UNITED STATES
INTERNATIONAL TRADE COMMISSION

In the Matter of:	)	
	)	Investigation Nos.:
CERTAIN POTASSIUM PHOSPHATE	)	701-TA-473 and
SALTS FROM CHINA	)	731-TA-1173 (Final)

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Tuesday,
June 2, 2010

Room No. 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 SHARA L. ARANOFF, Chairman, presiding.

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On behalf of the International Trade Commission:

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DANIEL R. PEARSON, VICE CHAIRMAN
CHARLOTTE R. LANE, COMMISSIONER
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P R O C E E D I N G S

(9:30 a.m.)

CHAIRMAN ARANOFF: Good morning. On behalf of the U.S. International Trade Commission I welcome you to this hearing in Investigation Nos. 701-TA-473 and 731-TA-1173 (Final) involving Certain Potassium Phosphate Salts from China.

The purpose of these investigations is to determine whether an industry in the United States is materially injured or threatened with material injury or the establishment of an industry in the United States is materially retarded by reason of subsidized and less than fair value imports of certain potassium phosphate salts from China.

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

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

Speakers are reminded not to refer in their remarks or answers to questions to business proprietary information. Please speak clearly into the microphone and state your name for the record for the benefit of the court reporter.

Finally, if you will be submitting documents that contain information you wish classified as business confidential your requests should comply with Commission Rule 201.6.

Mr. Secretary, are there any preliminary matters?

MR. BISHOP: No, Madam Chairman.

CHAIRMAN ARANOFF: Very well. Welcome to everyone in attendance today, and let us please begin with opening remarks.

MR. BISHOP: Opening remarks on behalf of Petitioners will be by James R. Cannon, Jr., Williams Mullen.

CHAIRMAN ARANOFF: Good morning, Mr. Cannon.

MR. CANNON: Good morning. I'm on. The Chinese phosphate rock and yellow phosphorous producers control about 70 percent of the world market for the raw materials that make these products. Realizing their control over the raw materials, China imposed an export tax of 120 percent on those raw

materials to leverage its strength in those raw materials and assist the ASEAN producers, the companies in China who make these products.

Because of that tax, the United States, the EU and Mexico have brought a WTO challenge to force them to eliminate it. In this case, we raised this issue with the Commerce Department. We explained that these measures that the Chinese Government has taken to bolster its industry, which competes with us, constitute a subsidy.

And Commerce agreed, and in the final determination last week Commerce found that that subsidy, together with other subsidies from the Government of China, amounted to a 109 percent countervailing duty margin. On top of that, in the antidumping case Commerce found dumping margins ranging from 70 to 95 percent.

Against that background before you today, you'll hear testimony about the conditions of competition in the U.S. market. You'll hear that raw material costs are increasing, demand is declining, U.S. producers have excess capacity, China has excess capacity -- indeed, there is global excess capacity -- and the products are good substitutes.

So you have declining demand, excess global

capacity and products that are good substitutes. What that I think will tell you is that price is very important. In fact, you will hear that even a one penny difference in the price will make the difference in competition for the sale.

Turning to the issues that you analyzed, in terms of present material injury the volume effects here for all three products are the same. Demand is declining, U.S. shipments are declining, imports are increasing and import market share is increasing.

Looking at the price effects of all three products, there's underselling particularly in 2009. There's price depression. In 2009, the domestic producers reduced their prices because of the underselling. There's price suppression.

With rising unit cost of goods sold, particularly in 2009, the U.S. industry was in a cost/price squeeze and so the impact on the domestic industry is clear. There have been losses. There are declining, inadequate profits across the industry. There is declining U.S. production. There is a massive underutilized capacity, and there have been layoffs.

In these conditions, we believe that what you predicted at the preliminary stage -- a threat of

injury -- came true, and in fact over the course of 2009 the industry experienced present material injury. However, the threat is still out there. There's still a maximum amount of excess capacity.

As I explained at the beginning, there are subsidies, and the industry in China, backed by the Government of China and these government measures to leverage their power over raw materials, caused this industry to have an export orientation, so the producers in China who have too much capacity are aiming it at export markets and they're also growing inventories. There's plenty of product in the U.S. market that is already in the market from China.

In these circumstances, I think you should find that there is a likelihood of continued underselling; that without relief the Chinese will use the same tactics they used in 2009. They will deeply undersell U.S. producers' prices, and they will therefore cause material injury imminently.

Respondents today represent an importer of one of the three products, MKP. Essentially the issue there I believe is whether there's an overlap in competition between the domestics and the imports. We will testify and you will hear about the quality of the Chinese product. It is a high quality product.

It competes directly with the domestic product. Importers are selling this Chinese MKP into the food grade market and into the high end technical uses which the domestic industry serves.

And finally, even if only a portion of the Chinese volume overlaps with the domestic production, the Chinese volume in total is so large that if one-tenth of the Chinese volume competes with the domestic volume the domestic producers -- well, the scale is such that you will find substantial overlap. Thank you.

MR. BISHOP: Opening remarks on behalf of Respondents will be by Joanna M. Ritcey-Donohue, White & Case, LLP.

MS. RITCEY-DONOHUE: Good morning. I appreciate the opportunity to make a few opening remarks today on behalf of Valudor Products, Inc., an importer of monopotassium phosphate, MKP, and tetrapotassium pyrophosphate, TKPP.

Valudor is appearing here today to speak about MKP. Valudor has relatively limited experience with TKPP in the U.S. market, but of course we'll respond as fully as possible to any questions from the Commission.

I'd like to make three brief points this

morning. First, subject imports of MKP could not have materially injured the domestic industry because subject imports and domestic MKP are not sold in the same market segments and are not in any meaningful sense substitutable.

Second, the domestic industry is, by a number of measures, performing well. Any negative indicators can be linked with causes other than MKP imports from China.

Third, subject imports of MKP are not likely to threaten the domestic industry with material injury because the current conditions of competition are not likely to change in the foreseeable future. Subject imports are likely to continue not to compete with domestic MKP.

The same limitations the Commission noted in its preliminary determination with respect to STPP are present for food grade MKP. That is, product qualifications and safety issues will omit these imports.

My first point is that the domestic industry did not compete with and therefore was not injured by subject imports. Subject imports, including both technical grade and food grade, are not sold for the same uses for which domestic MKP are sold.

Since the Commission's preliminary determination, the record has become clear that subject imports are used in U.S. market fertilizer production by and large. It is clear that the domestic industry for MKP does not service this market.

Domestic MKP and subject MKP imports are not used in the same end uses because these products are very different products. Domestic MKP is food grade -- that means higher standards -- than subject imports of both food grade and technical grade MKP. Domestic MKP produced by ICL Performance Products also purposely does not compete with imports from its parent company in Israel which, like subject imports, includes technical grade MKP.

Subject imports are sold generally for fertilizers largely because of safety issues in the U.S. market that prevent the use of subject imports for food production or many nonfertilizer technical applications. There are good reasons for these concerns such as the recent baby formula, pet food and other poisoning tragedies in China. Valudor's experience, as you will hear momentarily, also validates these concerns.

Related to the lack of competition, subject

imports furthermore are not substitutable for domestic MKP. There is agreement that technical grade MKP, which comprise the majority of subject imports, cannot be used in applications that require food grade MKP. Because domestic MKP is primarily food grade, this limitation narrows considerably the potential for substitutability.

Food grade MKP is technically "interchangeable" with technical grade MKP because food grade MKP can be used in technical applications. However, in general one would not expect purchasers to buy the premium product food grade MKP when technical grade suffices. Moreover, as already mentioned, domestic MKP producer ICL Performance Products has made the decision not to compete in the technical grade MKP market where imports from its affiliates are sold.

The staff report also has noted a limitation on the substitutability of domestic food grade and subject food grade MKP explained by the stricter standards applied to food grade products that few Chinese producers are capable of meeting. In Valudor's experience, as you will hear, no Chinese producers are in fact capable of producing food grade MKP to these strict standards.

In any event, U.S. purchasers clearly do not want to use the Chinese product for food or other specialty uses. The end use for which the subject food grade MKP was purchased during the period is conclusive on this point. With no meaningful competition or substitutability, subject imports could not have caused -- did not cause -- material injury to the domestic industry.

The resulting lack of substitutability also means there's no real underselling of subject imports. Rather, the two grades are sold in different markets to reflect different price points. If there were true underselling, one would expect subject imports to compete in the same market segments as the domestic product, which is not the case.

My second main point is the domestic industry by many accounts is not injured. To the extent that there is some negative financial indicators, factors other than subject imports were at play. Important financial indicators, including net sales values, operating income, profitability, are good. The domestic industry's negative financial indicators in any event cannot be explained by subject imports for the reasons just outlined.

Other reasons can explain negative aspects.

Two key factors which the Commission recognized in its preliminary determination are the raw material shortages/customer allocations by the domestic industry through late 2008, 2009. The recession dragged down sales in 2009. Another important factor in understanding the domestic industry's performance and sales during the period with respect to MKP is the presence of nonsubject imports.

My third and final point is there is no evidence the current conditions of competition with regard to MKP imports from China and domestic production of MKP will change in the foreseeable future. In fact, all evidence indicates that MKP imports from China --

CHAIRMAN ARANOFF: I'm sorry. You've gone a bit over your time. Can you wrap it up in a sentence or two?

MS. RITCEY-DONOHUE: Sure.

CHAIRMAN ARANOFF: Thanks.

MS. RITCEY-DONOHUE: Valudor will speak in greater detail about the current and imminent future state of affairs with Chinese production MKP. In essence, Valudor's experience is that Chinese MK producers are not capable of selling to the market segments in which domestic MKP is primarily sold.

As a significant importer of Chinese MKP, Valudor has unique insights. It is these and other key market dynamics that should assist the Commission's investigation. Thank you for your attention.

MR. BISHOP: Would those in support of the imposition of antidumping and countervailing duty orders please come forward and be seated?

Madam Chairman, all witnesses have been sworn.

(Witnesses sworn.)

CHAIRMAN ARANOFF: Welcome to the morning panel. Please feel free to begin as soon as you're ready.

MR. CANNON: Thank you, Madam Chairman. We will begin our testimony with the testimony of Nancy Stachiw. Nancy?

MS. STACHIW: Good morning. My name is Nancy Stachiw. I am Director of Technical Service and Applications Research for ICL Performance Products. I have spent more than 20 years in the phosphate industry since I started with Monsanto with 1987.

Currently I manage a team of scientists and chemists who staff our Technical Service Department. We look for new uses for phosphates and assist our

customers who use phosphates in their products. We also obtain and analyze our competitors' products.

I am here today to explain potassium phosphate applications and end uses. First I will identify the various functions performed by DKP, MKP and TKPP. Second, I will go through the phosphates one by one, indicating the functions that each phosphate performs particularly well. Third, I will highlight major differences between the phosphates in terms of applications and their end uses.

To begin, what functions do phosphates generally perform? Recognizing that different functions matter to different end users, I will mention six: Chelation, buffering, emulsification, dispersing, nutrient and fermentation and solubility properties. These functions are shown in Exhibit 1 to my testimony.

First, chelation, a term often used interchangeably with sequestration, inactivates unwanted minerals and metals. Iron, magnesium, copper or calcium can interfere with food processes or cleaning processes. Minerals can build up and cause scale in water or boiler systems. In meat, they can cause unwanted reactions and bad flavors.

A chelating agent, a sequestrant, will bind

these or tie them up so they are not available for unwanted reactions. As shown by Exhibit 1, TKPP is a chelating agent where MKP and DKP are not.

Second, buffering stabilizes pH, which measures the acidity or alkalinity of a solution. It's equal to seven for neutral solutions, increasing with alkalinity up to 14 and decreasing with acidity down to zero. A buffer minimizes the change to the pH when various other alkaline or acidic ingredients are added to a formula.

Suppose that not everything you are adding has the same pH. A strong buffer will help hold the pH where you want it, prevent the pH from shifting. This really matters in formulating pharmaceutical, beverages or food products. MKP and DKP are excellent buffers, where TKPP is not.

Third, emulsification, which is two or more otherwise incompatible substances, typically liquids, like oil and water. An emulsifying agent helps keep these two substances together. Take, for example, natural cheese. If you heat cheddar cheese the oil will separate out. If you add in emulsifiers, the oil doesn't separate out. Processed cheese slices and cheese sauces are made by forming an emulsant.

DKP is an emulsifying agent and is therefore

used in many dairy applications. MKP has the ability, but its pH prevents it from being used much as an emulsifying agent. TKPP also has this function, but not to the same extent as DKP.

Fourth, dispersing keeps particles in a liquid from forming aggregations or coming together. Let's say you're formulating latex paint. You don't want the pigments in the paint to clot. You want to keep the pigments dispersed. TKPP is very good at dispersing, where MKP and DKP are not.

Fifth, fermentation in food processing typically converts sugar and other carbohydrates to alcohol and carbon dioxide or organic using yeast or bacteria. Fermentation can convert juice into wine, grains into beer, carbohydrates into carbon dioxide to leaven bread and sugars from vegetables into preservatives, organic acids like lactic acid in yogurt in vinegar, acetic acid in pickles, cucumbers.

More than any other phosphate, MKP is used in fermentation and yeast applications for its nutrient content as a source of both potassium and phosphorous. Another example would be in fermentation to make insulin medicine.

Sixth, solubility is simply the amount of a compound that can be dissolved. The higher the

solubility, the more that can go into a liquid and form a homogeneous solution. MKP is 21 percent soluble, DKP 63 percent and TKPP 65 percent.

So now that you understand chelation, buffering, emulsification, dispersing, fermentation and solubility, I will go through the phosphates one by one and say the top two or three functions that each phosphate performs particularly well.

MKP's most important functions are as a buffer and in fermentation. DKP's most important functions would be as a buffer and in emulsification. Also, its solubility is very high. TKPP's most important functions are solubility, dispersion and sequestration.

Turning to the specific end uses of each product, Exhibit 2 shows that the general industries using TKPP differ from those using MKP and DKP. This is because of the different functions of each potassium phosphate.

Chemically, MKP and DKP are both orthophosphates, which means they have one building block of phosphate, where TKPP is a polyphosphate, more specifically because it has two of the phosphate building blocks. TKPP is a diphosphate or pyrophosphate.

As a result, TKPP is a sequestrant and dispersing agent with applications in cleaning, water treatment and metal finishing. DKP and MKP are much stronger buffers and are used for food and beverage applications, and MKP is used as a fertilizer.

Although the second exhibit suggests that DKP and MKP have overlapping uses, in fact there are major differences in the end uses for the individual phosphates within the orthophosphate group. Importantly, MKP is acidic with a pH from 4.2 to 4.8, and DKP is alkaline, around nine, maybe a little higher. Also, MKP and DKP have different solubility. DKP is around 63 percent soluble versus 21 percent for MKP.

Because of their opposite properties, they are used in different applications. DKP is usually an alkaline orthophosphate and is particularly well suited for dairy applications. As an emulsifying agent, it helps stabilize proteins in nondairy creamers where MKP, due to its acidity, is not used at all for those applications. In fact, we use DKP to help counteract acidity in coffee. That's what it contributes in a coffee creamer. Finally, because DKP is so soluble it is used in antifreeze applications.

MKP is used as a buffer, but in the acidic

area, because it is an acidic product. MKP is also used heavily as a nutrient source for microorganisms during their fermentation because microorganisms grow best in a more acidic type environment, where DKP is too high in pH. It would kill off the bugs. These differences are illustrated in the charts that accompany my testimony.

Let me address the different physical forms, solution or anhydrous, and grades, food or technical. In essence, different end users require different forms, particle sizes and grades. An end user making a liquid dairy creamer or a liquid antifreeze will want DKP in solution. Some dairy applications though are dry blends. Here the end user might want a dry ingredient so as not to need a liquid handling system. For example, powdered coffee creamers use anhydrous DKP.

Products sold as food have to undergo extra testing and meet food related specifications that our petition describes. For the most part, food grade can substitute for technical grade, but given the pricing no company is going to pay for food grade if it can use technical grade. So, yes. Form, particle size and grade do matter.

You might also wonder why our petition

excludes MKP and DKP in solution. This is for two reasons. First, imported solution does not make much sense economically. U.S. companies that want MKP or DKP in solution can produce it themselves by mixing phosphoric acid and potassium hydroxide. Why pay the costly freight to transport heavy solution when you can more cheaply make it yourself?

Second, the industry that produces potassium phosphates and solution differs from the industry that produces anhydrous phosphate. To produce anhydrous phosphate, a producer must invest in a drying oven, sizing equipment, packaging equipment and so forth.

I understand that some of you and your staff visited our plant and saw the No. 3 dryer. You will appreciate that this dryer represents a significant investment. By contrast, a manufacturer of DKP or MKP in solution simply mixes phosphoric acid and potassium hydroxide. Only ICL and PCS currently make anhydrous DKP and MKP.

Finally, I understand that one issue before the Commission concerns the use of Chinese MKP in fertilizer versus other applications. As I have explained, MKP is an excellent buffering agent. It can be used to change the pH of a liquid medicine, beverage or food product. It also functions very well

in fermentation because it serves as a nutrient and source of phosphate. For these reasons, MKP has broad application in the food and beverage market, as well as in pharmaceuticals.

Chinese MKP in particular is produced from a very pure form of phosphoric acid. Chinese producers use thermal phosphoric acid to produce MKP, as well as DKP and TKPP. As a result, Chinese MKP is relatively free of contaminants. By comparison, MKP from other sources, particularly Israel, will have a higher level of impurities.

The MKP that our sister company produces in Israel is made from merchant grade acid that has been filtered to remove impurities. This MKP contains a relatively high level of impurities and cannot be used in food grade or even many technical grade applications. The Chinese MKP in contrast is technically superior to the MKP from Israel in terms of impurities.

Our U.S. made MKP, manufactured in Carteret, New Jersey, is produced from purified phosphoric acid and is equal in purity to the Chinese product. Our MKP and the Chinese MKP therefore compete for business in the various applications identified. The Chinese MKP is not inferior or unable to be used in these

applications. This concludes my prepared statement. Thank you.

MS. SCHEWE: Good morning. My name is Angie Schewe. I'm the Business Director for Industrial Phosphates for ICL Performance Products. In this position I have management responsibility for the industrial phosphates business, which includes all of our technical grade phosphate salts.

I am personally responsible to set prices, authorize discounts and establish our marketing strategy. I also have financial responsibility for the industrial phosphate business and report directly to our president.

I had the pleasure to appear before the Commission two years ago during the investigation of sodium hexametaphosphate or SHMP. Since the antidumping order on SHMP, price levels in the U.S. market have increased sharply.

Even today, price levels are up over 30 percent from 2007. Our sales have more than doubled, and our profits have similarly improved. In 2009 and 2010, our SHMP business is earning strong profits and an adequate return on investment. In our portfolio of phosphate chemicals, SHMP is now one of our best performing businesses.

The Commission might be interested to know that the company that invented SHMP, Calgon, left the market before the antidumping case was filed, but after the antidumping order was issued Calgon, now owned by Nalco, restarted its SHMP plant. Today, Calgon is back in the business of producing SHMP.

By comparison, our potassium phosphate business is depressed. Over this same time period that SHMP profits increased, profits on potassium phosphates have declined. From our perspective, the real difference between these product lines is the large and increasing volume of imports from China.

To understand the market, it is important to understand that Chinese imports compete head to head with our products on the basis of price. At the preliminary conference, I reviewed a certificate of analysis or C of A. These documents issue with respect to every sale.

I understand that some of you visited our Carteret, New Jersey, facility. You toured our laboratory and saw the certificate of analysis that are tied to each batch of phosphate salt. These documents show that every batch of phosphate salts is tested for purity, particle size and level of contaminants. In our business, you cannot sell

phosphate salts without a C of A.

The Chinese also test their phosphate salts and issue C of As to accompany every shipment. Examples of these documents were included in Exhibit 5 to our prehearing brief. The Chinese producers can produce virtually the same quality of phosphate salts as any U.S. producer. In fact, the Chinese producers use thermal phosphoric acid, which is a very pure raw material.

In the United States, we generally start with purified phosphoric acid, which is made from green acid or MGA. Although purified acid is less expensive to produce, it is not as high in purity as thermal acid. We have seen over and over that Chinese imports would start selling to customers that do not have a very difficult specification or very high quality requirements.

For example, in the SHMP case the Chinese imports started selling in the kaolin market. In other words, the clay fields. These end users are not particularly demanding because the SHMP is used to disperse the clay to help it flow.

Once customers use the Chinese material, however, they discover that the quality is quite good. Over time, the Chinese producers will then penetrate

deeper into the U.S. market, moving up to the most demanding customers. In the SHMP case, we saw the Chinese SHMP start in the clay fields. Eventually, though, Procter & Gamble was buying Chinese SHMP to use in its most demanding applications.

In this case, Chinese DKP has penetrated food grade customer accounts across the market. The Chinese product is readily accepted by customers and substitutes for our product. Similarly, Chinese MKP has penetrated food grade accounts and technical grade accounts that call for very high quality material. Also, Chinese TKPP has been accepted for use in water treatment and in paints and coatings.

The Chinese imports of MKP have not been confined to less demanding applications such as fertilizers. In fact, review of import statistics shows from shipment manifests and bills of lading show that a large percentage of the Chinese imports are food grade. And whether or not our customers are buying Chinese material, they are certainly quoting Chinese price when the salesmen call.

We sell through two channels of distribution: Distributors and direct to end users. Distributors generally stock a significant inventory of phosphate salts to resell to their customers who

are end users. The largest end users, however, prefer to deal directly with the manufacturer and want to purchase rail cars or truckloads.

Distributors generally supply end users that do not require full truckload quantities. Distributors will maintain an inventory and ship less than truckload or LTL quantities to these customers. Distributors may also consolidate different products into a single truckload delivery. In some cases, even for our direct customers we supply the customer out of the inventory of a distributor in order to keep the inventory close to the customer.

Historically, we would issue a price list offering the same price to all distributors for shipments into their inventory. The typical distributor would receive a discount from the list price, allowing the distributor to resell phosphate salts at the list price and make a reasonable margin on the sale.

In some cases, a distributor would approach us about a specific customer account where our list price was above the competition. In such cases, we might provide a so-called support price discounted below the normal distributor price in order to respond to competition.

In 2008 and 2009, our distributors began receiving quotes from brokers supplying Chinese imports at prices well below our list prices. In order to keep these accounts, we were forced to depart from the normal list price plus discount formula. It is now the case that about 80 percent of our distributors are buying at off list prices. In effect, we are renegotiating prices roughly every three months or until the next Chinese offer.

I am one of three business managers at ICL. Among other things, we establish pricing policy for the company. Every week we hold a sales meeting to review all of the trip reports and emails from our sales force. We then decide whether to hold firm on offered prices or reduce those prices. If we agree to reduce prices, we will send a letter to our customer identifying the new terms or, in the case of long-term contracts, we will prepare a new contract.

In 2009, I cannot tell you how many times we debated whether to cut prices or respond to competitive offers. Over the course of the year, however, our strategy changed. First, I should provide some background.

As you are probably aware, there was a major increase in raw material prices starting at the

beginning of 2008. Phosphoric acid, which is one of two materials used to produce phosphate salts, increased by 400 percent in May 2008. Also, one of our suppliers of phosphoric acid had supply problems in January and February 2008, forcing us to seek additional raw materials in a very tight market for phosphoric acid.

In this market, with raw material costs increasing faster than we had ever seen before, we increased our prices at the beginning of 2008 to cover these higher costs. At the same time, because phosphoric acid costs had taken such a huge jump, we issued prices that were firm for 90 days rather than six months or a year. Because of contract commitments, our prices did not increase across the board immediately, but by the middle of 2008 a majority of our customers were paying higher prices.

I was honestly surprised by the fact that the market accepted higher prices announced in 2008. As luck would have it, Chinese producers experienced various problems that reduced their U.S. exports at the same time we were experiencing problems getting raw materials. Then in August 2008 there was a strike at the PCS plant that supplied potassium chloride to the North American market.

Potassium chloride is the raw material used to produce potassium hydroxide, KOH, our raw material to make potassium phosphates. Once again, our raw material costs increased dramatically, this time for KOH, and as the strike continued we were forced to put our customers on allocation. We limited customers to 80 percent of their contract quantities starting September 5, 2008, and ending in mid November of that year.

