

# UNITED STATES INTERNATIONAL TRADE COMMISSION

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In the Matter of: )  
PERSULFATES FROM CHINA ) Investigation No.:  
731-TA-749 (Third Review)

Pages: 1 through 125  
Place: Washington, D.C.  
Date: January 16, 2014

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## THE UNITED STATES INTERNATIONAL TRADE COMMISSION

In the Matter of: )  
 PERSULFATES FROM CHINA ) Investigation No.:  
 ) 731-TA-749 (Third Review)

Thursday,  
 January 16, 2014

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

The hearing commenced, pursuant to notice, at  
 9:35 a.m. before the Commissioners of the United States  
 International Trade Commission, the Honorable IRVING A.  
 WILLIAMSON, Chairman, presiding.

## APPEARANCES:

On Behalf of the International Trade Commission:Commissioners:

IRVING A. WILLIAMSON, CHAIRMAN (presiding)  
 SHARA L. ARANOFF, COMMISSIONER  
 DEAN A. PINKERT, COMMISSIONER  
 DAVID S. JOHANSON, COMMISSIONER  
 MEREDITH M. BROADBENT, COMMISSIONER  
 F. SCOTT KIEFF, COMMISSIONER

Staff:

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 MIKAYLA KELLEY, INTERN  
 ANGELA NEWELL, INVESTIGATOR  
 CHRISTOPHER ROBINSON, INTERNATIONAL TRADE ANALYST  
 AIMEE LARSEN, ECONOMIST  
 MARY KLIR, ACCOUNTANT/AUDITOR  
 COURTNEY McNAMARA, ATTORNEY  
 JAMES McCLURE, SUPERVISORY INVESTIGATOR

APPEARANCES: (Cont'd.)

CONGRESSIONAL APPEARANCE:

THE HONORABLE BRIAN HIGGINS, U.S. Representative,  
26th District, New York

In Support of the Continuation of the Antidumping Duty  
Order:

On behalf of FMC Corporation (FMC):

BRUCE LERNER, Vice President and Global Business  
Director, Peroxygens Division, FMC  
THOMAS BALL, Global Sales and Marketing Director,  
Peroxygens Division, FMC  
PAUL RYCZEK, Plant Controller, Peroxygens  
Division, FMC  
CLIFFORD NORTON, Vice President, International  
Chemical Workers Union Council, Local 76C,  
Buffalo, New York  
JOSEPH PATTISON, Associate General Counsel, FMC  
AMY WARLICK, International Trade Economist,  
Barnes Richardson & Colburn, LLP

THOMAS V. VAKERICS, Esquire  
MATTHEW T. McGRATH, Esquire  
STEPHEN W. BROPHY, Esquire  
Barnes Richardson & Colburn, LLP  
Washington, D.C.

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P R O C E E D I N G S

(9:35 a.m.)

1  
2  
3 CHAIRMAN WILLIAMSON: Good morning. On  
4 behalf of the U.S. International Trade Commission I  
5 welcome you to this hearing on Investigation No.  
6 731-TA-749 (Third Review) involving Persulfates From  
7 China.

8 The purpose of this five-year review  
9 investigation is to determine whether revocation of  
10 the antidumping duty order on persulfates from China  
11 would be likely to lead to continuation or recurrence  
12 of material injury within a reasonable foreseeable  
13 time.

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

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

25 Speakers are reminded not to refer in their

1 remarks or answers to questions to business  
2 proprietary information. Please speak clearly into  
3 the microphone and state your name for the record for  
4 the benefit of the court reporter. If you will be  
5 submitting documents that contain information you wish  
6 classified as business confidential, your requests  
7 should comply with Commission Rule 201.6.

8 Madam Secretary, are there any preliminary  
9 matters?

10 MS. BARTON: No, Mr. Chairman.

11 CHAIRMAN WILLIAMSON: Okay. Very well. As  
12 our congressional witness is not here yet, we'll start  
13 with opening statements.

14 MS. BARTON: Thank you. In support of  
15 continuation of order, Thomas V. Vakerics, Barnes  
16 Richardson & Colburn, LLP.

17 CHAIRMAN WILLIAMSON: Welcome, Mr. Vakerics.  
18 You may begin when you're ready.

19 MR. VAKERICS: This case is about Chinese  
20 excess capacity.

21 CHAIRMAN WILLIAMSON: Your microphone?

22 MR. VAKERICS: Oh, there we go. This case  
23 is about Chinese excess capacity, excess capacity that  
24 encourages Chinese persulfates producers, if the order  
25 is revoked, to easily flood the U.S. persulfates

1 market, driving FMC out of business. That excess  
2 capacity is so massive they can overnight flood the  
3 U.S. market, while at the same time serving all their  
4 existing customers in China and in third country  
5 markets.

6 Chinese excess capacity is several times  
7 larger than U.S. consumption and dwarfs FMC production  
8 capacity. At one time, the Tonawanda plant was the  
9 largest single persulfates facility in the world.  
10 That has not been true for some time as there are  
11 Chinese producers that overwhelm the capacity of the  
12 Tonawanda plant.

13 The record evidence shows that FMC is  
14 vulnerable to material injury. Even if this  
15 Commission were to find that the domestic industry is  
16 healthy, if the order is revoked the domestic  
17 industry, that finding notwithstanding, would still be  
18 destroyed by a massive flood of low-priced Chinese  
19 imports.

20 The Commission has the benefit in this  
21 review of looking at the experience of the EU after  
22 revoking an antidumping order against China. In 2007  
23 the EU imposed a new antidumping order on Chinese  
24 persulfates, and in 2012 the EU initiated expiry  
25 review and issued its findings in December 2013.

1                   In its 2013 findings, the EU recorded that  
2                   after the 2002 order of revocation, persulfates  
3                   imports from China increased from 440,000 pounds in  
4                   2001 to 8,800,000 in 2003 and increased to 19,800,000  
5                   pounds in 2006. Both India and the EU have dumping  
6                   orders against Chinese persulfates.

7                   In 2013, the EU and India decided to  
8                   continue those orders, just a couple of months ago.  
9                   Both countries confirmed in their reviews that China  
10                  has substantial excess capacity. If the Commission  
11                  votes in the negative and the order is revoked, given  
12                  the massive excess capacity in China and the decidedly  
13                  higher U.S. prices compared to other unprotected  
14                  markets, one cannot seriously doubt that the Chinese  
15                  will immediately flood the unprotected U.S. market,  
16                  forcing FMC to shutter its Tonawanda plant.

17                  Chinese persulfates are highly substitutable  
18                  with U.S. persulfates. As a commodity product, price  
19                  is a very important factor. The Chinese have  
20                  demonstrated, if we look at the EU situation, that  
21                  they price to gain market share. They do not price to  
22                  gain profits. They have to move their persulfates  
23                  quickly before the product decomposes. The only  
24                  reason the Chinese have not yet flooded the U.S.  
25                  persulfates market is the existence of this



1        antidumping duty order.

2                The intrinsic threat to the domestic industry due  
3        to Chinese excess capacity is further compounded by  
4        the ease of access to the U.S. market for Chinese  
5        persulfates provided by the internet. At Exhibit 8 of  
6        our brief, we include English language websites for 12  
7        Chinese persulfates producers. Those 12 in 2012  
8        accounted for an excess capacity of 109 million  
9        pounds. Total U.S. persulfates consumption in 2012  
10       was 55 million pounds.

11                There are several general websites that sell  
12        Chinese persulfates from various trading companies,  
13        producers and exporters. One of those websites is  
14        Alibaba.com. I visited that website last week and  
15        searched for Chinese persulfates. One hundred three  
16        pages popped up with 40 websites per page for a total  
17        of 4,120 websites in English selling Chinese  
18        persulfates to the world.

19                This massive excess capacity, coupled with  
20        export orientation of the Chinese persulfates  
21        industry, the importance of price in purchasing  
22        decisions and the ease of access provided by the  
23        internet mean that access to cheap Chinese imports if  
24        the order is revoked for U.S. customers is only a  
25        computer click away. Thank you.

1 CHAIRMAN WILLIAMSON: Thank you.

2 MS. BARTON: Will the first panel please  
3 come forward? In support of continuation of the  
4 antidumping duty order, Barnes Richardson & Colburn on  
5 behalf of FMC Corporation.

6 (Witnesses sworn.)

7 (Pause.)

8 MR. VAKERICS: My apologies.

9 CHAIRMAN WILLIAMSON: Okay. Sure.

10 MR. VAKERICS: We appreciate your patience.

11 CHAIRMAN WILLIAMSON: Sure.

12 (Pause.)

13 MR. VAKERICS: With your permission, Mr.  
14 Chairman --

15 CHAIRMAN WILLIAMSON: Sure.

16 MR. VAKERICS: -- we have four witnesses  
17 today -- Bruce Lerner, Tom Ball, Cliff Norton and Paul  
18 Ryczek. Mr. Lerner, Mr. Ball and Mr. Norton will  
19 present direct testimony. Mr. Ryczek is the plant  
20 controller in Tonawanda. He has made himself  
21 available to answer any financial questions the  
22 Commissioners may have. Thank you.

23 CHAIRMAN WILLIAMSON: Okay. Thank you. And  
24 you may begin.

25 MR. LERNER: Good morning and thank you. My

1 name is Bruce Lerner, and I serve as Vice President  
2 and Global Business Director of the Peroxygens  
3 Division of FMC Corporation. I joined FMC in 2007 as  
4 the general manager of FMC's Peroxygens Division and  
5 have served as the division's general manager since  
6 that time.

7 FMC is a diversified manufacturing company  
8 serving agricultural, industrial, environmental and  
9 consumer markets globally for more than a century.  
10 FMC has headquarters in Philadelphia, Pennsylvania,  
11 and employs approximately 6,000 people worldwide. FMC  
12 operates its businesses in three segments -- FMC  
13 Agricultural Solutions, FMC Health and Nutrition, and  
14 FMC Minerals -- which generated 2012 gross revenues of  
15 about \$3.7 billion.

16 FMC Global Peroxygens is a division of FMC  
17 Corporation and is a producer of inorganic chemicals  
18 with leading market positions in hydrogen peroxide,  
19 persulfates and peracetic acid. FMC's Tonawanda, New  
20 York, site, the sole domestic production facility for  
21 persulfates, was at one time the largest plant in the  
22 world. Today the size of the company's production  
23 facilities has been surpassed by several Chinese  
24 producers.

25 The Tonawanda facility employs approximately

1 100 American workers. Our Tonawanda site is also home  
2 to our Process and Application Technology Center.  
3 This research and development center is responsible  
4 for new process and product applications R&D for our  
5 persulfates and other peroxygen products, while also  
6 ensuring that the products are produced safely and  
7 with high quality.

8 I would like to thank you today for the  
9 opportunity to appear before you as the continuation  
10 of the antidumping duty order against persulfates from  
11 China is essential to the continued existence of the  
12 only persulfates manufacturing operation in the United  
13 States. It is my understanding that in the sunset  
14 review the Commission is to determine whether  
15 revocation of the persulfates order would be likely to  
16 lead to material injury to the domestic industry  
17 within a reasonably foreseeable time.

18 As you have read in the prehearing brief,  
19 included among the main elements that would contribute  
20 to injury is the massive excess capacity in China and  
21 the continued export orientation of Chinese  
22 persulfates industry. As this Commission is well  
23 aware, as the sole domestic producer FMC is the  
24 domestic industry.

25 As the vice president in charge of the

1 company's persulfates operations, I can assure you  
2 that revocation of the order will immediately lead to  
3 very serious injury and cause the ultimate demise of  
4 the domestic persulfates industry. Persulfates are a  
5 commodity product competing in a global market. The  
6 opportunity for product differentiation in these  
7 markets is limited, making price a critical component  
8 of the purchasing decision.

9           There is tremendous global oversupply, and  
10 this oversupply is likely to persist due to past and  
11 continued Chinese capacity expansion. This capacity  
12 expansion, coupled with relatively high fixed  
13 production cost and the short shelf life of  
14 persulfates, has led to intense price competition in  
15 certain markets outside the United States.

16           The antidumping order has shielded the  
17 domestic persulfate industry from the predatory  
18 pricing behavior that we have seen in certain non U.S.  
19 markets such as South America and Asia. During the  
20 original investigation in this case, there were only  
21 four known producers of persulfates of any  
22 significance in China. Today there are at least 24  
23 known Chinese producers.

24           These 24 producers represented a total  
25 capacity of 706 million pounds in 2013, which is

1 nearly 13 times as large as U.S. consumption in 2012  
2 and more than twice as large as consumption in China  
3 in 2012. The top five Chinese producers alone  
4 accounted for 367 million pounds or more than half of  
5 China's persulfate production capacity in 2013.

6 In 2012, China utilized only 77 percent of  
7 its available capacity. However, that low capacity  
8 utilization rate did not deter Chinese producers from  
9 expanding by nearly 50 percent in 2013. If China's  
10 capacity utilization rate remained at 77 percent in  
11 2013, then China currently has 162 million pounds of  
12 unused capacity with which to flood the U.S. market  
13 should the antidumping order be revoked.

14 In other words, unused capacity in China is  
15 almost three times the size of the entire U.S.  
16 persulfates market. If the utilization rate dropped  
17 then that unused portion is an even greater threat to  
18 our U.S. industry.

19 The Chinese persulfates injury and the  
20 Chinese Government, following asset utilization  
21 strategies, show no signs of relenting. There is  
22 every reason to believe that the Chinese will continue  
23 to increase capacity as they pursue a philosophy of  
24 creating jobs and exports, not creating an efficient,  
25 cost-effective industry.

1           With revocation of the order, Chinese unused  
2 capacity is more likely to be dumped into the United  
3 States, causing massive injury to the domestic  
4 industry as Chinese exporters compete on the basis of  
5 incessant price cutting among themselves for market  
6 share and to relieve themselves of distressed  
7 inventories.

8           Persulfate prices in the United States are  
9 higher than other areas of the world where Chinese  
10 persulfates are sold thanks to the existence of the  
11 U.S. dumping duty order. Should that order be  
12 revoked, however, the higher U.S. prices will create a  
13 funnel effect, inevitably attracting massive Chinese  
14 persulfate imports to the U.S. Given their vast  
15 excess capacity, the Chinese can easily serve all of  
16 their existing customers while at the same time  
17 flooding the U.S. market with persulfates.

18           If this Commission were to vote to remove  
19 the protection of the order, the competitive health of  
20 the domestic industry would significantly deteriorate  
21 virtually overnight. The domestic market would  
22 immediately be deluged with Chinese imports,  
23 eliminating any possibility of the U.S. industry's  
24 survival.

25           The U.S. market is currently a competitive

1 market and increasingly so. With the participation of  
2 German, Japanese, Taiwanese and Indian persulfate  
3 producers, it is the order that enables fair  
4 competition. However, the impact of removing this  
5 order will be that all competition other than that  
6 between various large Chinese producers seeking to  
7 gain U.S. market share will cease to exist.

8 The U.S. persulfate market is mature with  
9 minimal or low growth. FMC has sufficient capacity to  
10 meet the U.S. demand. While early on persulfate use  
11 in oil and gas recovery and environmental remediation  
12 markets looked to be promising applications, the  
13 actual development of these markets has been  
14 disappointing.

15 In addition, any enhanced demand that can be  
16 attributed to oil and gas and environmental  
17 remediation has been offset by FMC's loss of printed  
18 circuit board applications which have moved offshore  
19 and recreational water markets which no longer exist.

20 I would like to also illustrate to the  
21 Commission the favorable effects of the original order  
22 and its continuance under the sunset reviews. After  
23 an extended period of over 10 years under the order,  
24 the domestic industry finally recovered from the  
25 damage due to the previous dumping to the point of



1 achieving reinvestment economics.

2 As a function of this, we have cautiously  
3 invested capital to perform long-needed infrastructure  
4 improvements to our Tonawanda plant, modernize our  
5 laboratories at the site and purchase more efficient  
6 and productive production equipment to remain  
7 competitive, reliable and a quality supplier to our  
8 customers.

9 The continuance of the order is absolutely  
10 necessary for FMC to be able to continue to recover  
11 and recoup our costs and fairly compete, along with  
12 other competitors, to provide benefits to our  
13 customers, shareholders and ourselves. This would be  
14 impossible and lead to irrevocable damage and harm in  
15 the presence of certain dumping of the vast Chinese  
16 oversupply which would be funneled to the U.S.

17 On another note, as the Commission is well  
18 aware, FMC has signed a definitive agreement to sell  
19 its peroxygens business, including persulfates, to One  
20 Equity Partners, the private investment arm of  
21 JPMorgan Chase & Company. I am intended to be the CEO  
22 of the new company, and the existing management team  
23 and employees are being transferred to the new entity  
24 entirely.

25 As the CEO, I can assure you that nothing

1 will change with respect to the persulfate operations.

2 The new company is absolutely committed to the  
3 continued production of persulfates at the Tonawanda  
4 plant and well into the future.

