THE UNITED STATES INTERNATIONAL TRADE COMMISSION

IN THE MATTER OF:	) Investigation Nos.:
CHLORINATED ISOCYANURATES FROM	) 701-TA-501 AND
CHINA AND JAPAN	) 731-TA-1226 (Final)

Tuesday, September 9, 2014
Main Hearing Room (Room 101)
U.S. International Trade
Commission
500 E. Street, S.W.
Washington, D.C.

The meeting commenced, pursuant to notice at 9:30 a.m., Chairman Meredith M. Broadbent, presiding.

Commissioners Present:

Chairman Meredith M. Broadbent (presiding)
Vice Chairman Dean A. Pinkert
Commissioner Irving A. Williamson
Commissioner David S. Johanson
Commissioner F. Scott Kieff
Commissioner Rhonda K. Schmidtlein

Staff Present:

William R. Bishop, Supervisory Hearings and Information Officer

Sharon Bellamy, Program Support Specialist

Mikalya Kelley, Student Intern

Jennifer Rohrbach, Superisory Attorney, Docket Services

Joanna Lo, Investigator

Christopher Robinson, International Trade Analyst

Aimee Larsen, Economist

Mary Klir, Accountant/Auditor

David Goldfine, Attorney/Advisor

Elizabeth Haines, Supervisory Investigator

In Support of the Imposition of Antidumping and Countervailing Duty Orders:

Cassidy Levy Kent (USA) LLP on behalf of

Clearon Corp. ("Clearon")

Occidential Chemical Corporation ("OxyChem")

Jeffrey L. Williams, Senior Business Manager, ACL, Silicates and Sodium Chlorites, OxyChem

K. Bradleigh LeBlanc, Senior Counsel, OxyChem

Scott B. Johnson, Executive Vice President, Clearon

Dave Helmstetter, Vice President of Sales and Marketing, Clearon

Matthew C. White, Controller, Clearon

Anthony J. Repaso, Corporate Counsel, Clearon

Carl P. Moyer, Director of Economic Analysis, Cassidy Levy Kent (USA) LLP

James R. Cannon, Jr., Ulrika Swanson - Cassidy Levy Kent (USA) LLP

In Opposition to the Imposition of Antidumping and Countervailing Duty Orders:

Akin Gump Strauss Hauer & Feld LLP on behalf of:

Shikoku Chemicals Corporation, Shikoku International Corporation (collectively "Shikoku")

Hirotaka Ide, General Manager, Operational Management and Planning Department, Shikoku

Nicolas Pettoruto, President DelCal, Inc.

James Eisch, Chief Operating Officer, Suncoast Chemicals, Inc.

Daniel Klett, Principal, Captial Trade Inc.

Bernd Janzen, Valerie A. Slater - Akin Gump Strauss Hauer & Feld LLP

I N D E X

I N D E X (Continued)

P R O C E E D I N G S

MR. BISHOP: Will the room please come to order?

CHAIRMAN BROADBENT: Good morning. On behalf of the U.S. International Trade Commission I want to welcome you to this hearing on Investigation Nos. 701-501 and 731-1226, involving Chlorinated Isocyanurates, and I will learn how to pronounce this after the hearing is over, Chlorinated ISOs from China and Japan.

There is alleged dumping from Japan and subsidization in China. The purpose of these final investigations is to determine whether an industry in the United States is materially injured or threatened with material injury by reason of these imports. Documents concerning this hearing are available at the public distribution table. Please give all prepared testimony to the Secretary. Do not place it on the public distribution table.

All witnesses must be sworn in by the Secretary before presenting testimony. I understand that the parties are aware of the time allocations, but if you have any questions about time, please ask the Secretary. Speakers are reminded not to refer to business proprietary information in their remarks or in answers to questions.

Please speak clearly into the microphone and state your name for the record, so that the court reporter knows who's speaking. Finally, if you will be submitting documents that contain information you wish classified as business confidential, you are requested to comply with Commission Rule 201.6. Mr. Secretary, are there any preliminary matters?

MR. BISHOP: No, Madam Chairman.

CHAIRMAN BROADBENT: Very well. Let us now proceed with opening remarks.

MR. BISHOP: Opening remarks on behalf of Petitioners will be by James R. Cannon, Jr., Cassidy Levy Kent.

CHAIRMAN BROADBENT: Welcome. You may begin when you're ready.

MR. CANNON: Thank you, good morning. Chlorinated Isocyanurates.

CHAIRMAN BROADBENT: Got it.

MR. CANNON: We just call it "ISOs." Typically, when you listed to the testimony, Commissioners will be looking at the C tables and the data in front of them. In this case, you are going to look at the C tables in the staff report, and you're going to wonder what they're talking about.

The reason for that is that in this case, the importers from China have not responded to the questionnaire. There's one importer who has written a letter to the Commission saying we aren't going to respond. There's another importers who submitted a questionnaire at the preliminary stage and nothing at the final stage.

There are other importers who are named in the purchaser questionnaires who did not respond. So the volume of data, the volume of imports from China is not -- is deeply flawed. It's probably something like 20 percent too low in 2013, and we're going to talk a lot about it. But if you don't sort of adjust your thinking about that issue, the other data don't really make sense.

So what you see from the domestic data is a domestic industry where shipments are going down, production is going down, employment is going down, and they're losing money. Then on the import side, it appears as if in the end of the period, imports are also shrinking and they are not. They are not because they did not respond to the questionnaire.

Now it's become almost commonplace at the Commerce Department for foreign producers just to not participate. So you'll get these cases which come to you, where the Commerce Department is always applying adverse facts available, and I'm sure that it is frustrating to not know the exact amount of dumping. But we are seeing it in this case in a major way before the International Trade Commission.

It's disappointing to me and also surprising, and we're going to focus on this. But when you do and when the staff corrects and adjusts the data for what's in the record, what you will see I think will then start to come together, and the testimony then will make sense.

What you will then see is a rising volume of imports as having a negative impact on a domestic industry, and in fact on virtually every factor, the industry today is in worse shape than they were in 2005, when you ruled affirmatively in the dumping case on China and Spain. What you will also see is that many of the arguments that the Japanese are making are not supported by the record.

Essentially, they're arguing there is no overlap in the record between imports from Japan and imports from China. In part that's true, because the Chinese failed to report to the Commission the full extent of the volume of imports and the full extent of their prices.

That's what we intend to show today and to discuss, and with that, thank you.

CHAIRMAN BROADBENT: Thank you.

MR. BISHOP: Opening remarks on behalf of Respondents will be by Bernd Janzen, Akin Gump Strauss Hauer and Feld.

CHAIRMAN BROADBENT: Welcome.

MR. JANZEN: Good morning. Okay. We're on now. Good morning Chairman Broadbent, Commissioners and the members of the staff. I'm Bernd Janzen with Akin Gump, appearing on behalf of Shikoku Chemicals Corporation and Shikoku International Corporation. SCC is by far Japan's largest producer and exporter of subject chlorinated ISOs to the U.S.