At the same time we were experiencing difficulty obtaining raw materials, the Chinese imports really began to increase. By the end of 2008, we were talking about new Chinese prices at every weekly sales meeting.

Going into 2009, though, we did not want to reduce our own prices. Our raw material costs had become so high that we could not cut prices without losing money, so in our weekly sales meeting we told our sales staff that ICL will fight down price. In other words, we refused to respond to all sorts of Chinese imports at prices below our prices.

By the middle of 2009, though, this strategy had cost us an enormous amount of sales volume. The Chinese imports were capturing sales volumes, particularly at our distributor accounts. In every

market, Chinese imports were the price leader.

Because we did not cut our prices, our shipments of all three potassium salts declined between the first half of 2008 and the same period in 2009. Our response was to gradually give in to the lower prices set by the Chinese potassium salts. Over the course of 2009, we cut our prices of DKP, MKP and TKPP in order to keep sales volume.

At our Monday sales meeting we continuously responded to Chinese prices, reducing our price and writing letters every week to our customers with new prices. Our business not only suffered depressed prices and rising cost; we also were forced to lay off workers, cut back severely on overtime, eliminate contractors and otherwise reduce our operations.

We have tried to operate our plant at Carteret on a five day a week schedule in order to avoid overtime on weekends, but without orders we only produced TKPP 11 days in January and for less than two weeks in March and May of this year. In fact, we did not operate the plant full-time in any month in 2009. In other words, our capacity utilization is not adequate to support the plant.

We have already announced 5 percent layoffs and largely eliminated our outside contractors.

Rather than lay off additional workers, we have used our hourly workers to perform maintenance. As a result, we have terminated contractors that used to supply various services, in effect reducing the overall employment at the plant even though workers are not counted in the production and related workers.

Increasing imports, rising raw material costs and the loss of sales volumes have had a serious negative impact on our business. Since the Commission examined our industry late last year, conditions have only gotten worse. We have suffered operating losses on two product lines in 2009, and our efforts to cut prices resulted in a loss in the fourth quarter with respect to the third product.

Before concluding, I would like to address the arguments made by Valudor. Valudor argues that the Commission should not find injury with respect to MKP because its imports of MKP are only sold in the fertilizer market. First, we compete in the fertilizer market at accounts such as Miller Chemical and Fertilizer Corporation. We were selling U.S. made MKP to Miller in 2008, not imports from Israel.

Second, and more importantly, the imports from China are not confined to customers producing fertilizer. As I have explained, we have seen many

times that the Chinese imports start out in less demanding applications, but quickly move through the market to more demanding customers. Our largest customers for MKP are producers of pharmaceutical, food and beverage makers. In fact, one of our largest customers uses MKP in a sports drink.

Because we saw our volumes fall sharply in 2009, we decided in the fourth quarter of 2009 to match the Chinese price even at this large customer account. As a result, we regained sales volumes, but our profits disappeared. In sum, the dumped and subsidized imports of all three products -- DKP, TKPP and MKP -- have had a major impact on our business. The contrast between 2008 and 2009 tells the story.

Because Chinese imports of phosphate salts did not respond immediately to increased prices in 2008, we experienced an increase in profitability even though our material costs were raised to all-time highs, but as soon as the Chinese producers began shipping increased volume to the U.S. we started a steady decline that has not stopped.

Without relief from dumped and subsidized imports that are intent upon penetrating the U.S. market, our industry would inevitably suffer. Thank you.

MS. ALLEN: Good morning. My name is Beth Allen. I am the Vice President of Finance and Procurement and the Corporate Secretary at Prayon, Inc., in Augusta, Georgia. I have been with Prayon since April of 2002, and I currently serve on the board of directors and on the capital board. I regularly interface with our parent company and make decisions on capital spending.

Our parent company is a fully integrated phosphate producer. Prayon SA is a joint venture between a Belgian producer of phosphoric acid and phosphate salt and a Moroccan producer of phosphate rock. Through our parent company, we have access to phosphoric acid.

However, our company is measured by its own performance in the U.S. market. Our parent company establishes benchmarks for all of its operating subsidiaries and divisions. That is, our owners establish a minimum contribution margin or gross profit margin that we are expected to meet.

Our raw materials are purchased from both U.S. producers and our parent company. In the case of potassium hydroxide or KOH, we purchase raw materials from two U.S. suppliers. In the case of phosphoric acid, we purchase from both PCS in the United States

and we import from our parent company. In either case, we pay the market value for our products.

Our imported phosphoric acid is valued using a formula based upon the world market price for phosphoric acid determined by *Fertilizer Week* FOB Antwerp and adjusted for transportation costs. This cost is revised every month, so we therefore incur the same raw material cost as any other producer of phosphate salt, and we are expected to earn a reasonable return on the business.

As you heard from Angie, there have been enormous increases in raw material costs during the period of investigation. As shown by the chart on page 5-2 of the staff report, phosphoric acid prices increased over 400 percent between 2007 and the middle of 2008. Potassium hydroxide or KOH prices increased 300 percent between the third quarter of 2008 and the second quarter of 2009.

For this reason, Prayon has been forced to increase prices to cover just our variable costs of production, let alone the fixed costs of running our plant. Chart 1 illustrates the trend in raw material prices.

Historically, our strategy was to meet the market price in an attempt to fill our capacity.

However, at the end of 2007 our management decided to change this strategy. Our CFO decided to raise prices on phosphate salts to a level that would recover at least a reasonable profit and try to hold onto our sales volumes.

Because we are a relatively small player in the market, I was very skeptical that we would be successful. However, our parent company produces phosphoric acid. They could see that the demand for fertilizer was soaring and the phosphoric acid prices would surge in 2008, and they were right. Not only did phosphoric acid prices increase, but the market was also very tight in early 2008.

Then as the year went on the strike at PCS caused a severe shortage in the supply of KOH. In order to meet the demand for potassium products, we were forced to find alternative sources of potassium, but at higher prices, and thus the KOH price tripled. So even though we had sufficient potassium salt to sell in the U.S. market, we had to increase prices in order to cover higher costs.

In some cases, although we should have been able to increase our market penetration during the PCS strike, we did not. Instead, lower priced imports from China took business that could not be supplied by

ICL or PCS.

Because of the increase in Chinese imports of TKPP, we were forced to abandon our strategy of maintaining profitable price levels. Faced with increasing imports, we cut prices in 2009 in order to regain sales volume. At the same time, costs kept rising. Because KOH prices were increasing through the second quarter of 2009, our unit variable costs in 2009 were higher than our unit costs in 2008.

Capacity utilization is now roughly one-half of our total potassium salt capacity. Because of the loss on TKPP volume, we have had to campaign our plant, shutting down several times over the past year because of a lack of orders. In fact, when the ITC staff visited our plant last October, we were not operating the production line due to a lack of orders.

Last summer, we shut down for the Fourth of July and asked our workers to use their vacation. Workers that did not have any vacation were temporarily laid off. To date we have avoided permanent layoffs by using our employees to do maintenance and to assist with ISO recertifications, NSF audits and other tasks. We are extremely reluctant to lay off our production workers.

This is one of the great things about

Prayon. The company is extremely loyal to its employees. Instead of laying off our workers, we have been using production employees to perform maintenance work that formerly was outsourced to subcontractors. We have greatly reduced overtime and we have shortened production campaigns, which makes it very costly to run a plant.

To fill our capacity and maintain our employment levels, we must find sales volume. At the same time, we can't afford to sell phosphate salts at a loss simply to keep the plant open. We cannot maintain high prices against Chinese imports that blanket the market with offers to sell below our variable costs.

If we do not respond to the lower prices quoted by the Chinese suppliers, we inevitably lose sales volume. A healthy ratio of profits to net sales is not at all healthy if net sales shrink to zero.

Lack of adequate return on investment also has had a negative impact on our capital and R&D spending. You can see from our questionnaire response that our R&D spending is inadequate by any measure. We try to spend about $2 million per year at our plant in capital improvements. Our plant was originally built in the 1960s, and we need to replace older

equipment and upgrade the plant.

In 2008, because we could increase prices for phosphate salts we invested $2.5 million of our profits in a new packaging line designed to improve our ability to deliver food grade salts to our customers. In fact, we purchased a new packaging line because Prayon SA is very committed to the U.S. market and to the production of phosphate salts in Augusta.

But as the staff witnessed during the plant tour, our cooling equipment is long overdue for replacement. To justify additional capital spending, we need higher prices and stronger margins. For these reasons, we strongly urge you to find that imports of potassium phosphates from China are causing material injury to the U.S. industry. Thank you.

MR. SEXTON: Good morning. My name is Allen Sexton. I am the Vice President of Sales and Marketing for Prayon, Inc., a leading producer of food and technical phosphate salts.

I've been selling potassium phosphate salts, specifically TKPP, for Prayon for over three years. Prior to that time I spent 20 years in the water treatment industry. Now I sell TKPP to my former employer and a number of other end users and distributors.

Prayon sells to both channels of distribution, distributors and end users. Like ICL, we must compete with Chinese imports on a national basis at virtually every customer account. All of our distributors and all of our end users regularly receive offers from brokers selling Chinese phosphate salts.

Our sales meetings have gone pretty much the same as you heard Angie describe. We are constantly bombarded with reports that Chinese material is available for lower prices.

We sell to distributors both into stock and what we call third party sales. Into stock sales are sales into the inventory of distributors. We typically do not sell directly to customers that want small volumes or less than truckload or LTL quantities. Instead, our distributors will supply those customers from inventory.

In other cases, our distributors may have large volume customers that take rail cars or full truckload quantities. We will ship directly to these customers of our distributors. Because we're shipping to our customer's customer, we call these third party sales. We also sell directly to large end users with no distributor involvement.

In every case we encounter competition from low-priced Chinese imports. Brokers offering Chinese phosphates send emails and faxes throughout the market regularly. These prices are immediately quoted back to us in negotiations for new supply. For this reason, we cannot maintain long-term or even short-term contracts for more than about 90 days.

Given that our contracts typically have meet or release provisions and given that Chinese prices are reduced on a regular basis, virtually every price is renegotiated. In fact, prices for Chinese TKPP are so low that some distributors will make TKPP solution in order to supply customers that use a 60 percent solution.

Historically, the domestic producers had 100 percent of the solution business in the United States. Freight costs to ship a 60 percent solution are very high relative to the value of the product. You are shipping water. U.S. producers close to their customers could ship tankloads by rail or truck to their customers.

In recent years, however, distributors have begun to make TKPP 60 percent solution using Chinese anhydrous TKPP. Several customers replaced domestic solution with solution provided by distributors as

identified in my affidavit included in the prehearing brief.

At the preliminary conference I explained that it used to be our practice to issue a price list to distributors. The distributors' price would be 5 percent less than the list price. However, with increased Chinese competition in the past two years, prices change too quickly to keep up. We have simply stopped issuing price lists to our distributors. Instead, we negotiate prices effective for 90 days, although it is rare that prices will stay the same for 90 days.

Another way that we experience import competition is in so-called support prices. Our distributors will tell us that Chinese competition is threatening one of their accounts and will ask for a discount below the normal into stock price in order for us to try to keep their account against competition from a Chinese importer or another distributor.

If we do not provide a deeper discount, the distributor will either lose the account or purchase the Chinese phosphates themselves. In many cases we have lost sales to imports, but we cannot identify whether our distributor lost the sale or whether our

distributor replaced our product with Chinese material. All we know is that our sales volume to that distributor has fallen off.

We also have experienced competition from Chinese imports at our large end user accounts. Historically, we were able to maintain a small premium against the Chinese imports because of our ability to supply on a short lead time. However, since the economy has declined over the past two years our customers have become more and more price conscious. As the economy has declined, even these customers have switched to Chinese phosphates to get lower prices.

In fact, from a technical standpoint the quality of the Chinese material is just as good as domestically produced salts. Angie explained that every supplier analyzes its products and generates a certificate of analysis identified by a lot number to a given quantity of phosphate salts.

Every supplier has its own standard specification, but can also produce to customer specification if a given customer has other requirements. All of the major U.S. manufacturers, the Chinese manufacturers and other foreign manufacturers are technically capable of supplying high quality phosphate salts.

Looking back, 2008 was a high point for our company because of the coincidence of unusual events. First, we decided to raise our prices at the beginning of 2008, anticipating the increase in phosphate acid costs. Second, the Chinese imports were somewhat limited in the first half of 2008. Third, when the PCS strike caused a shortage of potassium chloride we were able to obtain raw materials from other sources.

As a result, our operating results improved in 2008, although the quantities shipped did not increase from 2007. In fact, I was surprised that we were able to increase prices in 2008 to the level that we achieved. In 2006 and 2007, we had tried to raise prices in order to improve profits. In both years we were unsuccessful.

In 2008, our announced prices held at least for the first part of the year. Because of the huge increase in raw material costs, our customers understood that we had to raise prices. Without any immediate surge in imports, those prices held.

Because of our global position on KOH supply, the PCS strike did not inhibit our ability to produce. We had adequate access to raw materials, but we had to pay a higher price. In fact, our plant was not running at full capacity, so we were able to

supply customers that could not obtain all of their requirements from ICL or PCS.

As a result, we were able to maintain relatively good price levels throughout 2008. Chinese imports did not really begin to flood the market until the fourth quarter. In 2009, however, the factors that helped us to improve our profits disappeared.

World market demand for fertilizer declined, phosphoric acid prices fell and phosphate salts producers in China have had more adequate access to raw materials. Competition from Chinese imports became more intense in 2009. Imports of potassium salts surged, and our own sales volumes sharply declined.

Because TKPP is a relatively high volume product in our plant, we altered our selling strategy in 2009. Rather than stay firm on prices and try to keep prices at a profitable level, we were forced to reduce prices. In fact, in some cases we made so-called voluntary price reductions not waiting for the contract period to end, but cutting price at an earlier date to maintain existing customer accounts.

This approach has helped us to compete against lower prices offered by importers of Chinese TKPP. I should point out that conditions have

improved since the preliminary Commerce determination in March.

As indicated in my declaration attached to the prehearing brief, we regained various TKPP customers' accounts after antidumping duties were imposed on Chinese imports. Although we still have to compete with the domestic and other foreign suppliers, the Chinese are no longer the price leaders in the market. With the duties in place on Chinese TKPP, we can get the business and make a profit.

Looking forward, the outcome of this case is very important to our company and our industry. First, we have excess capacity to produce potassium phosphates. We need to add to our volume of potassium phosphate production in order to fill our plant. Second, we believe the Chinese have an enormous amount of excess capacity, and they seem to be intent on exporting to fill it.

We can compete with any producer in the world on a level playing field, but if the Chinese Government is willing to subsidize its phosphate industry I fear that we cannot compete against the resources of a foreign government. For these reasons, I hope that you will make an affirmative determination. Thank you.

MR. CANNON: Thank you, Allen. I would like now to review some of the slides that we passed out with the testimony, but I guess I should ask. How much time do we have?

MS. BELLAMY: You have 20 minutes remaining.

MR. CANNON: Twenty minutes. Thank you. So I'll try to go faster than that. Turn to the next slide then.

As Nancy reviewed, and the exhibits she talked about are attached at the back of her testimony, but, as she reviewed, we think there are three like products. Basically the functions are different, and as shown by this chart the three products are MKP, DKP and TKPP.

Okay. Turning to conditions of competition, there are increasing raw materials costs, declining demand, excess global capacity and interchangeable products. We think that means that price is critical.

Okay. You heard a description that raw material costs increased. As shown in the staff report and here in this chart, the pink line is the phosphoric acid price. It increased 300 percent in May 2008. It stayed at that high level until about May 2009.

The blue dotted line is 45 percent KOH on a

delivered basis, potassium hydroxide. That's our other major raw material. It started increasing later in the year, but it has stayed high in 2009.

Okay. Let's turn to the next slide. As a result, this chart, which is an index -- index to 100 -- shows the U.S. producer unit cost of goods sold. Unit cost of goods sold went up every year, and basically the domestic industry's unit cost is double the level it was in 2007 and 2009.

Okay. Next slide? Looking at the case product by product and sticking with public data, I think it's fair to talk about the trends. Consumption for TKPP, which is the most important in terms of volume and value to the industry. Consumption is declining. U.S. shipments are declining. Imports from China increasing. The import market share is increasing, and U.S. producer profits are declining, particularly between '08 and '09.

This is the public version data from the staff report. The bars show consumption and U.S. shipments. The blue bar is apparent domestic consumption, so here you see the very steep demand decline, right? Next to that, the shaded kind of teal looking bar is U.S. shipments. U.S. shipments declined faster than consumption.

The line, the black line, that represents Chinese imports. Now, that line is based on the Census data and in fact understates the increase in imports. It understates the import data collected by the staff and the shipment data. There was apparently some misreporting in the HTS category, but the trend -- the trend -- is fair.

All right. Next slide? Domestic capacity. This is TKPP. Just to get an idea of what we're talking about here, we went from 72 million pounds of capacity down to 60 million pounds, but look at production. Production fell from 41 million to 23 and so right now domestic capacity in 2009, that is, is only 39 percent full. It is woefully underutilized, and employment has fallen from 60 workers to 46 workers, those being the direct, production related workers.

Okay. Looking now at DKP, for DKP also consumption is declining, U.S. shipments are declining, imports from China are increasing, although in terms of the shipments of imports there's a slight decline between '08 and '09, and import market share is following the same trend as the imports. U.S. producer profits. Again they're declining '08 to '09.

And here this chart, because consumption

isn't a public number and there is only one U.S. producer, this is an index showing publicly the trend in U.S. shipments and so you see a downward trend basically from 100 down to 65, a huge decline in U.S. shipments. At the same time, imports have increased.

Next slide? Turning to MKP, once again consumption is declining. U.S. shipments are declining, particularly between '08 and '09. Imports are increasing. Import market penetration is increasing.

In this case U.S. producer profits did increase in '09, but they're still at a very low level. This shows the trend in U.S. shipments and in imports. U.S. shipments are basically flat between '07 and '08, and they decline sharply in '09 and imports are increasing.

So next we turn to the pricing data. I said in the introduction that one thing that's remarkable about this case is the extent of Chinese underselling, particularly in the last four quarters. As a result of underselling in the last four quarters, all four quarters of 2009, domestic producers reduce their prices.

So here you see a downward trend in 2009 steadily being pulled down by the import prices, so I

believe there is in this case price depression. Moreover, you saw the chart on unit costs, right? Our unit cost of goods sold doubled, so there is also price suppression. Prices are being held below the level where they otherwise would be due to the rising cost.

Okay. Now, there's a whole series of tables in the staff report, and I sort of love these tables. This is a great innovation to visually show in every case really the link between price and quantity. This is based on index data as opposed to the actual data so that it could be shown publicly, but here what do we see?

We see that the level of sales of TKPP every quarter for the domestic industry -- this is domestic industry -- were relatively high until we get to the fourth quarter 2008, and that's when we have the allocation, the difficulty with the strike at PCS and the lack of raw materials and so domestic shipments fall, domestic prices stay relatively high.

We know that that allocation went from September '08 to November, so it ended very quickly. Certainly by the beginning of 2009 the domestic industry had plenty of raw material and they were ready to sell, but the volume stayed at the very low

level.

If we turn to the next slide we see the imports. The imports followed the price up. You heard Allen testify. He was surprised in 2008. When he increased the price it stuck. They were able to get a price increase.

That's because the Chinese imports followed the price up, but once they got a strong volume in the U.S. market, particularly in the fourth quarter of 2008, they didn't want to give back any market share and so they cut prices. And so throughout the year 2009 Chinese imports cut prices, and that's the black line declining.

And then I think we can sort of roll through. DKP. Next one? Next one? MKP. That's imports of MKP. That one is sort of remarkable looking. It's because the quantity in the fourth quarter of 2008 on MKP -- this is the point at which ICL has an allocation and a problem with raw materials. The quantity of imports of MKP surges in the fourth quarter.

Now, the importers were arguing and the Chinese were arguing that their product doesn't substitute for the domestic product and yet when the domestic product went on allocation and there was a

shortage that's exactly when the imports increased and so that tells you that indeed the imports did fill some of the void left by the domestic producer.

When the domestic crisis so to speak was over, though, the imports once again are at a much higher level than they were in all quarters of 2007 or even in 2008 until the allocation. They're remaining in 2009 at very high levels. They're trying to hang onto that market share that they got.

All right. Next slide? In the preliminary determination, the Commission in all cases except for one made a unanimous six votes for threat. In the case of MKP, we had three votes for injury. Notwithstanding the events of 2009 which we believe constitute injury, there is still a threat. There is still massive excess capacity in China. The Chinese Government is subsidizing this industry and it's export oriented.

And you see from the staff report that there are huge, growing inventories in the United States market. There are also increasing imports and the same pattern that we saw, which is having achieved penetration in the U.S. market to hold onto that the Chinese undersold the U.S. producers. They cut prices.

Well, since March when Commerce imposed duties the Chinese have stopped doing that, but if there's no order in place, dumping or subsidy order in place, they will go right back to what they were doing in 2009. We will see a return of underselling, and injury will be imminent. And with that we're done I think.

CHAIRMAN ARANOFF: Thank you very much for your testimony. Welcome again to the panel. We very much appreciate your taking time away from your businesses to spend part of the day with us and answer our questions. We're going to begin the questioning this morning with Commissioner Pinkert.

COMMISSIONER PINKERT: Thank you, Madam Chairman, and I thank all of you for being here today and helping us understand what's happening and what's likely to happen in this industry.

I want to begin with the question that's prompted by something suggested in the brief filed by the opposing side in the case, and what I want to ask is are technical grade imports of MKP necessary to meet U.S. demand to fill a gap between demand and supply?

MS. SCHEWE: We don't believe they are. Obviously our capacity numbers show that we were

significantly underutilized, so we obviously had capacity to help service the market here in North America both for food and technical grade MKP requirements.

MR. SEXTON: From Prayon's perspective, we do not currently produce this product. However, I can tell you if we were in a better market we certainly would.

COMMISSIONER PINKERT: Thank you. Now looking at the first six months of 2009 and the last six months of 2009 and looking at the apparent consumption numbers, which I realize I can't list for you at this hearing. What happened with demand for MKP in the U.S. market during the first six months of 2009?

MS. SCHEWE: I can try and answer that. You know, keep in mind that there are various markets here, one of which is the fertilizer market, and I think if you look at the fertilizer market in 2009 versus where we were in 2008 it was quite different.

2008 was a very big ag year worldwide versus 2009 when crop prices were coming down, so farmers were kind of pulling back on some of the chemicals that they add into their applications, including fertilizer, so we saw a lower consumption related to

fertilizer.

Specific to industrial applications, as we talked to our distributors who were the primary resellers of MKP for us, their indications were that they saw about a 15 to 20 percent decline in their industrial usage from their customers mainly related to the recession, and what we saw during the course of 2009 was the start of a rebuild of inventory for some of these industrial customers where they all of a sudden started to use more MKP in the latter part of 2009.

With regard to our food markets, we did see a slight decline I guess in usage of MKP in general. Specific to our customer base, we were reticent to change pricing, lowering ourselves to the Chinese pricing. As a result we saw lower volumes in MKP in the first part of 2009. Later in the year we reduced our price levels down to the Chinese, and we saw an increase in demand as a result of that.

COMMISSIONER PINKERT: I guess what I'm asking, and this is probably more appropriate for the posthearing brief than it is to discuss here at the hearing, but I guess what I'm asking is whether the apparent consumption numbers comparing the first six months and the last six months of 2009 reflect or do

not reflect demand trends in the market.

MR. CANNON: I think in the interest of guarding what's all in brackets in the staff report that we'll take your invitation and put that in the postconference.

COMMISSIONER PINKERT: Thank you. Now, this one perhaps we can discuss at the hearing. Are increases and decreases in MKP subject to import market share typically offset by changes in nonsubject import market share?

In other words, is there kind of a seesaw between MKP subject imports and the nonsubject imports?

MS. SCHEWE: I think you can draw a conclusion to that that they are correlated. When one moves up the other one is moving down as far as market share.

COMMISSIONER PINKERT: Mr. Cannon?