5 In closing, thank you again for your time  
6 this morning. I appreciate your attention during my  
7 testimony regarding the facts and reasons presented,  
8 which lead me to remind the Commission that it is  
9 essential that you vote to continue the order if we  
10 are to preserve the domestic persulfates domestic  
11 industry and the jobs of nearly a hundred Americans  
12 associated with the persulfate business working at FMC  
13 and in the new company. Thank you.

14 MR. BALL: Good morning. My name is Thomas  
15 Ball, and I am Global Sales and Marketing Director of  
16 the Peroxygens Division of FMC. Thank you very much  
17 for the opportunity to present my testimony to you  
18 today.

19 Initially I want to tell the Commission that  
20 I am in full agreement with all the aspects of the  
21 testimony presented this morning by Bruce Lerner. I  
22 fully concur with Mr. Lerner's testimony that  
23 revocation of the order will force FMC to close down  
24 its persulfate operations and would directly cause the  
25 loss of over a hundred American jobs in Tonawanda, New

1 York, and Philadelphia, Pennsylvania.

2 As the peroxygens global sales and marketing  
3 director, my responsibilities include all commercial  
4 activities related to persulfates and the other  
5 peroxygens product lines on a global basis. I first  
6 joined FMC in 1984 in the position of senior chemist.

7 I've been with FMC for almost 30 years and began  
8 working with persulfates in 2005. Given this  
9 experience, I'm thoroughly knowledgeable about the  
10 sales, marketing, applications and production of  
11 persulfates.

12 Persulfates use oxidation and free radical  
13 chemistry to initiate chemical reactions. FMC  
14 persulfates have been used in a variety of  
15 applications such as polymer initiation, printed  
16 circuit board etching, hair bleach performance  
17 enhancing, pool and spa shocks, environmental  
18 remediation and oil and gas recovery.

19 Since 2007, both the printed circuit board  
20 and pool and spa shock markets have largely  
21 disappeared in the U.S. Also since 2007, there have  
22 been no new markets or new uses developed for  
23 persulfates. Persulfates are a commodity product. As  
24 such, price is a critical component in purchasing  
25 decisions.

1           As Mr. Lerner testified, there is massive  
2 excess persulfates production capacity in China.  
3 Given this excess capacity, if the order is revoked  
4 the Chinese will easily be able to service their  
5 existing customers while flooding the U.S. market with  
6 low-priced imports, causing material injury to the  
7 domestic industry within a matter of months. Chinese  
8 persulfates would significantly undersell domestic and  
9 third country persulfates at prices that would depress  
10 and suppress the price of domestic persulfates,  
11 ultimately putting FMC out of business.

12           FMC has not been standing still since the  
13 order was put in place. There have been continuing  
14 improvements in FMC's persulfates operations made in  
15 reliance on the benefits of the order. These  
16 improvements include, among others, investment in  
17 technology improvements and initiatives to reduce  
18 cost, improve productivity and thereby to improve the  
19 competitive position of our persulfates in the U.S.  
20 market and funding R&D programs to develop new, higher  
21 value applications for persulfates to increase demand  
22 in the U.S. and other markets.

23           The quality of Chinese persulfates has  
24 significantly improved since the order was issued and  
25 has continued to improve since the last sunset review

1 was completed. The Chinese product today is in terms  
2 of quality highly competitive with FMC persulfates.

3 There is no reason to change the definition  
4 of the domestic like product in this review. The  
5 chemical composition of the three persulfate salts  
6 that are produced today -- ammonium persulfate, sodium  
7 persulfate and potassium persulfate -- are the same as  
8 the salts that were produced in 1997. There is only  
9 one persulfates industry, which consists of the  
10 production of ammonium, sodium and potassium  
11 persulfates, the same persulfates that were produced  
12 during the period of the original investigation.

13 The same is true for the definition of the  
14 domestic industry. There is no reason to alter that  
15 definition. FMC Corporation is the only U.S. producer  
16 of persulfates. While persulfate uses such as  
17 environmental remediation and oil and gas recovery  
18 have increased since 2007, the same basic types of  
19 persulfates that were produced at the time the order  
20 was issued are used today in these applications.

21 Historically demand in the traditional  
22 persulfates markets has been driven by polymers and  
23 printed circuit boards. However, in the United States  
24 these markets are mature and this demand has declined.

25 In fact, FMC's sales of persulfates to the printed

1 circuit board industry have stopped completely since  
2 the production migrated offshore to Asia where Chinese  
3 persulfates dominate.

4 Environmental remediation and oil and gas  
5 uses have been higher profitability markets for FMC  
6 during the period of review. However, demand in these  
7 markets has proven to be cyclical, and growth has been  
8 below expectations. FMC was hopeful trends in oil and  
9 gas would continue to drive greater demand, but  
10 instead we experienced a 34 percent decline in sales  
11 volume in 2013 from 2012. 2013 sales were also  
12 significantly below 2011 levels. This has been driven  
13 by technology evolution in the process of extracting  
14 oil and gas from shale formations.

15 Contrary to the Commission's stated reasons  
16 for conducting a full sunset review, there was  
17 absolutely no significant increase in demand in the  
18 fourth quarter of 2013. In fact, quite to the  
19 contrary, FMC's sales volumes in the fourth quarter  
20 were the lowest of any quarter of 2013 and 6 percent  
21 below the average volumes over the first three  
22 quarters.

23 CHAIRMAN WILLIAMSON: Excuse me, Mr. Ball.  
24 If you don't mind, I'm going to interrupt you now  
25 because Congressman Higgins is here, and then we'll

1 just resume after he speaks.

2 MR. BALL: That's fine.

3 CHAIRMAN WILLIAMSON: Thank you.

4 MS. BARTON: The Honorable Brian Higgins,  
5 U.S. Representative, 26th District, New York.

6 CHAIRMAN WILLIAMSON: He's coming now.  
7 Sorry. Welcome, Congressman Higgins. You may begin  
8 when you're ready.

9 MR. HIGGINS: Yes. Thank you very much for  
10 allowing me to testify today. Mr. Chairman and  
11 members of the Commission, I appreciate the  
12 opportunity to address you today before you make a  
13 final decision in this sunset review.

14 My district in western New York has long  
15 been the hub of manufacturing in the United States,  
16 and FMC Corporation, the sole manufacturer of  
17 persulfates in the United States, has proved an  
18 integral part of our community. The 128-year-old  
19 company provides approximately 100 manufacturing jobs  
20 to my constituents, and the residual economic benefits  
21 to the western New York community are felt profoundly.

22 Like many regions in this country, western  
23 New York has seen far too many manufacturing jobs  
24 eliminated or moved offshore because of competition  
25 from unfairly traded imports from China. Nearly two

1 decades ago, Chinese imports of low-priced and  
2 unfairly traded persulfates flooded the domestic  
3 market. FMC's operations were decimated, and the  
4 company was on the verge of closure.

5 At the time, this Commission determined that  
6 imports of persulfates from China were harming FMC and  
7 the domestic market. In 1997, the Commission and the  
8 United States Department of Commerce granted relief in  
9 the form of antidumping duties. Because of this  
10 relief, FMC and the members of the International  
11 Chemical Workers Union Council Local 76 were able to  
12 work together on new research, new investments and new  
13 efficiency measures that have made this facility  
14 competitive once again.

15 Today, FMC operates a state-of-the-art  
16 manufacturing facility that is capable of competing  
17 with any persulfate producer in the world, assuming  
18 that competition is fair. Time and again, China has  
19 proven that it does not compete fairly in the market  
20 for persulfates. It is no coincidence the European  
21 Union and India also impose antidumping duties on  
22 persulfates from China.

23 Members of the Commission, I believe nothing  
24 has changed since the last time you reviewed this  
25 order. China continues to increase its capacity to



1 produce persulfates regardless of demand and continues  
2 to dump its excess production on other unproductive  
3 markets. If the United States antidumping duties were  
4 removed, there is no doubt that China will again flood  
5 the U.S. market with low-priced, dumped imports.

6 In fact, the United States Department of  
7 Commerce has already determined that Chinese dumping  
8 will resume at a margin of 119 percent if the order is  
9 revoked. The United States persulfates industry  
10 simply would not survive such unfair competition.

11 For the sake of my community and my  
12 constituents, I urge you to continue the antidumping  
13 order on persulfates from China and not allow our  
14 industries to become unprotected from this very real  
15 threat. I thank the Commission for listening and for  
16 your consideration.

17 CHAIRMAN WILLIAMSON: Thank you very much,  
18 Representative Higgins, for coming. Are there any  
19 questions for the --

20 (No response.)

21 CHAIRMAN WILLIAMSON: No? Well, I want to  
22 thank you very much for taking the time to come.

23 MR. HIGGINS: Thanks for having me. I have  
24 to run back. Thank you very much.

25 CHAIRMAN WILLIAMSON: Okay. Thank you. Mr.

1 Ball, you may continue.

2 MR. BALL: FMC's plant in Tonawanda is  
3 capable of meeting all domestic demand. As a result  
4 of the antidumping duty, FMC was able to reinvest in  
5 infrastructure upgrades at Tonawanda, and these  
6 improvements yielded a modest expansion. However, as  
7 I just noted, actual demand increases have not  
8 materialized. FMC does not expect a material increase  
9 in U.S. persulfates demand in the reasonably  
10 foreseeable future.

11 The likelihood of material injury to the  
12 domestic industry caused by a flood of Chinese imports  
13 if the order is revoked is made even more certain by  
14 barriers to Chinese persulfates in other major  
15 markets. The EU has an antidumping order in place  
16 against Chinese persulfate imports, as does India.

17 In conclusion, based on my experience in the  
18 domestic persulfates industry and my knowledge of the  
19 Chinese persulfates industry, it is with great  
20 confidence and equal concern that I testify here today  
21 under oath that revocation of the order is likely to  
22 lead to severe injury to the domestic industry within  
23 a reasonably foreseeable time. Thank you.

24 CHAIRMAN WILLIAMSON: Thank you.

25 MR. NORTON: Good morning, and thank you

1 very much for this opportunity to speak today. My  
2 name is Clifford Norton. I am Vice President of the  
3 International Chemical Workers Union Council Local 76C  
4 based in Buffalo, New York. We represent the 60  
5 workers that are employed at the FMC persulfates plant  
6 in Tonawanda, New York.

7 I have been with the Union for 35 years and  
8 can well remember the condition of the Tonawanda plant  
9 prior to the imposition of the antidumping duty order  
10 15 years ago when the dumped Chinese persulfates  
11 flooded the U.S. market. At that time, we lost about  
12 40 percent of our members' jobs in Tonawanda, and I  
13 have no doubt that the plant would have been closed  
14 long ago had the antidumping order not stemmed the  
15 flow of unfairly traded imports from China.

16 Since that time, we have worked closely with  
17 management to improve efficiencies and productivity  
18 and to make the Tonawanda plant a global leader in the  
19 persulfates industry. This included the negotiations  
20 of a four year labor agreement with FMC in 2011 that  
21 provided for a tiered wage system and other measures  
22 designed to ensure the plant remains competitive.

23 Today we are confident that we can compete  
24 against anyone as long as the competition is fair.  
25 However, we cannot compete against unfairly traded

1 imports from China. Without the antidumping order, we  
2 will again be faced with a flood of low-priced imports  
3 from China that will again threaten our jobs and the  
4 continued existence of the sole U.S. persulfates  
5 producer.

6 The loss of these jobs would be a severe  
7 blow not only to our members, but also to the  
8 Buffalo-Niagara region. Our region is already  
9 economically depressed due to the loss of U.S.  
10 manufacturing industries and good jobs they provide.  
11 We cannot afford to lose any more jobs to unfair  
12 competition from China.

13 In conclusion, without the antidumping order  
14 I have no doubt that we will invariably face a flood  
15 of unfairly traded imports from China, the plant will  
16 be forced to close and we will lose our jobs, and  
17 another U.S. manufacturing industry will be lost.  
18 Please vote to continue the antidumping order and  
19 protect our jobs. And I thank you very much for this  
20 opportunity.

21 CHAIRMAN WILLIAMSON: Thank you.

22 MS. WARLICK: Good morning, Commissioners  
23 and staff. My name is Amy Warlick, and I'm an  
24 international trade economist with Barnes Richardson &  
25 Colburn. Now that you've heard all that Mr. Lerner,

1 Mr. Ball and Mr. Norton have told you about the U.S.  
2 persulfates industry, its employees and its markets,  
3 I'd like to ask you to back up a bit and look at this  
4 industry from a more macro global level.

5 While you've just heard that the U.S.  
6 industry has been relatively stable with respect to  
7 capacity, production and demand, the very opposite is  
8 true of China. The Commission has not received many  
9 questionnaire responses from Chinese producers, so  
10 it's more difficult in this investigation than most to  
11 gauge the threat posed by China.

12 To help fill in some of the blanks, FMC has  
13 hired a consulting firm to track the capacity and  
14 production of China's persulfates industry. We  
15 provided their report to the Commission as an  
16 attachment to FMC's producers questionnaire. The  
17 report details the truly exceptional growth of the  
18 Chinese persulfates industry.

19 From 2006 to 2012, China's persulfates  
20 production capacity is estimated to have grown by  
21 79 percent, as seen in Exhibit 1 here. Then, despite  
22 a fairly low capacity utilization rate of only  
23 77 percent in 2012, Chinese producers again expanded  
24 their capacity in 2013 by 49 percent. Again, that's  
25 49 percent in one year.

1           While FMC's Tonawanda plant was the largest  
2           persulfates producer in the world during the last  
3           sunset review, it has now been surpassed by several  
4           Chinese firms. Admittedly, some of this expanded  
5           capacity has been added to serve China's growing  
6           demand for persulfates, especially in the printed  
7           circuit board manufacturing sector.

8           However, China's economy is not growing fast  
9           enough to absorb all of this new capacity. China's  
10          printed circuit board production rebounded in 2010  
11          after the recessionary dip in 2009. However, growth  
12          has slowed significantly over the past three years, as  
13          seen in Exhibit 2. China's annual industrial  
14          production grew 10 percent in 2013, and its GDP grew  
15          less than 8 percent. Relatively speaking, these  
16          figure are impressive, but still they do not justify a  
17          49 percent increase in China's persulfates capacity in  
18          one year.

19          At this point in time, China has the  
20          capacity to produce a quantity of persulfates which is  
21          more than 13 times the size of U.S. persulfates  
22          consumption. This is illustrated in Exhibit 3. These  
23          volumes may seem a bit unbelievable, and they've  
24          certainly commanded the attention of FMC executives,  
25          but they are real and they cannot be overlooked.

1           For greater detail on the individual firms  
2 that contribute to these capacity figures, please  
3 review the consultant's report. In addition, you can  
4 research the websites of these companies yourselves to  
5 see evidence of the tremendous expansion that's  
6 currently taking place in China. For instance,  
7 Exhibit 4 shows the advertised production capacity of  
8 Hebei Jiheng Group. These figure represent a doubling  
9 of their 2006 capacity. In another example, Exhibit 5  
10 details Zhan Hua Chemical Company's expansion plans.

11           Now, our consultant reports that Zhan Hua  
12 has already expanded its 2013 capacity to 50,000  
13 metric tons. Zhan Hua states here on their website  
14 that the second phase of their ongoing construction  
15 project will bring their annual capacity production to  
16 75,000 metric tons. For comparison purposes, 75,000  
17 metric tons is equivalent to 165 million pounds and  
18 more than three times the weight of annual U.S.  
19 consumption of all persulfates.

20           As illustrated in Exhibit 6, the rapidly  
21 growing persulfates capacity and production in China  
22 have resulted in a tremendous surge in Chinese exports  
23 to Asian, Middle Eastern, South American and a wide  
24 variety of other world markets, especially during 2011  
25 and 2012 when Chinese economic growth began to slow

1 down.

2 In a sunset proceeding such as this, it's  
3 not often that the Commission has the advantage of  
4 observing real life, historical experience to learn  
5 what would actually happen should the orders be  
6 revoked. However, in this case the Commission can  
7 observe the experience of the EU when it revoked its  
8 antidumping order on persulfates from China.

9 The EU issued an ADD order on persulfates  
10 from China in 1995, then revoked that order in early  
11 2002. As seen in Exhibit 7, following revocation  
12 Chinese persulfates exports to the EU jumped from less  
13 than a million pounds in 2001 to 11 million pounds in  
14 2003 and 26 million pounds in 2006. This flood of  
15 dumped imports depressed then suppressed EU prices at  
16 a time of rising raw material cost, causing material  
17 injury to EU manufacturers.

18 So a new EU antidumping investigation was  
19 initiated in June 2006 and a new order was imposed in  
20 October 2007. The reimposition of the EU antidumping  
21 order had immediate and dramatic effects. Chinese  
22 exports to the EU fell from 26 million pounds in 2006  
23 to 13 million pounds in 2008, then 9 million pounds in  
24 both 2010 and 2012.

25 The EU initiated a sunset review of this



1 order in October 2012 and determined last month that  
2 revocation of the order would likely lead to a  
3 continuation or recurrence of injury. The EU order  
4 remains in place with a China-wide rate of 72 percent.