SIC is the exclusive U.S. importer. U.S. marketing functions are carried out by DelCal, Inc. We plan to demonstrate today that Petitioners' case against Japan has not merit, and that there is no reasonable way to read the record before you, that could lead to the conclusion that Japanese imports had or could have any adverse impact on the condition of the domestic industry.

Now on the threshold issue of cumulation, Petitioners attempt to portray the statutory requirement as nothing more than a speed bump on a road that must lead to an evaluation of the subject imports on a combined basis. Petitioners seem to suggest that cumulation is simply mandatory, and they would strip the Commission of its statutory authority and responsibility to determine whether cumulation is appropriate here.

It also seems from the record that Petitioners have no choice but to take this tack, given the strong evidence of no significant overlap of competition between the imports from China and Japan. The statute does not dictate cumulation regardless of the facts, but it requires an evaluation of whether the subject imports compete with each other.

Simultaneous presence in the market does not mean that they do, because they might simultaneously be participating in the market in fundamentally different ways. To discern whether there is in fact enough of a competitive overlap to warrant cumulation, the Commission has developed an analytical framework that we will discuss today, and that focuses on indicia of overlapping competition, such as degree of fungibility and presence in the same channels of distribution, and the Commission in its preliminary determination specifically noted that it intended to examine these factors in greater detail in this final phase.

A number of record facts show that any competition between the Chinese and Japanese imports is very limited, and that the Chinese and Japanese imports participate in the U.S. market in fundamentally different ways. They enter the market in different forms, they reach different customers through different channels of distribution.

The Japanese imports are entirely of granular product that is overwhelmingly resold to tablet manufacturers. The Chinese product, in sharp contrast, largely enters the market in tableted form, and is largely sold directly to distributors and retailers. Further, purchasers have told you in their questionnaire responses that Japanese imports are of significantly higher quality, and therefore command a significant price premium that is evident throughout the POI.

Your pricing data plainly show that this cannot be a pure commodity product. Once the Japanese imports and their effects are examined standing alone, it quickly becomes clear that these imports could not have caused any adverse effects to the U.S. industry.

The reported data shows stable import volume and market share for the Japanese imports throughout the POI. Japanese imports continue to fill the role in the U.S. market that they had been for some years prior to the POI, that role having been established by major business decisions taken by domestic producers before the POI.

Indeed, during the POI, the co-production arrangement between Shikoku and Oxy actually helped Oxy to market its granular product to more U.S. tablet manufacturers. The Commission's pricing data also powerfully demonstrate the absence of adverse effects from the Japanese imports.

The pricing data show pervasive over-selling by the Japanese imports, consistent with the acknowledged high quality of the Japanese granular product. None of the many responding purchasers identified Shikoku as a price leader. Indeed, it was the domestic producers who are often identified as being in this role.

If the Commission does determine that it must cumulate Chinese and Japanese imports, notwithstanding these fundamental differences in the way they participate in the U.S. market, we contend that assessment of the cumulated imports also must lead to the conclusion that there were no volume or price effects that could have injured the domestic industry.

It should not come to this, however, because the record provides a compelling evidentiary basis, not to cumulate, but no basis to conclude that Japanese imports had or could have any adverse effects. This case presents the Commission with an opportunity to clarify that cumulation is not a free pass, allowing the extension of trade remedies to imports that have had nothing but a responsible and non-injurious presence in the U.S. market. Thank you.

CHAIRMAN BROADBENT: Thank you.

MR. BISHOP: Would the first panel, those in support of the imposition of anti-dumping and countervailing duty orders, please come forward and be seated. Madam Chairman, all witnesses on this panel have been sworn.

CHAIRMAN BROADBENT: Thank you, Mr. Secretary.

(Pause.)

CHAIRMAN BROADBENT: I want to welcome the panel to the ITC. You may begin when you're ready.

MR. CANNON: Thank you, Madam Chairman. We'll jump right into it. We'll begin our testimony with Jeff Williams.

MR. WILLIAMS: Good morning. My name is Jeffrey L. Williams.

MR. BISHOP: Move the microphone a little bit closer.

MR. WILLIAMS: Oh sorry. Is that better? Good morning. My name is Jeffrey L. Williams, and I am the senior business manager for the ACL, Silicates and Sodium Chlorides Business Unit within Occidental Chemical Corporation. At Oxy, ACL is the brand name for our chlorinated isocyanurates. I've been in this business unit with Oxy for the past 14 years. For the past four years, I have been the senior business manager for the chlorinated isocyanurates.

The ISOs market is a national market with two major segment earnings, or two major market segments. The first and largest end use market for ISOs is residential swimming pools, including spas and hot tubs. This market accounts for 85 to 90 percent of our sales.

We sell to large players like Leslie's, Poolcorp and Biolab. Leslie's resells in the retail market. Poolcorp is a distributor to the professional pool service industry, and BioLab is a manufacturer of trichlor tablets that supply mass merchant and big box stores. We supply BioLab with dichlor to fill out its product line.

Water treatment and industrial cleaners account for the remaining 10 to 15 percent of our sales. Customers such as Ecolab or Nalco use ISOs as ingredients in cleaners, scouring detergents and dish washing detergents. In the swimming pool market, we sell ISOs in bulk bags to repackers and distributors, who will break down the bulk bags to retail packages and resell the products.

In some cases, we will use tollers to break down the packages before shipping to our customers. These repackers will also press the product into tablets, depending upon the form in which the product is to be sold. We do not sell directly to the mass merchandisers or the big box stores. Our customers, who repackage our product into retail containers, supply that portion to the market.

Oxy products trichlor at our plants in Sauget, Illinois, and we produce dichlor in Luling, Louisiana. Unlike Clearon or BioLab, we do not have repacking lines or tablet presses. We will ship to customers in super sacks. If our customers want tablets, we will engage a toll processor to convert bulk trichlor into tablets before repackaging and shipping the material to our customers.

If our customers are distributors, they may have their own repacking lines, or they may engage toll reprocessors to repackage the tablet on the dichlor and trichlor. In this manner, we operate just like the Japanese, and until recently, the majority of our Chinese competitors.

The imports for years have been shipped to the U.S. market in bulk super sacks. After the super sacks arrive, the same repackers that handle our material will also repack and, if necessary, tablet the imported material. More recently, Chinese imports have been pressed into tablets in China and packaged for the retail market before importation.

Ultimately though, all of the dichlor and trichlor produced by the U.S. industry or imported from Japan or China ends up in a swimming pool or some industrial application.

The market is very competitive. There are many suppliers fighting for a market that is smaller than our capacity. In fact, taken together, the three U.S. producers could supply the entire U.S. market without any imports from China or Japan. Because 85 percent of our market is the swimming pool market, demand is seasonal, as you would expect.