MR. CANNON: To your first point too, and then to talk carefully about the data, it is public that a large portion of the Chinese imports, the subject, are really trying to sell into the fertilizer market.

The U.S. producer is not really trying to broadly sell into the commodity fertilizer users for

MKP because in fact that uses a lower grade or essentially a very low quality product and so imports from say Israel or Mexico or France or Belgium -- correct me if I'm wrong -- are not the same type of MKP with the same quality raw ingredients that you would use to make Gatorade or insulin.

And so in that part, to those customers you see more of the Chinese imports sort of competing there in the mix with Israel and with Mexico and with European, and you see it in the pricing chart -- the charts I like, right -- in Section 5 for Product 6. I'm sorry. For Product 4, which is the technical grade MKP. You see all the prices are similar because it's a commodity. It's a very easy to meet standard.

Now, in addition to that, though, the Chinese volume is huge, say 10 million pounds of imports on the import side. Even if only 10 percent of that, a million pounds, is going into food products and high grade technical uses such as we try to serve, those niches, that's an enormous amount. One million pounds of imports is an enormous amount compared to the output of the U.S. producers.

And so a part of the Chinese imports and shipments are sort of in the mix with nonsubjects going into the fertilizer application, but a very

significant part relative to the size of the U.S. is competing for buffering applications, which would be a technical grade, or for pharmaceutical or for food. Is that helpful?

COMMISSIONER PINKERT: It's helpful. Thank you. Now going back to one of the slides that you put up, Mr. Cannon, given the volume of MKP subject imports during the first six months of 2009, how can we account for domestic industry performance during that period? I'm looking at page 11. Slide 11.

MR. CANNON: We have import volume for the first six months of 2008.

COMMISSIONER PINKERT: The first six months of 2009, which you can find in the staff report.

MR. CANNON: Yes. And I think we had talked about after this huge surge in the fourth quarter of '08 there is a relative decline in the first two quarters of 2009, and that is explained by inventories.

In other words, when the allocation went into effect and KOH was tight in the market the importers misjudged how long it was going to last, how much demand there was going to be, and they just brought in a huge amount and it took a while to work itself out into the market.

And so your better indicator would be the chart in the staff report that's not public because it took shipments and it took this huge volume of imports a little while to be shipped out so that that line would smooth out I think in terms of what you're asking.

COMMISSIONER PINKERT: Thank you. Thank you, Madam Chairman.

CHAIRMAN ARANOFF: When the Respondents made this argument that they don't compete with U.S. foot grade, and from the testimony that we heard, that was rebutted in-part in the sense that you argued about the quality of the product, and what you called based on the purity of the raw materials that the Chinese producers are using.

But the Respondents also argued that in order to sell a product as food grade that you have to have a more extensive infrastructure with stainless steel vessels, and piping, and the plans that you have to have more strict rules for handling the product, and keeping it segregated from any technical grade product.

And that you have to use special trucks that are food grade trucks to ship it before the customers are going to accept it for that kind of use. Can you

respond to that and whether you are aware of Chinese producers that can -- whether those are requirements and whether you are aware of Chinese producers that can meet them all?

MS. STACHIW: What you have described is true. There are more strict requirements for food production. It is not true though that the entire process must be stainless steel. I mean, you can make food grade MKP without the entire process, all the vessels and piping without.

I mean, it would be preferred, but it is not necessary. Yes, there are food grade manufacturers, Chinese manufacturers of food grade MKP. From the preliminary hearing, Winda appeared in opposition to us, and if you go to their website, they are promoting food grade MKP from China, and food grade DKP, and food grade TKPP.

So, yes, they are supplied by manufacturers in China capable of making food grade, and they are bringing it into the U.S., and we do as part of our technical service, we do analyze competitive products, and their analysis indicate a product quality.

And if you also recall from the preliminary, Winda made a point of explaining the high degree of inspections and quality, good manufacturing practices,

and third-party audits, that they adhered to for their product.

CHAIRMAN ARANOFF: Have any of you been to China and seen any of the plants that are capable of making a food grade product?

MS. STACHIW: I have not.

CHAIRMAN ARANOFF: I take it that none of the witnesses have. Okay. In your own plants could you make a MKP product in your U.S. facility that would not qualify as food grade while still producing a food grade product on the same equipment, or are the two mutually exclusive?

MS. STACHIW: We only run food grade acid, and we would not want to use a lower grade acid.

CHAIRMAN ARANOFF: And if you did run a lowe grade acid to make a technical grade MKP product would that your plant was no longer able to produce or qualify as a food grade producer, and you would have to go through some large screening process?

MS. STACHIW: We would have to have a cleanout validations, and set up procedures for that. So really it would not be possible to do that.

CHAIRMAN ARANOFF: Okay. I don't know if there is any way that you could give us an estimate maybe in the post-hearing of what the time and costs

associated with switching back and forth might be. I am assuming that it is high enough that you have made the decision not to do it, but I would just be curious to see some more details.

MS. STACHIW: All right.

CHAIRMAN ARANOFF: Thanks.

MR. CANNON: Commissioner Aranoff, it might be useful to think also about the fact that almost all of the DKP is food grade. That market is much more heavily food grade than test grade, and there is no question that Winda, as well as other Chinese producers, Sichuan Enzu, and other Chinese producers also, are fully capable.

They have certified plants, and CJNP, et cetera, and they are FDA certified to make and sell DKP, and there is really no dispute here that they do that, and all these plans make MKP and DKP on the same equipment, in the same vessels, using the saw raw materials.

They adjust the ratio of raw materials. So the Chinese producers -- and we will supply a lot to this in the post-hearing for you, but don't be confused or doubt that they have the technical capability. They absolutely have the technical capability, and I suppose now I have to find someone

who has been to China to get you a declaration.

MR. SEXTON: If I may, it is also important to point out that it may be a little bit of a misconception that is on the difference between technical and food grade. From our plant, we use food grade acid to produce everything.

The difference between food grade and technical grade is really that there is no difference in the product. The difference is that we prove that it is food grade due to much higher levels of testing.

So the product might be the same, and in fact, it usually is, but for food grade, there is extra handling, and precautions that we take. It only goes into food grade transportation, and it only goes into food grade packaging.

But the product, when we actually produce it, it goes on the same equipment, and it is the same raw material. It is just a matter of the extra steps necessary to prove that it is good grade.

CHAIRMAN ARANOFF: Okay. Well, I'm trying to figure out if that is what the Chinese producers are doing, too, and whether they are all producing a food grade product, but only certifying some of it.

MR. SEXTON: Well, it is important to realize the raw material that they typically use is

the thermal acid process, which produces an extremely high quality acid. Due to their history and infrastructure, that is the type of process that they use.

So the acid that they produce is almost always food grade quality, whether it is proven or not. So, our contention, our understanding is, is that they pretty much do the same thing that we do.

CHAIRMAN ARANOFF: Okay. Well, let me switch gears a little bit, and ask some questions about your production facilities. We have talked about the fact that none of the domestic facilities for any of these three products is operating at a high level of capacity utilization, and in fact they really haven't throughout the period that we looked at.

So a couple of questions about that. First, when the industry idles capacity, are there costs associated with keeping that capacity in a ready condition so that it could be restarted, or is it virtually costless to keep capacity, as opposed to workers sitting around not doing anything?

MS. ALLEN: The only costs really for Prayon is the cost of the employees, and if we choose not to lay them off, but other than that, it doesn't cost anything for the facility to remain idle other than

paying our employees.

CHAIRMAN ARANOFF: And so you can basically clean it out and it could sit there for a really long time waiting for some opportunity --

MS. ALLEN: At the same time, you still have insurance that you have to pay, and you still have a lot of costs that are fixed to maintain that plant. I mean, I could probably say that 60 percent of the costs that we pay every single day, they are going to be there whether we make one pound of product or we make a hundred-million pounds of product.

Most of the costs that we have are fixed, and we still are going to have to pay those, and we are not going to get rid of all of our employees. We may get rid of 24 production workers, but you are still going to have salaried employees. You are not going to lay them off.

You are still going to have sales people, and I would probably say that 85 percent of our costs are truly fixed if we wanted to get rid of all of our production workers, and all of our maintenance workers, and start from scratch if things ever came back.

CHAIRMAN ARANOFF: Okay. I am going to come back to that, but I think Ms. Schewe wanted to say

something.

MS. SCHEWE: Yes. I would just add that in general when we do lay our employees off or operators, we typically do have some extra expenses, where we are retraining the other employees that take over their jobs, because they typically come from different departments.

And we run like a seniority process in a union, and so as we lay off the less senior folks, there is typically a lot of retraining that is involved, and so it is extra expenses for our operations.

But as we mentioned in Augusta, and very similar in Carteret and our other facilities, we would have most of the expenses continuing, even though we did idle a dryer or a plant.

CHAIRMAN ARANOFF: Okay. My time is almost up, and so I am just going to pose a question and come back in my next round, because I don't have time to hear the answers now. But I am a little bit confused by this last discussion because at some point in the brief there is a reference to this industry's costs being mostly variable for production.

That is, that a high percent of the costs of production is raw material costs, which are variable

costs, and in here, we are hearing now that up to 85 percent of the costs are fixed. So I am going to come back to that and ask you to clarify in my next round. But let me turn now to Vice Chairman Pearson.

VICE CHAIRMAN PEARSON: Thank you, Madam Chairman, and greetings to all panelists. I was surprised to hear anyone refer to this SHMP hearing as being a pleasant experience or whatever, but you are very charitable and I appreciate that. Is China a net importer or a net exporter of phosphates?

MS. SCHEWE: They are a net exporter of phosphates.

VICE CHAIRMAN PEARSON: Okay. My understanding was that they were still a major importer of agricultural phosphates, and that their own supplies and production were not adequate to fill that demand. Am I correct or wrong, because I am several years behind the curve here.

MR. CANNON: At least at the fertilizer end and the phosphate rock and so forth, they are a net exporter, and I don't believe that there is really anymore imports anymore. In terms of what they need to import fertilizer, now it is only the potassium, but on phosphates, they are more than self-sufficient, and they are now exporting in fertilizer, and that

changed about -- it has been that way maybe 2 or 3 years.

VICE CHAIRMAN PEARSON: Okay. Thanks for that, and perhaps for post-hearing, you could put together a little chart that would show that.

MR. CANNON: All right.

VICE CHAIRMAN PEARSON: I have been at this job too long, and I am getting out of touch with -- I don't if it is the real world, but the other things in the world. Do any U.S. potassium phosphate salt producers thermal phosphate?

MS. SCHEWE: No. We at ICL actually -- we produce a thermal phosphoric acid, but it is used for a very specific purpose. It is used in pharmaceutical applications, and for the electronics industry, where purity is extremely important. But for all of our potassium phosphates, we use a purified phosphoric acid.

VICE CHAIRMAN PEARSON: Okay. How about producers in non-subject countries? Are there some places in the world, in addition to China, where it is just quite common to use thermal phosphates?

MR. SEXTON: It is largely a product of history. The older technology uses this thermal acid process. In the 1980s, Prayon actually came up with

this purification process, where it is done basically through a liquid extraction to improve the quality of the acid.

So, there are other producers in the world, and actually there are some in Europe that do use the thermal process still, and these companies that have these large infrastructures as a product of history to making thermal acid, they generally hang around for quite a while because of the expense of building a plant.

But from a strictly economic basis, it is generally that there are several factors. Number one, the purification process for purified acid is much cheaper than the thermal process. The environmental issues with the thermal process are also much more serious than with the purification process.

So in some countries where environmental regulations might not be quite as important, there is not as much pressure to convert to the purification process. Our understanding is that almost all producers in China still use the thermal process.

Whereas, in the U.S., when you find thermal acid, it is generally small plants for very specific high quality applications as Angie mentioned.

VICE CHAIRMAN PEARSON: Okay. In the United

States, given our requirements for environmental production and other things, give me a sense of how much more does it cost to produce a thermal phosphate than the purified liquified end, and if that is confidential, you could save that for the post-hearing. But if you can comment on it now, I would be happy.

MS. SCHEWE: Typically, I would say that it is about 25 percent more, but it is obviously going to depend on the cost of phosphorus, which is the base raw material for thermal acid.

And I would just like to comment that both Prayon and ICL are global manufacturers of potassium phosphates, and so our manufacturing facilities here in the U.S. use purified phosphoric acid to produce potassium phosphates, but globally we also utilize purified phosphoric acid in the production of potassium phosphates in both Brazil and in Germany.

And typically potassium phosphates, MKPs, there are some producers, including our sister company, that actually start with a lower grade of phosphoric acid to make MKP for use in fertilizer. It is considered more of a merchant grade phosphoric acid, and so it is a lower quality that you are starting with.

VICE CHAIRMAN PEARSON: Okay. So it would be correct to understand that there really is no country in the world other than China that in any major way is using thermal phosphates --

MR. SEXTON: There actually are some thermafrosts, for example, in The Netherlands, which are very much based on thermal acid. They have a very large production facility there that still operates that way.

The biggest problem is the energy costs. It is very energy intensive, but that is what their plant was built and based on, and so they tend to stick with it. There are a few around.

VICE CHAIRMAN PEARSON: Okay. Based on what you know of costs of production in China, if a new plant is going to be built, would they make it a thermal plant, or would they use a refined plant?

MR. SEXTON: Prayon still owns the technology for the purification process largely. We have some patents involved with that, and we do understand that there is a purification plant in China, but to build a new plant when there are so many and it is so overbuilt, it wouldn't make a lot of sense.

VICE CHAIRMAN PEARSON: Okay. Well, if the

Chinese contact you about procuring your intellectual property, just deal thoughtfully with them would be my suggestion.

MR. SEXTON: I would be happy to do discuss it with them.

VICE CHAIRMAN PEARSON: We don't need another 337 case here I can assure you. How important is reliability of supply to your customers, and I am thinking of the period in 2008, which was a short period obviously, but there were allocations.

And my guess is that this was an unusual thing in the marketplace, and so customers were probably caught a bit offguard. How important to them is reliability of supply? Do they have some ability to adjust and do something else to get by with less for a period of time?

MS. SCHEWE: Generally speaking, I think that the industry has had times when we have had various products on lead times, and effectively that is kind of what has really happened with regard to the potassiums during the September time period of 2008.

Generally speaking, you know, our customers -- and especially our distributors, they usually have some ability to keep material in inventory, and so they typically have inventory to work from.

But in most cases there are more than one source of phosphates that a customer has qualified, and so they have opportunities to order from various suppliers. So therefore in the case of potassium shortage, we shut down no customers that we had historically.

And typically when we are off lead times, our customers just begin to reorder what they typically had in the past. So it is usually not a huge issue to them.

VICE CHAIRMAN PEARSON: Okay. Well, I am asking in part to try to understand the impression from Mr. Cannon that there was surprise in the industry when customers, once they had started dealing with some other suppliers, didn't come back immediately to U.S. suppliers when the allocations were lifted.

And so I am just trying to understand the psychology of the marketplace, because it is not necessarily irrational for a purchaser to have more than one source of supply. So once you establish a new relationship, maybe you keep it going, you know?

MR. SEXTON: One of the things I would point out specifically for TKPP. Although ICL did have supply issues, we did not. We did not even utilize

our full capacity. We picked up every customer that we could, and if I had a list of our customers, I would have picked up more.

But in general the domestic industry was more than capable of supplying the market, and another point to that is that at KOH, the product where there was an issue, it is a global market.

If there is a shortage on KOH in the United States, it is very easy to pick up KOH in other parts of the world. So, in general, if there is a significant problem with KOH supply, it is a global problem.

There are different aspects to it, but in the end if there is a problem with KOH in one place, it ends up being a problem everywhere eventually. So to say that you will buy part of your product from China and part from the United States because you are concerned with the supply of KOH, it really doesn't add up.

VICE CHAIRMAN PEARSON: And of course the user might not be concerned so specifically about KOH, but just having the availability of the potassium phosphate salt, and so it is kind of a whole package thing; and can my supplier actually produce it and deliver it when I need it, you know.

MR. SEXTON: Well, true, there is three domestics, major domestic suppliers of the product, and so many of our customers do buy and split between suppliers.

VICE CHAIRMAN PEARSON: All right. My time has expired, and so, Madam Chairman, thank you very much, and back to you.

CHAIRMAN ARANOFF: Commissioner Lane.

VICE CHAIRMAN PEARSON: Good morning, and welcome to the panel. I have an issue to discuss that Mr. Cannon, you may have thought was already settled. I want to discuss domestic like product.

I went back and read our preliminary views and I am somewhat puzzled that the Petitioners aren't making an argument that this was one like product, especially in view of Mr. Sexton saying that they use the same equipment for food grade and technical grade, and there really is no difference.

You start off at food grade, and you are using the same production facilitates. So let's assume that you had filed as one like product for these three chemicals. What would be your best argument for making that argument?

MR. CANNON: Remarkably, and perhaps you perceive this, we actually when we originally wrote

the petition, drafted it as one like product. And we felt somewhat constrained by Commission precedent in our own prior case, on SHMP, that we had carved that out.

But in fact the strongest point in favor of considering this as -- well, there are several points. The raw material are the same. You use phosphoric acid and you use KOH.

COMMISSIONER LANE: Right.

MR. CANNON: So they are identical. The production process in the factory are literally the same, and they run through the same equipment. So that is the same. The channels of distribution are the same.

So the problems with one like product are in the end-user and physical characteristics. The physical characteristics are different. They have different pH, and they have different solubility, and they have different functions that they perform.

And so it is a close call you might say, and having been in some other cases with what are HEDP chemicals, it must be that the Chinese want to perform water treatment, because you seem to have a lot of cases.

You had sodium nitrate, and that is a water

treatment chemical. You had the phosphonates, HEDP, and that is a water treatment chemical, and you had SHMP, and that is a water treatment chemical, and now you have TKPP.

If we argue that the like product is determined based on that end use, we would have all these chemicals, and it would all be one big like product, and we should have all filed our cases at the same time, and brought it all to you at once.

And that is sort of the intellectual difficulty that we have. But you are right. There are in fact other statutory factors. The case could be made that it should be a single like product, and we think on that basis we are still injured.

COMMISSIONER LANE: In looking at our decision, we find that they all use the phosphoric or phosphate salt, and they have similar chemical structures, and they are derived primarily from the same chemical.

They have similarities and differences, and they are used in a wide variety of applications, but a lot of the same applications. I guess I would like for you in your post-hearing brief compare this case to Lawn Groomers, which we found one like product.

And, you know, a shredder, a fertilizer, a

feeder, a dethatcher, whatever, all pulling behind -- non-motorized, pulling behind a tractor used on a lawn with the same like product.

MR. CANNON: All right. Thank you. We will do that.

COMMISSIONER LANE: Okay. Thanks. And you may have answered this, but at some point are there price differences between -- I mean, at some point are the price differences between the food grade and the technical grade, do they start diverging and one is more expensive than the other? Tell me a little bit about that process, and the cost thing.

MS. SCHEWE: Typically, the price of the food grade, because we talked about some of the handling requirements, and the different types of certifications that a manufacturer must go through, it does typically have a premium versus a technical application or a technical grade phosphate.

But what we have seen over the course of the time period here that we are talking about, from 2007 to 2009, is that even between the markets, we are seeing the price for food grade getting closer to the technical grade.

And we think really that is because the Chinese material, as they bring it in, they are not

differentiating on pricing, whether they are selling into the food market or into a technical application. So we are seeing those two prices come together, which is somewhat unusual for the products that we are talking about here.

COMMISSIONER LANE: Okay. Thank you. If the Chinese producers of potassium phosphates are so competitive in the global market, when they rely on expensive raw materials, too, how can they do that?

MS. SCHEWE: Well, I believe that if we were competing on a level playing field with everyone, we definitely have a very competitive cost position here in the U.S. But given the subsidies that the Chinese are afforded, we think that has allowed them an opportunity to sell at a lower cost than obviously the actual cost of the material would be to produce.

COMMISSIONER LANE: Okay. Thank you.

MR. CANNON: And I would just supplement that, and that one impact on China of this export pass on phosphate rock, and on yellow phosphorous, is that the Chinese industry uses -- they run this thermal process to make acid.

They use phosphate rock from their minds. When China put on an export tax, and you saw the chart, and the world market price just took off in May

of 2008. May of 2008 is when China imposed that export tax.

Companies inside China didn't pay the tax, and so if you were making phosphate salts in China, you didn't pay that 120 percent tax. Everyone else was paying the tax. So their raw material costs were much lower for phosphate rock and yellow phosphorus, which are upstream products, but they are much lower than the whole Western world on this product.

COMMISSIONER LANE: Okay. Thank you. How does the differences in the production, handling, packaging, and labeling, and storage, and shipment of food grade and technical grade of these three products affect the range of applications for which each chemical is intended?

MR. SEXTON: If I understand you correctly, you are wanting to know what the differences in costs are between technical and food grade; is that the question?

COMMISSIONER LANE: Or the differences in handling, the processes that are different, or how are the processes different?

MR. SEXTON: Well, just to give you an example. If we have a truckload of DKP that is to be used in a liquid coffee creamer, when the product is

produced, it has to be tested far more stringently than a technical grade product.

It has to go through a lot more tests to meet the much higher level of purity, and one of the biggest differences is the differences in handling, and when we ship this product, it has to come in a food grade tank truck.

Those tankers have much higher standards of cleanliness and testing to ensure that they are meeting food grade qualities. There are certain things that can't be shipped in the truck at all, and so those trucks are restricted in what they can carry.

Whereas, in this DKP, it is a standard technical test, fewer tests, lower standards, and it can go basically in any technical grade approved carrier. So there are significant differences in the costs of delivering a product as food grade than as technical grade, even though the product may be identical.

COMMISSIONER LANE: Okay. Thank you. That helps a lot. Madam Chair.

CHAIRMAN ARANOFF: Commissioner Williamson.

COMMISSIONER WILLIAMSON: Thank you, Madam Chairman, and I, too, want to express my appreciation to the witnesses for coming today and giving your

testimony. And this is for post-hearing, and I was wondering can you account for the major differences in the end-users for certain potassium phosphate salts by domestic producers?

I am thinking about Table 3-9 in the staff report, and comparing that to the Table 4-17 for the Chinese producers, and just give some explanation of the differences in the end-uses of the products.

I was wondering. Which of the non-subject countries or companies in your experience are the most competitive in the U.S. market for the three products, MKP, DKP, and TKPP?

And have any of these companies gained substantial market -- companies or countries gained substantial market share from U.S. producers, or have the potential to take away market share?

MS. SCHEWE: You mentioned non-subject, right?

COMMISSIONER WILLIAMSON: Right. That's correct.

MS. SCHEWE: We have not seen a significant increase in imports from the non-subject countries on the subject products. We have perhaps seen exception since the preliminary duties, and we have seen more MKPs coming into the U.S. from non-subject countries.

And Israel would be an example of that, as the Chinese have backed away a little bit as far as the amount of material that they are bringing in. But as far as TKPP, and DKP, we really haven't seen a significant market share or increase in imports from those countries over the course of the timeline that we are looking at. It is really in MKP.

COMMISSIONER WILLIAMSON: And I don't now if this is getting into confidentiality, but can you sort of say what particular type of use in which there is more of that, and you may want to address that post-hearing.

MR. CANNON: Just blindly, without reflecting on whether it is confidential, but I imagine that this is talking about MKP and having to do with fertilizers.

COMMISSIONER WILLIAMSON: Okay. Thanks. In Table 2-5 of the staff report, there is a number of substitutes for the three products that are mentioned, and what I was wondering was whether or not any of those potential substitutes, functions, or activity, are they taking away market share from any of the products covered by the investigation? And if it is detailed, you might want to address that post-hearing.

MR. CANNON: Although the substitutes that

are identified, they are in the confidential version. I think that the witnesses are aware that there are other products that at some point start to compete with TKPP, and MKP, and DKP, and that is a design stage for a customer or a processing, because they have to reformulate their product and use something else.

And these other things cost more money, but there can be shifts. For example, in fertilizer, rather than use MKP, you might use something else to get your phosphorus.

MS. SCHEWE: Like you might use ammonium phosphate as an example.

MR. CANNON: But I suppose, tot he extent that I can explain to them what the substitutes are and get some technical feedback, I will answer that in the post-hearing.