5 When we compare the situation in the United  
6 States with that in the EU, it becomes painfully  
7 obvious that there is nothing that would prevent the  
8 same fate in the United States if the U.S. order is  
9 eliminated. Furthermore, because of all the Chinese  
10 persulfates that have now been diverted out of the EU  
11 market, as well as those diverted out of India due to  
12 their order against Chinese persulfates, there is  
13 every reason to believe that the fate of the United  
14 States would be far worse than that of the EU.

15 U.S., German, Japanese, Taiwanese and Indian  
16 persulfates producers compete with each other on a  
17 relatively fair playing field in both the United  
18 States and abroad. However, FMC simply does not stand  
19 a chance when up against the threat of ever expanding  
20 Chinese producers. That's because the Chinese  
21 persulfates industry is different from others around  
22 the world in that it's not entirely profit seeking.

23 The astounding growth in the Chinese  
24 industry has resulted from forces that extend well  
25 beyond the market. In 2013, five of the eight largest

1 producers in China and 43 percent of China's  
2 production capacity was wholly owned by the Government  
3 of China. While the capacity of privately held  
4 producers in China grew 126 percent between 2006 and  
5 2013, the capacity of government-owned Chinese  
6 producers grew by a staggering 246 percent as  
7 illustrated in Exhibit 8.

8 The phenomenon of overcapacity and  
9 overproduction in China has been witnessed time and  
10 time again in other industries; for instance, the  
11 solar cell and modular industry, which the Commission  
12 continues to investigate. While the motives for this  
13 ever expanding industrial behavior by the Government  
14 of China is the subject of much speculation and debate  
15 the world over, most experts concur that the Chinese  
16 Government directly and indirectly encourages the  
17 maximization of jobs, production and exports as goals  
18 in and of themselves, whether or not they lead to  
19 profits.

20 There is often also an incentive in China to  
21 maximize consumption of overproduced chemical  
22 feedstocks like sulfuric acid in industries like  
23 persulfates that are backwards integrated with their  
24 chemical raw materials. In the particular situation  
25 of persulfates, however, Chinese overcapacity and

1 overproduction is even more likely to lead to dumping  
2 because of the very nature of persulfates, which have  
3 a limited shelf life.

4 Over time, persulfates crystals cake  
5 together and begin to decompose. This generally  
6 occurs about six months after production. When caking  
7 occurs, persulfates become unusable and can become  
8 unstable. Because they are strong oxidizers, unstable  
9 persulfates can ignite if exposed to friction, heat,  
10 water or combustible materials, so all persulfates  
11 have a shelf life that must be respected.

12 Many industries face such inventory issues  
13 with perishable products. Dairy comes to mind, as we  
14 all know what happens when milk is past its prime.  
15 However, milk will simply spoil with age. It will not  
16 ignite or explode. If not handled properly, however,  
17 aged persulfates can and have caused highly  
18 destructive factory and warehouse fires.

19 FMC therefore manages its production and  
20 inventories and storage facilities with utmost  
21 caution. Any inventories that come near their  
22 expiration dates are generally reworked into other  
23 products as disposal of cake persulfates is subject to  
24 regulations which make it cost prohibitive. However,  
25 the process of reworking cake persulfates into other

1 products is also expensive, so all precautions are  
2 made by FMC to ensure that persulfates inventories are  
3 maintained within stringent guidelines.

4 In China, however, there appears to be much  
5 less concern about overproducing this limited shelf  
6 life product. Certainly Chinese producers are aware  
7 of the fire risks associated with storing aging  
8 persulfates. However their solution to this problem  
9 is very different. Their solution is to offer their  
10 oversupplies onto the world market at prices low  
11 enough to ensure that a global buyer is found quickly  
12 before the persulfates begin to age. Their vast  
13 output is priced to sell no matter how low world  
14 prices fall. This behavior is necessary and endemic  
15 for an industry that consistently overproduces a  
16 product that becomes volatile with age.

17 Since there were few U.S. imports of  
18 persulfates from China during the period of review,  
19 the Commission has very few Chinese prices on the  
20 record upon which to reflect so I'll point you to the  
21 prices Chinese suppliers are advertising on e-Commerce  
22 portals such as Alibabi, ChinaChemNet and TradeKey.  
23 Our last query on Alibabi turned up literally  
24 thousands of persulfates offerings from hundreds of  
25 Chinese suppliers. While there are always

1 redundancies on sites such as these, it's clear that  
2 Chinese suppliers participate heavily in online spot  
3 market sales.

4 Exhibit 9 shows persulfates prices offered  
5 online by Chinese companies in December 2013. As you  
6 can see, several Chinese trading companies were  
7 offering ammonium persulfates on Alibabi at prices  
8 ranging from just 7 to 18 cents per pound. Such  
9 prices would not even cover FMC's raw material costs.

10 Other Chinese suppliers, including Zhan Hua, whose  
11 expansion I just discussed, were offering ammonium  
12 persulfates for 29 to 34 cents per pound. These prices  
13 do not approach FMC's full cost of production and  
14 likely do not approach China's costs of production  
15 either.

16 Still, Chinese suppliers keep increasing  
17 their persulfates production to utilize the costly  
18 capacity they have built. Then they push these  
19 persulfates onto the market at these low prices  
20 because they cannot afford the risks of holding them  
21 in inventory until a better price can be found. Their  
22 persulfates are not priced for profit. They're priced  
23 to move fast, and they're being dumped.

24 After a decade of recovery following the  
25 initial imposition of the order, FMC had some

1 profitable years during which it was able to achieve  
2 reinvestment economics. FMC used its proceeds wisely  
3 to update and expand its infrastructure to respond to  
4 anticipated customer demand and to invest in its labor  
5 force.

6           However, 2013 has been a sobering year for  
7 FMC's persulfates business. In the interim 2013  
8 period, U.S. persulfates consumption is down, as are  
9 FMC's prices. FMC's production is down, its shipments  
10 are down and its market share is down. Its ending  
11 inventories are up. FMC's costs are up and its  
12 operating margins are down. Its productivity is down  
13 and its capacity utilization is down too.

14           In short, by every standard measure that the  
15 Commission employs to assess industry health the U.S.  
16 industry has lost ground. Quite frankly, even the  
17 healthiest domestic industry would be vulnerable to  
18 recurrence of injury in the face of such extreme  
19 overcapacity in China. However, given the recent  
20 downturn FMC would now be particularly vulnerable to  
21 material injury in the wake of revocation.

22           FMC is currently faced with intense price  
23 competition, weakening market demand, price erosion,  
24 escalating costs and encroachment by new market  
25 entrants, all of which make its market position

1 precarious. This is an industry where one can never  
2 rest. Markets are fickle and can disappear overnight.

3 As the staff report indicates, persulfate  
4 sales to the polymer industry represent about half of  
5 FMC's total sales volume. Demand in the  
6 polymerization market has been stagnant due to the  
7 continued downturn in the market for new housing as  
8 seen in Exhibit 10. This is because the market for  
9 new housing has a heavy influence on demand for  
10 adhesives, upholstery, carpeting, paints and other  
11 polymer-containing materials used in new home  
12 construction.

13 While FMC has only recently recovered from  
14 the loss of persulfate sales into the nearly extinct  
15 U.S. printed circuit board industry, it also suffered  
16 the loss of the pool shock chemicals market starting  
17 in 2012. This market represented a significant  
18 portion of FMC's persulfate sales volume in 2012, but  
19 persulfates were abruptly displaced from this market  
20 by other chemicals due to a change in pool  
21 sanitization technology.

22 The experience of the lost pool shock market  
23 is not uncommon in this industry. Market demands  
24 evolve and adapt to ever changing technologies and  
25 industry migrations. FMC is rightfully concerned

1 about the future prospects for persulfates in the oil  
2 and gas recovery market.

3 Horizontal drilling technology is quickly  
4 evolving to drive down cost and increase productivity,  
5 while responding to the changing hydrogeological needs  
6 of various U.S. shale formations. The use of  
7 persulfates as gel breakers in oil and gas recovery is  
8 tied to the use of guar gum to produce the gels. A  
9 recent drought in India caused a worldwide shortage of  
10 guar gum in 2012 and a surge in guar prices.

11 The drought also caused many end users to  
12 question their reliance on guar and switch to slick  
13 water guar hybrid fracturing fluids, which require  
14 less guar, hence fewer persulfates. So while guar gum  
15 production will likely stabilize and grow again over  
16 time, some of the damage from this short supply  
17 incident is permanent and will suppress demand for  
18 persulfates in oil and gas recovery going forward.

19 FMC has been in this business long enough to  
20 know that it must always stay on top of its game and  
21 can never relax because the floor could drop out of  
22 today's markets at any moment. FMC can never take its  
23 focus off the research and development that yields  
24 future customers, applications and markets.

25 After many difficult years, FMC finally had



1 some good years during the period of review, good  
2 years that would have never been possible without the  
3 relief provided by the antidumping order. However,  
4 FMC has never used the relief that order has provided  
5 as a crutch or shield behind which to become static  
6 and uncompetitive.

7 On the contrary, during these good years FMC  
8 reinvested in the future of persulfates by upgrading  
9 portions of its Tonawanda plant to improve  
10 productivity, safety, capacity and quality. However,  
11 FMC is increasingly concerned about whether their  
12 returns on capital will meet the expectations that  
13 triggered their decision to invest in the upgrades.

14 At this particular juncture, with the loss  
15 of the printed circuit board market and the pool  
16 chemicals market, disappointing sales in oil and gas  
17 recovery, continued slack demand for polymers and ever  
18 rising costs of materials, FMC is perhaps more  
19 vulnerable than it has been in many years.

20 The U.S. persulfates industry provides about  
21 100 skilled, high paying jobs largely in the  
22 Buffalo-Tonawanda area, which has experienced an  
23 exodus of steel and auto sector jobs in recent  
24 decades. FMC is not only the last remaining U.S.  
25 persulfates manufacturer; it's a leader in developing

1 new applications and improving the performance of  
2 persulfates in existing applications.

3 Persulfates are used in a wide variety of  
4 applications that support hundreds of downstream U.S.  
5 manufacturers, oil and gas companies, and important  
6 environmental remediation projects. It's important  
7 for the United States to maintain a domestic supply of  
8 persulfates for these important purchasers.

9 Continuation of this order will not only  
10 preserve this important U.S. industry, but it will  
11 preserve competition in the United States from third  
12 country producers and the EU, Japan, Taiwan and India,  
13 who also stand to be displaced in the U.S. market by  
14 China if the antidumping order is revoked.

15 This order is even more critical to the  
16 survival of the U.S. industry now than it was in 1997  
17 because of the vast production capacity expansion that  
18 has taken place in China and the increased foreign  
19 barriers to Chinese persulfates that will divert  
20 excess Chinese production volumes into the U.S. market  
21 at rock bottom prices designed to achieve rapid sales  
22 and reduce the inherent risks of storing aging  
23 persulfates.

24 The Chinese producers are not here for a  
25 good reason. They know the score. They know to what

1 extent their industry is expanding, they know what  
2 they're capable of producing, and they know the fate  
3 of the U.S. industry should the order be revoked.  
4 They're fully aware of the extent to which they  
5 undersell FMC in foreign markets.

6 They also know that they can produce any  
7 type of persulfates that FMC can produce. They have  
8 acquired the technology to encapsulate persulfates  
9 when an application such as oil and gas recovery  
10 requires encapsulation. Exhibit 11 shows an online  
11 advertisement for encapsulated ammonium persulfate  
12 breaker by Qingdao iPolymer Chemicals in Shandong,  
13 China. The Chinese also already sell into the  
14 environmental remediation markets in both China and  
15 abroad.

16 In short, the Chinese know that any  
17 information they provide to the Commission can only  
18 hurt their position. Thus, they've decided to provide  
19 almost nothing. We believe that the Commission is  
20 fully justified in making adverse inferences regarding  
21 the failure of nearly all foreign producers to respond  
22 to information requests from the Commission.

23 I'd be happy to answer any questions the  
24 Commissioners or staff may have. Thank you for your  
25 attention and the opportunity to explain this global

1 industry and FMC's support for continuation of the  
2 order.

3 MR. VAKERICS: Mr. Chairman, that concludes  
4 our direct testimony. We welcome any questions the  
5 Commissioners may have.

6 CHAIRMAN WILLIAMSON: Thank you.

7 MR. VAKERICS: Thank you.

8 CHAIRMAN WILLIAMSON: We want to express  
9 appreciation to all the witnesses who have come today  
10 to testify, and this morning we'll begin our questions  
11 with Commissioner Pinkert.

12 COMMISSIONER PINKERT: Thank you, Mr.  
13 Chairman, and I thank all of you for being here today  
14 and being willing to share your experience and  
15 knowledge of this industry with us.

16 My first question is going to sound like  
17 it's a question for the economist, but it could also  
18 be for the industry witnesses on the panel. In  
19 considering profitability, is it significant whether  
20 demand for the industry's product is cyclical in  
21 nature?

22 MR. LERNER: Our recent profitability or the  
23 earning of higher profits over the last few years is  
24 in fact cyclical. It was principally driven by some  
25 applications that had higher market demand in that

1 frame of time, principally the fracturing or hydraulic  
2 fracking industry for this oil and gas extraction from  
3 shale formations.

4 As Ms. Warlick testified a moment ago, the  
5 reduction of guar supply for which persulfate is the  
6 gel breaker of choice or the majority choice declined  
7 significantly due to this weather pattern infliction,  
8 and the industry developed alternative substitute  
9 hydraulic fracturing fluids which do not utilize  
10 persulfate or utilize it to a significantly lower  
11 extent than guar gum gels do.

12 That has not recovered since that time, and  
13 in fact the industry technology shift, which is always  
14 propagating as research and development in this  
15 lucrative field of oil and gas extraction always  
16 propagates, shows that we have had significantly less  
17 sales into that segment because the value added  
18 performance of products into that segment has not  
19 returned to the same levels of profitability.

20 And as Mr. Ball testified, our sales in  
21 general and our sales specifically in that segment  
22 over the last year, year and a half, two years, have  
23 declined significantly.

24 COMMISSIONER PINKERT: Thank you. Ms.  
25 Warlick, did you want to add something to that?

1 MS. WARLICK: No. I think that's adequate.

2 COMMISSIONER PINKERT: Now, Ms. Warlick, I'm  
3 wondering based on your discussion towards the end of  
4 your testimony about why the Chinese may not be here  
5 today. Are you suggesting that we apply an adverse  
6 inference given the fact that they're not here?

7 MS. WARLICK: Yes, I am suggesting that you  
8 apply adverse inference.

9 COMMISSIONER PINKERT: And if we don't apply  
10 an adverse inference, do you think the evidence on the  
11 record is sufficient to support the determination that  
12 you're advocating in this case?

13 MS. WARLICK: Yes, I believe so. Do you  
14 mean on the record in terms of not just in terms of  
15 the questionnaires because that's limited. However,  
16 what we have entered into the record in terms of the  
17 research that we've done and our consultant has done,  
18 yes.

19 COMMISSIONER PINKERT: Now, you also put up  
20 quite a bit of material on other markets, overseas  
21 markets in which China participates. Has FMC had  
22 firsthand experience in overseas markets with respect  
23 to the supply of Chinese product to those markets?

24 MS. WARLICK: Yes, they have, and that is  
25 probably better answered by FMC. They compete with

1 China in various markets head on or have tried to  
2 compete with China.

3 So I'll let either Tom Ball or Bruce. Would  
4 you like to answer that one?

5 MR. BALL: Yes. We do have firsthand  
6 experience competing with China in those markets --  
7 Mexico, Brazil, Argentine, some of the other Asian  
8 markets like Korea, Taiwan. We do sell globally. We  
9 export product out of the U.S.

10 We also compete with them in Europe,  
11 although they're limited by the antidumping order  
12 that's in place in Europe.

13 COMMISSIONER PINKERT: And can you talk  
14 about your ability to go head-to-head with them in  
15 those markets?

16 MR. BALL: Yes. It's very difficult because  
17 they're effectively dumping product out, as Ms.  
18 Warlick testified, to move it quickly at very low  
19 prices.

20 Where we've been successful is with some of  
21 our global customers that we do business with in the  
22 U.S. and in Europe who value reliability of supply,  
23 somebody who's in the market all the time, not in and  
24 out of the market trying to move product quickly  
25 today.

1           So we've been more successful supplying  
2 those types of customers. Very difficult to supply  
3 kind of true regional customers up against the Chinese  
4 in those markets.

5           COMMISSIONER PINKERT: Mr. Lerner, anything  
6 to add?

7           MR. LERNER: I have nothing to add except to  
8 support what Mr. Ball just said; that when we deal  
9 with a global client that has multinational operations  
10 where they have a benefit that they can get the  
11 reliability and quality that we produce, but at a  
12 better price universally because of the larger volumes  
13 that we can supply around the world, then we can  
14 export to, for instance, BASF or Dow's locations in  
15 South America or other locations. But to compete with  
16 regional industries against extremely low-priced,  
17 dumped Chinese product, we've almost consistently lost  
18 that business.

