thank you.

18 VICE CHAIRMAN PEARSON: Thank you, Mr.  
19 Waite.

20 In accordance with Title 7 of the Tariff Act  
21 of 1930, post-hearing briefs, statements responsive to  
22 questions and requests of the Commission and  
23 corrections to the transcript must be filed by April  
24 15, 2009.

25 Closing of the record and final release of

Heritage Reporting Corporation  
(202) 628-4888

1 data to parties, May 1. And final comments on May 5.

2 This hearing is adjourned.

3 (Whereupon, at 5:25 p.m., the hearing in the  
4 above-entitled matter was adjourned.)

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**CERTIFICATION OF TRANSCRIPTION**

**TITLE:** Citric Acid & Certain Citrate Salts  
**INVESTIGATION NO.:** 701-TA-456 & 731-TA-1151-1152  
**HEARING DATE:** April 7, 2009  
**LOCATION:** Washington, D.C.  
**NATURE OF HEARING:** Hearing

I hereby certify that the foregoing/attached transcript is a true, correct and complete record of the above-referenced proceeding(s) of the U.S. International Trade Commission.

DATE: April 7, 2009  
SIGNED: LaShonne Robinson

Signature of the Contractor or the  
Authorized Contractor's Representative  
1220 L Street, N.W. - Suite 600  
Washington, D.C. 20005

I hereby certify that I am not the Court Reporter and that I have proofread the above-referenced transcript of the proceeding(s) of the U.S. International Trade Commission, against the aforementioned Court Reporter's notes and recordings, for accuracy in transcription in the spelling, hyphenation, punctuation and speaker-identification, and did not make any changes of a substantive nature. The foregoing/attached transcript is a true, correct and complete transcription of the proceeding(s).

SIGNED: Rebecca McCrary

Signature of Proofreader

I hereby certify that I reported the above-referenced proceeding(s) of the U.S. International Trade Commission and caused to be prepared from my tapes and notes of the proceedings a true, correct and complete verbatim recording of the proceeding(s).

SIGNED: Christina Chesley

Signature of Court Reporter