COMMISSIONER WILLIAMSON: Okay.

MR. CANNON: I think overall, as you see with many products, unless there is just a complete shortage, or unless prices change tremendously, these products tend not to compete with other chemicals, although technically something else could substitute.

And, for example, at the preliminary stage, we had STPP, sodium tripoly, and the big issue was

dishwasher detergent as you may recall. And that product is no longer allowed in dishwasher detergent.

So now there will be other things in your Cascade, such as soda ash, which will wear the shine off your plates. Now, soda ash can substitute in that application for STPP, but it is not a good substitute. It is being forced.

And similarly there are some other chemicals that can substitute for these phosphates, but they are not good for one reason or another. They don't perform as well, or the price is high.

COMMISSIONER WILLIAMSON: Okay. So I guess the key question is that in looking at the future and the anticipated demand for these products, is there anything in the regulatory area or for some reason why some substances may have more substitution in the future?

MR. SEXTON: One example, if you look about -- and I want to discuss the uniqueness of phosphates. In 2008, the purchasers were faced with prices that were almost three times the normal level.

And at three times the price level, you would expect that if there were any substitutes, that would have been the opportunity. And there was some -- and what we would call -- demand destruction because

of this.

But even with three, and sometimes four, times the normal prices on phosphates, most buyers kept buying phosphates because there really was not an acceptable performance alternative. And even in the case where phosphates were forced out, like the STPP for laundry detergent and ADW, the producers will admit -- the ADW producers will admit that the products they have now are absolutely inferior.

And if they had the option even at much higher prices, they would continue to use the phosphates.

MS. ALLEN: And I think if you look at most of the phosphates, and what the end-uses are, it is a very small component of the overall costs of their product, because it is such a commodity product.

COMMISSIONER WILLIAMSON: Okay. Ms. Stachiw

MS. STACHIW: I would like to say that there is really a bright future for the potassium phosphates. I think you are all aware of the emphasis on reducing sodium in the diet, and these phosphate ingredients are quite function food ingredients, pharmaseuticals, et cetera, and bring a lot of potential for formulating food ingredients and reducing sodium.

They have replaced the sodium ingredients or the sodium phosphates, and provides the same functionality, and in some cases enhance functionality. So we are very optimistic, very hopeful, doing research, and believe that this is a lot of potential for us.

COMMISSIONER WILLIAMSON: Okay. I want to thank you all for those answers. This is very helpful there. In Tables 3-8 and 3-9 of the staff report, U.S. producers and U.S. shipments by grade and purity in 2009, as I understand it, these tables may include data of U.S. shipments of potassium salts produced outside the United States.

So in your post-hearing could you please provide comparable breakouts that only include U.S. produced potassium phosphate salts. Thank you.

COMMISSIONER WILLIAMSON: I was wondering if you could discuss the role of non-subject imports in the U.S. and the U.S. market that feature the other products? I know that you have touched on that already, but if there are any other additional points that could be made regarding this role of non-subjects?

MR. SEXTON: For potassium specifically?

COMMISSIONER WILLIAMSON: No, for all three.

For the subject products.

MR. SEXTON: There are many producers around the world that make potassium phosphates. There are other European producers, and there are other producers in Asia, and in all parts of the world.

But the interesting thing is that these other producers do not play much of a role in the United States. We have a very strong industry for producing potassium phosphates in the U.S. In fact, the only other country that really produces or imports significant amounts of DKP and TKPP is China.

And our belief is that we have a lot of advantages being a domestic producer, and the only way that many of these foreign producers are able to compete is if they have things like we are alleging for the Chinese producers.

If the Chinese producers were to disappear tomorrow, it is our belief that we would retain 100 percent of their business, and that we would not see other countries in it.

MS. ALLEN: And our parent company produces all three, DKP, MKP, and TKPP, and if anybody should have a good price advantage, they should, and they can't compete. They can't compete with ICL. We would bring it in at a much higher cost than we would even

be able to produce it at.

MR. SEXTON: Just as she said the only product that we are able to sell here is the products we produce here, and if there was an opportunity for more imports of MKP and DKP, we would do it.

MS. ALLEN: And we used to sell MKP that was produced by our parent company, and there is just no demand in fertilizers.

COMMISSIONER WILLIAMSON: All right. My time has expired, and I want to thank you for those answers.

CHAIRMAN ARANOFF: Commissioner Pinkert.

COMMISSIONER PINKERT: Thank you, Madam Chairman. Going back to one of the answers to one of my previous questions, you talked a little bit, Mr. Cannon, about inventory levels in 2009 for MKP.

I am wondering if you can explain the high levels of inventories of MKP and TKPP in 2008, given the supply shortage experience in 2008?

MR. CANNON: The 2008 experience -- and the witnesses can probably confirm this better than me, but in China, because they thermal acid, they need a lot of electricity. Every winter, in January and February, they have a had time because they use hydro.

And so the Chinese industry starts to cut

back on phorphoic acid. So the producers in China don't have as much raw material. It is not as freely available at the beginning of the year.

And so everybody knows this, and so importers bring in a lot of product anyway at the end of the year, because they know that it is going to be more difficult to get at the beginning of the year.

And so if we were to include our best 2006 data that we had at the preliminary, I think we would see the same thing. In effect, there is a little bit of seasonality because of this factor that it is harder to get raw materials, particularly phosphoric acid, in China in the winter because of the electricity.

COMMISSIONER PINKERT: Would anybody else on the panel like to comment on that? I saw some affirmative headshakes.

MR. SEXTON: Our understanding is that the Chinese production is seasonal due to the fact basically that electrically is a very short commodity in China. And then again these are just what we understand.

And the Chinese production is very dependent on hydroelectric power. In fact, we have seen certain years in the past where the Chinese were not

necessarily present at all, whether they had a drought, or for whatever reason, the phosphate producers weren't able to produce as much as they normally would.

So there is a seasonality, and they produce in the rainy season, and they don't in the dry season. The distributors and the brokers in the United States that sell Chinese material are very aware of this, and they change their buying habits accordingly.

MS. SCHEWE: We also as ICL are a significant importer of Chinese phosphorus into the U.S. and into our plant in West Virginia, Supersta. And we are very familiar that we have to basically place our orders starting -- actually, we just placed our orders for this year starting in May, and it usually rolls in through about November.

Because from December to April, it is very difficult to get a hold of the raw materials coming out of China.

COMMISSIONER PINKERT: Thank you. Now, what are your demand forecasts for DKP, MKP, and TKPP, for the remainder of 2010, and into 2011?

MS. SCHEWE: Actually, recently we have seen a resurgence in our demand in potassiums. Obviously it is not related to the data that we have provided,

but if you look at our data in 2010, our volumes are up significantly.

Actually, it is crossover business related to the subject products, but we have seen about a 15 percent increase in volume, mainly since the preliminary duties were imposed. So we are hopeful that those volumes will continue through the rest of 2010, and obviously into 2011.

And as Nancy mentioned, we do have some activities going on as it relates to the reduction of sodium. So we are actually hopeful that we will have some new products coming on-line that are potassium based subject products that we are talking about that will increase some demand for some select food customers as well, and that is rolling through our five year plan.

MS. ALLEN: We have also seen increases in both MKP and DKP, and they are both food grade products. Our MKP food grade has gone up probably five-fold since the beginning of the year, and DKP, maybe three-fold, but that is all food grade product.

MR. CANNON: At the large level with the economy, products such as paints, the expectation would be that paints and coatings would move with the housing market, and then with regards to water

treatment chemicals, you always need to treat water.

However, when the economy is tough, municipalities may cut back for a period of time still at a safe level on their water treatment chemicals, and they can get away with that for some period of time.

But later they are going to have to come back and put the chemicals back in the water so as to maintain the safety, and so it is expected that as the economy comes back, the demand for water treatment will also increase again.

MR. SEXTON: One of the other things that we are very closely watching is that we do not currently produce MKP nor DKP solid in Augusta, and the reason is because of the price suppression that we have seen over the years due to Chinese imports.

However, we are very closely watching that and we think that there is a high likelihood that we will begin producing these materials in a more fair and even level playing field market. So that we will be able to participate in this market as well.

COMMISSIONER PINKERT: What effects do you expect environmental restrictions on phosphate products to have on future demand? You have already talked a bit about the products that are not a part of

the current discussions, but in terms of the other products.

MR. SEXTON: In the U.S., it is difficult to say, but the main two areas that got all the attention was laundry detergent and ADW. And again there are some applications where there simply is no substitute.

One of the applications for TKPP, for example, is -- I mean, that is the water corrosion inhibition. If a phosphate is not necessary and you use TKPP, and if phosphates aren't added to the municipal drinking water, you have increased levels of corrosion.

And although it may not sound all that severe, there is an awful lot of lead in the piping and distribution system in water. So the end result is that you have significant increases in the level of lead in certain municipal supplies.

So although the argument can be made that phosphates can be a bit of a problem in some environmental situations, there are some situations where a lack of phosphate is a far worse issue.

COMMISSIONER PINKERT: Any other comments on future environmental restrictions?

MS. STACHIW: As Allen mentioned, most of the restrictions have been in the area of cleaning,

and with the bans now in auto dish, there really are very few -- I mean, virtually almost none, where phosphates are used in home cleaning.

So I really don't expect there to be any additional bans, and in some products, or in industrial and institutional type cleaning, and green cleaning products typically don't use phosphates.

But I don't really see that there will be any bans or any regulatory action taken, and certainly not in food. There is no indication whatsoever that there is any restrictions on food. In fact, we continue to get more clearance and more usage through FDA for our phosphates.

COMMISSIONER PINKERT: Thank you. Turning back to -- I'm sorry, did I interrupt you?

MR. CANNON: The only other sector was fertilizer, and already you can't get home fertilizer that has phosphates, right?

MS. STACHIW: Yes. When you go and buy a home fertilizer to do your lawn, typically you cannot find those that contain phosphorus. There are actually some counties that have banned the use of phosphorus in these products.

There are some counties in Wisconsin, for example, but they have exempted golf courses, parks,

and those types of things, but for home use, no, and that is a potential regulatory issue.

COMMISSIONER PINKERT: Thank you. Than you, Madam Chairman.

CHAIRMAN ARANOFF: Let me go back to where I was in the last round, and I had asked about variable costs versus fixed costs. Am I right that I read in a brief that this is a high variable cost industry?

MS. ALLEN: Yes, it is a high variable cost industry. If you look at Prayon in general, what we do is we say that we have got our full costs, which is our variable costs, plus the fixed costs of production.

Your variable costs would be your raw materials, plus any utilities that are going to vary on a pound by pound basis, and then over and above that, you have your fixed costs, which are your depreciation, your insurance, your salaries, the things that really are not going to vary very much if you produce again more than one pound.

But if you produce 10 million pounds, versus a hundred-million, you pretty much are going to always have depreciation, and you are still going to have your salaried employees. So we are probably 60-30. So, 60 percent variable, and 30 percent fixed.

So if we didn't produce anything, we would have no variable costs, but we would still have our fixed costs, if that makes it more clear.

CHAIRMAN ARANOFF: Yes. That helps. Let me ask then. A rudimentary economic way of looking at that would be to say that when your fixed costs are greater than your variable costs, and prices go down in the market, you follow them down because you need to fill up the plant in order to cover the fixed costs.

But if you have more variable costs, it might not make sense to do that. It might make sense to shut down all or part of production and not chase the prices down. And from what we have seen for these three products, we have seen some of both, and I am trying to understand what motivates a company to try which of those strategies.

MS. ALLEN: Well, we have sold over the years, and just saying that anything that we get over variable costs is good, and we certainly can't sell below our variable costs. So a lot of times, we are trying to fill our plant and we will take a very low margin just so we can get more business, because every penny that we can get over and above our variable costs is one more penny that we can pay an employee

with.

So it gets to be a tradeoff, where you are trying to figure out at what point am I going to gain enough volume so that I can cover all the fixed costs to run the plant, and make a dollar or two dollars, and we have had those years where we are happy to make one dollar.

MS. SCHEWE: I think if you look at the data from ICL, and without specifying any of the information, you can kind of tell that in the MKP area that we decided not to participate as the market went down.

It is a smaller volume market for us; whereas, kind of a bid product for our Carteret facility is TKPP, which is a much bigger product volume wise, and so you did see us follow the pricing down in order to -- you know, at least try and cover some plant costs.

And where it wasn't as important in a smaller product, like MKP, for us to do that same methodology because it wouldn't have covered the plant costs to begin with because the volumes weren't large enough to do that to begin with.

CHAIRMAN ARANOFF: Okay. Throughout the period that we have looked at, and for all three

products, we have not seen the domestic industry operating at anything close to a hundred percent capacity of utilization.

And yet there have been years for the various products in which the industry has been reasonable profitable. I am trying to figure out how to weigh the capacity utilization levels in that light.

Obviously I can look at the trends, but in terms of the absolute levels, what constitutes a good solid level of capacity utilizations for these products?

MS. SCHEWE: Well, typically, we are not selling our plants at full capacity. Typically, we try to keep between 85 and 90 to have a reasonable return on our investment. Obviously, if you look at the products that go through the Carteret facility, we are woefully short of that.

And I believe as we have mentioned in the information leading up to this, we do have an intention to take that plan down in 2012. So that capacity will go away and we will make a significant multi-million dollar investment in our Carondelet facility to produce the similar products that we are producing at the Carteret facility, meaning the

subject products that we are here to discuss today.

So that is one way that we are trying to address utilization of our plants specifically.

CHAIRMAN ARANOFF: So utilization levels were below the number that you have just given me as a good number, even at the beginning of the period before you see the real growth in Chinese imports in any of these product categories.

Is that a longer term issue of global over-capacity, or

-- I mean, what explains that if we look all the way back to 2007, or even to the 2006 data that we have from the preliminary?

MS. SCHEWE: Right. I think if you look, there are obviously a couple of factors at play. The Chinese have reduced our capacity utilization significantly, but you're right that in fact even without the subject imports, our utilization was below satisfactory levels, which means that there is over-capacity, at least in the North American market, for these subject products.

And so that is in-part why we are making this change, and obviously a very difficult decision to shut down a major plant.

CHAIRMAN ARANOFF: Does the issue back to

the elimination of phosphates from detergents? Is that where the capacity or where that capacity was serving that we see is not really occupied in the period that we are looking at?

MS. SCHEWE: The industry was built on the use of STPP in home laundry, and later in automatic dishwashers, and really over the course of the last 30 plus years in the U.S., there has been a significant reduction in the use of STPP in both those applications.

And you can see that there has been some idling of plants, and shutdowns, and ICL was involved in the largest shutdown of a STPP plant in 2003. Yet, there is still some capacity overhang, and I think to your point, related to the demise of STPP in detergents.

MS. ALLEN: Yes, and I will add that at Prayon in Augusta, Georgia, we were built as a single STPP, and we are right next to the Proctor and Gamble plant, and we sole sourced back and forth to Proctor and Gamble for years, and years, and years, and when that went away, we are sitting there with one customer, and we ended up with nothing.

We have a plant that has no customers, and so we have spent millions of dollars over the past 40

years to convert that from something that was one customer to something now where we have over 300 customers and 20 different products.

So it is not just an easy thing to just say, okay, we did make STPP, and now we are going to make TKPP. It takes a lot of work and a lot of different changes that you have to make in your facility.

CHAIRMAN ARANOFF: Okay. I appreciate those answers. Turning to a different issue. In your brief, you argue that our staff report did understate Chinese production and capacity for TKPP, but I don't see the same argument being made for MKP and DKP. Is that an agreement that our coverage is adequate with respect to those two products?

MR. CANNON: Or else I just got tired because there were so many pages. In fact, I think that overall that I would take my hat off to the staff. I think the staff report is excellent. I think that for the relative size of this case, and these markets, that these are complex products, and there is a lot of difficult issues, and I think they did a great job.

And I wasn't trying to be critical of the staff in any way, but I do think it is valid to point out that you can shift products between and use the

same equipment to make all three, and to that extent, indeed, I would have made the same argument on all three products. It is, however, most obvious on the largest product.

CHAIRMAN ARANOFF: Okay. Well, thank you for that clarification, and since my light is yellow, I am not going to switch subjects again. I am going to turn to Vice Chairman Pearson.

VICE CHAIRMAN PEARSON: Thank you, Madam Chairman, and as soon as I can get my pages turned, I will proceed with a question. I would like to explore a bit the issue of non-subject imports again.

In your experience which countries are the most competitive suppliers in the U.S. market, and this is other than the United States and China, for DKP, MKP, and TKPP? So how would you assess that? We have non-subject imports for each of those?

MR. SEXTON: For TKPP, there is really -- the other -- well, in our experience, the other importers are really not very competitive. The Chinese are really the only ones we see. There are times that we see other products, but we generally have no problem competing with them at all. The same for DKP.

MS. SCHEWE: I would agree. Our cost

analysis would have us basically on par with the rest of the producers in the world, and obviously since we are a domestic producer, we feel that we have an advantage.

And our prices, we really are not impaired by any of the other non-subject imports.

VICE CHAIRMAN PEARSON: Well, okay, I hear that, but then I look at the numbers in the confidential staff report, which of course you have not had the advantage of seeing, and without describing the numbers in detail, I will describe them generally to give you a sense of the conundrum that I find myself in.

And specifically with respect to TKPP, our data are showing that non-subject imports gained more market share over the period of investigation than was the case for subject imports. So I hear you saying that the problem is all with the Chinese, and yet somehow in the marketplace the non-subjects are coming in and serving some demand, and gaining more market share than the Chinese.

And we have this problem that we have to deal with of non-attribution. The statute does not allow us to attribute injury to the subject imports if it is actually caused by some other factor. So help

me with this one if you could.

MR. SEXTON: I would say that that is probably representative of the difficulties that ICL had in shortage of KOH. During that brief period of time the market price is much higher because of the shortages of some of the other folks.

Again, had we been able to find all of those customers, we would have been glad to serve them. But my suspicion is that some of the other producers found opportunity in that short window to bring things in.

But again I don't have the benefit of seeing the confidential section, but all I can tell you is that on a regular every day business for TKPP, we don't see a lot of other importers.

MS. SCHEWE: Just to comment on the TKPP specifically. During our shortage, we did import TKPP from our sister companies, which are located outside of the U.S. So they were likely included in those non-subject imports.

VICE CHAIRMAN PEARSON: Right. And they should have shown up in 2008 in our staff report, right?

MS. SCHEWE: That's correct.

VICE CHAIRMAN PEARSON: And so I see them I

think more obvious in 2009, and Mr. Cannon, you may have some observation that you want to offer now, or otherwise I am sure that you will provide that --

MR. CANNON: Sure. I would offer the observation that I think to talk only about the trend, you also have to have a perspective on the relative magnitude of the non-subject relative to the Chinese.

Unlike perhaps some of the other products here, we are not talking about a volume of non-subjects, or even a volume of Chinese relative to the entire market. That is a huge market share.

So the movement, albeit upward, in TKPP, if you look at the magnitude of that movement, you are talking about in the ones of millions of pounds, as opposed to the size of the total TKPP market.

And the Chinese volume is relatively significantly larger than and has been larger than the non-subjects, and secondly, I think you always in your cases, and particular in terms of attribution, look at the price levels.

You look repeatedly at where the non-subject pricing is relative to the Chinese, and in fact the Chinese are the low price leaders that you heard testimony on, and they are the price leaders.

So I think for purposes of your attribution,

at least with regard to TKPP, you see the non-subjects are at a higher price point than the Chinese, and yes, they did increase relatively in volume, but the size of that increase in terms of the whole market, and the market penetration that they achieved, is not even as large as the Chinese market essentially.

VICE CHAIRMAN PEARSON: It's correct that the Chinese have a larger market share than the non-subjects, but if you look over the POI, the largest growth in market share was the non-subjects rather than the subjects. So I am looking at what is changing that could be causing injury.

MR. CANNON: And I think really in this case, where we have seen the evidence of the declining domestic prices and price suppression literally, driving the industry into a loss position in 2009, that compels you to look at the Chinese imports as the cause of that decline in U.S. prices, and indeed the losses that followed, more so than the volume effects.

The volume effects with regard to TKPP, simply by the size of the market share, aren't going to be as dramatic as you might see in other products, without saying what the market share is, and clearly not as large as in some other cases.

VICE CHAIRMAN PEARSON: No, I hear you.

MR. CANNON: I think it is certainly large enough, but I think it is the price.

VICE CHAIRMAN PEARSON: This involves a comparison of average unit value, which has a shortcoming of where we don't know what the product mix is, but --

MR. CANNON: Well, on Table C-5, if you are looking there, you see the same in the product specific price.

VICE CHAIRMAN PEARSON: You mean C-3.

MR. CANNON: Okay. C-3. I'm sorry. But you can see the pricing data in the product six and product five, and you can see the same downward trend, and you see -- or in Appendix D, you can see the Chinese prices relative to everyone else.

VICE CHAIRMAN PEARSON: Right, but my real -- what is making me curious at the moment is that we see for the non-subject imports higher average unit values than we see either for the Chinese imports or for domestic U.S. production.

So again not knowing what the product mix is, somehow if our data are correct, we have non-subjects coming in to this market and increasing at a larger quantity over the POI, and at a higher price.

Explain to me what is going on there? Is

there some market segment that these non-subjects are serving, and that the domestic industry simply isn't competing in, and that's why there is not an awareness or a sense of competition with these non-subject imports?

MR. CANNON: I will try to address that in the post-hearing brief, in the sense that if there was a market niche or a new end-use, or something, and they didn't know about it. I can't tell.

VICE CHAIRMAN PEARSON: They are the expert panel after all, yes.

MR. CANNON: Similarly -- well, right, but clearly they have competitors, and you appreciate the non-subjects are their competitors. When you look at the overall size of the non-subjects as to what Allen and Angie testified to, the non-subjects are not nearly that big of a factor in the market.

Now, the data reported by importers, which turn then into shipments, and which get into this report, obviously most of the focus goes on to the subject imports and making sure that we collect all the data, and it matches up well.

So we will take a look at that, and whether that trend is actually accurate, and I will address your question hopefully in the post-hearing.

VICE CHAIRMAN PEARSON: Mr. Sexton.

MR. SEXTON: Just from an anecdotal standpoint, I can tell you that when we go to negotiate prices with customers, or for new volume, invariably we are told that your competitor has this price, or your competitor has that price, and you have to meet that.

Never once in the last two years have I been told about a competitive price somewhere other than China or a domestic. I have absolutely no evidence of the other guys. Obviously they are there, but it just is not something that is driving the price in the market.

One thing that Mr. Cannon said about the Chinese being the price leaders, we have a saying internally that every Chinese container is sold 40 times. That sounds a little bit ridiculous, but basically when the Chinese containers come in at the low price, that becomes the market price.

Everyone hears about it, and although there is only one container, and every place we go expects that price, and that becomes the new set point for price negotiations. The other non-subjects just really don't factor into that.

VICE CHAIRMAN PEARSON: Okay. Well, thank

you very much for this discussion.

CHAIRMAN ARANOFF: Commissioner Lane.

COMMISSIONER LANE: I have just a few questions. Talking about the new market to replace sodium, and the potential there for increased demand for this product. Are you investing a sufficient amount of money in R&D to pursue this market?

MS. STACHIW: I believe we are. We sell in many different markets. Primarily the subject products here are beverages and dairy, but we also have other products used in bakery and other applications.

And we are developing and devoting a significant amount of our resources. We really feel that this is not just a trend in the food industry. This is something for the long term, and so we are doing the type of research that is proprietary, and hopefully it will give us in some cases patented positions.

And we are working jointly with our sister company in Europe, and I think we are positioning ourselves well for the future.

MS. ALLEN: And Prayon, I would say, is doing the same thing. We have got a pretty large research staff in Belgium, and we have an R&D

specialist in Augusta, and that is our future, and if we don't invest -- and again we have already seen what has happened with STPP, and so the only option we have if we want to continue is to make new developments for phosphate salts.

MS. STACHIW: And I would like to add that certainly if these products can be more profitable that would incentivize us to even do more with them, because a lot of what we are talking about is in the future, and we are investing now for that. So we need to know that we are going to benefit from our R&D efforts.