Most of our shipments occur within the first six to eight months of the year. In order for chlorinated ISOs to be packaged and in retail stores when the weather turns warm, we will begin building inventory in the first quarter of every year. We will then begin shipping to customers before the pool season starts, so that the product can travel through the distribution chain and make it onto the shelves in time.

There is another key factor that impacts the market dynamics. Each year price negotiations start towards the end of the pool season for the next year. We have already been visiting customers, negotiating prices for 2015. We try to have them done by the end of September.

So our prices will be set months before the shipments begin. In these negotiations we set prices, and we try to set targeted quantities or negotiate take or pay contracts. In most cases, the quantities are basically estimates. Our customers may actually purchase more or less, depending on the demand in the swimming pool market and the weather.

As a result, in many cases, they'll simply reduce their purchases from Oxy and increase their purchases from the Chinese or Japanese imports. Also, several major customers have meter release clauses in their contracts. If low-priced imports undercut my price, we are forced to meet the low price or lose the business.

In fact, Customer 1 shifted almost four million pounds of dichlor in super sacks to Chinese competition in 2012. Our price at the time as $1.17 a pound. The Chinese quoted 94 cents a pound. We could not meet that price.

Another factor is weather. Overall, the United States consumption fluctuates between 240 to 250 million pounds of total ISOs. That's an important number to remember. If the weather is bad, if the pool season is shorter than predicted, the market may fall by a percentage point or so, but the competition becomes even more intense.

Imports from China and Japan are already in inventory in the first quarter of the year, and the domestic producers are filling their own inventories ahead of the pool season. If demand falls because of colder weather, the importers will drop their prices. We'll have to match them at the risk of reducing our production or shutting down our plants.

When imports not only drop price but also increase their market share, we suffer both from lower shipments and from lower prices. 2013 is a good example of the way the weather can intensify competition in the market. Preparing for this hearing, I looked back at my monthly business reports to my management.

On April 5th of 2013, I wrote "Moderate temperatures across the U.S. are reducing ISO consumption as we approach the heart of pool season. March total ISO volume was below outlook by 2.94 million pounds." On May 10th, 2013, I reported "Cold temperatures continue across the U.S., putting pressure on ISO sales in April. Meteorologists report the U.S. is headed for the coldest spring on record."

On July 5th, I wrote "Even though temperatures have finally risen, volume is still cool in June. June total ISO volume was below outlook 2.35 million pounds." In other words, the pool season started late in 2013 because of cold weather. When this happens, everyone in the market, Oxy, Clearon, BioLab, Shikoku and the Chinese importers had inventory waiting to be sold.

As a result, there was fierce competition in 2013. To try and move inventory and meet our sales forecasts, we had to meet price levels set by the imports from China and Japan. By the end of 2013, our average prices were significantly below forecast. We had to cut prices in order to maintain our capacity utilization.

Our prices at the end of the season were even lower than the price levels we had originally negotiated the year before. If I did not have to compete against Chinese government subsidies and Japanese price discrimination, I do not doubt that our prices would have been higher.

Make no mistake. Oxy has lost money for the last three years. Our only hope is that this case will stop imports from quoting subsidized and dumped prices, so that we can increase prices and increase our sales volume. From a production standpoint, sales volume is critical to our business, because we have high, fixed costs at our plants and we're geared to run at very high rates. Fewer orders means running at lower capacity, and producing fewer U.S. manufacturing jobs.

Within Oxy, my business is judged on segment earnings, meaning gross profits. When that's calculated, the ISO business is treated as a customer of the chloralkali business. We buy chlorine and caustic at competitive prices that are linked to a public index, CMAI, now HIS.

All of our chlorine and caustic contracts are based off this market standard. This means that internally, the ISO business is judged by the same standards that would be applied to Clearon or BioLab. This generally accepted accounting method is standard across all product lines for our company.

Our product line has lost money the last three or four years because our product line is a poor performer. My goal is to bring this business back to positive segment earnings. Our industry is in terrible shape. We have two plants, a dichlor plant and a trichlor plant. We could phase out or shut down the dichlor plant if things get really bad, but it's not possible for us to consolidate the two lines and produce both. That would require additional capital investment.

But Oxy is not going to put additional capital investment into a business that is chronically losing money. Instead, we would have to leave the dichlor market all together to shut down one of our plants.

At the preliminary hearing, witnesses for the Japanese argue that quality has an impact on the market. I do not agree. The repackers and tableters that buy our products are not concerned about quality of the product, the service or even the source. The customers will simply look at the bucket and say "what's the price?"

Most people have the perspective that all brands perform equally well, and even though the market is seasonal, the importers maintain inventory in the United States, and as a result we do not have an advantage even regarding delivery time. At the end of the day, our customers buy on the basis of price, not quality.

For example, Customers 2 purchased some 30 million pounds of trichlor in bulk super sacks from China. The customer told me directly "Your price is a dollar, but we can get it from the Chinese at 95 cents." Customer 3 is one of our top customers. This customer purchased ten million pounds from us in 2013. We estimate that they bought 10 to 15 million pounds from China.

They refused to take the entire quantity identified in our contract. When I protested, they refused to allow us to audit their purchases. I have no doubt they purchased imported ISOs in order to get lower pricing. Price is overall the single-most important factor in making sales in this market. This is true for all suppliers, including Japanese suppliers as well as Chinese.

For example, in October of 2012, Customer 4 rejected a supply proposal from Oxy for two million pounds, because the Japanese offered to supply at a price that was two pennies lower than our price. One of the ways that the Commission can really see the impact of unfair trade is to look at what happened since anti-dumping and countervailing duties were imposed.

Since we filed this case a year ago, our shipments have increased, particularly in 2014, because the customers must pay anti-dumping or countervailing duties. They have come back to the domestic suppliers. None of the customers are willing to pay more for imports because of quality. In fact, Shikoku is purchasing from us and shipping our product to their customers. Our quality is every bit as good as the Japanese.

Just this past July 1, I announced a price increase, as shown by the talking points. This if the first price increase from Oxy since 2011. In fact when we announced a price increase in 2011, no one paid the higher prices. I either had to hold my existing prices or lose the business in 2011.

In 2014, by contrast, I fully expect that this price will stick. With the new duties in place in the first half of 2014, our trichlor capacity has been close to 100 percent. This investigation is the only reason we have experienced this rebound. We were injured by imports, but once duties were placed on these imports, our business turned around.

An affirmative vote from the Commission will enable us to continue this turnaround and strengthen our industry. Before I close, I would like to say a word about fraud. Since I became a manager of the ISO business, I have been amazed at the amount of outright fraud that I've encountered in this business.

Back in 2011, there was a rising volume of imported ISOs that were marked as Vietnam origin. However, there were no ISO producers in Vietnam. We brought this to the attention of Customs, and two years later you don't see any imports from Vietnam. Now we're seeing imported ISOs that show EPA registration for Taiwan, Panama and the Philippines. Once again, there are no ISO producers in Taiwan, Panama or the Philippines.