19          COMMISSIONER PINKERT: Thank you. Now, you  
20 indicate that demand is down in the oil and gas  
21 recovery market. Do you expect that demand to recover  
22 in the near future?

23          MR. LERNER: I do not expect that demand to  
24 recover to the levels that it experienced in the prior  
25 couple of years when we had elevated profitability



1 driven by that sector for the reasons that I expressed  
2 earlier.

3 The migration and propagation of the general  
4 technology used in the fracturing process and the  
5 fluids used is not likely to return to the high  
6 quantities or almost universality of guar gum  
7 formulations that used high levels of persulfates.

8 And so while I do expect that the general  
9 production of oil and gas from shale domestically will  
10 continue to increase so that the total number of wells  
11 or fracture jobs into the future will continue to  
12 increase as demand for those products increases that  
13 that will not correlate in the same way or directly to  
14 persulfates demand in those processes because of the  
15 shift in technology.

16 MR. BALL: Could I add something to that  
17 also? Also the kind of visibility of the shale gas  
18 play in North America is increasing new sources of  
19 competition, so in addition to what Mr. Lerner just  
20 said more foreign persulfate producers are trying to  
21 get involved in that market as well, making it a more  
22 competitive and difficult market for us to navigate in  
23 the U.S. anyway.

24 MR. LERNER: Agreed.

25 COMMISSIONER PINKERT: Thank you. Now, your

1 brief mentions that FMC produces some specialty grade  
2 products. How should we consider those specialty  
3 grade products in the context of this sunset review?

4 MR. LERNER: So I'd like to make a point  
5 first of all regarding specialty versus commodity so  
6 that there's no misunderstanding.

7 And in my same capacity, although I'm a  
8 manager I'm also classically trained as a chemist. I  
9 have a Ph.D. in Inorganic Chemistry, and I can testify  
10 to you that the chemical constitution of all of these  
11 persulfates, those that we produce and those the  
12 Chinese produce and those that the direct competition  
13 from other countries produce, are chemically  
14 identical.

15 So to Mr. Ball's testimony, there's no  
16 reason to assume that for marketing purposes where we  
17 suggest that there are feature benefits that are more  
18 specialized that there's anything different chemically  
19 between any of these persulfate products, and there  
20 easily could be competition between them.

21 When we refer to specialties or specialty  
22 applications we are almost certainly referring to the  
23 total value added that FMC can bring to the  
24 application as much or more so than the physical  
25 product itself.

1           A case in point is for environmental  
2 applications where we are a patent holder and patent  
3 licensee of certain application technology of  
4 persulfates for the remediation of organically  
5 contaminated soils. It's that technology of the  
6 application, the determination of quantities and types  
7 of -- quantity of persulfate and types of activators,  
8 the other consulting activities that we do around the  
9 use of this common chemical component persulfate that  
10 creates the specialty nature or the value added  
11 offering to that industry.

12           COMMISSIONER PINKERT: Thank you.

13           CHAIRMAN WILLIAMSON: Thank you.

14           Commissioner Johanson?

15           COMMISSIONER JOHANSON: Thank you, Mr.  
16 Chairman, and I would also like to thank the witnesses  
17 for appearing here today.

18           Mr. Vakerics, you stated in your opening  
19 statement that this was an investigation which  
20 resolved around the issue of capacity. And, Ms.  
21 Warlick, you spoke on capacity, the growth of the  
22 capacity in the Chinese market at some length.

23           Why has there been such a rapid expansion of  
24 capacity to produce persulfates in China? Are you all  
25 aware? Because the numbers you gave are very

1 dramatic.

2 MR. VAKERICS: I think the best person to  
3 answer that is -- well, let me say this. The Chinese  
4 are more capacity utilization oriented. They want to  
5 keep expanding. They want to create jobs. It's an  
6 essentially controlled economy.

7 While it may seem irrational to us here, in  
8 China, based on the government mandates and the  
9 government control, it makes sense. More capacity,  
10 more jobs, more production. But I think Ms. Warlick  
11 is the best to specifically answer your question.

12 COMMISSIONER JOHANSON: And if I could  
13 interject with one more factor to consider here. Is  
14 this an old industry in China? Because we hear of  
15 older industries in China, which the government is  
16 reluctant to shut down due to possible social  
17 dislocation.

18 MR. VAKERICS: Mr. Ball?

19 MR. BALL: Yes. I mean, it is an old  
20 industry in China.

21 COMMISSIONER JOHANSON: Okay.

22 MR. BALL: Yes. It's been there. The  
23 persulfate production plants have been in China for a  
24 long time.

25 COMMISSIONER JOHANSON: Yet they continue to

1 increase capacity?

2 MR. BALL: It doesn't make sense to us. I  
3 mean, obviously a portion of their capacity increase  
4 is going to meet growing demand in China, so there's a  
5 piece of it that's logical for that.

6 There's some examples of Chinese producers  
7 back integrating into some of the raw materials. So  
8 let's say a key raw material is sulfuric acid. We're  
9 aware of a couple of instances where a sulfuric acid  
10 producer decided to go downstream into persulfates to  
11 try to channel their sulfuric acid into another  
12 market. You get some of that.

13 But none of it really makes any sense when  
14 you look at an industry operating at 70 some percent  
15 capacity utilization and then continuing to add  
16 capacity at the kind of rate that has happened in  
17 2013. We can't make any sense of that, to be honest  
18 with you.

19 COMMISSIONER JOHANSON: Because we're  
20 certainly not seeing increased capacity in the U.S.

21 MR. BALL: No. No. We have a modest -- as  
22 we've seen in the information we've provided, we had a  
23 modest capacity increase at Tonawanda over the period  
24 of review, which was really tied into our  
25 infrastructure improvements we made there.

1                   But also the demand isn't growing in the  
2 U.S. very much either. So demand is stable. Capacity  
3 is stable. The competition here today from the other  
4 importers who participate in the U.S. market is pretty  
5 consistent and robust, but it's a very different  
6 situation in China.

7                   COMMISSIONER JOHANSON: Ms. Warlick, did you  
8 want to add anything?

9                   MS. WARLICK: Yes. And I will also ask Mr.  
10 Lerner to speak on this too. But there's something  
11 interesting that goes on with sulfuric acid. The  
12 production of sulfuric acid releases energy in the  
13 form of heat and so there's a demand to capture that  
14 energy.

15                   So I don't want to say that sulfuric acid is  
16 a byproduct of energy -- I think they're co-products  
17 -- but you have a situation where there is sometimes  
18 more sulfuric acid produced than is demanded by the  
19 market so you can make persulfates out of it. So that  
20 is one of the reasons you see kind of a demand for  
21 producing the persulfates. Mr. Lerner as a chemist  
22 can do a much better job explaining that than I can.

23                   However, I've looked at this quite a bit  
24 because it seems so irrational. What is going on  
25 here? And I wanted to verify all of these numbers

1       myself and did quite a lot of research myself, and  
2       it's all real.

3               And so what I kept going back to is the  
4       consultants show exactly which firms are state owned,  
5       and some of them -- one is even owned by a township,  
6       but the rest are at the federal/state level and even  
7       some of the privately held have a state interest, and  
8       I think that there is, as you see by the comparison  
9       and the growth rates of the state owned versus the  
10      privately held, there's just much more growth, and I  
11      do believe that --

12             COMMISSIONER JOHANSON: Pardon me. In the  
13      state owned?

14             MS. WARLICK: In the state owned firms there  
15      is much more rapid capacity building, and I think that  
16      they are after increasing GDP, contributing to GDP,  
17      meeting certain metrics that the government has  
18      established for production, for employment and for  
19      exports.

20             COMMISSIONER JOHANSON: Could you all in  
21      your posthearing brief, to the extent you can, provide  
22      information as to what percentage of production in  
23      China is state owned versus privately held, if that's  
24      the word you'd use, in China?

25             MS. WARLICK: Yes.

1                   COMMISSIONER JOHANSON: I don't recall  
2                   seeing those numbers. And maybe I've already seen it,  
3                   but I just don't recall that.

4                   MS. WARLICK: In my testimony I think that  
5                   it is 43 percent.

6                   COMMISSIONER JOHANSON: Okay. Sorry. I  
7                   just didn't notice that.

8                   MS. WARLICK: Forty-three percent. But that  
9                   43 percent is concentrated at the top among the  
10                  biggest firms.

11                  COMMISSIONER JOHANSON: Okay.

12                  MS. WARLICK: So was it 43 percent of the  
13                  expansion or 43 percent of production? I'd have to  
14                  look at that --

15                  COMMISSIONER JOHANSON: That's fine. I can  
16                  look at it myself.

17                  MS. WARLICK: -- and review them --

18                  COMMISSIONER JOHANSON: Thank you, though.

19                  MS. WARLICK: -- in posthearing.

20                  COMMISSIONER JOHANSON: I appreciate it.

21                  MS. WARLICK: Yes.

22                  COMMISSIONER JOHANSON: Moving on to  
23                  something else, you all have made an argument that the  
24                  experience of Chinese persulfates exports to the  
25                  European Union provide a useful case study for us as



1 to what happened when the orders were lifted there.

2 Is there any reason to believe that market  
3 conditions in the European Union are different from  
4 those in the United States, including in terms of  
5 demand and supply conditions and pricing factors  
6 relevant to the particular market such that we should  
7 be aware of in drawing any parallels that you all  
8 advocate? Because the situation in Europe, as you  
9 know, right now economically we are doing somewhat  
10 better.

11 MR. BALL: Yes. So I think the end markets  
12 in Europe are largely the same as they are in the U.S.  
13 with the exception that the oil and gas recovery  
14 market, shale gas, isn't really there and it is here,  
15 but otherwise the markets are very similar.

16 The demand has been weaker in Europe over  
17 the last couple of years with the economy, economic  
18 situation there than it has been here. I would  
19 characterize it overall as being pretty stable here to  
20 being down a little bit there. But beyond that,  
21 similar markets, similar competitors involved in the  
22 markets, not a lot of differences.

23 COMMISSIONER JOHANSON: All right. Thank  
24 you for your response.

25 Ms. Warlick, will U.S. manufacturers

1 purchase Chinese persulfate at fire sale prices, as  
2 you discussed in your statement, knowing that these  
3 older supplies can be volatile?

4 MS. WARLICK: Yes. I will have Bruce talk  
5 on it too. I think that they're selling them with  
6 plenty of shelf life left. The point is that they  
7 don't want to keep them in inventory too long until  
8 they would start losing value. But, Mr. Lerner, let  
9 us know your thoughts.

10 MR. LERNER: I think that's the primary  
11 point is that because there is sort of a clock ticking  
12 that the product has to be moved in a reasonable  
13 timeframe fashion so that it doesn't create a  
14 situation where it begins to become unusable, either  
15 first by caking, which doesn't allow it to be readily  
16 put into these polymerization processes, or from that  
17 stage forward potentially becoming unstable and  
18 causing a hazardous condition.

19 I think it's fair to say that again to the  
20 point of interchangeability there are multinational  
21 consumers of persulfates in the U.S. and Europe, some  
22 of the largest chemical companies that are well known,  
23 that have operations in China and purchase Chinese  
24 products in China and use them, so there is no reason  
25 to assume that they would not or could not utilize

1       them and would purchase them at these irrationally low  
2       prices here in the U.S. if they were brought here  
3       under those conditions.

4                COMMISSIONER JOHANSON:  Given the safety  
5       problems involved, are you aware of purchasers in  
6       other developed countries who are willing to buy the  
7       product along these lines?

8                MR. LERNER:  Yes.  There's brokers  
9       throughout the world that continuously buy these  
10       products to remarket them, purchase them at very, very  
11       low prices such as those types of prices that were  
12       illustrated and then mark them up at marginal margins  
13       since they don't have a lot of overhead being just the  
14       broker and move those products along to determinate  
15       consumers, whether they be middle or large sized  
16       regional industries or smaller industries or companies  
17       that would utilize smaller portions of those products  
18       because they provide repackaging or breakdown of large  
19       volumes into small packages type of services on their  
20       behalf.

21               COMMISSIONER JOHANSON:  All right.  My time  
22       has expired, but I just wanted to bring up one issue  
23       which you all had discussed a moment ago, and that was  
24       the issue I believe it would be cogeneration, the  
25       production of energy off of the plants.  Is that what

1 you all were stating occurs? Is that the right word?

2 MR. LERNER: Yes.

3 MS. WARLICK: Yes.

4 MR. LERNER: I think what Ms. Warlick was  
5 simply saying is that as producers of sulfuric acid  
6 increase their production sulfuric happens to be an  
7 exothermic process. They can produce heat, which can  
8 be captured and converted to steam.

9 Cogeneration is an opportunity to utilize  
10 that steam, as well as persulfate manufacturing is a  
11 way to convert excess production of sulfuric acid into  
12 yet another product with different applications,  
13 perhaps slightly higher value added applications, and  
14 utilize that sulfuric acid. I believe that was the  
15 point that was trying to be made.

16 COMMISSIONER JOHANSON: Would you all  
17 contend that Chinese producers are reluctant to shut  
18 down plants due to energy production, the fact that  
19 they are producing energy?

20 MR. LERNER: I would say the Chinese  
21 producers are reluctant to shut down operations for  
22 any reason, but the fact that operating let's say in a  
23 rational manner about other produced products to  
24 product valuable co-products such as electricity is a  
25 motivational force.

1                   COMMISSIONER JOHANSON: All right. Thank  
2 you. And once again, I apologize for going over my  
3 time.

4                   CHAIRMAN WILLIAMSON: Thank you.  
5 Commissioner Broadbent?

6                   COMMISSIONER BROADBENT: Thank you. Can you  
7 talk to me a little bit about what drives innovation  
8 in this market? Do you develop product applications  
9 internally or are your customers doing it and  
10 contacting you about what they might use it for?

11                  MR. LERNER: I would say that both are in  
12 play. We do have research and development facilities  
13 that focus on two aspects principally. One is process  
14 improvements about the manufacturing of persulfates so  
15 that we can continuously look to improve our  
16 productivity and efficiency and reduce our waste and  
17 cost in producing those products.

18                  We have had several incremental inventions,  
19 if you will, as a result of our laboratory investments  
20 and our reinvestment into R&D. In other cases we have  
21 licensed technology that was developed externally to  
22 FMC such as in the environmental application for  
23 persulfates in soil remediation. Those licenses and  
24 patents were taken from a number of sources, including  
25 the University of Connecticut as an example.

1           We have been developing products on our own  
2           or certain variation applications on our own, as well  
3           as working closely with clients, which sometimes has  
4           value and sometimes goes away. A case in point is in  
5           this water treatment or pool shock industry we had a  
6           close customer, BioLab, which was a subsidiary company  
7           of Chemtura, where we partnered with them to make a  
8           higher performance pool and spa shock product based on  
9           the oxidative properties of persulfate.

10           Unfortunately, that did not translate  
11           long-term into a value added or as high of a value  
12           added product for that company and they shifted  
13           technology to alternative formulations that were lower  
14           cost we were told with essentially almost equivalent  
15           or slightly lower performance, but the tradeoff that  
16           defines value of cost for performance for the market  
17           was more appropriate for them.

18           We therefore lost that application in its  
19           entirety. And going back to the question or the  
20           testimony regarding the profitability, we lost that  
21           element of slightly higher unit profitability because  
22           of the higher value added formulations of those  
23           specialty shocks.

24           In other cases we're pulled by the industry,  
25           and the oil and gas segment is one such industry where

1 really the developers of these hydraulic fracturing  
2 formulations for that application had discovered and  
3 been utilizing persulfate as a viscosity breaker for  
4 which we were pulled into that market, although I  
5 would tell you that we also tried to do our own R&D  
6 explorations for how to try to make product  
7 improvements to help our clients that use that product  
8 make that more beneficial and productive and efficient  
9 in their operations. That's how we stay competitive.

10 COMMISSIONER BROADBENT: Okay. So the  
11 BioLab was your only customer on the shock product?

12 MR. LERNER: That is correct.

13 COMMISSIONER BROADBENT: Okay. So what  
14 product are they using as an alternative?

15 MR. LERNER: I'm not aware of their  
16 proprietary formulations. We were only aware, working  
17 with them, that our persulfates were an active  
18 component of whatever their ultimate proprietary  
19 product formulations for the market were.

20 COMMISSIONER BROADBENT: Got it. Okay. So  
21 if you can talk to me a little bit about the migration  
22 of the printed circuit board manufacturing in the  
23 U.S., kind of what caused that, where that's going?

24 MR. LERNER: I'll let Mr. Ball speak to  
25 that. He was involved with the business at that time.

1 COMMISSIONER BROADBENT: Okay.

2 MR. BALL: Yes. It actually started quite  
3 some time ago. It was an ongoing migration that  
4 really finished up during this period of review. But  
5 I think it was the electronics industry largely  
6 shifting to Asia, particularly the lower value part of  
7 the electronics industry, which printed circuit boards  
8 would be.