COMMISSIONER LANE: Okay. Thank you. Have your products experienced any increased demand because of the stimulus from the U.S. Government, and especially talking about water treatment and things like that?

MR. SEXTON: It is very difficult for us to quantify that, although we do know that there has been some significant spending in infrastructure projects like water treatment, or that they are certainly planned.

Most of that tends to be capital spending. They don't tend to get a lot of money for the operational side of it. So, we certainly believe that

the overall spending of money in those markets will help us eventually, but it is very difficult for us to quantify.

MS. SCHEWE: I think one of the other markets that we talk about, and we have got a can of paint up there, is the paint and coatings market. And unfortunately there has been a lot of money spent in housing, and trying to incentivize folks to buy their first home.

Unfortunately, we have not begun to see a resurgence in demand in that particular market. If you look at the demand for the potassium phosphates, at least in the U.S. paints and coatings market, they have not returned to the level even prior to the recession, which I think we probably would say from a housing standpoint was probably in 2007.

And the other products up here, you will see that they are all basically consumer goods, and not necessarily addressing any of the stimulus monies that we have seen. Unfortunately, a lot of our product does not go into road projects and things like that. So we are not seeing the bump in the stimulus money for these products.

COMMISSIONER LANE: Okay. My final question is are any of these three products being used in the

Gulf to disperse the oil spill?

MR. SEXTON: That also is difficult for us to know. I don't think so, although I will tell you, my understanding is that that is primarily dispersants that would be similar to surfactants, that type of chemistry. We have seen some inquiries about phosphates, but that is probably more related to processing some of the recovered water from the oil once they remove it. But as to injecting directly into the Gulf, we don't think so.

COMMISSIONER LANE: Okay, thank you. And that's all of the questions I have and I thank you for coming here today.

CHAIRMAN ARANOFF: Commissioner Williamson.

COMMISSIONER WILLIAMSON: Thank you, Madam Chairman, a few more questions. It's funny, the differences between the, in the price that's any different of phosphates, and to what extent is that, is it related to the form and grade of the product, you know, for example anhydrous versus solution, are these differences in price totally determined by the differences in the cost of production or are there other factors that also play a significant role in the price difference of the products?

MS. SCHEWE: I think supply and demand

always plays a little bit of a part in pricing, and if you look at the three subject products, TKPP is most easily produced on what we would have called the dryers we would use for STPP, which are quite frankly readily available throughout the world. So typically compared to the other two products, MKP and DKP, we would see a little bit lower pricing.

And I think even if you look at our list prices you would see a lower price. So there is some difference between the subject products, you know, on the products themselves, and then obviously we also talked about there's a difference, a little bit of a premium for a food product versus a tech product. And that's, you know, as an example food TKPP would have a higher price point than a technical grade TKPP.

COMMISSIONER WILLIAMSON: Okay. That leads to my next question. While the data is confidential, our pricing data is showing the technical DKP is consistently higher than food grade DKP, and that with respect to the MKP and TKPP, technical grade is priced higher than food grade for much of the investigated period. So in other words the data doesn't -- what you just said is what, you know, one would think, but our data is not necessarily showing that.

MR. SEXTON: One of the issues with the tech

grade DKP is that it in many cases goes into antifreeze, and the qualification period for products used in automotive applications is very difficult and very long, and producers of antifreeze are very reluctant to bring in new products in that specific application. So the barriers to entry are a little bit higher so the pricing in that market tends to be a little bit higher even than food at times.

COMMISSIONER WILLIAMSON: Okay, thank you. So since specific products, it's not food versus technical but --

MR. SEXTON: Right, and the tech market for DKP is very small compared to the food side. The food side is much larger, and when you run into these applications in the automotive industry the barriers to entry tend to be a little bit more difficult so the pricing tends to be better.

MS. ALLEN: And we also tend to see big differences from month to month tech grade versus food grade just in the fact of who your customer is. So if, you know, if we have a very large customer they're certainly going to get better pricing if they're going to buy 500,000 pounds from us in a month, they're going to get much better than somebody who buys a truckload every other month. So a lot of it has to do

with, you know, who your customers are and when they're buying.

COMMISSIONER WILLIAMSON: Okay, and whether or not they might buy a contract say in January that lasts for a whole year.

MS. ALLEN: Right, and for a big customer that's got real good pricing this month and maybe ICL goes and steals them from us so they're no longer in our data anymore.

MR. SEXTON: Another thing to remember, for DKP specifically food grade, 5, 6 million pounds is not unheard of from a single customer. The DKP tech grade customers tend to be much smaller.

COMMISSIONER WILLIAMSON: Okay.

MR. SEXTON: So they don't buy as much, they don't get as good a price.

MS. SCHEWE: Yeah, so to Allen's point there are quite a number of large end users that consume DKP food grade, so obviously based on economies of scale they typically have a lower price, whereas the technical market as they indicated is a lot smaller, and so typically it's sold through distribution. And we talked about that our distributors do less than truck load quantities for us. So typically the buyer of the technical grade DKP is, you know, buying a very

small amount so they're not as price sensitive so typically we can earn a little bit higher price.

The other point that I'll make relative to our specific customer portfolio on the technical DKP is that most of our customers are pharmaceutical customers, and so they have exacting requirements, maybe even a little bit more than just the standard food application, so some of it is related to specific specifications that they may have that have driven the price up to a little bit higher price point than a typical food customer would have.

COMMISSIONER WILLIAMSON: Okay. Most of the examples you mentioned DKP, what about MKP and TKPP, are they similar situations there?

MR. SEXTON: With respect to TKPP the market for food is far smaller than the technical market. The TKPP tends to be at least for us better than 95 percent of the sales to technical.

MS. SCHEWE: We're similar as well, we have very few food grade TKPP or food grade TKPP 60 percent sales. As you look at the MKP market that we participate in, I think you'll see that the food accounts, average food pricing is significantly higher than what you might have seen from a technical customer. So it's not the same as the DKP market

where the pricing was actually a little bit higher for a tech customer.

COMMISSIONER WILLIAMSON: Okay, thank you.

MR. CANNON: Excuse me, there's also sort of a technical problem in that initially we reported some TKPP solution mixed in with the anhydrous for products 5 and product 6, and so I'm not sure that off the top of my head but you may not quite see the same price difference in the final staff report now that we've corrected that and submitted the data.

COMMISSIONER WILLIAMSON: Okay. Okay, thank you for that clarification and the other clarifications. Just wondering, Mr. Cannon, how should the Commission take into account the substantial degree to which U.S. producers are related to producers of these products in nonsubject countries? Is there anything we should take into account or bear in mind in that regard?

MR. CANNON: Well, I suppose I could argue that you shouldn't worry about the nonsubject producers that are related to U.S. producers because they won't compete with themselves. However, we'll compete with each other, and so I recognize that the nonsubject sources of competition are present in the market and therefore Prayon foreign parent competes

with imports against ICL and potentially vice versa, although not really with regard to TKPP or DKP.

But when you look at the traditional way in which the Commission looks at that from the standpoint of a U.S. business, if you look at these businesses, the extent to which they import and rely upon that as revenues of their company and the importance of imports relative to their domestic production, quite clearly for these businesses it's all about the domestic production, not about the import volume.

The import volumes from their foreign affiliates are very small, and in fact there might not even be any for ICL, for example of TKPP, except that they had a shortage of raw material and had to import some. And in the case of Prayon, some of their imports from Europe in fact of I think MKP were actually used, passively consumed, because there was a shortage of potassium. And so those foreign connections do not weigh more than their U.S. business in terms of importance and in terms of the way that Commission traditionally looks at this. They make their products here, they make their money here, and they are dependent on the U.S. operation for success.

MS. ALLEN: We typically do not bring anything in unless we need it for a customer. We're

not really out seeking to make a new product in Augusta. We make our core products, and if we need it for a specific customer or a distributor needs it, that's the only time we would even bring it in. And as far as TKPP goes, we produce a lot of it in Augusta, however there was one customer only that we could not meet their specifications so needed to bring it in from our parent company, but otherwise we wouldn't have brought it in. We could produce MKP and DKP in Augusta but there would be some investment to do it.

COMMISSIONER WILLIAMSON: Okay. Okay, thank you for those answers. My time is about to expire. Thank you.

CHAIRMAN ARANOFF: Commissioner Pinkert?

COMMISSIONER PINKERT: Thank you, Madam Chairman, I just have a few follow up questions. Mr. Sexton, did you say that your company used to produce MKP domestically?

MR. SEXTON: No. We had the ability, we believe, both MKP and DKP solid. Currently I believe we produce that in Europe, it's either in LaRoche, France or in Belgium. But we believe that we have the capability of making, TKPP in the same equipment that we have we could make MK and DKP, and if the market

improves price wise that's exactly what we'll want to look at. Currently we bring in very little. We don't participate in that market very much, and what we do bring in is usually for a specific customer where we really have to have the product, and we're not very cost competitive.

COMMISSIONER PINKERT: Thank you. Now, I had asked an earlier question about the first part of 2009 for MKP but I want to go back to this for purposes of the posthearing. And what I'd like you to do is look at table 4-14 concerning MKP, and look at the trend in the ratio of imports to U.S. production. Focusing specifically on the first six months of 2009, please explain domestic industry performance in light of the data in that data in that table.

MR. CANNON: We will do it, thank you.

COMMISSIONER PINKERT: Thank you. And with that I have no further questions.

CHAIRMAN ARANOFF: Is there a process in this industry for canceling an order once it's made either for a distributor or for an end user that you're selling to?

MS. SCHEWE: I believe you're asking if, when a customer decides that maybe they have too much inventory or they don't have demand is there a process

they can go through to cancel? And yes there is. Typically depending on how much notification they give to us, you know, meaning if they do it say ten days out there's usually no cost to them, but if we have already picked the material and we have it in the truck, we may charge them a cancellation fee. So, you know, we do have cancellation orders that happen quite frankly daily in our business.

CHAIRMAN ARANOFF: I'm wondering, I don't know whether you have any personal knowledge of this, but whether the process would be the same for someone who's, for an importer who's buying from a Chinese producer?

MR. SEXTON: Our understanding for most of the Chinese products is that those are paid for in advance, in fact they have to be paid for in many cases months in advance, at least this is what we're told. When we approach a customer about trying to regain some business that we've lost to Chinese competition, many times the response is, well I'll need some in about four months, come back and talk to me later. Because they pay for these in advance and they have to pay for it before it leaves China.

CHAIRMAN ARANOFF: So the inventory buildup that we start to see in 2009, which follows the period

where there's this domestic supply shortage, by the time importers realized that wasn't going to last very long they probably couldn't cancel?

MR. SEXTON: It's already paid for.

CHAIRMAN ARANOFF: Right, okay. You had mentioned though a lag time of maybe three or four months, buying three or four months in advance of receiving delivery?

MR. SEXTON: What we hear it's roughly three months. It depends on the product and the producer, but that's a general rule of thumb, sometimes more.

CHAIRMAN ARANOFF: So if we were going to see Chinese imports start to retreat a little from the market after it became clear that the domestic supply shortage had been resolved, we'd want to look about three months out after, you know, after December of 2008?

MR. SEXTON: It depends on how heavily they ordered. In many cases a lot of distributors saw the long term upward trend in pricing, they thought it would continue forever, so if I can buy it this month and sell it for more next month that's a great thing, and a lot of distributors quite frankly fell into that trap, and it took them a while to dig their way out of it.

CHAIRMAN ARANOFF: Okay. I think we've seen that with a number of commodity type products over the past year or two. One of my colleagues asked about price negotiations and how that works. Now there is no public pricing data that you are looking at, right, you are just giving your best price and then hearing back from a potential customer that they've got a better offer?

MR. SEXTON: Historically -- I'll differentiate between two different types of customers. In the past the general practice was to produce a distributor price list, goes to all distributors, they get 5 percent less than list price and offer accordingly. And the direct customers are almost exclusively direct negotiations, we bid, we negotiate back and forth. That doesn't even happen anymore as far as the list pricing. We have to change it so often there's really no point in having list price anymore. So all with our distributors we generally will try to set pricing for 90 days firmness, even though it generally doesn't stick for 90 days. For a distributor, example, they will sell to their customer, their customer comes to them and says, hey I've got a quote on from Chinese material that's 20 percent below your price, if you want to

keep this business you'll meet it. So the distributor calls us, we either meet it or we walk away from it.

MS. SCHEWE: We actually do have a list price, a published list price. It's the same for our direct customers as our distributors. And actually in 2008 as we saw the runup in raw materials, the market was extremely tight, and we did change our prices increasing them quite a bit over the course of 2008. And actually we had many customers both direct and distribution that were purchasing our materials at the list price that we had published, but as the market changed and the Chinese started to bring in more material they were lowering the price. And so typically at that point, as we would go in at least to direct customer and then later to distribution, we would have to meet the competitive or become more competitive than we were, so we were negotiating off of the list.

CHAIRMAN ARANOFF: Essentially you have to take the customer's word about the better offer that they've gotten, you don't actually see the offer that they've gotten?

MS. SCHEWE: We do have a practice where we ask to see, but you're right, in many cases we don't firmly get to see the actual competitive from, you

know, from the Chinese broker or from the other competitor. But we do typically ask, and we also try and verify that with other information we've heard in the market. So you're right, we are kind of going on their word as far as what their real prices that they have.

MR. SEXTON: For us it's a matter of negotiation, it's just part of the process. Generally when we hear these things they come in groups, we'll hear it from five or six customers at once, and if they all quote the same general number then that leads us to believe that it's probably right.

MS. SCHEWE: We have seen emails though that some of our sales people that it has been forwarded to them by the customer that shows what the Chinese prices are, and I was astonished because they were below our variable cost of production.

CHAIRMAN ARANOFF: Okay. Commissioner Williamson was asking about, you know, the relationship between the pricing for technical grade and food grade for the various products, and, you know, you explained why sometimes one is higher than the other and then it's the other way around for the other product. But my question is, for each of the three products, to what extent do the prices for

technical grade and food grade influence each other? Do they move in tandem based on the raw material costs or are there different factors at work so that the spread between them might vary at different times?

MR. SEXTON: For us there's generally two factors. One is the cost of production. The cost of production for technical and food grade tend to go in tandem. The biggest factor there is generally raw materials, it's not so much cost of production, that's fairly static. And a changing cost of production for the tech grade would affect food grade to the same degree. However, the biggest factor quite honestly is the market. If there is a certain buyer that is reluctant to buy Chinese food grade products for whatever reason, we can get a better differential on food grade material in that situation. However, in tech grades it's much less common for a differential to be, you know, drawn by a customer, so the differentials can be either larger or smaller for those reasons.

CHAIRMAN ARANOFF: The customer's not going to come to you and say, I've been offered tech grade, you know, MKP let's say, at this price so your food grade product can't be more than X percent more than that?

MR. SEXTON: Generally no. I mean it really is apples and oranges, and that would be my answer to the customer.

CHAIRMAN ARANOFF: Okay.

MR. SEXTON: I would say, if you want to buy tech grade we'll talk about tech grade.

CHAIRMAN ARANOFF: Okay. So one last question. In the brief you make an argument about plans that the government is going to have to restructure its domestic phosphate salt industry in order to strengthen large integrated producers. Do you have any evidence that major changes in the structure of the Chinese industry are likely within what we would define as the immanent future?

MR. CANNON: It's part of the eleventh five-year plan, and each province has started working on it and rolling it out in fits and starts. And so that depends on if I suppose five years is immanent.

CHAIRMAN ARANOFF: Okay. I mean I guess in some other industries you see that the central government in China adopts these plans that the smaller less efficient producers are going to get closed and the local governments decide they're just not going to pay any attention to that and the fragmentation doesn't ever really change.

MR. CANNON: It has actually though. I can get you some evidence from some of the measures of the Chinese provinces that show that in fact they made minimum plant size and then they pushed people out of business and so that the remaining plants are larger scale. That has happened certainly within the last two or three years.

CHAIRMAN ARANOFF: Well and is there a connection between the scale of the plants and the quality of the product or the competitiveness of the pricing?

MR. CANNON: It has to do with, the scale of the plant and the business has to do with the efficiency and the utilization of electricity. The Chinese are trying to fully integrate so that they become more efficient and therefore use less electricity, because that's the commodity that you heard in the testimony that's difficult to get because when you're in the winter.

And then the second part of it is they want to promote the people who are integrated downstream, who don't just dig up the rock or sell yellow phosphorous, but who make phosphoric acid and who make phosphates, who make glyphosate, who make other chemicals that are all in this family. They want full

integration, they want to encourage foreign investment and they want to bring the downstream operations into China to the extent that they're not there now. In this industry you see they are there now, there's a lot of capacity, but overall that's what their plans contemplate.

CHAIRMAN ARANOFF: Okay, I appreciate those answers. Vice Chairman Pearson?

VICE CHAIRMAN PEARSON: Thank you, Madam Chairman. Operating income for DKP and TKPP was not positive in 2009. To what degree was the recession a cause of this decline in earnings?

MS. SCHEWE: Decline in earnings I guess relative to 2008 from a volume standpoint, we would attribute just based on anecdotal information that we have from our customers and distributors that the industrial volumes were down about 15 percent from versus 2008, and overall food was maybe down around 5. I mean obviously, you know, a lot of our products go in convenience foods, and so I think we probably all consumed about the same amount that we did, you know, in 2008 -- or maybe that's not a good thing, I don't know, but it was obviously for the food industry.

But as an example, a lot of industrial goes into cleaning for hotels and hospitals. And for

hotels anyway, the service industry was down quite a bit. So we tend to believe those figures from our distributors and end customers that that's kind of the type of volume impacts we would have seen if we looked at 2008 versus 2009.

MR. SEXTON: From our perspective on TKP specifically, we believe it is to some degree insulated from economic effects and that for municipal water for example, even though the economy may be down people tend to drink the same amount of water, so it is not directly tied to the economy per se. In addition, we would argue that if it was strictly or even primarily related to the economy the Chinese would not have been able to increase their penetration of the market and increase their imports. So although there is certainly some effect it certainly didn't stop the Chinese from increasing their imports.

VICE CHAIRMAN PEARSON: Why didn't earnings for MKP follow the same pattern with the decline in 2009 relative to 2008?

MS. SCHEWE: Well I think that in the other products, at least from an ICL perspective, I believe that you'll see that we became a little bit more competitive on those products earlier. And as I mentioned in my testimony we really kept MKP, because

it's a small product for us, at close to list price throughout most of 2009, so you didn't see a significant dropoff in our operating income until the fourth quarter. And I think if you look at the business as we move into 2010 it will more closely mirror now the DKP and TKPP business because we made a change at a very large customer that makes up a significant amount of our volume.

VICE CHAIRMAN PEARSON: Okay, I assumed there was an answer for that, good. Because it's not entirely apparent looking at the summaries for the three products, because we do see a decline in apparent consumption in 2009 for all three of the products and then we have differential effects across them. Dealing with three cases at once is just a lot of it is kind of beyond my design parameters to absorb it all.

Going right to the issue of causation, if we look at DKP we see that imports were up in 2008 and operating income was down a bit, and so that's a type of relationship that one would expect. Then in 2009 we saw imports go down and yet earnings went down a lot. Is there a way to understand that other than, you know, the recession may be playing a role in that?

MR. CANNON: Certainly I think there is, and

I think you've recognized in other cases exactly the reason, and that is price. That in this case the imports did reduce price but the domestic industry fought back, and so they cut their price too. And so consequently the import volume, the market penetration of the imports on this shipment data came down a little bit between '08 and '09. Now if you look at the overall magnitude, clearly in '07 the Chinese imports in DKP are very small.

So it's this enormous increase in market share in '08 and it's still very large in '09 although a little bit smaller. But you have recently, I think in Matchbooks, looked at a case where you had declining demand and declining imports and increasing domestic shipments. Nevertheless you were able to see that domestic prices were declining, the domestic industry was fighting to regain some sales volumes, and so you saw an injury.

And I think that's the way to explain this here, that what you're seeing here is that not all the cases are the same, it would make an easier picture. If I merged all the data together I could get it all to look like TKPP. But what you are seeing is that some cases are more price driven and some cases are more volume driven, right? When the cases come before

you, some cases domestics don't drop their price and imports capture volume, and then you have kind of a volume case. Other cases the domestics, by god we're not going to give up any volume, they cut their price and they lose money, and you have a price case. Every case is somewhere in between, so DKP is closer to the price side of that.

VICE CHAIRMAN PEARSON: Okay, that's a reasonable explanation and I should explain to the rest of your panel that causation on the face of it often isn't easy to discern and that's why I enjoy asking the questions. But now for MKP, this gets more tricky because imports were up substantially in 2008, operating income was down a bit but it was still positive, okay. But then you get into 2009 and we had the market share of imports up a little bit and operating income was up a lot, okay. So the rationale for that would be?

MR. CANNON: Well I think as Angie just explained, in MKP, unlike DKP where you have a price case, MKP you see the effects of the volume, right? What did the domestic industry do? They just dropped sales volume, they just aren't shipping. And if you look at their whole business MKP is a very small product. And so basically they made the decision

that, well by god we're not even going to sell it unless we can make a profit, so they didn't. So their shipments just fall away. And so they did in fact made a profit and then late in the year they did cut the price finally, the volume comes back up, and you do see in the second half of 2008 poor results with regard to MKP. But you see over the year kind of an example of the other extreme.

VICE CHAIRMAN PEARSON: Okay.

MR. CANNON: Which is why this is fun, we have all these different --

VICE CHAIRMAN PEARSON: But part of your argument with MKP is that it is somewhat of a residual product in the plants, I mean the other products have larger volume and so you kind of build your running plants around those and?

MR. CANNON: Well, yeah I should let Angie answer because I don't want to put words in her mouth.

VICE CHAIRMAN PEARSON: Yeah, that would be good.

MS. SCHEWE: Yes, so for the specialty products at least from the way we look at our business it's more important for us to cover all of the cost versus just the variable and maybe contributing to some of the fixed cost. And so that's how come we've

chosen at least in that product line at least for most of 2009 to, you know, effectively I guess walk from competitives and not meet them. And so as a result we saw what we said, lower volumes, and it wasn't until we made the change to a specific customer late in the year that the volumes increased, but unfortunately it didn't really help our bottom line.

VICE CHAIRMAN PEARSON: Okay. Well the last product, TKPP, we had imports up in 2008, operating income up a lot. You know, it's nice when it happens, but a little hard to understand at times. And then in 2009 imports were up again and operating income down a lot. Any particular explanation for those relationships?

MR. CANNON: Really the key thing is what the trend in unit COGS, the unit cost of goods sold. And it's really true for all the products that the reason for the profitability in 2008, indeed unit cost of goods sold increased, but you see the great price increases, I mean the kind of tremendous increase in price level, everyone in the market knew that raw materials were going up, and Allen and Angie were really successful with their customers at selling them on paying more. And they did, and so they made money. But in 2009 the cost just kept going up and the prices

fall, and so that explains what happened in 2009. And I think you foresaw this, indeed I think in the prelim when you looked at the case and said there's a threat it's because of what you were seeing in 2008 and just the beginning of 2009. And now that you see the full year, it came true.

VICE CHAIRMAN PEARSON: Okay. My last question is a brief one. Ms. Schewe, you've mentioned both ICL's Carteret and Carondelet facilities. Do people within ICL ever get confused about those two or does that only happen to Commissioners at the ITC?

MS. SCHEWE: I can't speak for our Israeli friends, but typically I think given the fact that most of our employees have been pretty long term we understand Carondelet and Carteret, but I apologize for the confusion.

VICE CHAIRMAN PEARSON: It's just my own shortcomings, that's all, but I think I have it straight now. I would like to thank all of you for your participation, and, Madam Chairman, I have no further questions.

CHAIRMAN ARANOFF: Commissioner Williamson? Commissioner Pinkert, do you have any more questions? Okay.

COMMISSIONER PINKERT: No further questions.

CHAIRMAN ARANOFF: I have one last question. Mr. Cannon, off what you were just saying to Vice Chairman Pearson, usually when the Commission reaches a preliminary threat determination, you know, and then temporary duties go into place, it kind of foreuses the market and the injury never materializes. And your argument is that an injury did materialize in this case, so what's different here? Usually that doesn't, almost can't, happen. And so how do we distinguish that that's really what happened as opposed to effects of the recession that, you know, happened post-petition?