Data published by the SRI shows that these countries are net importers of ISOs. One of our customers, who also buys from Shikoku, has been to Washington to meet with Customs about these imports. This customer has done exhaustive research to show that mismarked Chinese ISOs are being smuggled into the U.S. market.

I have also been contacted by Customs, and I believe an investigation is ongoing. The fact is the U.S. market is the largest ISO market in the world. Producers in China and Japan have far more capacity than is justified by their home market demand. ISO's factories were built in these countries to supply the U.S. market, even though the U.S. industry has plenty of capacity to serve this market.

It would be one thing if the imports were sold in the U.S. market at fair prices. They are not. Imports from China are dumped and they receive subsidies that substantially reduce their electricity costs and even their tax rates. Imports from Japan are sold at prices in the U.S. market that are one-half the level of prices in Japan.

Because companies like Shikoku and Nankai are very profitable at home, they can afford to cut prices in the U.S. market and still cover their costs. We cannot do the same. We do not receive government subsidies, and there is no market where we can earn high profits that allow us to supply the U.S. market below our costs.

At the same time, if the subsidies and dumping stop, we absolutely can improve this business. Since we filed this petition, we have experienced a turnaround with respect to our shipments and capacity utilization. We are now anticipating that prices will rise to a profitable level. I ask you to make an affirmative determination in this case, so that we can revive our industry. Thank you.

MR. CANNON: Thank you, Jeff. Jeff referred to customers one, two, three, and so forth. That's the first page of the pink sheets, if you care to look at the names.

Next we'll hear from Scott Johnson. Scott?

MR. JOHNSON: Good morning. Good morning. Is this on? Okay.

My name is Scott Johnson. I'm the Executive Vice President of Clearon Corporation. I have been with Clearon now for for over 18 years and in that time I have been entirely in the Isos business. I was involved in the first case in 2005 and appeared before the International Trade Commission at that hearing.

In 2004 we filed the anti-dumping petitions against China and Japan because our sales were declining, the volume of imports was steadily increasing, and dumped imports had sufficiently degraded market prices to the extent that Clearon was losing money. Given the condition of the industry at that time, the Commission unanimously found material injury.

In the first few years after the antidumping duties were imposed, our industry regained sales volume, market prices improved, and we experienced profitable operations.

In other words, for several years, the antidumping orders on China and Spain were effective in creating conditions of fair trade.

I am back before the Commission today because the relief from dumping did not last. Since the dumping orders in 2005, imports from Japan have entered the market in large volumes at prices that are well below our cost of production. Imports from China never really left the market, but now benefit from significant subsidies. As a result, price levels in the U.S. market are now as low as ever and U.S. producers are simply unable to fill their capacity.

In fact, imports from China and Japan now account for an even larger share of the U.S. market than when I appeared before the Commission in 2005. As shown in this slide, since 2004, the last full year in the original 2005 investigation imports from China and Japan have increased from about 20 percent to over one-third of the market today. Compared to the original 2005 investigation, imports have increased, price levels are just as low as they were in 2005 and our operating rates are lower. Our shipments and market share have fallen and we are again losing money.

The substantial import penetration is a severe problem for all of the U.S. producers. As Jeff has stated, the U.S. producers can together supply essentially the entire U.S. market. But when subsidized and dumped imports increase to one-third of the market, the U.S. producers cannot operate anywhere near full capacity.

Clearon is today running at operating rates that are lower than we were in the 2003-2004 timeframe. As Jeff Williams described, our operating rates are a critical issue for us because of our high fixed costs. Like Oxy, our fixed costs account for almost one half of the costs to manufacture of chlorinated Isos. Raw materials and utilities going into variable costs. But everything else, labor, maintenance, operating supplies are all fixed costs.

I would estimate that our fixed costs are 40 to 50 percent of our total cost of manufacture, but are very rate dependent. Given such high fixed costs as well as large amount of unused capacity, it is critical for us to increase our production volume in order to spread those fixed costs.

At the preliminary staff conference I testified that we were forced to shut down our plant for over four months in 2012. We took this step because we had no orders for Isos. Normally we shut down during the month of September for maintenance. In 2012 we shut down for four months, not four weeks, and we laid off one-third of our employees during this shutdown. We have never had a comparable shutdown.

Because of the disruption to our employees in Charleston, West Virginia, we decided to operate at much lower levels during 2013. By running the process more slowly to produce lower volumes of Isos we were able to avoid a prolonged shutdown and avoid laying off more workers. In the end though, our capacity utilization is just as bad. Slowing down production means that you have a smaller volume to carry the fixed costs.

Faced with high fixed costs and the pressure to load our capacity, we cannot afford to hold out for higher prices. At Clearon we have suffered losses over the entire period of the investigation.

Jeff explained that Oxy's business strategy is to sell trichlor and dichlor in bulk supersacks. Clearon also used to participate in this segment of the market. However, imports from China and Japan concentrated on high-volume customers buying in bulk. At Clearon, we simply could not survive selling to these customers at the price levels established by the imports.

Consequently, over time, we cut back our sales of bulk Isos and shifted to tableted sales. For example, we were making tables in 2002-2004, as we do today. But, most of our business at that time was bulk business. Since the 2005 case, price levels in the bulk business continued to deteriorate because of import competition. As a result, we shifted more to producing products for direct shipment to retailers. A majority of our business today consists of selling directly to "big box" retailers.

Retailers will not take bulk quantities in supersacks and in drums. For those customers, we repackage the product in smaller quantities, including 50, 25-pound, or smaller plastic pails represented by this pail up front. We have provided samples of the packaging for the Commission to see. Actually nested inside of t his are two smaller containers. I will take them out after my testimony. These are retail containers which would be purchased by residential pool owners.

Dichlor is sold in the swimming pool market as granular product used for "shock" treatment. In other words, you add dichlor at the beginning of the season when you open your pool, or after a pool party. The purpose is to add a large amount of chlorine quickly in order to kill the bacteria.

Trichlor is typically sold as a bucket or pail filled with trichlor tablets. The tablets dissolve slowly so that the chlorine is released gradually. The purpose of the tables is to maintain the chlorine level in the pool, after it has been "shocked".

In Charleston, West Virginia, we have two facilities. First, there is our manufacturing plant, where we make granular dichlor and trichlor, packaged in supersacks. Second, about half mile away is our retail packaging operation. We truck the bulk granular Isos from our manufacturing plant to our packaging and tableting operation.

The whole business starts on the manufacturing side. That's where the chemical manufacturing process takes place. In our case, though, we make dichlor and trichlor at the same facility. The process for manufacturing cyanuric acid from urea is identical, whether we are making dichlor or trichlor. Also, the raw materials are identical for both products use the same production steps.