9 You know, interestingly enough, now in some  
10 of the higher value areas which don't involve  
11 persulfates that trend is being reversed, but it was  
12 the migration of the electronics industry to Asia, and  
13 it's not coming back. That part of it is not coming  
14 back to North America.

15 COMMISSIONER BROADBENT: Okay. Thank you.  
16 In your firm, who sort of handles the dumping actions  
17 or maybe monitors the dumping proceedings in the EU  
18 and in India? Have you guys paid attention? I know  
19 you mentioned it in your testimony.

20 MR. LERNER: We have outside counsel, such  
21 as Barnes Richard Colburn.

22 COMMISSIONER BROADBENT: Oh, Mr. McGrath. I  
23 can ask him a question.

24 MR. LERNER: In Europe we have firms such as  
25 theirs that are expert in these matters that handle



1 these cases, and they're supported by the same people  
2 that you see sitting here. We are from a divisional  
3 perspective a small organization --

4 COMMISSIONER BROADBENT: Yes.

5 MR. LERNER: -- that has to wear a lot of  
6 hats and is fighting every day to keep value added  
7 employment and profits for our company.

8 COMMISSIONER BROADBENT: Okay. Great. Mr.  
9 McGrath, why did the Europeans allow their dumping  
10 order to expire given the state of the global economy  
11 in this product?

12 MR. McGRATH: I regret I'm going to have to  
13 punt the punt.

14 MR. VAKERICS: Commissioner Broadbent, in  
15 the initial round for some reason the European  
16 domestic industry did not request an expiry review.  
17 And as I understand EU procedures, if the domestic  
18 industry doesn't request a review the order will be  
19 permitted to expire.

20 COMMISSIONER BROADBENT: And then how long  
21 did it take them to reimpose it? I couldn't quite  
22 catch it on the graph, which was interesting, but --

23 MR. VAKERICS: Well, it was what, revoked in  
24 2002, Amy, and then I think it was reimposed in 2007.

25 MALE VOICE: Yes. That's correct.

1 MS. WARLICK: Yes, 2007. We can put that  
2 graph back up if that's helpful.

3 COMMISSIONER BROADBENT: No. That's okay.  
4 Just give me -- yes.

5 MR. VAKERICS: Then the expiry review  
6 initiated in 2012 and the EU with their findings to  
7 continue the order in December 2013.

8 COMMISSIONER BROADBENT: Right. So they  
9 really had really no activity on the antidumping side  
10 between 2002 and 2007?

11 MR. VAKERICS: That's correct.

12 MS. WARLICK: That's right.

13 COMMISSIONER BROADBENT: That was  
14 interesting. Thank you. And then what's it like in  
15 India? Sir, did you look at the India proceeding?

16 MR. VAKERICS: It's included as one of our  
17 exhibits to the brief, the Indian findings.

18 MS. WARLICK: Yes.

19 MR. VAKERICS: I found the Indian findings  
20 compared to the EU findings to be much less  
21 informative. So compared to the EU, if you look at  
22 what India did they just kind of didn't really go into  
23 any detail. They just said we're going to continue  
24 it.

25 COMMISSIONER BROADBENT: Yes.

1 MS. WARLICK: I did look at the data, and in  
2 our brief and I think also in our substantive response  
3 I show the Chinese exports to India and how they  
4 changed after the Indian order was put in place. So  
5 it's a graph very much like this only it's India,  
6 Chinese exports to India. So you can look at that.  
7 It's the same trend.

8 COMMISSIONER BROADBENT: Right.

9 MS. WARLICK: It's just the numbers are a  
10 little smaller --

11 COMMISSIONER BROADBENT: Okay.

12 MS. WARLICK: -- because India doesn't  
13 consume as much as the EU.

14 COMMISSIONER BROADBENT: Okay. Ms. Warlick,  
15 the government ownership of these firms that are  
16 increasing capacity so dramatically in China. Is it  
17 state owned or is it provincial directed? Do you guys  
18 have a sense on that?

19 MS. WARLICK: In all but one case we're told  
20 by the consulting firm that did the research it's  
21 state owned, and in one case it's township owned.

22 COMMISSIONER BROADBENT: In all cases it's  
23 provincial, kind of state province?

24 MS. WARLICK: Yes.

25 COMMISSIONER BROADBENT: Yes.

1 MS. WARLICK: Whenever the state --

2 COMMISSIONER BROADBENT: Yes.

3 MS. WARLICK: -- or whenever the government  
4 is owning the firm --

5 COMMISSIONER BROADBENT: Yes.

6 MS. WARLICK: -- in all cases it's state  
7 except one where it's township owned.

8 COMMISSIONER BROADBENT: Okay. And it's not  
9 Beijing. It's the locale that --

10 MS. WARLICK: Yes.

11 COMMISSIONER BROADBENT: Right?

12 MS. WARLICK: I'm sorry. Instead of saying  
13 state I should say central.

14 COMMISSIONER BROADBENT: Oh, central? So it  
15 is basically Beijing directing all this?

16 MS. WARLICK: Right. Yes. I mean state  
17 versus private.

18 COMMISSIONER BROADBENT: Got it.

19 MS. WARLICK: But, yes.

20 COMMISSIONER BROADBENT: Yes.

21 MS. WARLICK: It is Beijing owning all but  
22 one of the government owned.

23 COMMISSIONER BROADBENT: Got it. Okay.  
24 Thank you. That's helpful.

25 MS. WARLICK: Yes.

1                   COMMISSIONER BROADBENT: And then what is  
2 the predicted maybe increase in demand in the  
3 environmental soil remediation segment?

4                   MR. BALL: You know, we're expecting  
5 something in the 5 percent growth rate going forward  
6 here. Unfortunately, we have not experienced that  
7 level of growth over the last few years partially due  
8 to the bad real estate market, if you will, in the  
9 U.S. and constraints on government budgets because  
10 some of the remediation money comes from that source.

11                   But we are more optimistic going forward in  
12 the soil remediation area. That represents today  
13 about 10 percent of our Tonawanda production, and I  
14 think high single digit type growth could be possible  
15 there in that market.

16                   COMMISSIONER BROADBENT: Okay. Could you  
17 describe to me a little bit --

18                   MR. LERNER: It's been strongly regulatory  
19 driven, so to the extent that regulatory environment  
20 contains along the trajectory we see or think it may  
21 go to be more stringent in the future that's where we  
22 would see high single digits. Otherwise our current  
23 models are low single digits, maybe 5 percent growth,  
24 in the forward years when the U.S. economy more fully  
25 recovers.

1                   COMMISSIONER BROADBENT: Great. Thank you.  
2           I appreciate it.

3                   CHAIRMAN WILLIAMSON: Thank you.  
4           Commissioner Kieff?

5                   COMMISSIONER KIEFF: I join my colleagues in  
6           thanking you all very much for coming and presenting  
7           such detailed information and helpful information.

8                   And I wonder if I could ask some questions  
9           that I recognize may not be best answered today, but  
10          could be answered in posthearing submissions, and I  
11          also recognize may be hard for you to answer as a  
12          party, but of course you as a party and a law firm  
13          interact with other trade associations and bar  
14          associations and so you might through your membership  
15          in those communities be able to solicit input.

16                   This pathway for input posthearing  
17          submissions by third parties can sometimes be helpful  
18          because it doesn't have to have your direct  
19          fingerprints on it, if you will. It's not you  
20          speaking as a party. And it can be helpful to us  
21          because these are questions that are at least on my  
22          mind.

23                   What strikes me as tricky about this case is  
24          that we have a couple of buckets, if you will, of  
25          questions that we in a sense don't even know what we

1 don't know about. We have Petitioners asking for  
2 renewal. We have no one on the other side. One  
3 response to that is the adverse inference move.

4 But then that raises the age old question  
5 every decision maker has, age old tension between  
6 making decisions that are precise and making decisions  
7 that are accurate. If we always impose adverse  
8 inferences we will be precise. We will be like  
9 clockwork. We will always make the same decision  
10 again and again, but it will then by definition be a  
11 decision that lacks informational foundation, which  
12 means it's likely to be inaccurate. I mean, at least  
13 I'm pretty confident that I am less confident when I  
14 know less.

15 So we have a case, this case, where the  
16 original proceeding is old, if you will. It's our  
17 second review. It was a proceeding that was before  
18 the Uruguay Round and a proceeding that was before our  
19 Gerald Metals caselaw so it's a decision that doesn't  
20 explain in detail what the thinking was, and yet we're  
21 looking back on it and in a sense being asked to renew  
22 it.

23 And that, by the way, may make great sense  
24 to renew it, but we're being asked to renew it in a  
25 sense shooting blind because we have a small amount of

1 information about what's really going on in the  
2 future. We always have that. But we have one side's  
3 view, not the other side's view, if you will.

4 So if you could posthearing tell us more  
5 about how we can feel more confident about making  
6 decisions in that setting? I think we do in lots of  
7 cases, so I hope this is not a heavy ask, a heavy  
8 lift, but if you could just flush that out a little  
9 more I think that would help us.

10 If you could also maybe posthearing talk a  
11 little bit about how we should think about injury in  
12 cases like this where we've got already in the market  
13 some nonsubject imports that don't seem to be  
14 injurious or at least not sufficiently injurious to  
15 support another case. We have some possible future  
16 uses and applications.

17 In fact, Mr. Lerner and Mr. Ball have talked  
18 about their interactions as a good manager and as a  
19 good salesperson with potential clients working  
20 hand-in-hand with them to develop potential  
21 applications and in that sense Dr. Lerner because  
22 you're using your chemical experience to have those  
23 conversations.

24 The economic slowdown did not seem to really  
25 kill the industry. Maybe you'd do fine if the



1 order -- maybe the ingenuous, helpful, congenial  
2 interactions of the likes of Dr. Lerner and Mr. Ball  
3 with potential customers mean in fact you'd be quite  
4 successful, you'd thrive in a post-order world.

5           Again, I think we are quite mindful and  
6 appreciative of the many reasons you've given why that  
7 won't happen. So I don't mean to contest that. What  
8 I mean to do is say help give us more confidence about  
9 why in the face of no other information we can make a  
10 confident decision that you've provided is sufficient  
11 to form a good decision going forward.

12           So again, that's a very long set of  
13 questions, but it's designed to I hope ask you to give  
14 us either yourselves or through other parties  
15 information about how we can be more confident in  
16 decision-making in this way.

17           Let me just close then by saying the reason  
18 I'm asking this is not only because I think it  
19 strengthens our decision-making -- in other words, if  
20 we can better explain our decision -- but I think the  
21 need for a better explanation is not at its lowest  
22 today. The rest of the world, for example, hears us  
23 say that much of China is state-run, and then in the  
24 facile way in which rhetoric is -- rhetorical barbs  
25 are thrown, they then say or might say, well, you

1 know, gosh, J.P. Morgan was part of the federal  
2 government bailout of the financial sector, and  
3 they're now doing a private placement acquisition of  
4 this part of the U.S. industry. Isn't that -- isn't  
5 the United States becoming a state-run economy just  
6 like China?

7 In other words, the barbs come, and the more  
8 confident we are in our decision-making, and the more  
9 detailed our explanations can be about our decision-  
10 making, I think the better-positioned we are to  
11 explain to our trading partners and to our own economy  
12 why our decision-making is well-reasoned.

13 Think about incentive effects. If we always  
14 apply adverse inferences, it may provide an incentive  
15 for parties to show up less frequently and in effect  
16 challenge the U.S. trade system in the international  
17 trade fora rather than within the U.S. trade system.  
18 So rather than come to the ITC, rather than come to  
19 the CIT, rather than come to the Federal Circuit, it  
20 would just bring all of us, if you will, to the WTO.

21 So the better explanation we can provide, I  
22 think the better we can keep our system robust  
23 internally and robust to those external barbs, if you  
24 will.

25 So a long set of questions. I hope that

1 that provides, though, context for those questions  
2 because answers would allow us to provide context in  
3 our written decision. Thank you.

4 CHAIRMAN WILLIAMSON: I would like to turn  
5 to Mr. Norton for a minute. And I was just wondering,  
6 are all of the non-management workers at the Tonawanda  
7 plant union members?

8 MR. NORTON: Yes, sir.

9 CHAIRMAN WILLIAMSON: Okay. And that has  
10 always been the case, I take it?

11 MR. NORTON: Yes, sir. We've always been  
12 one -- you know, 60 union versus salary on the other  
13 side, yes, sir.

14 CHAIRMAN WILLIAMSON: Okay. What about the  
15 shall we say training and backgrounds of the workers  
16 at the plant?

17 MR. NORTON: It's pretty intense. It's  
18 handed down from one trained, skilled operator to  
19 another. In other words, jobs are posted on our board  
20 internally, and the successful bidder is based on  
21 seniority in our union rank and file membership. And  
22 when the successful bidder gets a job, he is then  
23 trained not only by management, certain sets of  
24 procedures to follow, safety rules and procedures, but  
25 then he has hands-on training for a period that could

1 last up to six months, on-the-job training, very  
2 intense, and the knowledge that the operator has on  
3 the job, that he passes it on to the new individual  
4 going to take that job, and then, of course, is tested  
5 also.

6 He is tested to make sure he knows what he's  
7 doing. He's confident he knows what he's doing. He's  
8 confident he knows what he's doing, and he's ready to  
9 go on the job. So it's pretty intense. It's handed  
10 down from one operator to the other, with the guidance  
11 of management.

12 CHAIRMAN WILLIAMSON: Okay. Thank you. I  
13 don't know to what extent you feel comfortable  
14 addressing, now that FMC has sold the operation to --  
15 I guess you'd say it's a venture capital company, or  
16 at least they've sold it to another company.

17 MR. LERNER: It's a private equity firm.

18 CHAIRMAN WILLIAMSON: I'm sorry, a private  
19 equity.

20 MR. LERNER: And to the other point, it's  
21 not J.P. Morgan Chase. It's a private equity  
22 investment for which J.P. Morgan Chase is just a  
23 general partner.

24 CHAIRMAN WILLIAMSON: Okay, good. Now, I  
25 was wondering, Mr. Norton, any comment on how -- what

1 does that mean for the workers going forward, if you  
2 have any comments now. If not --

3 MR. NORTON: Sure. I know definitely we're  
4 -- you know, we're all kind of a little bit, for lack  
5 of as better word -- I'm not a great public speaker.  
6 But we're on pins and needles because it's our  
7 livelihood and everything. And FMC has provided I  
8 know all of us in the union, our families, with a  
9 great livelihood. They have for many, many years.

10 But there is the fear of, you know, how this  
11 new firm who is going to be, you know, taken over for  
12 us will continue to run the operation as we have run  
13 it for the past -- well, for the past 37 years I've  
14 been there.

15 So, you know, we're -- that's first and --  
16 that's a lot on our minds. It's on the union members,  
17 so will I have health insurance, what type of health  
18 insurance. Hopefully that -- you know, what I mean,  
19 and the pay and everything to go along with it.

20 It definitely is a little unnerving, to say  
21 the least. The FMC has provided us with a great job.  
22 I'll tell you, we make a good living. And we'd like  
23 that to continue, but definitely it's first and  
24 foremost on all the members' minds. The stability is  
25 always a question because there is always the unknown.

1 So a lot of times where our minds kind of wander, say,  
2 geez, I hope, you know, help will be here tomorrow.

3 So it definitely is a concern, but we feel  
4 strongly we make a good quality product. We have good  
5 U.S. jobs, and we definitely would like to keep them.

6 CHAIRMAN WILLIAMSON: Thank you.

7 MR. LERNER: So I'd like to maybe --

8 CHAIRMAN WILLIAMSON: Sure, sure.

9 MR. LERNER: -- just add for you that as the  
10 -- we are in a sort of an interesting window. It's my  
11 first personal experience known as signed-to-close, so  
12 a definitive agreement has been reached and signed  
13 between the parties, and we're working towards a  
14 closing that makes it officially a new company for  
15 which I think it's very important to your question to  
16 also understand the following, which I believe I'm  
17 free to share, first of all, that FMC is transferring  
18 not just the business, but its entirety, including the  
19 current management team so that the management will be  
20 consistent.

21 This has been a value-added relief to many  
22 customers and clients for which we've had a strategy  
23 in place to be evaluated, supply across all of our  
24 product lines to them, and bring continuity and  
25 consistency to continuing our manifest operations.

1           Secondly, our Tonawanda facility is our  
2 largest persulfates manufacturing and our only  
3 persulfates manufacturing here in the States. We also  
4 produce other products there, namely peracetic acid.  
5 That facility is core to what is being acquired  
6 without a question. So it is our full intent and  
7 strategy to continue to operate that facility if that  
8 facility is viable.

9           Hence our desperate testimony here for the  
10 recognition that it will be severely and irrevocably  
11 harmed in the absence of the order that has allowed us  
12 to not only stay viable past the time when the order  
13 was imposed originally, but to have the ability to  
14 achieve after a significant period of time under the  
15 initial orders, to finally reach reinvestment  
16 economics, namely to have a level of profitability  
17 that would justify reinvestment in the factory and  
18 recognize the required return for the cost of capital.