MR. CANNON: Well first of all, your question supposes that for current material injury it needs to persist over some longer period of time. And I suppose in my matrix of statutory factors I don't see that the impact on the affected domestic industry has to be so for three full years in order for there to be current injury, but if there's one year's worth of losses caused by declining prices, caused by a surge in imports at lower prices, to me I would define that as current material injury.

CHAIRMAN ARANOFF: Yeah, I'm not disagreeing with you on that, I'm just saying usually once we make a threat determination and then Commerce makes a

preliminary affirmative things don't get worse, things start getting better.

MR. CANNON: Well remember that petitioning was in September, your decision was in October. And so 2009 was almost over at the time you made it. So usually -- I don't know what's usual, but in this case your interim period was only six months at the preliminary stage, and so now you see the full year. And indeed that's a pretty quick -- this case is a little unusual in there were no expenses at Commerce. I mean here we are at the final in March from a petition in September, that's as quick as it gets. And so you really only have six months more data now than you had, and I think you could have found injury at the preliminary stage but I think what's happening in 2009 qualifies.

MR. SEXTON: It's also important to point out that because of the long supply chain there was a significant amount of inventory still to be worked through. In fact we still run into some of this material even though it is starting to go away and we are seeing some improvement now, we still run into it.

CHAIRMAN ARANOFF: Okay, well fair enough. And I think, I think you're right, the fact that this case went so much faster from preliminary to final may

explain some of it. Are there any more questions from Commissioners?

(No response.)

CHAIRMAN ARANOFF: Okay. Do the staff have questions for this panel?

MR. CORKRAN: Douglas Corkran, Office of Investigations. Thank you, Madam Chairman, staff has no additional questions.

CHAIRMAN ARANOFF: Counsel for Respondents, do you have any questions for the panel?

MS. RITCEY-DONOHUE: No we do not.

CHAIRMAN ARANOFF: Okay. Well thank you very much to everyone on this panel for all your answers and for all the additional information that we have asked you to provide posthearing. We are going to take a lunch break for one hour and return at 1:40. Please be advised that this room is not secure, take with you any business proprietary information, anything valuable that you'd like to take home with you tonight, it won't be safe here during the lunch period. And with that, we will be in recess for one hour.

(Recess.)

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

CHAIRMAN ARANOFF: Welcome back, the hearing is resumed. Welcome to the afternoon panel. Mr. Secretary, are there any preliminary matters?

MR. BISHOP: No, Madam Chairman. Those in opposition to the imposition of antidumping and countervailing duty orders have been seated, all witnesses have been sworn.

CHAIRMAN ARANOFF: Okay, please proceed as soon as you're ready.

MR. MELAMED: Good morning, Commissioners. My name is Semyon Sem Melamed, and I am president of Valudor Products, a chemicals importer and distributor based in southern California. I thank you for the opportunity to speak to you today. I have 15 years experience in chemical importation and distribution. I believe my company's shipments accounted for a significant portion of total Chinese MKP import volume in 2008 and 2009.

In my presentation I would like to make three important key points. First, until today I was not aware of a single sale that had taken away from U.S. production of MKP. ICL Performance Products revealed today that it sells to Miller Chemical and Fertilizer Corp. I sold to Miller primarily in 2005

and 2006 before Miller complained bitterly about Chinese products. Afterwards Miller sharply decreased MKP orders and our sales in 2008 and 2009 were a fraction of 2006 sales.

I have competed and won significant customers previously served by imports of MKP from U.S. producers foreign affiliates, but as I understand this is not a basis for the Commission to find injury. The reason I generally have not taken away sales from domestically produced MKP is my second key point. There are two distinct types of MKP, fertilizer MKP and higher grade performance type MKP. Imports from China are fertilizer MKP. Domestic MKP is higher grade performance type MKP.

Fertilizer type MKP serves the soluble fertilizer market, mostly in greenhouse and hydroponic applications. Performance type MKP serves food and non-fertilizer technical applications. Especially food, but even non-fertilizer higher grade industrial applications in general require lower levels of impurity compared with fertilizers. In my experience, Chinese producers don't perform required testing for some of these impurities.

In fact, the MKP production and marketing of the largest MKP manufacturer in the world and parent

company of the sole U.S. MKP manufacturer, Israel Chemicals Limited, also known as ICL, reflects the division between fertilizer and non-fertilizer MKP, namely ICL premium fertilizer produces MKP outside the United States only, and ICL Performance Products, one of the Petitioners in this investigation, produces higher grade performance type MKP in the United States.

As the business structure of ICL indicates, comparing fertilizer and non-fertilizer type MKP in any material respect is like comparing apples to oranges. ICL's separation of its business between fertilizer and non-fertilizer MKP reflects the market reality, that the production requirements and market competition for fertilizer and non-fertilizer, mostly food types of MKP, are so different.

That U.S. production of MKP of entirely higher grade performance type MKP makes sense for ICL, which imports MKP from Israel through ICL Premium Fertilizers. ICL would not compete with itself. ICL has chosen to produce the premium product in the United States and supply the fertilizer commodity grade segment of the U.S. market from Israel. The domestic industry, mainly ICL Performance Products, does not compete with and for all practical purposes

their MKP is not substitutable for MKP imports from China.

Imports of MKP from China, Israel, and to some extent Mexico, are primarily used for fertilizer. For technical grade fertilizer MKP, U.S. end user depend entirely on imports. U.S. production and the majority of imports from Mexico and Europe on the other hand are used for either food grade applications or to a lesser extent for non-fertilizer technical users. Thus there is no significant competition between Valudor's sales and U.S. domestic production.

There is however competition between the domestic industry's sales and imports from some other countries. As to so called food grade MKP coming from China, I do not believe it is being sold in the high end food segment in which the domestic industry concentrates its sales. As our fertilizer MKP sales in the U.S. increased and we established ourselves as a major importer of MKP to the U.S. market, I researched the potential for expanding to other market segments. The U.S. food industry appeared attractive at the outset.

Our market research indicated that the majority of non-fertilizer sales are in the food industry and to lesser extent industrial applications.

One advantage for an importer such as Valudor is that large food customers purchase full truckloads of MKP while industrial customers and smaller food producers buy less than truckload quantities through distribution. However, I quickly discovered it was essentially impossible to sell so called food grade MKP from China for anything other than fertilizer.

There is a total mistrust in the U.S. market of MKP imports from China for any food application. I can tell you from my own experience I could not convince any purchasing manager of food companies to even consider trying food grade MKP from China after news reports about Chinese children dying from adulterated baby formula and cats and dogs getting sick or dying from pet food contaminated with Chinese ingredients.

A major sport drink producer, I am not sure whether it's the same one referenced by ICL, was among those that told me they would not use under any circumstances Chinese MKP. Moreover, U.S. customers require proof of liability insurance and product recall liability insurance from their suppliers. Our insurance company said that if we started selling Chinese MKP to food companies our premium percentage would increase, not only on the food portion of our

sales but on the entire sales revenue.

Additionally we could not find any insurer offering a product recall liability insurance for Chinese MKP. Most importantly, as part of Valudor's presales due diligence, we conducted a study of Chinese food grade MKP production, hoping to show our prospective customers that Chinese food grade MKP would be acceptable. I asked my purchasing manager Xiao Jing to visit twelve Chinese factories offering both technical and food grade.

Before joining Valudor Products, Ms. Jing was a sales manager at Nyang Nyang Estar, one of the largest MKP manufacturers in China. In all the factories she visited, food grade MKP is produced on the same equipment as technical grade MKP. She reported to me that all production equipment is made of carbon steel, not stainless steel as we would expect in food grade MKP facilities. There were no dedicated food grade MKP storage areas and no dedicated food grade MKP trucks.

We suggested to Chinese manufacturers that they make changes to their production of food grade MKP to comply with U.S. food ingredients requirements. Chinese manufacturers' general response was that their most important MKP market is in Asian countries where

Chinese food grade MKP is acceptable. The Chinese companies had no real reason to change their food MKP production.

After visiting those Chinese factories, Valudor did not pursue sales of Chinese MKP to the U.S. food industry. We have absolutely no plans to do so in the future as we have found no producers of MKP in China that we would be comfortable representing in the U.S. food market. I really cannot see how their facilities in their current condition would pass an audit by U.S. food manufacturers. To my knowledge Chinese manufacturers have no future plans to install stainless steel equipment and dedicated food grade storage and transportation facilities.

In addition to an inability to sell to the U.S. food industry we also have not had any ability to sell to U.S. chemical distributors. Aside from MKP, these distributors are an important part of Valudor's business. These distributors regularly purchase other Chinese chemicals from Valudor. Chemical distributors sell MKP to a variety of end users, the U.S. food industry and non-fertilizer technical applications. They told us they would not buy Chinese MKP because they want MKP that is suitable for both food and industrial customers.

Chinese MKP can only be sold to industrial and mainly fertilizer customers. They do not want to keep separate inventory of food and technical grade MKP and they do not have enough volume in non-food applications to justify purchasing full truckloads of technical grade MKP from China. I know from our fertilizer customers that some other importers supplied them with Chinese MKP labeled food grade. Many soluble fertilizer manufacturers ask importers to supply Chinese MKP with the lowest possible impurities levels.

A number of such requests increased following negative publicity about Chinese products. So called Chinese food grade MKP is well suited to meet those requirements as food grade phosphoric acid and potassium hydroxide imports limit the percentage of impurities. Valudor has obtained the same quality of MKP. For liability reasons, however, Valudor has always insisted that these shipments be labeled technical grade MKP for fertilizer use. I do not want to run the risk that some of it is sold to the U.S. food industry.

Because U.S. production in general does not service the fertilizer grade market, imports of MKP are essential to meet U.S. demand for fertilizer grade

MKP. Currently Valudor has no MKP inventory, and almost every day I get calls from customers asking for MKP. Currently I tell them that I don't have any product because of the antidumping investigation and that I still have MKP plants in the United States have petitioned the U.S. government to impose antidumping and countervailing duties on Chinese MKP.

Their usual reply is, what domestic MKP industry? We're not aware of any MKP made in U.S.A. Several customers have told me that as recently as February of this year they tried to purchase MKP from ICL but were told ICL had none available until around July. By then these customers would not need MKP at all as they would miss the fertilizer sale season. My third point is that imports from China cannot threaten to harm the domestic industry in the future for the same reasons that they have not harmed them to date.

I sell to fertilizer producers, and vast majority of my customers are not even aware of the existence of domestically manufactured MKP. It is well known in the industry that the U.S. domestic production of MKP is sold to food grade customers or for applications requiring more screens and standards and in which higher prices are paid compared with fertilizer production. As far as I'm aware the vast

majority of imports from China are sold to fertilizer producers.

Chinese MKP manufacturers fail to fill any significant quantities outside of the fertilizer market, even during severe MKP shortage of 2008. This failure during such favorable market conditions indicates Chinese MKP has no future in the U.S. market for non-fertilizer users. For the reasons I have already explained, so called Chinese food grade MKP is not and will not be marketable to U.S. food customers in the foreseeable future.

Valudor's failure to expand MKP sales to non-fertilizer markets clearly illustrates the existence of significant barriers to enter U.S. non-fertilizer market segments. Until Chinese MKP manufacturers establish food grade MKP production, storage and transportation practices that comply with U.S. regulation, those barriers are unsurmountable for Chinese MKP. As I mentioned before, Chinese MKP producers have no plans or motivation to make these changes in the foreseeable future.

Chinese MKP producers have no marketing or sales presence in the United States. They do not participate in any major trade shows or have not visited any customers. I will leave it to the lawyers

to offer more precise arguments against granting protection to U.S. producers of food grade MKP, but from where I sit as a U.S. business owner, I cannot understand why domestic producers that generally supplies none of the products that I import should benefit from trade protection.

It is not my experience that U.S. producers are trying to compete with fertilizer MKP, and why would they? Their sister company ICL Performance fertilizer supplies this portion of U.S. market with MKP made in Israel. Additionally, U.S. customers biased against Chinese production provides U.S. producers a big advantage over imports from China for non-fertilizer users.

Imports of Chinese MKP simply cannot substitute for U.S. production of MKP and therefore present no threat to the domestic MKP industry. For the above mentioned reasons this situation is very unlikely to change in the future. Put simply, from my experience in the market eliminating imports of Chinese MKP would not materially benefit domestic U.S. producers, although their foreign affiliate companies would benefit. In conclusion, I urge you to allow imports compete with imports. The winners will be among others U.S. soluble fertilizer manufacturers and

American farmers and consumers. Thank you very much for your time and attention, I welcome any questions you may have.

CHAIRMAN ARANOFF: That's the conclusion of the panel's testimony?

MS. RITCEY-DONOHUE: That does conclude, thank you.

CHAIRMAN ARANOFF: Okay. Thank you very much for coming this afternoon and sharing that information with us. I'm going to be the first one to ask questions this afternoon. Mr. Melamed, you testified that you had your associate visit, was it twelve separate Chinese producers?

MR. MELAMED: That is correct.

CHAIRMAN ARANOFF: All of whom claimed to be producing food grade MKP?

MR. MELAMED: Yeah, they advertised it on their websites and offered it to us as the product.

CHAIRMAN ARANOFF: Okay, have you provided the names of those producers to the Commission?

MR. MELAMED: We can provide them in posthearing brief.

CHAIRMAN ARANOFF: Okay, that would be really helpful, thank you. I think you also participate to some small extent in the TKPP market in

the U.S. is that correct?

MR. MELAMED: To a very small extent. We never actively marketed TKPP. From time to time customer that buys other product would say, I know you bring products from China, can you bring some TKPP so we would sell it, but we really never been a big market presence in it.

CHAIRMAN ARANOFF: So in addition to MKP are there other phosphate salts that you're marketing?

MR. MELAMED: Oh yeah, we sell quite a bit of MAP, GAP, and phosphoric acid.

CHAIRMAN ARANOFF: Okay. I'm a little bit -- well I'm not quite sure where to go with respect to what I view as a real clash in testimony on the facts about whether or not Chinese food grade product is being sold to food grade users in the U.S. market. I've got testimony from the Petitioners that they are losing sales, the customers that only purchase food grade product, to Chinese product. I've got testimony from them that you don't have to have all stainless steel piping and equipment in your plant to produce an acceptable food grade product, particularly if you start with the very pure inputs that the Chinese producers are starting with.

And I have your testimony on the other hand

that at least in your experience you've never successfully sold the Chinese product to anyone who was making a food or beverage product because they're afraid of it. Is there anything that you can suggest to me, and I open this question up to the domestic industry as well, as to how I can resolve that factual conflict? I'd rather not just make a credibility determination on whose witness, you know, was wearing a nicer tie or, you know, sounded better to me today. I'd rather see people point me to something on the record that could really resolve the ambiguity here. Do you have any suggestions?

MR. MELAMED: Well, all I can say, I can speak only for myself, we never succeeded, we never sold a bag of MKP to any food grade customer. On the other end we sold about 15 million pounds of Chinese MKP to fertilizer industry. So we started in '05 with zero, we went to being one of the biggest Chinese importers of MKP in '09, and it speaks to some degree of our ability to sell. At the same time we have never been able to sell any food grade MKP. As far as the Chinese production goes, it's not only the stainless steel equipment, they do not maintain separate food storage facilities, they do not maintain separate trucks.

I believe Petitioners mentioned today requirements for trucks that needed to be food grade, and Chinese do not have that, they store it in the same areas. There is much more than using just the purified phosphoric acid or stainless steel equipment. As our audit has showed of their factories, there are many things that they are not doing in accordance with U.S. requirements, and we were simply not comfortable representing such product in the U.S. But before we learned about it we spent quite a bit of time trying to market it anyway and it wasn't successful either. So it was a case where really it didn't work and there were many reasons and it just never worked for us.

CHAIRMAN ARANOFF: Okay, now the time period when you were attempting to market Chinese food grade product in the U.S., what time period are you talking about?

MR. MELAMED: '06, '07, the same time when we were very successful in marketing fertilizer products.

CHAIRMAN ARANOFF: Okay, and when you talk about U.S. requirements, I think I heard mention in this morning's testimony that there are Chinese producers whose product is FDA certified. Is that the proper agency? Whose requirements are you talking

about, are they the requirements of individual buyers or is there a government imposed standard?

MR. MELAMED: I believe there are government standards; we'll research it further and present it in posthearing brief. Also, individual buyers might have stricter requirements based on their internal procedures. We have not encountered any companies that we feel are complying. There might be others that we never went to, but we went to twelve and from what I understand, I asked my purchasing manager, she spent several years working at one of the biggest MKP producers in China, who we should go to, and she suggested those companies and we could not find any evidence that they would pass any audits or something that we would be comfortable representing here.

CHAIRMAN ARANOFF: Okay. Now, you said you'd never successfully sold your product for any food grade applications. Do you always know what the purchaser of your product is using it for?

MR. MELAMED: Mostly we sell to end users. As I told you before we never sold any distributors any MKP either, because distributors told me, is your product food grade? And after I knew the results of these inspections I said, no we cannot offer you food grade product. And then they say, we cannot buy it

then, because we want both grades, our sales are small, if we keep two inventories it's going to last us forever, we just want to have one inventory, it's a small product for us.

CHAIRMAN ARANOFF: Okay, so the answer is you actually you do know, you do know that nobody has bought it for --

MR. MELAMED: Like all of our MKP sales are to end users, we don't sell to distribution.

CHAIRMAN ARANOFF: And all those end users are making fertilizer, that's their business.

MR. MELAMED: All of them are fertilizer companies. I can provide complete name list of our customers in posthearing brief.

CHAIRMAN ARANOFF: Okay, well that would be very helpful.

MS. RITCEY-DONOHUE: And if I just may make a quick point that I hope is responsive. With respect to kind of the standards, as I think we actually heard a lot of useful information this morning, there are a number of areas in which those standards are applied in terms of the production as well as the storage as well as the handling as well as the transportation. And so all of those, you know, have to meet certain requirements, and those are elevated as we heard this

morning for to food use in the food industry and pharmaceuticals.

And although we can't talk about obviously the proprietary data here, you know, our clear understanding of the data as we interpret it is by and large it's very clear what end users the Chinese MKP, whether it's food or technical grade, are being used for. And so I'm not sure what producers, in particular their talking about an FDA certified, I know they mentioned Wenda, but nonetheless I think the data on the end users is, you know, particularly instructive and very important.

The other thing that we heard this morning of course is that the stainless steel, while as they said as a technical matter may not be strictly required, is preferred, and that is also another important distinction because we're talking about, you know, there's a clear preference for someone in the industry, in the food industry and pharmaceutical that have strict standards, they're not going to buy something that's not up to their preferred standards.

CHAIRMAN ARANOFF: Well then let me ask, you know, we heard a lot of testimony about 2008 and there being very tight supply in the U.S. market, well raw material costs going up and then an issue with KLH

availability resulting in some high prices and tight supply. Since you're only serving the fertilizer segment of the market, did that all just completely pass you by or how did you experience the events of 2008?

MR. MELAMED: Well we had quite a bit of demand and the prices were going up in China a lot. And we were just supplying as much as we could. In the winter there was an energy shortage so we couldn't get as much as we wanted. Obviously there were some shortages in China as well and some price increases, but we were just trying to do our best and supply as much as we can.

CHAIRMAN ARANOFF: So you were affected by the raw material cost increases?

MR. MELAMED: Oh absolutely.

CHAIRMAN ARANOFF: And you raised your prices because of that?

MR. MELAMED: Absolutely. The way we operate, we have almost no fixed costs, all of our costs are variable. We work for a certain profit margin. We never sell if we cannot make a profit.

CHAIRMAN ARANOFF: Okay. And, well I see my time running out so I won't ask my next question this time, I'll wait til the next time, but thank you for

those answers. And let me turn to Vice Chairman Pearson.

VICE CHAIRMAN PEARSON: Thank you, Madam Chairman. Mr. Melamed, this morning I had a discussion with the domestic industry on the basic question of whether China is a net importer or net exporter of phosphates. You're involved with this business. Do you have a sense of that one way or another?

MR. MELAMED: I don't know, there are so many phosphates. I will research and present an answer in posthearing brief, I will ask my Chinese employees to look into it as well and we'll do our best to provide an answer.

VICE CHAIRMAN PEARSON: Okay, thank you. You've indicated that you're selling most of the imported MKP into fertilizer use. Have you sold any Chinese MKP for use in the United States for cement?

MR. MELAMED: No.

VICE CHAIRMAN PEARSON: For some type of chemical processing?

MR. MELAMED: No.

VICE CHAIRMAN PEARSON: Production of fungicides?

MR. MELAMED: No.

VICE CHAIRMAN PEARSON: Okay, you've really specialized in MKP for fertilizer.

MR. MELAMED: We tried to go into the food market, we tried to service non-food technical applications for distribution, but we failed. So just by the way this product is and market perceptions are, we were limited to fertilizer use. We're not selling to these industries because we didn't try or didn't want to, we just couldn't.

VICE CHAIRMAN PEARSON: Okay. Well, for some of the other non-food uses in the United States you might have a chance just because you wouldn't be dealing with noncompliance with the food standards used by U.S. food companies.

MR. MELAMED: This is the point I was trying to make to my distributor customers, I was saying, well I don't have food grade but why don't you sell it in cement and fungicides and laundry detergents and so on? And they say, well we need a product that we can sell everywhere otherwise it's going to sit here for a year and get compacted and we won't be able to sell it at all. It's not a big mover and we just need product that we can sell to both food and non-food.

VICE CHAIRMAN PEARSON: Ms. Ritcey-Donohue, you will know from reviewing the staff report that

table 4-17 does indicate a small amount of Chinese MKP being indicated as used in food and beverage production in the United States. Do you have any knowledge of whether that actually is happening, is there a possibility that there's some error in our data or do you have thought on that?

MS. RITCEY-DONOHUE: Yes, we are aware that there is reporting of very small quantities, and our client Valudor has no insight in his experience over the past five years, he has literally been unable to make a single sale or get any interest with respect to the Chinese MKP because of the quality concerns. So it's, you know, it's also to the extent that, you know, when we look at that, immediately at best, you know, what we see if that data are correct is, you know, limited competition at best is what's going on here. So if there's ever a case where that is an appropriate term, that would seem to be so here with respect to, you know, to the extent that there are any food grade MKP coming in from China being used for truly food and beverage applications.

VICE CHAIRMAN PEARSON: Do you have any knowledge whether there might be a plant in China that would be a wholly owned foreign, wholly owned by a foreign firm, a Western firm perhaps, that was

sophisticated in chemical production and was making a food grade that it could bring into the United States and perhaps sell to an affiliated company or what not for food purposes?

MS. RITCEY-DONOHUE: That actually, just yesterday there is something that came to our attention, and I'm reluctant to say anything because we haven't really had any time to look at that question, but the answer may be yes. Whether they are responsible for that limited amount or not I also don't know, but we would certainly look into it and try to give you the best answer we can in our posthearing.

VICE CHAIRMAN PEARSON: Excellent.

MR. MELAMED: What I can add is I know there is a Thermophos and ICL facilities in China. I don't know enough about them, I don't know if they make MKP or not. We will look into it and let you know in the posthearing brief. At this time I know they exist, I don't know if they make MKP or other phosphates.

VICE CHAIRMAN PEARSON: Okay, well and perhaps the domestic industry could address that question also in the posthearing, just give us some sense of what plants the affiliated firms might operate in China, product mix, and food grade capable

or not, food grade by U.S. standards I guess.

MR. MELAMED: In any case, even if they do make MKP I don't think they would be offering it other me or any other importer, they would sell it through their existing marketing infrastructure.

VICE CHAIRMAN PEARSON: Right, yes well and that's, I understand that, that's why it might be going on and you wouldn't know about it.

MR. MELAMED: Yes.

VICE CHAIRMAN PEARSON: Yeah, okay. Now, you had indicated that you compete against other, basically against nonsubject imports in the U.S. market. Can you tell us a little bit more about that competition? Is Chinese product generally the lowest priced?