Our tableting operation is similar to that of other repackagers in the market, although perhaps larger in scale. When it comes to tableting the only thing you need is a press. A tablet press is a fairly common type of industrial press, the equipment is easily obtained and operated by anyone. The amount of skill needed to run the press is relative low as compared to the skill needed by operators in our Isos manufacturing factory. By virtue of their additional training and skill, the production workers in our Isos manufacturing facility earn, on average, more than $48 an hour, inclusive of benefits. By comparison, the operators on our tableting presses average about $15 per hour inclusive of benefits.

The investment to purchase a press and the necessary tooling ranges from about $80,000 to $140,000. The chemicals are corrosive, so we periodically take some of our presses out of service to do mechanical workovers. We take our existing dies and have them checked and machined and have them brought back to the tolerances that are necessary. These operations, however, do not compare with the maintenance that takes place in our manufacturing facility with respect to kilns and operators.

Typically, the cost of production for a finished tablet -- including the granular trichlor, the cost of tableting, and the packaging into the finished goods container we're looking at about $1.50 a pound. By comparison the cost to press a three-inch tablet is about 15 cents a pound.

In my declaration submitted in this investigation, I included several slides comparing our Isos manufacturing plant with our tableting operation. I'll refer to some of these slides as I explain what we're looking at. You can see that the nature and the scale of the operation is fundamentally different. This is an aerial view of the manufacturing facility at Clearon. It has a footprint of about 20 acres.

The next slide is a picture of the tableting building that we use about a half mile away from the manufacturing plant. It has a footprint of about two acres.

The next slide shows one of the calciner or kilns that are used to make the cyanuric acid. This is one of just many operations. You can see by the size of the crane sitting next to it, the size of the equipment that's associated with this.

The next picture shows a tableting press. The tablet press is very simplistic and is the size of about two people.

The next slide shows the complexity of a network of pipes that exist within the chlorination area of our plant. Very complex and very safety oriented.

The next slide shows the relative simplicity of the press. The press kicks out the tablets and they're fed onto conveyor for placement into packaged and finished bids or finished containers.

The next slide shows the computerized controls that are used within the manufacturing facility, a very complex and highly technical control system for the assurance of safe operation for all of the materials used.

The next slide shows literally the individual wrapped three-inch tablets that are being manually loaded into buckets with the lids then placed on and that's the level of control that's at our tableting facility.

It is frustrating to me though that the result of a decision that tableters are part of our industry. I hope you can see the differentiation that I've shown here. The truth in the case is that without relief, one of the manufacturers within the U.S. will exit this business. The companies that just press tablets though, will not be affected. Even if all of the U.S.

producers shut down, the tableters will still be able to make tablets using low-priced Isos from China and Japan. In other words, the United States will lose high-paying manufacturing jobs but keep seasonal jobs working at a tablet press and repackaging operation. The real value in manufacturing chemicals will be lost to foreign plants. I cannot believe that this is the purpose of the law.

In summary, when I compare the situation now with 2005, I honestly believe that the competition has become more intense and more injurious. Shipments by U.S. producers are lower now than in 2004. Dumped and subsidized imports hold a larger share of the U.S. market. U.S. capacity utilization is lower now than it was in 2004. And, a smaller U.S. industry is losing money. For these reasons, we ask the Commission to make an affirmative determination and to relieve our industry from the effects of unfair trade. Thank you.

MR. CANNON: Thank you, Scott. And next we'll hear from Dave.

MR. HELMSTETTER: Good morning. My name is Dave Helmstetter and I am Vice President of Sales and Marketing for Clearon. I have had this position for seven years and I have been with Clearon for 12 years. I started my career with Olin where I managed four plants including the plant in Charleston, West Virginia, now owned by Clearon.

Olin ended up selling the Charleston, West Virginia plant and later Olin split their company into Olin and Arch Chemicals. I became an executive with Arch and had purchasing responsibilities for Isos. In 1995 Olin divested the Clearon business selling it to ICL.

Through 1999, Olin/Arch had a five-year contract with Clearon. During those years Arch paid a fair price for trichlor made by Clearon. Eventually after the contract expired, I came in and said we wanted to sign another contract with Clearon. So while I was at Arch, Clearon would come to us and quote to supply 20 million pounds. I would just beat them down in price because I could get it cheaper from China and Japan. I'd meet with Shikoku and with importers from China, and I would use their prices against Clearon. I would have them quote me for a combined total of 20 million pounds to get their lowest price. Clearon had no option but to supply me at that price I requested.

At Arch we would just keep forcing the price down using Chinese and Japanese prices to quote against the best domestic prices.

When I left Arch in 2003 and came to Clearon, Clearon had their biggest sales volume ever. But we lost $17 million that year due in large part to the intense pressure from Chinese imports. As Scott mentioned, we had to change our sales strategy to try and avoid competing with imports and bulk supersacks.

Clearon went to Costco in 2003 and we went to Sam's Club in 2003. Although we did not secure any business in that first year, we were eventually able to penetrate the accounts. The big box retailers are essentially two SKU stores. They would only carry a large package of shock and a pail of trichlor tablets. The mass merchandisers have required us to remove leftover inventory from their stores at the end of the season. We bring it all back to one location in North Carolina and we buy it back at the price we sold it at. It's the first product we ship out the next year.

Despite the requirements, the mass merchandisers purchase large volume and we need volume sales to fill our plant. As a result, Clearon shifted from production of granular and bulk bags to dichlor granular and trichlor tablets in retail packaging so that we could supply the mass merchandisers directly. This strategy worked for a time to help us maintain margins. But in the past three years, Arch, my old employer, has been offering extremely low prices to mass merchandisers, forcing us to cut prices to maintain sales volumes.

In my experience in this industry, price is the most important factor in every sale. Over my career the intensity of competition throughout the market has increased. Historically the manufacturers were able to make a profit. Nobody was chained to suppliers for a few pennies. There was loyalty between customer and supplier.

However, the subsidized and dumped imports have changed all that. We were making money the first few years after that antidumping order was published with respect to China. Selling trichlor tablets at a $1.74 a pound. Today, by comparison, that same customer will report that Arch quoted a $1.40 a pound using a factory in China to supply bulk trichlor.

Although we have shifted our focus to the retail market, we have not stopped trying to sells Isos in bulk quantities. For example, in 2011, we offered our best possible price to three U.S. rate backers to supply 10 million pounds of trichlor and dichlor granular for the 2012 season. At a volume of 10 million pounds, we could -- we would have been able to cover our costs. Customer five and customer six ordered at our price. The third customer insisted that the Japanese imports were cheaper. We thought we would sell these 10 million pounds but shortly after we started supplying, customer five came back and insisted we meet a lower quote he had received.

Customer six never purchased per the agreed-upon schedule. And when we protested that his price was based upon a much higher volume of sales, the customer told me that Shikoku had quoted seven or eight cents below our price. At this point we lost the sales volume altogether.

At another account, customer seven, we have suffered a steady decline in sales volume over the entire period of investigation. This customer is a national distributor that covers every state. Because the customer switched its orders to a Chinese seller, Clearon suffered a decline in shipments in 2011 which got even lower in 2012.