19           We also have as a provision of the sales and  
20 purchase agreement, just to Mr. Norton's concern, and  
21 we are communicating that to all of our employees, not  
22 just those at the Tonawanda facility, provisions that  
23 we intend within the best of our ability to provide  
24 similar and -- what is the right term -- consistent  
25 benefit packages that will not be alterations of

1 salaries or any other likes of benefits, that  
2 employees will still have in enjoy a substantially  
3 similar set of benefits across the board that they  
4 enjoyed under FMC with regard to health and wellness  
5 protection, insurance, et cetera, salaries, a  
6 vacation, and the like wherever those types of plans  
7 are a viable will be put in place.

8           Actually, communications are underway, and  
9 I've personally been involved over the last few days  
10 in this interim period of being involved in selecting  
11 providers and organizations to provide such sort of  
12 savings and retirement, health and wellness, and other  
13 types of benefits of a substantially consistent nature  
14 to what all employees, myself as well as Mr. Norton  
15 and his colleagues, enjoy under FMC.

16           It's a concern for everyone, not just the  
17 union rank and file.

18           CHAIRMAN WILLIAMSON: Thank you for  
19 addressing that. I was just wondering. You mentioned  
20 other products that I guess the plant produces, and  
21 either or now or posthearing, can you sort of say how  
22 -- and this was talked about with the Chinese plants,  
23 that I guess their co-products that are produced that  
24 have -- do play a role in how much the plant produces,  
25 and how much is that a factor with respect to the



1 Tonawanda plant?

2 MR. LERNER: Yes. At our Tonawanda  
3 facility, we also produce a product called peracetic  
4 acid. There is no relationship of our production of  
5 that type of a product relative to the conjecture that  
6 Ms. Warlick put forward that is a logical outflow of  
7 why someone would produce persulfates if you were --  
8 had available and were producing or over-producing  
9 sulfuric acid as a way to fully integrate the excess  
10 production of that into something else.

11 Peracetic acid is a chemical that is formed  
12 by combining acetic acid with hydrogen peroxide.  
13 Hydrogen peroxide happens to be another core product  
14 of our peroxygens franchise. We're backward  
15 integrated into that. We produce that product at our  
16 Bay Port facility, which is located just outside the  
17 city of Houston. We ship that hydrogen peroxide to  
18 our Tonawanda facility, where we receive acetic acid  
19 from another domestic producer of acetic acid and  
20 perform that reaction at that facility and produce the  
21 product, package the product, and ship that product to  
22 clients for its uses.

23 CHAIRMAN WILLIAMSON: Okay. Thank you.

24 MR. BALL: And just to be clear, there is no  
25 assets, you know, packaging or anything, shared

1 between those two products. One is a liquid product,  
2 and one is a solid product.

3 MR. LERNER: Correct.

4 CHAIRMAN WILLIAMSON: Okay.

5 MR. RYCZEK: May I please add on that?

6 CHAIRMAN WILLIAMSON: Sure.

7 MR. RYCZEK: I'm the controller at the  
8 manufacturing facility. The persulfate process  
9 consists of almost all of our equipment. It is a very  
10 highly equipment-intensive and labor-intensive  
11 process. So most of our employees' labor as well as  
12 the equipment and our maintenance costs, our fixed  
13 cost utilities, support the persulfate process.

14 It's a continuous process chemical, 24 hours  
15 a day, with a lot of piping, electrical, and so forth.

16 The peracetic acid process is a much smaller and  
17 easier chemical process and more of a batch process,  
18 and it does not have a lot of equipment or does not  
19 require a lot of labor.

20 MR. LERNER: We have done extensive analysis  
21 that in the absence of the viability of this site,  
22 which would pretty much only be derived from the loss  
23 of this order and the injury occurring by the dumping  
24 of Chinese products, we could not sustain on that site  
25 this peracetic acid manufacturing without the

1 persulfates manufacturing.

2 The fixed cost burden on that much smaller  
3 operation would be overwhelming.

4 CHAIRMAN WILLIAMSON: Okay. Thank you for  
5 all of those answers. Commissioner Aranoff?

6 COMMISSIONER ARANOFF: Thank you, Mr.  
7 Chairman. And I join my colleagues in welcoming all  
8 of you.

9 Now, all of the company witnesses have not  
10 seen the importer questionnaires because they're  
11 confidential. But you have indicated that low prices  
12 are very important to customers for this product. And  
13 if that is the case, why do you think that so many  
14 importers have told the Commission in their  
15 questionnaires that they are opposed to revocation of  
16 the order on China?

17 MR. LERNER: I'll let Mr. Ball follow on,  
18 but just from the highest level, having interacted  
19 with management for many of the consuming companies of  
20 our products, that again a domestic supply for a  
21 reliability point of view, meaning a supply chain  
22 point of view, the consistent quality that FMC has  
23 provided them over the years in terms of the product,  
24 and a competitive price relative to other competitive  
25 options that they have all contribute to an assurity

1 in their operations that they will be able to continue  
2 to run consistently and reliably in what they're  
3 doing.

4 I would point to some of the testimony here  
5 that the persulfates product into polymerization is  
6 the largest volume application, and while it's a small  
7 component of their overall process, if the product  
8 isn't right in terms of its quality and so forth, it  
9 can cause significant misreaction, which is very  
10 costly, both in time, effort, and raw materials to  
11 those clients.

12 MR. BALL: So I want to follow on to that,  
13 but I just want to make sure I heard your question  
14 correctly about -- could you say the last part again,  
15 why did the --

16 COMMISSIONER ARANOFF: So the importers, a  
17 number of them, told us that they oppose revocation of  
18 the order.

19 MR. BALL: The reason for that, in my  
20 opinion, and obviously it's conjecture on my part, is  
21 that, you know, there are four or five importers who  
22 participate very actively and consistently in the U.S.  
23 market and would view that market to be important to  
24 them. And I think they realize that if the order is  
25 revoked, they would be overwhelmed by the Chinese,

1 just like we would be overwhelmed by the Chinese.

2 So I would suspect that that's their logic  
3 for that position.

4 COMMISSIONER ARANOFF: Okay. That's  
5 helpful.

6 MS. WARLICK: I might want to add to that.

7 COMMISSIONER ARANOFF: Sure.

8 MS. WARLICK: They may also be looking at it  
9 just in terms of, you know, long-term competition in  
10 the market, that, you know, if you lose FMC, well,  
11 that's going to be very hard on them. If they lose  
12 the Japanese, the Taiwanese, the Germans, everyone  
13 else who participates in the market, then they can  
14 only source from China. You know, perhaps they want a  
15 more varied and reliable supply than just, you know,  
16 being dependent on one country.

17 COMMISSIONER ARANOFF: Okay. A question  
18 about inventories. We've been told that persulfates  
19 have a relatively short shelf life before they start  
20 to experience degradation. Given those limitations,  
21 why do domestic producers and sellers of nonsubject  
22 imports in the U.S. market sell predominantly out of  
23 inventory? Why wouldn't you want to produce to order  
24 in order to eliminate the risk that the product sits  
25 around too long?

1           MR. LERNER: The chemical processing of  
2 these materials does not make it avail itself to make  
3 the order. The continuous flow nature of the process,  
4 the chemical dynamics of the process, and each stage  
5 of the process, one has to produce continuously an  
6 have inventories.

7           Past the product then, of course, there is  
8 the component or reliability to have certain  
9 inventories to meet customer demands through different  
10 seasonalities or their own product demands that they  
11 would require this product, and so we maintain these  
12 segregated inventories of various products.

13           COMMISSIONER ARANOFF: Do you periodically  
14 find yourself in possession of product that's aging  
15 and need to drop the price in order to move it?

16           MR. BALL: We work very hard not to have  
17 product that has gone past the shelf life. Generally,  
18 if we have it, we rework it. You know, if we're to  
19 that point where something is at or near the six-  
20 month, let's say, level -- just as a point on the  
21 inventory, you know, we carry about three or four  
22 weeks of inventory typically, if you looked at on  
23 average of our product.

24           So the product has a six-month shelf life.  
25 We work hard to make sure we don't end up with product

1 there, and when we do, we generally rework it in the  
2 plant.

3 COMMISSIONER ARANOFF: Okay. Let me switch  
4 to another topic. And so you've indicated that  
5 Chinese producers have entered the oil and gas  
6 recovery market, and I think maybe you also said soil  
7 remediation applications. Can you tell us a little  
8 bit more about what products the Chinese industry is  
9 selling in these applications, and specifically the  
10 geographic markets in which they're being sold? Is it  
11 the U.S., is it Europe? You know, where is it?

12 MR. BALL: Sure. So let me speak, because I  
13 have a better first-hand knowledge about the soil  
14 remediation market. You know, the Chinese are selling  
15 sodium persulfate, which is the same product that we  
16 use for our soil remediation applications in the U.S.  
17 They are for sure selling that product into soil  
18 remediation applications in China. Our patents that  
19 we have in the U.S. don't apply in China, so Chinese  
20 product is being used there.

21 So we know that for a fact. They may be  
22 selling sodium persulfate into soil remediation in  
23 other countries. We suspect they are, but I don't --  
24 I can't give a perfect example of that. And then oil  
25 and gas is more based on their advertisements on some

1 of the web sites, talking about selling an  
2 encapsulated breaker, which is a product used in oil  
3 and gas. I don't have any firsthand knowledge of the  
4 Chinese. We know there is fracking and shale  
5 development in China. We don't participate in that  
6 market in China, so I don't have any firsthand  
7 examples of that.

8 COMMISSIONER ARANOFF: Okay. Following up  
9 on the soil remediation, you mentioned that you have  
10 patents around that in the U.S. market, but not in  
11 China. If the order were to be revoked and the  
12 Chinese product were to enter the U.S. market, does  
13 that mean they wouldn't be able to sell into that  
14 application without infringing your patent?

15 MR. BALL: That would be the one market I  
16 think they would -- the answer is yes. They would not  
17 be able to sell without infringing our patent. The  
18 concern we have is that in kind of a freewheeling  
19 environment of Chinese producers competing with each  
20 other to get in the market, there would be significant  
21 patent infringement going on that would be difficult  
22 to police.

23 But the short answer to your question is,  
24 yes, they would be infringing our patent if they sold  
25 into that, into that application in the United States.



1           MR. LERNER: We of course police our  
2 intellectual property, and whether or not it's  
3 Chinese-born product, we have had several instances of  
4 people using persulfate in violation of our patent  
5 rights that we had to pursue to be compliant with the  
6 legalities of that. So --

7           MS. WARLICK: It's also public knowledge  
8 that in the manifest data we saw a shipment by a  
9 company called Regeneris, and they do almost  
10 exclusively environmental remediation, and they  
11 purchased sodium persulfate from China in 2009, I  
12 think, or 2011. I can submit the bill of lading for  
13 our posthearing brief.

14           COMMISSIONER ARANOFF: Okay.

15           MR. BALL: And just a point on that. The  
16 sodium persulfate used in that application is just  
17 kind of regular, run-of-the-mill sodium persulfate, so  
18 there is no product characteristic barrier at all.  
19 It's only the patent.

20           MR. LERNER: I might point to the fact, just  
21 for clarity, that the patents that we have involve not  
22 the -- it's not a product patent, it's a use patent,  
23 which involves the totality of how one uses sodium  
24 persulfate with other technologies to accomplish the  
25 end means. So it's not per se that the sale of the

1 persulfate itself would be violating the patent.

2 COMMISSIONER ARANOFF: Understood,  
3 understood. And while we enjoy your company, I'm sure  
4 you don't want to be back here in a section 337  
5 proceeding.

6 Let me ask one last question. In your  
7 brief, you refer to one importer questionnaire that  
8 discusses the possibility that there has been  
9 circumvention of the order going on. Is there any  
10 other evidence that you have seen or could add with  
11 respect to whether Chinese producers are attempting to  
12 circumvent the order?

13 MR. BALL: Nothing beyond that. I mean, we  
14 -- and Tom or somebody can talk maybe more  
15 specifically about that because we went through some  
16 effort to identify the circumvention issues some years  
17 ago.

18 MS. WARLICK: I will say that I've spent a  
19 lot of time looking at the import data, and in our  
20 brief, when we do use the import data, and also here  
21 in my testimony, we have only included the countries  
22 that actually produce persulfate as the import  
23 origins. There are a lot of countries that do not  
24 produce persulfate that appear to be shipping  
25 persulfates to the United States.

1           So I don't know where those persulfates were  
2 produced. Italy does not produce persulfates. Canada  
3 does not produce persulfates. So, you know, we have  
4 not investigated all of that. We don't know for sure.

5       It could be that they are misclassified, that it's a  
6 hair care product that should be somewhere else. But  
7 that's how they're coming in, so there is the  
8 possibility that there is transshipment.

9           COMMISSIONER ARANOFF: Okay. Thank you very  
10 much. I appreciate all of those answers.

11          CHAIRMAN WILLIAMSON: Thank you.  
12 Commissioner Pinkert.

13          COMMISSIONER PINKERT: I have no further  
14 questions for the panel, but I appreciate the  
15 testimony, and I look forward to the posthearing  
16 submission.

17          CHAIRMAN WILLIAMSON: Thank you.  
18 Commissioner Johanson?

19          COMMISSIONER JOHANSON: Thank you, Mr.  
20 Chairman.

21                I was wondering if you all could follow up  
22 somewhat on the whole issue of oilfield applications  
23 of persulfates because, as you all know right now, the  
24 U.S. oil and gas industry is very active. And this is  
25 kind of a personal interest for me to some extent.

1 This summer I went to eastern Utah and west Texas, and  
2 just was amazed at all of the activity going on in  
3 those areas.

4 But you all contend that the outlook for  
5 persulfates in this sector of the economy is not  
6 necessarily that bright due to the possibility of  
7 substituting persulfates with other products. But I  
8 was wondering if you could expand upon that a bit.

9 And also, you speak about the problems with  
10 guar gum. But aren't there other products out there  
11 that would still need the use of persulfates such as  
12 xanthan gum, something along those lines? We're  
13 familiar up here with xanthan gum. We had a case on  
14 it last year, and so -- and when I think of guar gum,  
15 I think of xanthan gum.

16 MR. LERNER: Okay. So what I could tell you  
17 is we are not ourselves in the business or have  
18 technology around the formulations of these fracturing  
19 fluids that are injected down the well to achieve the  
20 purpose of opening up the formation to allow the  
21 extraction of this gas and oil. We sell our products  
22 to customers that are involved in adding value to our  
23 products and further selling them downstream into that  
24 industry, or who formulate them into a component of  
25 the overall concoction that goes down there for the

1 purpose.

2 The persulfate is one of many possible  
3 oxidizing chemicals that can be used as a breaker by  
4 name. Other classes include other type of peroxides,  
5 acids, enzymes, and other various chemical components.

6 So it's not just persulfates that are used as  
7 breakers.

8 So persulfates start by competing with these  
9 other oxidizing chemicals that have been shown to be  
10 beneficial for the same purpose, and which one or  
11 combinations of them are used is really unknown to us.

12 That's all with the formulating company, and in some  
13 cases those are well-known names like Halliburton and  
14 Schlumberger that have been involved in developing  
15 these formulations. In other cases, it's other  
16 companies that have started up and developed their own  
17 technology that they market into this space.

18 It is absolutely the case that in the  
19 absence of the ready availability of guar gum and  
20 consisting pricing of guar gum from the past when this  
21 drought occurred, or weather event occurred in India  
22 that limited the production crop, that alternative  
23 fracture fluid technology really ramped up  
24 significantly in the industry. This slick water or  
25 polyacrylamide as its referred to type of fracture

1 fluid gained great acceptance and is widely used, was  
2 shown to have feature benefits that were not only  
3 applicable, but maybe superior in some types of  
4 formations.

5 The type of geology and hydrogeology of  
6 these formations in various parts of the country --  
7 it's different from place to place -- dictate what  
8 types of technology fluids and other things to use.  
9 And those types of other formulations that use less or  
10 no guar typically tend to use significantly less or no  
11 persulfate as the breaker class for whatever the  
12 properties are of that formulation.

13 So I would say that it is my opinion, based  
14 on market data and our customer input, that the amount  
15 of oil and gas exploration and extraction using  
16 hydrologic fracturing will continue to increase in  
17 future years as economic recovery drivers greater  
18 energy demand. So there will be a volume escalation.

19 But it's also my opinion, again based on our  
20 own forecasts for demand of our persulfates through  
21 our customers, that the volumes of persulfates used  
22 based on the composition of these fluids will be less  
23 than what it was at the peak for some time until  
24 hopefully the total number of fracking events get so  
25 great that even at lower levels of demand, the

1 multiplicity effect would get us back to sort of 2011  
2 kind of volumes.

3 COMMISSIONER JOHANSON: All right. Mr.  
4 Lerner, you mentioned that persulfates are used as a  
5 breaker.

6 MR. LERNER: Yes.

7 COMMISSIONER JOHANSON: Does that mean it's  
8 a degummer, or what is the process?

9 MR. LERNER: Yes. The term refers to the  
10 ability of that chemical to break the viscosity, so  
11 sometimes they're referred to as viscosity breakers or  
12 just breakers for short, so that after the force and  
13 viscosity of the fluid has done its job, to permeate  
14 the formation, you have to backflow that so that the  
15 oil and gas can come back.