MR. MELAMED: Not always. Sometimes they are and sometimes they aren't. Our biggest competitor is ICL of Israel, ICL Premium Fertilizers. I looked in the publicly -- customers are always telling me I'm high even when I'm not. I looked at the public data, the U.S. Census Bureau publishes data for pricing and quantities for each HCS code, so I look at, well phosphate where MKP belongs, most of it is MKP, in the last seven months ICL's, or Israeli prices, which there is a little bit of high -- chemicals there as

well, were lower per unit than Chinese. And this is publicly available data.

VICE CHAIRMAN PEARSON: So you don't always get the sale?

MR. MELAMED: Oh no, oh no. Many times people tell me I'm high and they wouldn't buy from me.

VICE CHAIRMAN PEARSON: Do you have any knowledge of whether you sometimes are losing sales to other importers of Chinese product?

MR. MELAMED: I'm sure I am, and sometimes I'm losing to Uniphos and sometimes I'm losing to ICL. And sometimes I'm losing, like this Miller Chemical situation I'm losing to ICL because Chinese product quality is not satisfactory to the customer, and they are not the only example. And sometimes there are other considerations, relationships and so on, and my price is not always the best. We're not taking high margins either.

VICE CHAIRMAN PEARSON: Do you import from more than one plant in China?

MR. MELAMED: Oh yes.

VICE CHAIRMAN PEARSON: And so do you have some variation in quality then because of purchasing from multiple suppliers?

MR. MELAMED: We try to match suppliers and

customers. Generally their quality is fairly, pretty much the same because they comply with the same state standard, there is a China-wide state standard for MKP. The biggest concerns were like in case of Miller Chemicals was moisture level in the product. They were bitterly complaining that the product is wet and clumping and they have to mix it with something else to make it work.

They were bitterly complaining that the bags weren't good, that polypropelene bags the Chinese are shipping are when they cut them the shreds fall into their mixing system, that bags are not staying on the pallets, that they are shifting. There are many things that some customers don't like about the Chinese product. Sometimes solubility issues come up. There is a customer I was trying to sell and never sold to, he purchased a pallet of Chinese MKP, he took a bag, dissolved it, he didn't like the results so he returned the rest of it to me and never bought anything.

VICE CHAIRMAN PEARSON: Okay. Is MKP in crystalline form hydroscopic?

MR. MELAMED: Oh yeah.

VICE CHAIRMAN PEARSON: So it likes to absorb moisture and it --

MR. MELAMED: It likes to absorb moisture and after a while it will get compacted and --

VICE CHAIRMAN PEARSON: Turn into a brick.

MR. MELAMED: Exactly.

VICE CHAIRMAN PEARSON: Yeah, okay. And is it hard to crush it up once it's in that condition?

MR. MELAMED: Depends how long it stays, and sometimes you can just drop it down on the ground a couple of times and it will segregate, sometimes will still stay in pieces like golf balls. If it stays in storage long enough sometimes you have to put it through a delumping machine and there are additional costs. This is exactly the reasons distributors don't want to buy from me because it would last them forever, by the time they get to sell the last pallets it would turn into rock.

VICE CHAIRMAN PEARSON: Okay, well thank you very much. My time is expired, Madam Chairman.

CHAIRMAN ARANOFF: Commissioner Lane.

COMMISSIONER LANE: Good afternoon and thank you for coming to answer our questions. I will start with what I asked the Petitioners this morning. Did you consider making an argument that these products were one like product and should not be three like products?

MR. MELAMED: I don't know much about DKP and I hardly know much about TKPP so it's really not my place to make such statements because we mostly concentrate on MKP product only.

MS. RITCEY-DONOHUE: To the extent that we thought about like product it actually the more that we became educated on it, were wondering if in fact MKP should be broken down into two like products, because it seems to different in terms of particularly the food grade and the technical grade. But that was very late in the process and so that train had left the station I think.

COMMISSIONER LANE: Well let's keep with that for a moment. Could one of you on the panel describe to me how MKP is made and at what point it becomes food grade and at what point it becomes used for fertilizer?

MR. MELAMED: Well from what I understand to make fertilizer grade MKP you need to start with fertilizer phosphoric acid and fertilizer grade potassium hydroxide. One of the concerns we have with Chinese production is they do start with food grade ingredients to make food grade product but they make it on the same equipment and they do not purge the industrial grade product that was previously made on

it enough so we can be reasonably certain that they wouldn't mix in production. And then you need to store it in a separate facility and you need to use special trucks to transport it and they are not doing that.

COMMISSIONER LANE: In answer to Vice Chairman Pearson's question you said you do get your product from more than one facility in China.

MR. MELAMED: Yes.

COMMISSIONER LANE: Do any of those facilities sell MKP to other importers for food grade use in the United States?

MR. MELAMED: Basically they advertise food grade production, that's why we audited them. I don't believe anybody who's been there should be buying their product for food grade. I know that many of my competitors are supplying food grade MKP to fertilizer customers because of their requirements to supply pure product. This is something that I mentioned during my speech, from time to time we get requests from our fertilizer customers to get product that is as clean as possible, that's how they call it.

Well the so called food grade Chinese MKP serves it pretty good because they at least started with the food grade imports. So we would say, okay

these are the requirements, just put it in a bag with technical fertilizer grade label and we're going to sell it. I know some of the importers are just buying the food grade and selling bag labeled food grade to fertilizer customers, I know from my customers that this is happening.

COMMISSIONER LANE: Okay. Now I have to confess that I have never had a chemistry course, and so I get a little confused here, but if somebody brought into this country from China MKP food grade and sold it to someone who was going to use it for fertilizer grade, is there further processing necessary and who does that?

MR. MELAMED: The food grade Chinese MKP product would work just fine in fertilizer application, there is no further processing is necessary. As I read the staff report it's absolutely correctly indicates that you can take food grade and use it in technical grade applications but you cannot take a technical grade and use it in a food grade application.

COMMISSIONER LANE: So do you know for sure that you are not getting food grade product from China that you are then selling as fertilizer grade?

MR. MELAMED: Well the way we approach it,

we just give them requirements. The biggest difference between food and fertilizer grade is arsenic content. So if I go and tell them I need arsenic to be lower than 5 parts per million it means food grade. And this is exactly what I do, and I tell them, well I need arsenic below 5 parts per million or below 20 parts per million or below 40 parts per million, whatever customer asks me, and then I say, put fertilizer grade label on it. This is how we do it. Some other importers they just say, we want to buy food grade from you. And they buy food grade, they bring it into U.S. and still sell to my fertilizer customers.

COMMISSIONER LANE: Okay, now your fertilizer customers, when they get the product, do they then have to put it in the fertilizer to make fertilizer or whatever you do with the product?

MR. MELAMED: Yes, basically what they use it for, they make soluble fertilizer mixes. Soluble fertilizer mixes have to have certain content of nitrogen, phosphorous, and potassium. And MKP serves to fill this as pretty much as a building block. The most popular fertilizer mix is what we call triple 20. It means that it has 20 percent nitrogen, 20 percent phosphoric pentoxide, and 20 percent potassium oxide.

And they use MKP and they mix it with uria and potassium nitrate to make it. So this is how they would buy it.

COMMISSIONER LANE: Okay, thank you. You said that part of the problem that you had with not buying food grade from China to sell in this country as food grade was that you could not get proof of liability insurance and you could not get recall insurance for food grade product, is that correct?

MR. MELAMED: We could get product liability insurance, we could not get product recall liability insurance at all, even Lloyds wouldn't write it. The product liability insurance would cost much more than it does now that we do not sell the food grade, but we could not find anybody at all who would offer us product recall liability insurance. I believe my agent went to seven or eight insurance companies and they all declined.

COMMISSIONER LANE: But you do have both types of insurance for your fertilizer grade product?

MR. MELAMED: We only maintain product liability insurance. We do not have recall because recalls in fertilizer industries are rare and customers don't ask for it. But in the food industry because of recently publicized cases of, you know, dog

and cat food product being recalled in massive quantities, I understand the cost of the recall was $65 million and now they're all asking for recall liability insurance and it's just very hard to get for Chinese MKP.

COMMISSIONER LANE: Okay. You state on page 28 or your brief that you would have to establish a presence in the United States to market food grade MKP. Why could not the same mechanism be used to promote sales of technical grade MKP in the United States that is used to promote the sales of food grade?

MS. RITCEY-DONOHUE: I'm --

COMMISSIONER LANE: I'm sorry. Why can you not use the same channels of distribution that you have for your technical grade to do food grade?

MS. RITCEY-DONOHUE: I'll let him expand more, but the little that I understand if I understand your question correctly is, do they already have -- whatever they already are doing to be able to sell into the U.S. market the technical grade MKP, why would that not be sufficient for --

COMMISSIONER LANE: The food grade, right.

MS. RITCEY-DONOHUE: Food grade. And as I understand from Sam, so I'll let him speak in just a

second, the food grade sales and marketing is a much more sophisticated area and you expect people to be in these, you know, trade shows and customer visits and having a presence in the United States, and they have not done that at all. Without that, they are still able to sell, Sam is able to sell, other importers, the technical grade MKP, but it is a much different story to the food grade MKP sales.

MR. MELAMED: Well basically, like Joanna said correctly, Chinese do not maintain any presence in the U.S. at all. They do not have any offices, they do not come ever to meet with customers, they do not participate in trade shows. We are one of the largest importers of MKP from China, nobody ever came from China to meet with me. As far as our experience, I told you that we failed, maybe if they were here themselves they would be more successful, but they're not.

COMMISSIONER LANE: Okay, thank you. Thank you, Madam Chair.

CHAIRMAN ARANOFF: Commissioner Williamson.

COMMISSIONER WILLIAMSON: Thank you, Madam Chairman. And I do want to express my appreciation to the witnesses for coming this afternoon. For Ms. Ritcey-Donohue and Ms. Zississ, I was wondering if you

could address posthearing, if you look at the pricing charts, I guess it's table 5-3 and 5-4, and look at the numbers there and I was wondering what should we -- you know, we've heard the testimony that the two different markets, Chinese don't sell any food grade, and so I want to know is our pricing tables wrong, is the information, the data there incorrect or what should we make of all of that? So if you could address that posthearing I'd appreciate that.

MS. RITCEY-DONOHUE: We certainly will do so.

MS. MALONEY: I'll jump in here because I have discussed this a little bit with your staff, and we do believe that there are some kind of glaring errors in there, and I think that they're working on those and they'll be corrected.

COMMISSIONER WILLIAMSON: Okay. Are they going to explain all of the numbers?

MS. RITCEY-DONOHUE: We're waiting to see any corrections that might appear and then we can discuss more fully when we have the full picture.

COMMISSIONER WILLIAMSON: Okay.

MS. MALONEY: But this does also touch on Commissioner Pearson's comments, and we have been able to trace, you know, where those quantities actually

are coming from that are supposedly reported as food grade, and we will be telling you more what we have discovered. But for the most part we have not determined any real food end use users using the food grade.

COMMISSIONER WILLIAMSON: Okay. Now, so does that mean though that customers are not -- I mean it says, if the package says food grade they might buy it even though it may not be -- are you saying it's not food grade or it's not labeled as food grade or?

MS. RITCEY-DONOHUE: Are you talking about the imports from China?

COMMISSIONER WILLIAMSON: Yes.

MS. RITCEY-DONOHUE: Yeah, I think Valudor's experience in this has been very interesting, and not to repeat what he's already said but just to underscore that he is aware in the fertilizer segment of the MKP market that fertilizer customers are buying imports from China of MKP that are labeled food grade. That's what he's been told, and there's no, you know, there doesn't seem to be any doubt about that. The question is what does that label mean? And as we heard this morning there are a variety of things that make it acceptable to be used in the food industry. Part of that is the production process and the inputs

and the production grade phosphoric acid, the equipment that's used and the standards --

COMMISSIONER WILLIAMSON: No but that's all -- I'm sorry.

MS. RITCEY-DONOHUE: Yeah, so in Sam's experience in terms of what he's seen in China through his colleagues and reports that he's gotten is that there is no such thing as true food grade, as that term is understood here in the U.S. market, coming from China. I don't know if that was your question, but.

COMMISSIONER WILLIAMSON: I guess, what do the customers think they're buying?

MS. RITCEY-DONOHUE: I'm sorry?

COMMISSIONER WILLIAMSON: What do the customers in the U.S. market think they're buying though, are some of them expecting they're buying --

MR. MELAMED: You mean fertilizer customers?

COMMISSIONER WILLIAMSON: Not just fertilizers, there are a lot of other different uses for this product. And I mean, you know, you focused mostly on the fertilizer but there are a lot of other different uses.

MR. MELAMED: Well I can only speak of the customers I either got in fertilizer business that I

am servicing or customers that I tried to get in the food business and distributions that I didn't get. The fertilizer customers when they buy food grade product they think it's purer and somehow a little better for their production. Food people who did not buy it from me think that it's not good enough, that's why I'm not selling it to them. This is my take on it.

MS. RITCEY-DONOHUE: Yeah, and in terms of, I mean we can address more specifically in the posthearing brief, but the fertilizer end users do account for the vast majority of what the food grade MKP from China is being used for.

COMMISSIONER WILLIAMSON: Okay. Okay, well I'll be interested to see how these numbers get reconciled or clarified. I was wondering about the impact of the supply shortages of potassium phosphate salts in the U.S. market in 2008, and do these shortages contribute to the rising volume of imports of the subject merchandise in China?

MR. MELAMED: We had orders in 2008 that were bigger in 2007, actually it was our record year.

COMMISSIONER WILLIAMSON: 2008 or 2007?

MR. MELAMED: 2008 was our highest volume sales ever for MKP. From where I sit I really take

one order at a time. I don't look at general trends, the customers call me and order I'm happy, if they don't I'm not so happy. But we had more orders than ever before in '08, and then the volume dropped in '09 partially due to recession.

COMMISSIONER WILLIAMSON: Okay, what about were there some customers who saw this event as a reason to multisource their products?

MR. MELAMED: I'm sure because of shortages, and the 2008 shortage wasn't the only one, there was a 2004 shortage that was even worse. They are certainly concerned about getting product and they are very interested in diversifying their supply chain.

COMMISSIONER WILLIAMSON: Okay. Petitioners have suggested that, you know, since this was a temporary phenomenon that the imports should have declined in 2009. Any comment on whether they're right about that?

MR. MELAMED: Our 2007 imports were fairly substantial as well. They were lower than 2008 and 2009 was still higher than 2007. But I mean we work every day trying to market these products, we always try to get new customers, so obviously we try to retain our customers. We do not compete with domestic industry primarily. Until today I didn't even know

that there is one case with Miller Chemicals when we did compete.

So really whatever we do is between us and ICL and Uniphos, and other Chinese importers of course. There is really very limited presence of domestic MKP in fertilizer markets. To the extent that when my customers call me almost every day asking for product I tell them I cannot supply it because of injury investigation for MKP they tell me, well as far as we know there is no domestically produced MKP, and I told them, well there is one that ICL makes.

And they say, well we know ICL but they always supply us Israeli product. Right now there is a grave shortage of MKP in the markets. People are calling me almost every day asking me if I have anything, I tell them no I don't. I understand domestic industry has a lot of unutilized capacity, why wouldn't they sell to these customers? I know that some of my customers approached ICL Premium Fertilizers in February, they asked them to buy container of MKP, it's only 20 metric tons, they were told that it's not available until July. There is really a shortage of this product right now.

COMMISSIONER WILLIAMSON: Does that have anything to do with the planting season do you think

or is it you're just saying there's not enough capacity in the market?

MR. MELAMED: Well I don't know, for whatever reason -- they wouldn't be calling me if they had the product, but for whatever reason they don't, it's just unavailable to them right now.

MS. RITCEY-DONOHUE: And I think you had asked about imports, there was I think decline overall in terms of the recession and that seemed to affect all imports as well as the domestic industry. And that raises another point that is being made by Petitioners with respect to the declining prices, you know, they have their average unit value on page 19 of their exhibit from this morning and it shows those quantities for China imports and for average unit values coming down in 2009.

And their interpretation of that is that, you know, the average unit values are decreasing in 2009 because they're trying to take the market share, but when you look at it for the period of investigation in fact they're still much higher than where they started in 2007. And it's not surprising that once people passed the abnormal conditions of the 2008 supply shortages and the price spikes that everybody seems to be in agreement about that those

prices wouldn't start to come down now in 2009 once that has passed. So, you know, that's just looking at their exhibit here on page 19.

COMMISSIONER WILLIAMSON: Okay, thank you. My time is expired. Thank you for those answers.

CHAIRMAN ARANOFF: Commissioner Pinkert.

COMMISSIONER PINKERT: Thank you, Madam Chairman. And I thank all of you for coming in to testify today. I want to begin with sort of at the end rather than the beginning and talk about the data issue with respect to Chinese capacity and Chinese capacity utilization. Do we have enough data on those issues to make a negative determination as you have suggested?

MS. RITCEY-DONOHUE: First of all, there is a possibility that we could get some better numbers and we're working on that with Valudor's help. So we do realize that there is an issue there, and so we are doing what we can to try to address that. With regard to the threat, which I assume is what you're getting at when you look at the production capacity and capacity utilization, you know, really to us in Valudor's experience and looking at the end use data, regardless of what the capacity is it's looking at what is foreseeable in the future with respect to what

imports are coming in from China and how are those going to used in the U.S. market versus where the domestic industry is making their sales.

And to the extent that the current conditions of competition continue as they are, which there is no evidence that would change, then regardless of any theoretical capacity issues the situation is not going to change, that they're not going to take any further sales away from the domestic industry, and that seems to be the most important aspect of the MKP story.

MR. MELAMED: There are several things that affect Chinese true capacity. Petitioners mentioned energy shortages, I have a very much of a first hand knowledge of them, sometimes we call Chinese people, they won't answer the phone for days, then you finally reach them, you ask them what was going on, why I couldn't reach you, and they say, oh the energy was off, we couldn't come to the office because there was no electricity.

This happens for months and it reduces their effective capacity because all they can do is they look at this machine that can make a lot of MKP and sit in the dark, they don't have raw material because yellow phosphorous production is very energy

intensive, and it happens every year. And then even if they have capacity, the question is whether their capacity is marketable. And the truth is what we found, we visited some of the biggest factories in China, we could not qualify their product for food grade use, I don't think any U.S. food producer would qualify them. So can this capacity be considered real for real threat to U.S. industry? Probably not.

MS. RITCEY-DONOHUE: The situation in fact seems to be very similar to STPP where the Commission looked at very similar circumstances, and concluded that with respect to the future, there are really serious, real limits on what could be imported with respect to the safety issues and the qualification issues.

And you know, Sam has explained to us that from his experience, those are the exact same conditions that he's operating in. And from the record, we see the same similarities.

COMMISSIONER PINKERT: Thank you. Now, staying with the threat, which you correctly inferred from my question that I was focused on. In your brief you talk about alternative export markets for the Chinese product. Are any of those markets comparable in terms of size, and in terms of price, to the U.S.

market?

MS. RITCEY-DONOHUE: You know, it's difficult to get specific data. And we did provide a chart in Exhibit 5 of our brief, and I don't know if that's what you're referring to.

But if you look at, with respect to broken down by HTS. And it's our understanding that MKP does comply with the significant part of that HTS number, the quantities for Thailand and the United States, in fact, are very comparable. And you can see that they are a very large and important market for Chinese exports.

And there are some others that aren't quite as large, but certainly there are other significant markets, export markets, such as India you'll see there, followed by, you know, Australia, Malaysia, Taiwan.

MR. MELAMED: What I want to add is, as far as food-grade MKP is concerned, as I mentioned in my speech, we asked them to improve upon their production, storage, and transportation practice as a food-grade MKP. They basically replied that they're not very interested to do it, because they can still sell this product in the Asian market, which is the main part of their distribution system.

U.S., according to this table, U.S. exports of MKP fell from 21 to 13 million pounds between '08 and '09. And even that is not prompting them to do anything. They really are focusing on Asian markets. And when they spoke to my purchasing manager, Jaro Jing, she was a sales manager from Yum-Yum Gale Star. And she told me that they are primarily concentrated on Asian countries. They have a lot of salespeople in the Asian markets, and only limited number of salespeople in U.S. and European markets. Because they really feel that their product ships really well with Asian standards, and they just focus on those markets.

COMMISSIONER PINKERT: Thank you. Now, what effect do you expect environmental restrictions on phosphate products to have on future demand for MKP?

MS. RITCEY-DONOHUE: To be honest, I don't know. I'm not aware of any on the horizon. We certainly could make sure that there's nothing we're missing. And if there's anything that we think is relevant, we will address that in our post-hearing brief.

COMMISSIONER PINKERT: Thank you. Now, are any of the reported substitutes identified in Table 2-5 of the prehearing report -- that's page 2-23 --

increasingly taking away market share for MKP?

MS. RITCEY-DONOHUE: I'm sorry, were those, did you say non-subjects?

VOICE: No, those are the alternative products.

COMMISSIONER PINKERT: Alternative products.

MR. MELAMED: Well, but some of these products, you need to analyze our data more precisely. I didn't see any increases over the same period as last year. I will take another look. We sell MAP, we sell DAP, we sell potassium nitrate. I will try to provide more data in the post-hearing brief. But so far they are trying to look for MKP.

COMMISSIONER PINKERT: Thank you, that would be helpful, for the post-hearing.

MS. RITCEY-DONOHUE: And it is our understanding that it is somewhat consistent, pretty consistent with what we heard this morning. And Valudor's experience that he shared with us maybe can say just to see what it's about. Which is that in general, right now the preference has been for MKP. And there would be some slight alterations that would need to be made in order to, to change the production to be able to use these alternative products.

So technically they all are alternatives,

and they can be substituted in some instances. But there would need to be some adjustments made. And without, you know, let's say sufficient market promptings, the preference right now is to use the MKP product.

COMMISSIONER PINKERT: Thank you. Now, I don't know if I was reading between the lines, or if I was focused on something that you weren't even suggesting in your testimony.

But I'm wondering whether you would suggest or believe that relief, anti-dumping countervailing duty-type relief, for MKP would have more of an impact on non-subject imports into the United States than it would on domestic production.

MR. MELAMED: Oh, obviously. Because we sold 15 million pounds or so of MKP since we started selling it. From what I understand, the only customer that really accessed the domestic industry was Miller Chemical. And even that was very brief, and we are not selling much to them any more.

So all of these sales would go to non-subject imports. Primarily Israeli companies, such as Kaifa and ICL, and also to Mexican producer, Enofos.

COMMISSIONER PINKERT: And finally, as I asked earlier today, can you tell me what your demand

forecasts are for the remainder of 2010 and into 2011? And perhaps for the post-hearing, what the key indicators are that you use to forecast future demands?

MR. MELAMED: We will try to do it and provide our best information in the post-hearing brief.

MS. RITCEY-DONOHUE: We'll address it in the post-hearing brief. Thank you.

COMMISSIONER PINKERT: Thank you very much. Thank you, Madame Chairman, or Mr. Vice Chairman.

VICE CHAIRMAN PEARSON: You're welcome. Mr. Melamed, could you tell me, what specific fertilizer products use MKP as an input? Because certainly there must be many other, or at least some other sources of fertilizer of phosphorous that go into fertilizer.

MR. MELAMED: MKP actually serves a very narrow, specialized field in fertilizer sales, which are what are soluble fertilizers. They are generally much more expensive than regular fertilizer, and they are used in high-end fertilizer applications for hydroponics and greenhouses.

Normally you would buy what is called fertilizer-type MAP or DAP or some other product like that. And it's not water-soluble, and they just

spread it along the cornfields, along the wheatfields. You would not see MKP used in these really high-volume applications. It's a specialized niche market, and it's mostly used in greenhouses.

VICE CHAIRMAN PEARSON: Okay. So you sell MKP to a fertilizer manufacturer in case your product does additional things to it, and then sells it, sells that product to a greenhouse that raises hydroponic tomatoes.

MR. MELAMED: In most cases, this is the case. Because they require balanced fertilizer. MKP does not have nitrogen, so they have to have uria to make a balanced product.

All they do is really, they have big mixers, and they put several ingredients. They have to put all chelate micronutrients, they put some colorants. So there are quite a few ingredients that they mix together, and MKP is one of them.