In 2013, we lost two million pounds of three-inch tablets to a Chinese importer at $1.40 a pound. We quoted again in December 2013 for the 2014 pool season. This year we again lost the business, but it was from imports from Japan instead of China. Whether we have sold in bulk bags to repackers and tableters, or whether we have sold tablets directly to retailers, we cannot escape the every-day low prices offered by Chinese and Japanese imports because we require volume to fill our capacity and avoid extended shutdowns, we cannot resist the low price levels.

We thought in January 2013 that an increase in the antidumping duties on China would help. In some cases, though, the Chinese imports simply built inventory before the duties were raised. In other cases importers shifted from Jiheng or Kangtai who got high antidumping duties to another supplier. I know of one customer, customer eight, that purchased four million pounds of Chinese three-inch tablets in 2013 from Heze. Heze's antidumping duty was only 2.6 percent. These tablets were sitting in the customers' parking lot packed in 50-pound pails for almost all of last year.

In short, we were unable to raise prices to a level that would cover our costs even when antidumping duties increased in January 2013. Not until this summer after the new petition was filed have we been able to get a price increase. On July 1st, this year, we raised prices 5 cents per pound. We have already announced another price increase for October 1st which will raise prices 10 cents per pound. Without the antidumping and countervailing duties, we could no have increased prices. In fact, without relief from foreign subsidies and price discrimination we cannot find any strategy that will allow us to operate at a profit.

In 2005, the antidumping orders on China and Spain helped us to turn around the business. We need your help again. Thank you.

MR. CANNON: Thank you, Dave. Could I ask how much time we have?

MR. BISHOP: You have 19 minutes remaining.

MR. CANNON: Thank you. So the tedious part. I would like to go through the confidential exhibits.

At the outset I indicated that it's very frustrating for us the extent to which the importers did not participate. Arch, who is probably the largest U.S. importer from China, filed a dumping case as a petitioner, they are before you on Calcium Hydrochloride. They have filed -- they are actively participating right now in three lawsuits involving the dumping case on China at the Court of International Trade. They have two different law firms fighting the dumping case, and one fighting the countervail case, and they didn't bother to send you a witness or even an attorney.

Heze Huaway the new emerging Chinese producer whose buckets are sitting in Florida, four million pounds worth, showed up at the preliminary decision, didn't file a questionnaire response. Sent their lawyer and is not here today. No one is here today from the Chinese side. And that's a big part of the problem. The staff has had to cope with the fact that there are gaps.

Now, turning to page two. Page two shows how this sort of plays out in the data. So on the left-hand side, on the columns under 2002, 2003, 2004, there's sort of a mini C table. What you see on the top line is where apparent consumption was in 2002, '03, and '04. Underneath that you see the U.S. producers' share. To the right you see the current C table and the one before you now and in the back of the staff report. And you can see apparent domestic consumption, and you see at the far right in 2013 we've marked that number with an asterisk. That is a number that is majorly impacted by this missing data. Look under that, you look at the producers' share. That also is majorly impacted.

But if you just step back first, look at where we were in 2005 and where we are now, U.S. producers' market share was about 78 percent in 2004, at a time when the Commission found in the affirmative that imports from Spain and China were causing material injury. The U.S. imports' market share is far lower today, whether or not we change any data.

Now, I want you to look down again at the line where we show importers' share. In the 2005 case the subject imports were basically China and Spain and there were some other imports in the mix, but they were small in volume.

If you look at China and Spain from the published public data, you see that the total import market share rose to 22 percent. If you look to the right where we are today, the total market share ranges something above 10 percentage points higher than that. Our chart -- our public chart is based on petition data where we added census with U.S. producers to produce a number. Your staff report in 2013 is showing this number with an asterisk next to it because we are missing some Chinese data.

The missing data also affect shipments of imports so if we look down to the next line we see all imports from the period 2002, 2003, 2004 were running between twenty-six million and sixty-five million pounds. Compare that to where imports from China and Japan, the subject imports, are today.

Now if we turn the page, page three. What we ve done here is lifted some data from different sources to give you a notion of why we think it s the case we are missing some information here.

In your final investigation on the top line you see the figures that we got reported in questionnaire responses in the final phase. Below that you can see the data base that you have in your preliminary staff report. So you can see that even from a year ago to today, the Chinese are not responding to your questionnaire.

Now if you look at the census data, the peer s data, or the Chinese export statistics, you see that by every measure there is a problem with the data that you have from China. I am not asking, we -- it is not our position that we need to make what is called an adverse inference. I know lots of companies have come before you and this argument has been aired out, however, under Section 776(a)(1) of statute, you are permitted to use facts available from the record when data are missing and there are facts available in this record.

One set of data you could look at are the data on this page, from page three the census data and in some cases you have used census data. If you turn the page though some of the alternative is you can use data from the record in the preliminary stage for one importer and you could add to that some data from a questionnaire response from a purchaser.

So in the top point one you ve got from an importer questionnaire, you see this importer filed at the preliminary phase and did not submit in the final phase. In the final phase though there s a purchaser and ninety-nine percent of their purchases were from the importer. The importer above that in line nine, so the purchases by this purchaser in line two here, the purchaser questionnaire, they were buying from the company above that, so you could take those two pieces of data and put them together and that s point three, and that would be one way to solve the problem.

It is not the only way, but that certainly would in our view be something that comes out of your record, right, your administrative record before you, you could easily take this data and move those into the data set or you could use the census data.

So on page five we do that, right. We take the ITC imports that you have got on the staff report on the first line and then below that we add the purchaser that filed at the preliminary stage, I m sorry, the importer, that filed at the preliminary stage, plus the purchaser who reported the same importer at the final stage, and we come up with a new total.

Now compare that to the census peers for the Chinese export statistics and we still think there are problems with this but it s far better. It s at least better in showing the trend than what s happening in the market. It doesn t produce this appearance that there is this huge fall off of imports in the marketplace.

Now there is still a problem with this. You see the two bullet points down below on this page. The first problem is there is an importer who wrote a letter and said we just aren t going to respond, this is a major importer right, and we discussed in the confidential brief the circumstances why they are not going to respond all right.

In the original investigation in 2005, they were a big player. They still are today. Their sister company is a major toll processor who makes tablets using imports. Secondly trichlor tablets in the census data are not classified in the same HTS number as the granular product, so if the Chinese are sending more and more tablets than the census data and indeed the Chinese export statistics are not catching those data. And this classification where tablets are found, 3808, 99, 9500 is a basket category. It applies to, you can see, disinfectants and similar products, there are a host of products, so it s not particularly useful to us.

In other words, even if we try to cobble together from the preliminary and the personal questionnaire, two discreet pieces of evidence on your record, we are still understating because we are missing the tablets. All right, page six so I could change gears.