16 It's my understanding that the role  
17 chemically of that is to participate in breaking down  
18 the viscosity of the formulation so that it can  
19 backflow readily up the well and cause a producing --  
20 the well to produce.

21 COMMISSIONER JOHANSON: All right. Thank  
22 you for your response. And now I'd like to talk about  
23 another applications for persulfates, which has  
24 apparently waned in recent years, and that is the use  
25 of persulfates as pool shock products. What has

1 happened there? Because it seems like in the past  
2 that was a very major application of the product, and  
3 then all of a sudden it hit the wall, and that no  
4 longer is the case. That's my impression, at least  
5 from what I've read.

6 MR. BALL: It was a significant application  
7 for us. However, having said that, it was with one  
8 pool chemical company. It was the whole market, if  
9 you will, was one company. And I think we mentioned  
10 earlier that company, for reasons that are, to be  
11 honest, not fully understood by us, but we know it was  
12 cost driven more than performance driven, decided to  
13 reformulate their pool shock line.

14 They have more than one pool shock chemical  
15 in their portfolio or blends. They decided to  
16 reformulate and discontinue the product that used  
17 persulfate. And it kind of came as a surprise to us  
18 because that application had been around for quite  
19 some time. It wasn't a new application. It wasn't  
20 growing. It was pretty steady.

21 But they for cost reasons took that  
22 formulation out of their product line. And that  
23 market is -- for everything we know, that market no  
24 longer exists in the U.S. There is no pool shock  
25 formulation using persulfate today.



1                   COMMISSIONER JOHANSON: All right. Thank  
2 you for that explanation. And so we've seen -- we've  
3 heard the use of persulfates in oilfield applications  
4 is not necessarily growing quickly at least, and that  
5 its use in pool shock products is basically done with.

6                   You mentioned in your prehearing brief that  
7 FMC is making efforts to develop new specialty uses or  
8 new markets for persulfates. Could you all maybe talk  
9 on what those new markets might be? I know this might  
10 be proprietary, and it is, then don't discuss it, of  
11 course. But if you have any information as to what is  
12 going on there, that might be helpful to just let us  
13 know what we might expect in the future for this  
14 market.

15                  MR. LERNER: Two aspects. And I apologize,  
16 just dialing back to your former question for one  
17 minute. I am happy to in our sort of confidential  
18 section of the posthearing brief identify for you the  
19 rather low by number percent growth rate that we are  
20 modeling for the oilfield use of persulfates going out  
21 to the future. So you can see sort of more clearly  
22 our low estimates and why I'm testifying that I think  
23 it will grow, but grow slowly, or to a low degree.

24                  COMMISSIONER JOHANSON: That will be  
25 helpful. Thank you.

1                   MR. LERNER: Okay. In terms of new  
2 products, frankly, we are not developing right now any  
3 new application products. And I think Mr. Ball  
4 mentioned this in his testimony, what is being  
5 referred to, I think, as new applications here for oil  
6 and gas, and for environmental, have actually been  
7 around for a number of years, and were around at the  
8 time of the prior order, only that the industry itself  
9 had -- meaning oil and gas -- had a sharp increase in  
10 its demand as a function of these horizontal drilling  
11 and shale gas activities ramping up, which pulled an  
12 older product persulfate through.

13                   But there were fracturing activities long  
14 before the big boom, if you will, where persulfates  
15 were used. And our environmental applications that  
16 were also around for many, many years now, it's only  
17 more recently in the light of stronger regulatory  
18 pressure and a growing acceptance of *in situ*  
19 remediation, meaning to clean up *in situ* at the  
20 location versus digging and hauling or pumping and  
21 treating over longer periods of time, have we seen  
22 some growth to more meaningful levels of that  
23 application.

24                   But the patent, I believe, will expire in  
25 2020, or some of our patent portfolio will expire five

1 years from now, indicating that patents and the us of  
2 knowledge of this is going back more than ten years  
3 already anyway.

4 COMMISSIONER JOHANSON: All right. Thank  
5 you, Mr. Lerner, for your answer. And that concludes  
6 my testimony.

7 CHAIRMAN WILLIAMSON: Thank you.  
8 Commissioner Broadbent?

9 COMMISSIONER BROADBENT: You mentioned if  
10 the product is held too long in inventories or -- do  
11 they just have unused capacity, and have they -- have  
12 you heard of fires occurring in China as a result of  
13 oversupply?

14 MR. BALL: I'm not aware of any fires  
15 occurring. We see the Chinese as dumping the product  
16 out onto the market to get rid of it before it gets --  
17 I think they're well aware of that risk. It's very  
18 public information, and they understand the chemistry  
19 of that. So no, I'm not aware of any fires in China.

20 COMMISSIONER BROADBENT: Okay. Thank you.

21 FMC is a leader in persulfate production.  
22 To what extent are you able to comment -- I'm not sure  
23 if you're able to comment publicly. But could you  
24 talk bout the countries where you export and why  
25 you're able to compete in those countries?

1           MR. BALL: That may be again better -- maybe  
2           some more detail in the posthearing brief. I would  
3           just say in general that, back to a point I made  
4           earlier, we have very strong relationships with some  
5           global companies that use persulfate in a similar  
6           process all over the world. I think they value our  
7           commitment to quality and reliability, the way we work  
8           with them. And I think we are able to compete best  
9           that way.

10           COMMISSIONER BROADBENT: Right.

11           MR. BALL: But we could try to expand on  
12           that a bit more specifically in the posthearing brief.

13           COMMISSIONER BROADBENT: But how many  
14           countries do you export to, or just order of  
15           magnitude? Is it 2 or 20 or --

16           MR. BALL: I'm going to say 15, but don't  
17           hold me too close to it.

18           COMMISSIONER BROADBENT: Yeah.

19           MR. BALL: It's in that ballpark.

20           COMMISSIONER BROADBENT: Understood. That's  
21           great, okay.

22           The staff report notes that during the  
23           original investigation, the Chinese process for  
24           producing persulfates may have been slightly less  
25           automated than the domestic process. Can you comment

1 on this? Do you know if the Chinese process for  
2 producing this product is less automated during the  
3 original investigation and whether that remains true  
4 today?

5 MR. LERNER: I have not personally been  
6 inside of any Chinese product facilities making  
7 persulfates, so I really couldn't say to that extent,  
8 other than just sort of general commentary that labor  
9 intensity tends to be greater as sort of just a common  
10 theme in Chinese manufacturing than it might be in  
11 U.S. manufacturing. But I couldn't say directly.

12 MR. BALL: We might be able to provide a  
13 little more insight on that in a followup after we  
14 talk to a few people.

15 COMMISSIONER BROADBENT: Yeah. It may be  
16 interesting for us to know sort of costs and  
17 efficiencies, any perspective you have on that.

18 MR. BALL: Yeah. I don't -- we don't know  
19 sitting here today.

20 COMMISSIONER BROADBENT: Okay.

21 MS. WARLICK: Excuse me. I'm sorry. I  
22 wanted to add one more thing to that. You will want  
23 to look at the consultant's report because they do  
24 provide some costs in there in energy, electricity,  
25 and so forth, labor.

1 COMMISSIONER BROADBENT: Okay, great.

2 Mr. Norton, thank you very much for coming.

3 It's helpful for us to have you here. Could you talk  
4 about the wage agreement that you mentioned in your  
5 testimony? You said it was a three-tiered structure  
6 to it?

7 MR. NORTON: Yeah. Basically, what the  
8 union and the company agreed to is a tiered system in  
9 which incoming employees would be paid at a lower rate  
10 up till five years. And up to that fifth -- when it  
11 becomes a fifth year, they will become full rate, you  
12 know, that we get at the plant now.

13 In other words, we're kind of like  
14 grandfathered, the men and women who work there, and  
15 the new employees, to help the company offset some  
16 costs and everything, are brought in at, you know,  
17 pretty -- not real substantial, but a lower rate of  
18 pay. And therefore, they get a couple of increments  
19 in between if, you know, everything works out, they  
20 work out as an employee --

21 COMMISSIONER BROADBENT: Right.

22 MR. NORTON: -- to the company's  
23 satisfaction. And therefore it helps offset some  
24 costs. And we sacrifice, you know -- normally, in the  
25 old days, they'd start off at whatever the union

1 hourly wage rate was for that particular job. Now  
2 they start at quite a bit lower. Not quite a bit. I  
3 keep saying that. I apologize. Just a little -- it's  
4 a lower rate, though. And therefore, you know, we  
5 felt we helped kind of bridge the gap with the  
6 economic conditions in western New York, and hopefully  
7 that we're doing our part as union people to try to  
8 help us stay in business.

9 COMMISSIONER BROADBENT: What are the  
10 average wage rates, or can you give me a sense of what  
11 the wage rates are there in the plant?

12 MR. NORTON: Right now, I can tell you mine  
13 right now is about \$30 an hour.

14 COMMISSIONER BROADBENT: Thank you.

15 MR. NORTON: And now, I believe -- and don't  
16 quote me on this, please -- Mr. Ryczek will probably  
17 tell you better than me. I think they're starting  
18 them out roughly around 20, 17 to 20, as compares to  
19 my wage.

20 But, like I say, after five years,  
21 everything works out with the employee, then they'll  
22 go right to our existing wage. But at least it gives  
23 them that time zone in between we felt that, you know,  
24 would help them in this time, you know, when we're  
25 trying to -- with the competition and, you know, our

1 economic conditions in western New York, hopefully  
2 that we're doing our part, you know what I mean, in  
3 trying to help the company stay successful because  
4 without the company -- well, they definitely wouldn't  
5 need us. You know what I mean?

6 But I'm just saying that we thought it was a  
7 good gesture and good working relationships, kind meet  
8 them halfway.

9 COMMISSIONER BROADBENT: Got it.

10 MR. NORTON: I know that the UAW has done  
11 the same similar thing in western New York. I don't  
12 know really how they have worked with General Motors.

13 But I know they have also done a tiered system in our  
14 area, and there are other factories locally who I know  
15 are also involved in the tier system pay.

16 COMMISSIONER BROADBENT: Okay. Thank you.

17 MR. RYCZEK: We're always looking for a cost  
18 reduction and cost-saving opportunities, and just with  
19 general inflation, with raw material supply, and their  
20 production factors and such, labor certainly is one of  
21 our higher costs, you know, with not just the wages  
22 and such, but the benefits, the care-related costs.  
23 So this was, you know, one of the opportunities that  
24 we had to have a reduction in some of our labor costs.

25 COMMISSIONER BROADBENT: Okay. Mr. Lerner,



1       could you talk a little bit more about the purchase by  
2       One Equity Partners, what it was like to sort of  
3       negotiate that and what their incentives were to buy  
4       you out? I guess one other question was it's  
5       peroxygen unit, right, that's being sold, and  
6       persulfates is a portion of that?

7                   MR. LERNER: Right.

8                   COMMISSIONER BROADBENT: What portion of  
9       persulfates of that whole operation?

10                  MR. LERNER: Okay. So sort of in the order,  
11       I personally, due to my conflict of interest, based on  
12       the intent to transfer management with the business,  
13       did not participate in the full negotiation beyond  
14       assisting FMC to do what it needed to do through the  
15       process of the auction to market the business. But  
16       what I can tell you about One Equity Partners, who was  
17       the successful bidder, is that they have an investment  
18       philosophy that they publicly state to invest in  
19       businesses that have opportunities to be invested in  
20       and grown. That's principally how they choose to  
21       invest and how they make returns on the capital that  
22       they deploy of their shareholders and investors.

23                  So their intention for the business,  
24       consistent with their investment philosophy, would be  
25       to continue to invest in value-added businesses. And

1 again, Tonawanda, our persulfates, our peracetic acid  
2 manufacturing, and our hydrogen peroxide franchise all  
3 have investment opportunities that they can make to  
4 continue to grow and keep the business capitalized to  
5 thrive.

6           It was FMC's decision to sell our business  
7 based on a corporate reorganization of their portfolio  
8 that was going in a direction for which peroxygen  
9 chemicals and our applications did not fit into some  
10 of those categories that I mentioned in my opening  
11 parts of my testimony, that they've realigned the  
12 company to agricultural solutions, health and  
13 nutrition, and minerals, minerals being the two  
14 mining-based operations that FMC conducts, soda ash in  
15 Wyoming and lithium mining in South America, a  
16 beneficiation of those products.

17           So it was felt by the company that our  
18 division, which consists of peracetic acid,  
19 persulfates, and hydrogen peroxide could continue to  
20 thrive and grow through more focused investment, which  
21 would be better provided by a third-party investor.  
22 So that was the philosophy there.

23           Persulfates is -- it depends how, I suppose,  
24 you want to look at it. But on a volume sort of  
25 basis, maybe a third or so. I don't have an exact

1 number of our production, maybe less than that because  
2 we produce a lot of hydrogen peroxide in terms of  
3 pounds.

4 MR. BALL: It's about 30 percent of our  
5 revenue.

6 COMMISSIONER BROADBENT: And what will the  
7 general revenue be of the whole operation when it's  
8 sold, roughly, just order of magnitude?

9 MR. LERNER: I would gladly answer that in  
10 our post brief --

11 COMMISSIONER BROADBENT: Please do, yeah.

12 MR. LERNER: -- where it's confidential --  
13 business confidential information.

14 COMMISSIONER BROADBENT: Yeah, good. Thank  
15 you very much.

16 And then in terms of why One Equity Partners  
17 would have done this, I'm guessing it was, you know,  
18 the operating margins are what, over \* \* \*, and you're  
19 the only domestic producer of this product right now.

20 Would that be -- how would we characterize why they  
21 would have -- why they think this is a good deal?

22 MR. LERNER: Actually, our total franchise  
23 EBITDA, which is sort of the proxy for cash flow as  
24 the basis for the investment, is at a significantly  
25 lower percentage than what you just quoted of \* \* \* \*

1 \* \* \* \* operating margins in this particular product  
2 class. So the business in the aggregate is not quite  
3 that healthy. That might be something we could  
4 include for your knowledge as it relates to this line  
5 of questioning.

6 They're purchasing the whole franchise, not  
7 just the persulfates operations. So it's a  
8 combination of our global peroxide, our persulfates,  
9 and peracetic acid franchises.

10 COMMISSIONER BROADBENT: Okay. All right.  
11 Thank you very much.

12 CHAIRMAN WILLIAMSON: Thank you. Just a  
13 couple of more questions. Mr. Lerner, in describing  
14 persulfates, you say it's a commodity product. But it  
15 seems like what the competitive advantage is, as is  
16 the case with many manufacturers and manufactured  
17 products nowadays, it's the services that go along  
18 with that product to your customers. And I wondered  
19 to what extent is that sort of your competitive  
20 advantage with the Chinese product now, in addition to  
21 the intellectual property.

22 MR. LERNER: Yeah. In almost all of the  
23 cases, many of those value-added features are not  
24 those of ourselves, to translate directly to the  
25 terminal using client, but for others in the process

1 of utilizing our persulfates forwards.

2 In the case of oil and gas, the most  
3 specialized product becomes specialized because of  
4 another party taking our product and applying coatings  
5 to it that give it this sort of time-released or  
6 delayed properties. It's that value added that's  
7 created by someone else down the line.

8 In the soil and groundwater application, for  
9 instance, while it's true that we have these patent  
10 rights for the application and use and activation,  
11 it's actually our sub-licensing, if you will, to the  
12 parties that actually participate in the environmental  
13 design and engineering of the sites who are typically  
14 our customer for the product, as well as their  
15 subcontractors who are the applicators that deliver  
16 that value ultimately to the terminal site owner or  
17 client, terminal client, not us.

18 In terms of polymerization, while I do  
19 believe that we garner business over others that  
20 fairly compete with us in the U.S., for instance, to  
21 supply persulfate to polymerization, it's based on the  
22 reliability of the supply chain being closer at hand  
23 from a logistics perspective, from a consistent and  
24 reliable quality perspective, from being responsive to  
25 the client when they have needs that allows us to

1 compete, let's say, a bit more effectively against  
2 other fair competitors from Germany or Japan or Taiwan  
3 or elsewhere.

4 But I need to recognize, and I think it's  
5 fair for the Commission to recognize, that the  
6 chemical persulfate itself is interchangeable and used  
7 by those same customers in other territories in an  
8 equivalency of form.

9 MR. BALL: Can I add a comment to that?

10 CHAIRMAN WILLIAMSON: Sure.

11 MR. BALL: I think you could think of those  
12 things that Bruce mentioned in terms of reliability,  
13 let's say, because we're producing in -- you know,  
14 think of it as a tiebreaker. Those customers want to  
15 buy from us because of that. But they expect us to be  
16 price competitive. They don't pay us more than they  
17 pay the competitive alternative, and that's true in  
18 virtually all of these markets, distributors,  
19 polymerization, hair bleach, et cetera.