VICE CHAIRMAN PEARSON: Okay. But there's no chemical reaction going on; it's just a physical mixing. And then that mixed product is delivered to their customers. And I assume the whole thing is relatively soluble, and they put it into water and then run it through the system to provide nutrition to the roots of the hydroponic plants.

MR. MELAMED: Exactly. In most cases, that's correct. We have very limited business, they would actually react that with something to make very proprietary formula. But this is a very small percentage of the business.

Vast majority of our customers would just simply mix it, and there is no chemical reaction going on at all.

VICE CHAIRMAN PEARSON: Okay. So it would be very unusual for a normal commercial farmer to use this product. This would be something that is serving this quite specialized need for the most high-end type of intensive crop production, under glass.

MR. MELAMED: Yeah. Unless the farmer would have greenhouses, it would not be cost-effective for him to use it.

VICE CHAIRMAN PEARSON: Okay, thank you. Now, Commissioner Pinkert was addressing issues of threat. And here, of course, we do see both the excess capacity to produce MKP in China, and we also know that they have exports to other countries. And conceivably, those could be directed to the United States, if the preliminary anti-dumping duty was to be lifted.

Let me make sure I understand your argument

why. Because I think you're saying in this case, we shouldn't see that as a factor that creates threat. So Ms. Ritcey-Donohue, do you want to address that threat once again? But speak to it somewhat specifically.

MS. RITCEY-DONOHUE: Sure, I'd be happy to. With respect to, you know, the future and what we can tell from the future, what we see is a continuation of present conditions. And the present conditions that Valudor has experienced is that by and large, and almost exclusively, the imports from China are used in fertilizer production.

And the reasons for that is that combination of unwillingness on the part of the U.S. food industry and other specialty pharmaceuticals, or other higher-standard application end users, to use imports from China.

There does not seem to be, there is no indication that that is going to change, going forward. There is, even with respect to other chemical production, there are higher standards than are required for fertilizers. And so therefore, the same issue is present.

Moreover, as we've heard from Sam in his testimony, with respect to the chemical distributors,

it is then impossible in his case to sell the Chinese imports to those distributors. Because, again, of this technical and food-grade issue, and the standards issue. And the response has been it's not worth it for us, it's not cost-effective for us to maintain inventories or to buy the Chinese imports.

And because we can't maintain an inventory, because after, you know, a very short time, it becomes problematic, it becomes brick-like. And we can't sell enough of it fast enough in order to get it out of inventory. We need a product that we can sell to our variety of customers that includes food end use, that includes these higher specialty end uses that are non-fertilizer. And therefore, they are not interested in the Chinese MKP imports.

Those, that's what currently is operating by and large in the market. And there is no evidence that that is going to change going forward, with respect to what U.S. customers are going to want, what they will purchase Chinese imports for. And with respect to the qualifications, the product quality, there's no indications that Chinese producers are going to change what they're doing in order to meet those standards.

VICE CHAIRMAN PEARSON: Okay. So you're

arguing, in essence, that competition is highly attenuated between the, the imports from China and domestic MKP product? And you don't see anything changing that would bring about direct competition between those two.

MS. RITCEY-DONOHUE: That's correct. Thank you.

VICE CHAIRMAN PEARSON: Okay. Madame Chairman, allow me to welcome you back. I think I have no further questions at this moment at any rate.

CHAIRMAN ARANOFF: I apologize for disturbing the order. I have just one more question.

What's the typical lag time between when you order a product from China and when it is delivered to you?

MR. MELAMED: Usually between eight to 12 weeks, which is two to three months.

CHAIRMAN ARANOFF: Okay. And in 2008, during the time when supply was short in the market, would you still have said eight to 12 weeks? Or would there have been a longer lag time?

MR. MELAMED: I would say 12 weeks at least. There were some cases when it was 10, and some cases when it was 14. But certainly, it has been longer than it is now.

CHAIRMAN ARANOFF: Okay. And if you order product, when you ordered product from a Chinese producer, do you pay in advance?

MR. MELAMED: No. We pay before goods are released with the shipping company. The arrangements we have is called payment against bill of lading. So we would place an order, and they would ship it. They would keep the shipping documents in their possession until eight days.

Usually I would say when the ship is like two or three days before arriving to U.S. port, and then they would do what is called a telex release. They would send the message to the shipping company to release the goods.

CHAIRMAN ARANOFF: Okay. Now, if you ordered a substantial amount of product, and then decided that you didn't need it -- demand dried up, your customers decided they weren't going to purchase from you -- could you cancel that order? What would the consequences be? And does it matter if it was before it was on the water?

MR. MELAMED: I would never do it. It's against my business principles. I guess they could sue me, and would probably be successful in litigation. I would just never do it; that's not how

I do business.

CHAIRMAN ARANOFF: Okay. Now, you told us that your, some of the people who purchased from you, that distributors don't want to keep a lot of technical-grade MKP around because it ends up clumping over time.

How do you deal with that situation? You're bringing it in in large quantities. Have you presold everything that you bring in?

MR. MELAMED: A vast majority of our shipments are presold. We do sometimes take positions, but on a very small scale.

CHAIRMAN ARANOFF: And do you have to store it under some kind of special conditions to make sure that it remains saleable?

MR. MELAMED: The conditions don't really matter. You just need to try to sell it as fast as you possibly can.

CHAIRMAN ARANOFF: Okay. All right. With that, I don't think I have any further questions. So let's see, I need to skip over to Commissioner Lane.

COMMISSIONER LANE: Thank you. I just have one question. You are not the only importer of MKP from China, is that correct?

MR. MELAMED: Oh, yeah, there are many other

importers.

COMMISSIONER LANE: And so do you know whether any of the other importers of MKP are importing for food-grade?

MR. MELAMED: I don't know what they're doing. All I know is that fertilizer customers are buying food-grade product for their fertilizer uses from other importers.

COMMISSIONER LANE: So there could be MKP product in the United States from China, being used for food-grade purposes.

MR. MELAMED: Well, all I can speak of is my own experience. And we have been unsuccessful, despite really trying very hard.

Like I said, I sold 15 million pounds to fertilizer, and I sold nothing to food. We are probably one of the largest importers of MKP in aggregate, and we have been unable to penetrate the food market.

It just, I don't know how would anybody else sell it where I failed. But yet I sold so much more than everybody else in the fertilizer market.

COMMISSIONER LANE: Okay, thank you. Madame Chair, that's all I have.

CHAIRMAN ARANOFF: Commissioner Williamson.

COMMISSIONER WILLIAMSON: Is the process of certifying MKP in China as food grade, is that process the same as in the U.S.? Is it different?

MR. MELAMED: Well, based on what we saw, it was different. Because apparently, whoever is certifying it there don't have requirements for separate storage facilities, don't have requirements for separate equipment, don't have requirements for separate transportation. And yet they certify it. So it must be different.

COMMISSIONER WILLIAMSON: Okay. But you don't know whether the substantive standards are different, or whether or not they're just not doing a very good job of certifying.

MR. MELAMED: Well, my suppliers are telling me they're certified, so probably the standards are different. I can look into it more and provide more information in the post-hearing brief.

COMMISSIONER WILLIAMSON: Okay. The reason I'm asking is I'm trying to figure out, what are we to make of, you know, we've got the question statistics need to be clarified. But if there are shown to be some product that is legitimately classified as food-grade, you know, how much account should we take of this potential? And that's why I was trying to get at

the certification process, the differences, to see whether or not it is easier to get a product certified in China, or what.

MR. MELAMED: Well, they need -- sorry for interrupting. They need to certify it because they need to sell it as food-grade in China. They have their own requirements.

Apparently they are not the same as here. Also in Asia, they have to certify it. There is a procedure for exportation. There is a CAQ in China, China inspection and quarantine inspection, apparently it passes that. Maybe all they do is they just look at the levels of heavy metals without taking into account the transportation and storage practices.

It's hard to say what they're judging it by, but I know that it doesn't meet certain U.S. requirements for food use.

COMMISSIONER WILLIAMSON: Okay. And anything you can provide us post-hearing, and that also goes for the Petitioners, regarding the standards that are used in other Asian countries that China might be exporting to, compared to what, the standards that would need to be met here, to ship it to the U.S. And I guess actually substantive standards themselves, as well as to the meaningfulness of the certification.

MR. MELAMED: Well, certainly we'll do our best to find that and provide it, yes.

COMMISSIONER WILLIAMSON: Good. I take it at this point you only sell to customers who are using your product for fertilizer. Now, I was wondering about water, you know, things like antifreeze, water treatment, and other end uses for technical grade of MKP.

MR. MELAMED: We do not sell it. We were hoping to sell it to those industries for distribution. But distributors asked us to provide them to provide them one product that will fit all applications, both food and technical applications like water treatment and so on. And we couldn't do it, so they wouldn't buy from us.

COMMISSIONER WILLIAMSON: Okay, so it's --

MR. MELAMED: My understanding is those industries do not buy very large volume, and it's appropriate to sell them for distribution. So this is what they were trying to do, and it didn't work out.

COMMISSIONER WILLIAMSON: Okay, I understand now. Thank you, good. Okay. I want to thank you for the answers, and I have no further questions. Thank you.

CHAIRMAN ARANOFF: Commissioner Pinkert.

COMMISSIONER PINKERT: I just have one or two questions. You heard the testimony this morning about the nature and the amount of subsidies that are allegedly being provided to the Chinese industry.

What role should that sort of information play in our analysis of the MKP issue?

MS. RITCEY-DONOHUE: At the risk of sounding a little bit like a broken record, you know, those subsidies were in place during the time that we are talking about and focusing on for the period of investigation, where there remains very much a segment and market in terms of the market in which the MKP from China is being sold, and the market that they're serving here and able to serve in the United States, versus where the sales are made for the domestic production.

And regardless of subsidization, that has not changed. And so an important part of that answer remains, what, you know, Valudor's experience has been, and what we're seeing with the data. Which is that the subsidies there during that time and going forward are not going to change, you know, with regard to any threat that the Chinese imports would pose to the domestic industry.

MS. ZISSIS: And I would just add that the

Commerce Department based its determination regarding subsidization on adverse facts available, rather than actual findings of subsidies. We can address this further in the post-hearing brief.

COMMISSIONER PINKERT: Thank you. And thank you very much for the testimony today. I look forward to all the information that we've talked about that you're planning to include in the post-hearing brief.

And I thank Madame Chairman, as well.

CHAIRMAN ARANOFF: Are there any further questions from Commissioners?

COMMISSIONER LANE:

VICE CHAIRMAN PEARSON: I would just thank you all for your participation today. I know you had to take time out of your business to come here. You are not selling MKP when you're sitting here.

MR. MELAMED: Oh, thank you for your time.

VICE CHAIRMAN PEARSON: But your participation has been very helpful. Thank you.

MR. MELAMED: Thank you very much.

CHAIRMAN ARANOFF: So I take it there are no further questions from Commissioners. Okay. Do the staff have any questions for this panel?

MR. CORKRAN: Douglas Corkran, Office of Investigations. Thank you, Madame Chairman. The

staff has one question, directed to Mr. Melamed.

Today we talked about food-grade and technical-grade MKP, about MKP used in fertilizer and non-fertilizer applications. But you also used the term "performance MKP." Could you go into a little detail about what that, how you used that particular term?

MR. MELAMED: Well, the reason I used this term is because I feel divide that there are MKP production between two divisions. I see premium fertilizers, and I see performance products.

So by performance I mean on fertilizer, U.S. MKP. They are the largest MKP manufacturer in the world, so we adopted their own position.

MR. CORKRAN: Thank you very much. And Madame Chairman, staff has no additional questions.

CHAIRMAN ARANOFF: Do Petitioners have any questions for this panel?

MR. CANNON: No, thank you.

CHAIRMAN ARANOFF: Okay, thank you. Let me do a time check here. Petitioners have 10 minutes remaining from your direct presentation, as well as five minutes for closing; a total of 15 minutes.

Respondents have 45 minutes left from your direct presentation, five for closing, for a total of

50 minutes.

Unless anyone objects, we typically just combine those two time periods for closing and rebuttal. I don't see anyone objecting.

MS. RITCEY-DONOHUE: No objection.

CHAIRMAN ARANOFF: Okay. So I want to thank the second panel, especially Mr. Melamed, for taking time away from your business to join us. I will ask you to take your seats again in the back, and call up Mr. Cannon as soon as he's ready.

MR. CANNON: Close it early? I want to first talk about TKPP and DKP. We reviewed all the various trends. And I know that looking at data and trying to make it all fit can be challenging. And indeed, we're all trying to tell you what all those data points mean.

And in the large sense, we have things that everyone seems to agree on. Demand is declining, domestic shipments are declining. We have imports of some of the products that are increasing, and some went up and came back down a little.

And it's difficult, I think, to always expect every single factor will lay out perfectly. But we do have some very important facts here that go straight to sort of what I think is the heart of the

matter, and that's the Chinese underselling.

Your evidence tells you they were the lowest price, and the witnesses tell you. We heard their prices routinely, weekly. We heard them, we got them in faxes. We got them in emails. Our sales force told us this is what you have to respond to.

And so that evidence I think is very compelling, that whether they responded by trying to hold their price, keep their profit margin up and lose volume, perhaps in the case of MKP; or whether they responded by we've got to cut our price, chase their price because we can't afford to lose volume in TKPP, either species of injury, they're both present. And you see them on the stacks here.

And I think taken together, that evidence, with the statistics, lets you get a consistent picture of what's happening to this industry. It's an industry like others you have seen. Indeed, there's too much global capacity. It might not have even been made for a market that's the size of the market today.

But in that context, we have unfair trade. We have imports that are subsidized massively, and then are dumped. And when that occurs, the industry is entitled to relief. And that's the basis for an affirmative decision.

Now, turning specifically to MKP. The witness for MKP, the witnesses, the panel, are representing a single importer. And as the question is brought out, they're not the only importer.

In fact, if you look on the internet, there are sellers out there, such as Wego Chemical, who offer MKP food-grade openly on the internet. There are major U.S. distributors who carry these imports from China. And these, you can see from the staff report and we will point out, are not selling on the fertilizer market.

There are companies, such as in the ship's manifest data one of the largest importers shown on the bills of lading is a company called VL Clark. VL Clark, on their website, is advertising food-grade product which they are trying to sell.

And then we have Winda, who participated at the preliminary, but is not here now. And they are selling food-grade product; indeed, their whole site, and all the products they offer, are talking about food grade. That is their market segment.

So food-grade offers at least are widely available, and the container it's selling sell 40 times. But those prices are calling for a response. And then when the domestic industry is losing volume,

they have to respond to that, and that's what you see happening in 2009.

Now, with regard to the Chinese manufacturers, there are many Chinese manufacturers of phosphates. If you look at the imports of food-grade -- you called our attention, I believe, Commissioner Pearson, to the table which shows the breakdown of imports by percentage into what end use they go into. It's Table 4-17.

For MKP it shows that a large volume of MKP is going to fertilizer. And there are small volumes in other uses.

If you look up above that, to DKP, di-potassium phosphate, the lion's share of di-potassium phosphate is going into coffee creamer, processed cheese, and evaporated milk.

Now, Chinese producers are making food-grade DKP that's every bit good enough to be sold in your processed cheese and your coffee creamer. Quite obviously, these companies can do the same thing with MKP. There is no technical limitation, and there is no inability to produce food-grade product that meets the standards.

And we will, I'm sure, be able to come up with for you a list of companies in China who make

food-grade MKP. Because I am confident that the fact that that's where they're selling all their DKP, they most certainly can make MKP, and are selling that into the U.S. market.

Let me turn a minute to the domestic industry. ICL, they're making MKP. We talk so much about food-grade; don't lose sight, MKP makes tech-grade. I mean, I'm sorry, ICL makes tech-grade MKP. All right. They made more tech-grade than food-grade as recently as 2007.

Now, if you look at the quarterly data, by the time you get to 2009, yes, ICL is selling more food-grade product than they're selling tech-grade. But they are still pulling in the tech-grade product. And there, there's no doubt that they're competing with the Chinese product.

Even if you want to sell food-grade product into a tech-grade application, fine. We're still in that part of the market, too. They haven't left the tech-grade market; they are still trying to sell there. And it may not be the largest part of their business, but it's not abandoned.

So then we also talked about threat. And the interesting thing that was discussed was Chinese capacity. But in the case of MKP, China doesn't have

to produce any more MKP than they're producing right now. They don't have to ship from any other country. The volume of MKP right now in the U.S. market is massive.

If you take away the preliminary Commerce finding and all that volume comes back, that's sufficient. Now, if we don't need it existing and we don't need any volume, why is the domestic industry, why are they still in the market at all? It's there to say it's the same phenomenon that we see with each of these products. It was described by Angie this morning with regard to SHMP.

First the Chinese penetrate the low-end market, the easy applications. Then they move upstream. It's happened product after product, and I know the Commission has seen this in other cases.

So indeed, Chinese MKP food-grade may only be showing up in a very small percentage of sales. But that's not going to last for long. They can make the product, and they will soon be at all the accounts. And that's the threat.

Thank you.

MS. ZISSIS: Good afternoon. My name is Kristine Zissis, and I'll do the closing on behalf of Valudor.

First I just want to note, in listening to Mr. Cannon and his closing remarks, that there have been a number of shifts in the U.S. industry's position; shifts from the conference, when Ms. Schewe talked about the fact that the U.S. industry does not compete in the fertilizer market. Today we heard her say that in fact, they do make sales to this market.

Also, in their brief, the U.S. industry stated that the Commission should, if anything, look for competition in a subset of the MKP market in the food-grade portion. They said that the Commission doesn't usually do this, but in this case it's warranted.

Now we hear that in fact, ICL focuses on technical-grade. And that's what they've been doing for the last few years. They've done a lot of technical-grade, in 2007, 2008.

And we've also heard that the MKP for them, as a product, is a very small portion of their, their product line. On the other hand, we've heard that they want to supply, and they think they can supply the whole U.S. market without any imports to supplement. At the same time they said that they import non-subject product in order to compliment their production.

So we're hearing a lot of things at one time. I will say that our story hasn't changed. Our story from our prehearing brief remains the same, and doesn't change as a result of the testimony here today.

We again say there is no causal nexus between the domestic MKP industry's performance and imports of MKP from China. And the reason for this is that there is, at best, limited competition between subject imports and the domestic like product, in both the technical- and the food-grade markets.

The imports of MKP from China that are technical-grade are used mainly in fertilizers. While we understand that Valudor is one importer, as Mr. Cannon pointed out, they are also the largest importer. And we heard today that fertilizer is a primary technical-grade, a primary market for MKP in the U.S. market. So it's an important and major market. And our understanding is that the U.S. industry does not compete in the market.

Now, we did hear today that there have been limited, or one sale on, I'm not sure how to characterize them, to, from ICL to a customer. And we look forward to hearing more about this in the post-hearing brief.

But our understanding was that the U.S. industry is not interested in the fertilizer market. And our understanding is also that the competition in the fertilizer market is between the subject imports and non-subject imports; and that the U.S. producers import to compliment their production of food-grade, and of technical-grade for demanding applications.

And these non-subject imports are from affiliates, like ICL in Israel and Enofos in Mexico. And to the extent that the U.S. industry sells its food-grade MKP as technical-grade MKP, it's selling it for demanding applications to standards that imports from China cannot meet, despite what the U.S. industry said this morning.

MKP sold for these non-fertilizer technical uses are sold primarily to distributors that, as you have heard from Mr. Melamed, do not maintain inventory of both food- and technical-grade MKP. For these reasons, there is limited competition in the technical-grade segment.

Now, today, and in their brief, the U.S. industry said that there is head-to-head competition between the U.S. producers and imports from China of food-grade MKP. But we would maintain that this head-to-head competition does not exist, at least not with

subject imports. We'll look into these issues that you've pointed out in the staff report, and pursue any indications that there have been sales of food-grade, just as we heard the U.S. industry will do, as well.

But as Mr. Melamed has said, Chinese food-grade MKP is not up to the standards of U.S. food-grade MKP. That's been his experience, for a variety of reasons. The Chinese producers don't use the stainless steel equipment, they don't handle the MKP consistent with food-grade requirements to avoid cross-contamination. And as we heard, Chinese food-grade MKP is acceptable to some customers for use in food in China and certain Asian markets; and in the U.S., it's usually sold for non-food purposes, such as for fertilizer, where there are low levels of impurities. There are requirements that, that the MKP be in a more pure form. And so for these reasons, there is also limited competition in the food-grade segment.

We would say that competition in the food-grade segment instead is in the non-subject imports, is with non-subject imports. The U.S. industry admitted today that non-subject imports from certain sources compete against domestic production.

As for pricing, the U.S. industry has argued

that subject imports have undersold domestic producer prices, and that they were surprised they maintained price increases in 2008. The limited competition, we would say again, between subject imports and the domestic product undermines this claim of underselling. And we'll pursue this with respect to the product 3 and product 4 data in the staff report.

And we think it should come as no surprise to the domestic industry that they commanded high prices in 2008. Demand was strong. There was shortages in the U.S. market in the time. And as they have said, they would only elect to produce and sell MKP if they could do so at a profit.

The U.S. industry blames subject imports for their declining capacity, utilization, layoffs, and their inability to earn adequate profits. However, they admitted that they have an over-capacity issue, this morning. The U.S. industry was profitable during the investigation, with profits falling only in the second half of 2009.

We would submit there were factors other than subject imports that account for this decline, such as the recession.

As for threat of material injury, the U.S. industry claims that the Chinese producers have unused

capacity to produce MKP, and that they have the ability and incentive to shift MK exports from other markets to the U.S. market.

Their argument has been premised on increased export to food-grade, rather than technical-grade, to the U.S. market. However, as you have heard, the food-grade MKP produced by the Chinese does not compete with U.S. food-grade product. In order to produce food-grade MKP that is acceptable to U.S. customers, the Chinese would have to make investments in their facilities, and undergo a lengthy qualification process.

As we've pointed out, the Commission reached similar conclusions in the SEP preliminary determination that supported a negative threat to finding, when it stated that few Chinese producers have extensive capacity to produce it, and their export potential for food-grade STPP to the U.S. market in the imminent future is limited, due to reported qualification and safety issues with food-grade STPP.

We would say the Chinese producers don't have the incentive to make the changes and investments necessary to change to food-grade production. And I'll mention three reasons.

One is that as the U.S. industry stated today too, the facilities usually are dedicated to food-grade production to avoid cross-contamination. So the Chinese producers would have to abandon their technical-grade production, and they don't have the incentive to make this wholesale change. They have technical-grade customers who want to purchase this grade for use in the large and growing fertilizer market, and they also have customers for what they call food-grade MKP, including Asian customers and U.S. fertilizer customers.

Second, U.S. customers do not want to purchase the Chinese food-grade MKP. And we'll look into any exceptions to this. But the Chinese would have to overcome safety concerns regarding food-grade Chinese MKP in the U.S. marketplace. And, as Mr. Melamed said, importers also require product liability and product recall insurance, which has been difficult to obtain.

And then finally, the Chinese don't have the marketing or distribution networks in the U.S. that facilitate sales of food-grade MKP.

In its brief, the U.S. industry cited to a number of Commission cases to support their claim that declining demand doesn't explain the position of the

domestic industry. And that non-subject imports don't sever the causal link between subject imports and threat of injury in respect to teabags and OCTG, HEDP, and the line pipe case. We would say that these cases don't apply, because in all of them, the Commission found that the products, the domestic product and the subject imports were highly substitutable. Whereas we would say here there's limited competition between the subject imports and the domestic product.

And that is my concluding remarks. Thank you.

CHAIRMAN ARANOFF: Thank you very much. And thank you, one more time, to everyone who has participated in today's hearing.

Post-hearing briefs, statements responsive to questions and requests of the Commission, and corrections to the transcript must be filed by June 9, 2010. Closing of the record and final release of data to parties will take place on June 23, 2010. And final comments are due on June 25, 2010.

As there is no other further business before the Commission, this hearing is adjourned.

(Whereupon, at 3:30 p.m., the Commission was adjourned.)

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CERTIFICATION OF TRANSCRIPTION

TITLE: Certain Potassium Phosphate Salts From China

INVESTIGATION NO.: 701-TA-473 & 731-TA-1173 (Final)

HEARING DATE: June 2, 2010

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: June 2, 2010

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: Micah J. Gillett
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