So page six addresses a different issue. Typically in your tables, and the way the Commission analyzes the data, you use shipment data. In other words imports entering the United States, they are imports, but you don t add them into consumption until they are shipped. So if they send an inventory, in this case, if they come in in the fourth quarter and they wait in inventory until April or May when they are shipped for the swimming pool season, right, you could those shipments when they are, when they leave and they are shipped out for consumption.

In this case the problems with the data have I think caused the staff report to make the selection of using imports from China rather than shipments. If you instead focus on shipments of subject imports in the normal fashion which the Commission typically and universally every case uses the data in this way, what you see is that the trend in imports is much stronger in 2013 and indeed the market shares are actually increasing over the period.

Okay, so page seven we reconstruct. We essentially reconstruct the table using what I think is a way to do it that is fair and I say that because we were conservative. We lifted one importer out of the preliminary and we used one purchaser who bought from that importer. There are other ways to do this, you could plug in the census data, I think you would get a similar trend, but if we make that one change to the data, now we start to see a picture that makes more sense. And why do I say that it makes more sense? I say that because if you look at the data in the bottom half of the revised table, and you look under where it says U.S. producer average capacity, production capacity utilization.

Back in the 2005 case, U.S. capacity utilization is running 81 percent, 79 percent, 81 percent. They are running their operations at eighty percent of capacity. Look at what they are running at today. You heard testimony I think that Clearon is running at like 50 percent capacity. Look at the actual numbers today, compared to where they were. The capacity itself you can see here. It is not that different than it was, right.

How is it that the U.S. industry in essentially the same amount or the same size market is shipping so much less, right? Look at the net I m sorry, look at the production, look at the 2002, 2003, 2004 under capacity we have this figure production, right, look at the magnitude of production 2002 to 2004. Look at the magnitude in production 2011 to 2013, right?

What accounts for the fact that the U.S. industry is shipping so much less? What accounts for that fact is the import penetration. The market itself has not defined anywhere near to the extent. Now, the last thing you see on the page, the bottom line is the operating income. If you look at the picture there you understand why the Commission in 2005 made an affirmative decision.

If you look at that C table on the left side, 2002 to 2004 imports are going up, market shares are going up, domestic industry goes from a 12 1/2 percent profit to a 2.5 percent loss, right. There is no time in the current period where the domestic industry is making 12 percent. They are consistently below that and they are going to a loss. If you look right above that you see the cost of sales ratio. This tells you what their costs of goods sold are relative to their revenues. Costs of goods sold in 2002 to 2004 relative to revenues are running 76, 80, up to 90 percent the entire time from the current period costs are much closer to the sales value.

In other words, the margin is squeezed in this period. These data seemingly are irrational unless we fill the gap from the Chinese data that are not reported to the Commission and I think clearly we can do that.

Now try to look at this another way. So if we turn to page eight, it is in the statute 777, subjection 7(c)(3a) the statute says you should look at the volume of imports in absolute terms and relative to domestic consumption and production. Now typically you are used to looking at import share of consumption but as we have shown above that consumption number is shaky because our data base is not very good. So if in the end you are doubtful about my suggestion of how we might fill the gaps. If there is concern about the consumption number, the statute says -- you can also look at the ratio between imports and U.S. production and there is no doubt on the record about the U.S. production number -- that is a hard number.

So if we take imports as a percent of production and we look at where that was in 2002 to 2004, imports were 11 percent of U.S. production up to 27 percent of U.S. production. Look at imports today. Look at imports from China and Japan, how large they are relative to U.S. production.

Imports are by this measure a substantially greater share of the U.S. market. Okay, so now I want to shift gears again and talk a little bit about the impact of this problem on the pricing data. How am I doing on time now?

MR. BISHOP: You have three minutes remaining.

MR. CANNON: Okay, if you look at pricing data, what you see on page 9 at the bottom is the coverage right. So this is how much of the pricing data that you have got in your pricing charts are accounted for by the shipment data. What the most disturbing trend here, the circled part is the China coverage. If you look at the volume of imports from China, the problem with the pricing data are not only are the shipments from China too low, they are understated, but the prices they have reported are covering less and less as we go through the period.

So your pricing tables, that you rely upon for looking at underselling, looking at are imports in the bulk product, right? Are the Japanese imports and the Chinese both competing for product one? There is just a big gap. If you look at your pricing table, in section 5 you have the top two product, product one and product two, that is bulk dichlor, bulk trichlor in super sats, there is nothing there from China. It is as if they don t ship that product and that is not true.

Now what we did in the brief and in the attachments to the brief, in the next two pages is we as examples, we looked at the underselling from the purchaser s data and normally you look at underselling from the importer s data. But here we know our importer s data, they are missing, they don t respond so we look at the purchaser s data to sort of help fill in the blanks and what you see from the purchaser s data and the one I put in there is product two, there is plenty of volume coming from China in product two, but if you look at the importer data, there is nothing, there is zeroes, right.

So when you look at the underselling data, you have to discount the argument that below there is not very much underselling. Domestically she is overselling, not true. It is not true. The data are missing because the importers didn t respond and their failure to respond got worse, okay.

And then the last two sheets I have are basically quotes from the purchaser s questionnaire where you can read in their words importance of price in the market. Now some of them just say we had to go to China because we wanted to get a lower price. Price is the number one factor. Others looked at it a different way.

We stopped buying from China because of the anti-dumping duties. Now what does that mean? If they stopped buying from China because of the duties, it means that the price got high. So they shifted, came back. Now if that is the case price matters. It isn t about some product that is fashion, this isn t about some product that is high quality, this is about a product that is essentially a mere commodity in a market where the weather matters.

We are, we are talking about something that is close to an agricultural product here. And in that kind of market dynamic we have too much supply and too much capacity, price absolutely matters and that s what you see from the data.

And on that basis I think you have to find that this poor condition that you see it s explained by in this case is caused by the increase in imports from China and Japan, thank you.

CHAIRMAN BROADBENT: Mr. Cannon, I want to thank the business representatives for taking the time away from their companies to be with us today. Let s begin our questioning with Commissioner Williamson.

COMMISSIONER WILLIAMSON: Thank you. I do want to express my appreciation to the witnesses for coming today and giving their testimony. For Mr. Williams I will start off, can you provide us more information on Oxy s co-production agreement with Shikoku in particular. You can do it now or if you prefer post-hearing. Is that arrangement a contractual arrangement?

MR. WILLIAMS: Okay. I can answer that. First of all it s, it s not unusual for producers to have agreements across with other producers, i.e. I buy from Clearon, Clearon buys from me, I sell to Biolab. So it s not an unusual situation. I come from an industrial chemical company, we do this in caustic chlorine, KOH silicates sodium chloride so first of all let me just say that it s not an unusual thing.

When originally started selling Shikoku it was on a spot basis and relatively small volume, okay and most of the time it was problem done to help them with inventory fluctuations. And that and I ve been selling them for a couple of years on that basis. The reality is and I will be quite blunt, the reality is that we had a favorable ruling against the Japanese recently and I think that because of that ruling Shikoku decided at the time to come to me and secure extra volume and so the answer is yes, we did do a contract then for 2014.