20 So I think the reality is if the Chinese  
21 come into the market selling at these dumped prices,  
22 the customers would still prefer to buy from FMC, but  
23 they would expect us to be competitive with those  
24 prices in order to do it.

25 CHAIRMAN WILLIAMSON: Okay. And to the

1 extent that you're using third parties with some of  
2 these, I guess they could just source from the  
3 Chinese, too. So you're at risk there.

4 MR. LERNER: Absolutely.

5 MR. BALL: We're at risk in all of those  
6 areas. That's correct.

7 MR. LERNER: I would say that in the absence  
8 of the order, literally overnight we would see a  
9 significant portion of our client base, particularly  
10 in the area of distribution, meaning chemical  
11 distributors, as well as other importing companies,  
12 immediately start sourcing from these significantly  
13 lower-priced Chinese imports, some of which are so far  
14 below our full cost that it would be impossible under  
15 any economic condition to compete.

16 CHAIRMAN WILLIAMSON: Good, okay. Thank  
17 you. Just one last question. And actually I think  
18 this might be best handled posthearing, this kind of  
19 series of questions.

20 Let's see. And this goes to our C table.  
21 And so posthearing, could you address is the  
22 differences in the unit values of U.S. shipments in  
23 nonsubject imports -- and there seems to be some  
24 differences in their relationship in the 2007-2009  
25 period and the post-2010-2013 period. So if you could

1 just take a look at that and maybe explain the  
2 difference -- you know, why the differences, if there  
3 are any differences, or any significance to that,  
4 particularly as it might regard this case, and, you  
5 know, what might be the explanation for those  
6 differences.

7           And I think you've already hinted at it, but  
8 maybe any differences between unit values for U.S.  
9 exports and the unit values in the U.S. and the unit  
10 values in the domestic market, and including -- but  
11 the nonsubject as a selling net.

12           I think you addressed, somewhat addressed,  
13 that, but if anything that might be helpful here, I  
14 would appreciate that.

15           MS. WARLICK: I've looked at it a little  
16 bit, and we will address it in the posthearing. But I  
17 think a good portion of what you're seeing is product  
18 mix because the potassium tends to be -- run a little  
19 more expensive than the others. But also, its  
20 particular end users would buy small amounts, and the  
21 packaging could be very precise. I don't want to get  
22 into confidential information.

23           CHAIRMAN WILLIAMSON: No. There are some  
24 logical explanations there, or answers.

25           MS. WARLICK: Yes.



1 CHAIRMAN WILLIAMSON: Good. Okay, fine.

2 Well, I think that's fine.

3 Okay. I have no further questions. Let's  
4 see. Commissioner Aranoff.

5 COMMISSIONER ARANOFF: Just one more  
6 question. After this order went into place and the  
7 Chinese product more or less left the market, what we  
8 saw was that the market share that Chinese imports had  
9 held was sort of carved up between FMC and nonsubject  
10 imports, more or less 50/50 from what I can see in the  
11 data.

12 If the order were to be revoked, and Chinese  
13 imports were to reenter the market, is there any way  
14 that we can tell whether that would be the pattern  
15 again of whatever market share they might take, about  
16 half would be from the domestic industry, and half  
17 from nonsubject imports, or is there some reason to  
18 expect a different result?

19 MR. BALL: I mean, I can try. I mean,  
20 because we've never been in that situation, it's a  
21 little difficult. I don't think that's an  
22 unreasonable assumption that it would come out of a  
23 combination of the domestic and the nonsubject imports.  
24 I think that's a reasonable way to look at it.

25 COMMISSIONER ARANOFF: Is that what happened

1 in Europe?

2 MR. BALL: I can't answer that. I wasn't  
3 involved back in 2002. We could -- I don't know if w  
4 have the data -- I guess we have the data to look at  
5 that. I don't know off the top of my head. I don't  
6 know if Amy does.

7 MS. WARLICK: I would expect that because  
8 there is just one domestic firm, that when FMC leaves,  
9 it's gone. The industry is gone. So I would imagine  
10 maybe within the first few years after revocation  
11 there would be some, you know, sharing of the loss.  
12 But then there is a lot more third-country producers  
13 than U.S. producers.

14 You know, they've talked about these  
15 specialty items or protected markets. It's so small  
16 as a share of total production, that there is no way  
17 the company could survive based on those small shares.  
18 So we're looking -- Tonawanda, the plant, is looking  
19 at shutting down. And I think that's your answer.

20 COMMISSIONER ARANOFF: Okay, yeah. Fair  
21 enough, fair enough. Okay. I don't have any further  
22 questions, but I do want to thank you all for your  
23 participation today.

24 CHAIRMAN WILLIAMSON: Good, okay. I must  
25 apologize to Commissioner Kieff because I skipped him

1 in my anxiousness to ask my own questions.

2 COMMISSIONER KIEFF: It's quite okay. I  
3 have really gotten a lot of benefit from everyone  
4 else's questions and your answers to them, so this has  
5 been very helpful, and it is always good to be  
6 substance-focused rather than worry about order. So I  
7 appreciate it, but no worries.

8 Let me just add one other followup question  
9 again that may be best addressed in the posthearing.  
10 And it's a followup to this discussion about how  
11 sharply things might play out in that if it were to be  
12 the case that the order were revoked, my question is  
13 when you have a -- when we think about our friends in  
14 the private equity market, we think about them as  
15 people who are -- you know, have very sharp  
16 incentives, right, it's their money, and it's a lot of  
17 it, to figure out alternative states of the world and  
18 price them.

19 If one of the alternative states of the  
20 world that they're trying to price is a state of the  
21 world in which you don't have an order, presumably  
22 they put -- you know, like that would be bad. That  
23 would be a low. So what I'm just wondering is, have  
24 they -- and yet, as Dr. Lerner pointed out, they are  
25 in the preclosing period. So, you know, corporate law

1 world thinks about deals like that as often involving  
2 MAC clauses, material adverse change clauses. It  
3 sounds like it would be a material adverse change if  
4 the order were to be lifted.

5 What I'm wondering is, you know, to the  
6 extent available for that setting, was there a MAC  
7 clause. Would this have been a MAC. And why was it  
8 priced so low that the time process for closing seems  
9 to be one that will itself -- its event horizon will  
10 pass before we even reach our order.

11 In other words, in effect, they're doing the  
12 deal no matter what we do, which means I think they  
13 either think this is not such a material adverse  
14 change, or they think the likelihood that we will come  
15 out against the order is essentially zero. So they  
16 can move ahead and price the deal thinking -- in other  
17 words, they've given us our magic eightball for  
18 decision-making. They've already run the numbers on  
19 how we do our decision-making, and they've basically  
20 concluded we're going to be quite precise. We'll hit  
21 a yes for sure.

22 So if you could just to some extent follow  
23 up afterwards. My guess is that's probably very hard  
24 to talk about in this setting.

25 MR. LERNER: So, sir, I personally was not

1 involved in negotiations, nor am I an employee or  
2 representative of One Equity Partners. The only thing  
3 I could tell you or that we could even discuss perhaps  
4 in the brief is I can tell you that from the beginning  
5 of the process, where I was, as well as Mr. Ball,  
6 involved in marketing the business, this issue and the  
7 speculative nature of whether a reaffirmation or a  
8 reneging of the order could effect the financial  
9 condition was a strong consideration of the many  
10 parties that were involved here.

11 So I think you're correct to assume that  
12 this was a critical element for many people in the  
13 process when they were making their decisions. But  
14 ultimately -- and again, I was not part of the  
15 negotiation process. One Equity and the management of  
16 FMC seemed to have reconciled something around the  
17 risks or opportunities herewith.

18 I would prefer to ask each and all of you to  
19 rather consider the financial conditions of that  
20 transaction, the real implications to the business, to  
21 the domestic industry, to our clients here, and to  
22 everybody at this table's personal livelihood under  
23 the real ramifications that would likely occur from a  
24 flood of irrationally-priced Chinese imports that  
25 would eliminate us as a competitor or provider of any

1 value to any clients.

2 The simple matter is for any of these more  
3 value-added applications, that relative volume and  
4 opportunity is not significant enough today or  
5 anywhere in the near future that we could bridge the  
6 kind of economic impact of losing the kinds of volumes  
7 and market shares that we would under even a  
8 transitory influx of Chinese dumped into this country.  
9 It's just simply not viable.

10 COMMISSIONER KIEFF: Well, thank you very  
11 much. I think as we come close to our 2016 hundredth  
12 anniversary, it's especially helpful to us to have  
13 parties like FMC and firms like Barnes Richardson &  
14 Colburn here because each share that same century of  
15 discussion in the trade space. So look forward very  
16 much to the posthearing submissions, and it will  
17 really be very helpful to us as we think about our  
18 next 100 years. Thank you very much.

19 MR. LERNER: Thank you for your  
20 consideration.

21 CHAIRMAN WILLIAMSON: Thank you.  
22 Commissioner Pinkert?

23 COMMISSIONER PINKERT: I know I said that I  
24 didn't have any additional questions, but I do have  
25 one for the posthearing for Ms. Warlick. And this is

1 just a reformulation of what I asked before. Does it  
2 really make a difference in this case whether we apply  
3 an adverse inference? If you could focus on that, I  
4 think it also brings out one of the issues that  
5 Commissioner Kieff was looking at. So I'd appreciate  
6 it.

7 MS. WARLICK: Well, I'll respond real quick,  
8 and then more in our brief. While I think you're  
9 fully justified in making the adverse inference, and I  
10 also want to touch upon what Commissioner Kieff had  
11 asked of us earlier, this idea of being precise rather  
12 than accurate, this is the reason why FMC hired a  
13 consulting firm to look into this, and a brochure on  
14 the firm so that you learned more about them and why  
15 they are particularly qualified to do that study has  
16 been provided to you in a response to our  
17 questionnaire.

18 But I think you'll find that report has a  
19 lot of very good information, and so that you can make  
20 a determination with accuracy as well as precision.  
21 Maybe it's not as good as you might have if you had  
22 your own questionnaires. But, you know, we've gone  
23 that extra step to try to get good information, as  
24 good as we can get, and there is also trade data, and  
25 then you also have whatever is public from the EU and

1 the Indian investigations to show what their  
2 experience has been.

3 So I think that in this case, you really do  
4 have a lot more information than you might in another  
5 case, where you didn't have a whole lot of response  
6 from the foreign party. Thank you.

7 COMMISSIONER PINKERT: Thank you very much.

8 CHAIRMAN WILLIAMSON: Okay. Thank you. Any  
9 other Commissioner have questions? Commissioner  
10 Broadbent.

11 COMMISSIONER BROADBENT: Yeah. I just had a  
12 last question for Mr. Vakerics. Can you tell me sort  
13 of what the dumping picture is globally for FMC? Do  
14 they have orders against their products coming from  
15 the U.S. and other countries, Europe, China?

16 MR. VAKERICS: The only dumping duty order  
17 that has been pursued by FMC and which is in place  
18 today is against persulfates from China. The company  
19 has no other outstanding orders.

20 COMMISSIONER BROADBENT: But are they  
21 subject of a proceeding in another country?

22 MR. VAKERICS: Oh, is FMC? Maybe Mr.  
23 Pattison is better equipped.

24 MR. PATTISON: Currently, no. We have been  
25 the subject of an investigation in China regarding an



1 ad chemical, but that has expired.

2 COMMISSIONER BROADBENT: How long was that  
3 in place for?

4 MR. PATTISON: I think it was around five  
5 years.

6 COMMISSIONER BROADBENT: Okay. So no other  
7 dumping orders against FMC products?

8 MR. PATTISON: Not at this time.

9 COMMISSIONER BROADBENT: Great, good. Thank  
10 you very much. That's my last question, and I thank  
11 the witnesses for their good testimony.

12 CHAIRMAN WILLIAMSON: Thank you. Since  
13 there are no further questions from Commissioners,  
14 does staff have any questions for this panel?

15 MR. McCLURE: Thank you, Mr. Chairman. Jim  
16 McClure, Office of Investigations. Staff has no  
17 questions. I personally would like to take this  
18 opportunity to welcome back a former colleague, Amy  
19 Warlick. Nice to see you again.

20 CHAIRMAN WILLIAMSON: Thank you. I guess  
21 it's time --

22 FEMALE VOICE: I wondered why she was so  
23 good.

24 (Laughter.)

25 CHAIRMAN WILLIAMSON: Thank you. Time for

1 closing statements. Okay. So those in favor of  
2 continuation have a total of five minutes. And, Mr.  
3 Vakerics, you may begin.

4 MR. VAKERICS: Not that my first  
5 presentation was stellar, but it's going to be a  
6 little bit worse because I'm working off of my  
7 handwritten notes, which I don't often read very well.

8 A couple of points. At the adverse  
9 inferences question, we will address it in detail in  
10 our posthearing brief. But adverse inferences is a  
11 very important tool for this Commission, and it's a  
12 tool that's not unique to this Commission. I would  
13 characterize Chinese cooperation in this sunset review  
14 as totally non-existent. They have basically said  
15 they're just not interested.

16 If this Commission's information requests  
17 are ignored, as they were in this case, there are --  
18 and there are no adverse consequences, foreign  
19 producers will have absolutely no incentive to  
20 cooperate. You'd become impotent.

21 In terms of accuracy, accuracy is built into  
22 the adverse inferences tool because it's based on the  
23 assumption, which is difficult to argue with, that if  
24 the Chinese had information that favored them, and if  
25 the Chinese had information that would support order

1 revocation, they would produce it.

2 On third country competition, there is  
3 evidence in the record in our brief that the Chinese  
4 are dumping everywhere they are. We don't have that  
5 much firsthand information on that, but I would refer  
6 you to Exhibit 14 of our brief, which is the EU  
7 Council final findings. The EU did spend some time,  
8 and as a matter of reference, they did look at Chinese  
9 third-country pricing and found them to be dumping.

10 So it's a practice. It's not just here or  
11 there. It's everywhere. In terms of like product,  
12 there is one like product. It's the same product that  
13 existed in the original investigation. The term  
14 specialty product really applies to application more  
15 than a differentiation between the persulfate salts.  
16 So when we talk about specialty applications, it  
17 doesn't refer to chemical composition. All these  
18 salts are the same, and they've been the same since  
19 the original order issued.

20 Let's see. Oh, a post-order world. I may  
21 have misunderstood, but there was a suggestion that  
22 FMC might do quite well in a post-order world. I  
23 submit that would be impossible. The Commission, as  
24 we all know, is required to consider several factors  
25 in determining whether an industry is healthy, an

1 industry is vulnerable, an industry is likely to be  
2 injured.

3 I would compare FMC to a man standing on a  
4 beach, and the man is very healthy and a darn good  
5 swimmer, and there is a tsunami wave containing tons  
6 of water that hits that beach. That man is dead. And  
7 the equivalent would happen with these excess Chinese  
8 capacity. The flood would just drown the company. So  
9 a post-order world is Armageddon for this company.

10 I want to make a point on encapsulated  
11 persulfates. FMC does not produce encapsulated  
12 persulfates. That was referenced here and there. FMC  
13 sells its ordinary persulfates to customers. The  
14 customers coat the persulfates and then resell it to  
15 the oil and gas industry. FMC does not produce  
16 encapsulated persulfates.

17 And by way of general reference, Exhibit 7  
18 to our prehearing brief has an FMC PowerPoint  
19 addressing soil remediation and oil gas recovery.  
20 Pool shock -- I just want to make sure we're all  
21 clear. Persulfates -- FMC lost the pool shock market  
22 because it was replaced by a new technology. It's as  
23 simple as that. And that happens all the time, as we  
24 saw it happen with oil and gas.

25 And the guar situation. Market share split,

1 can't look at the original investigation. The Chinese  
2 were just starting up. Their industry was much  
3 smaller. And we nipped them in the bud. So in terms  
4 of sharing between FMC, third country, nonsubject  
5 imports, and the Chinese, no. The scenario here today  
6 is different. The Chinese would wipe us all out. No  
7 more German, no more Japanese, no more Indian  
8 persulfates in the U.S. market. They can't compete.

9 I guess that's it. I want to thank you all  
10 so much for your cooperation and your patience.

11 CHAIRMAN WILLIAMSON: Okay. Thank you.  
12 Closing statement, posthearing briefs, statements  
13 responsive to questions and requests of the  
14 Commission, and corrections to the transcript must be  
15 filed by January 24, 2014. Closing of the record and  
16 final release of data of parties, February 13, 2014.  
17 Final comments are due by February 18, 2014.

18 And with that, I want to thank all of the  
19 witnesses for their testimony. We very much  
20 appreciate your taking your time from your business to  
21 come today. And with that, our hearing is closed.  
22 Thank you.

23 (Whereupon, at 12:22 p.m., the hearing in  
24 the above-entitled matter was adjourned.)

25 //

**CERTIFICATION OF TRANSCRIPTION**

**TITLE:** Persulfates from China  
**INVESTIGATION NO.:** 731-TA-749  
**HEARING DATE:** January 16, 2014  
**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: January 16, 2014

SIGNED: LaShonne Robinson  
Signature of the Contractor or the  
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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).

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