COMMISSIONER WILLIAMSON: Thank you.

MR. WILLIAMS: Does that answer your question?

COMMISSIONER WILLIAMSON: Yeah.

MR. WILLIAMS: All right.

COMMISSIONER WILLIAMSON: So what makes it a co-production agreement rather than a simple sales arrangement?

MR. WILLIAMS: It is a simple sales arrangement.

COMMISSIONER WILLIAMSON: Okay.

MR. WILLIAMS: Just like I have a sales arrangement with Clearon, Biolab, it s a simple sales arrangement. They just choose to call it a co-producer arrangement.

COMMISSIONER WILLIAMSON: Okay. Thank you. And should Shikoku take possession of the product?

MR. WILLIAMS: I m sorry do they take possession of the product?

COMMISSIONER WILLIAMSON: Yes.

MR. WILLIAMS: Yes, they take possession of the product when it leaves our plant.

COMMMISSIONER WILLIAMSON: Okay. Thank you for those answers. Mr. Johnson you talked a lot about the difference between the process of making cabinets and the process of making them. And we have sort of a six factory test for, to help us decide about domestic production and including things like the level of capital investment and prior to exporting and I was wondering what are the factors do you think we should give most weight to, what are the factors that we should give less weight to in examining this difference?

MR. JOHNSON: Well of the factors that you just mentioned, if you look at capital investment there s a major difference between the capital investment necessary for producing tablets from the granular material versus a very large in excess of a hundred million dollars for operating the chemical operation where you are producing the granular material.

COMMISSIONER WILLIAMSON: Let me mention the others required technical expertise value added in the U.S. employment levels, merchandise sourced in the U.S. and other costs and activities in the U.S.

MR. JOHNSON: Very obvious, you could see from the technology employed in the manufacturing facility versus the tableting just manual operation in tableting, there are no real type of controls in that operation and yet the chemical operation, computerized control and very, very technical as far as control of the chemicals that are being used.

COMMISSIONER WILLIAMSON: You don t measure this is reached tablet to make sure it is off site?

MR. JOHNSON: Oh we absolutely do, but there is much you know, the difference between looking at the size of the tablets and making sure that they are coming out versus making sure that the chlorine is being fed at the proper amounts and into the proper containers, at the proper levels, it s a whole different ballgame.

If the tablet is not, does not meet standard and we don t ship that way, but if it did not, it would not amount to any type of a major type of an issue, whereas if there was a problem with the manufacturing facility, that can result in some major safety and environmental type problems very quickly.

As far as the level of operator training and in pay I talked with you about the level of pay that the chemical operator makes versus the tableting operator. As far as the training in the manufacturing plant we employ roughly three months of training before we ever let an operator even go out and start operating with another person shadowing that person, that individual.

At the tableting plant that consists of two days of training and then the one other thing as far as staffing, we did talk about the number of staff typically back in the previous hearing that I attended we were up at staffing levels of 140 employees in the manufacturing plant. We are now down at levels of about 105 employees. We have done that in every effort to reduce our fixed cost allocated to the products that are coming out, or the lower production that is coming out. But the tablet manufacturing facility, we, it s a very seasonal type of a production so our employment there will go up to about 150 employees who are tableting and packaging the materials during the strong part of the pool season it drops down to about 30 during the off-season.

COMMISSIONER WILLIAMSON: Okay. Gotcha. What about merchandise sourced in the U.S.?

MR. JOHNSON: All of our merchandise is sourced here within the U.S. It is produced within Clearon.

COMMISSIONER WILLIAMSON: Okay. Thank you for that explanation.

MR. CANNON: Could I just add a little to that. So in 2005 when the Commission looked at this issue and found that tablets were part of the U.S. industry, you did not have the evidence on each of these factors that you now have, and a critical distinction between 2005 and now is that there s a key thing you know in this record and that s what is the toller charge. Because when you think of toll processing what is toll processing, that is the cost of just pressing the tablet, so their price, a toller s price to press a tablet is the value added to make the tablet.

And so you very discreetly can identify with specificity right, it s not a range. Back in 2005 it was vague on the record, there are arguments that oh the value add is like 30 percent. That s no longer the case. You can see on this record what is the value add. It s fifteen cents and that s because a toller charges you fifteen cents to press a tablet.

COMMISSIONER WILLIAMSON: Okay, thank you. Good, for the Petitioners how do you respond to Shikoku s claim, this is on page 37-39 of their brief, that Japanese, that Chinese and Japanese product are sold in different channels of distribution and therefore should not be cumulated?

MR. HELMSTETTER: They are not, they are sold in the same channels so that may not, I guess that I dispute their claim because I run into them on any channels I go to, the Chinese or Japanese. Just recently the Chinese started to sell tablets to distributors to expand further into the market but that s only been the past couple of years, so its bulk material is bulk material.

MR. WILLIAMS: I d like to if I can. I think you know Shikoku will make a statement that they go after the tableters in the United States. I would like to tell you that I have competed in that market. I m doing business, there s only a dozen tableters in the United States that do tableting essentially. I do business with Oreq tableter. I do business with Alden Leeds, I do business with Mid-Continent, I do business with All-Chem, I do business with Steller, I have done business with KMI, I even called, I doubt the gentleman will remember but Mr. Eisch down at Suncoast, I even called him and asked him a question to say will you table for me in Florida and he specifically said no I will not.

And I also asked him if he needed an alternative supply source and he said no I do not. So I think that the really basic answer to your question is yes, I compete against him in this market and I run into him all the time.

COMMISSIONER WILLIAMSON: Okay, thank you for those answers.

CHAIRMAN BROADBENT: Commissioner Johanson?

COMMISSIONER JOHANSON: I would like to begin by thanking all of you for appearing here today. My first question involves again the issue of tableting. At page 12 of their pre-hearing brief the Respondents write in the preliminary determination the Commission found comparable numbers of production related workers performing tableting manufacturing operations as were reported to the employed in the manufacture of the granular form of the product. The data now before the Commission shows similar comparability further supporting the treatment of tablet manufacturing and the production of the domestic-like product.

And the proprietary data which followed this paragraph seemed to support this view of the Respondents, could you all please comment?

MR. JOHNSON: Let me first come back to the statement I made to Mr. Williamson that the level of our staffing within the manufacturing facility, we try to keep at a fairly stable level throughout the year. That s because of the amount of training and knowledge that is required by the employees there.

The employment for our tableting and packaging operation as I just stated fluctuates very directly with the pool season itself. As the pool season starts to come on, we staff up, we bring on these operators that require very little training. We start to press these tablets, once we get through the pool season and that staffing level will be up in the 150 employee type level. Once the season passes we start to reduce our staffing levels down to the point that we are at right now at 30 employees and we will stay there until we start to see the uptake for another pool season coming on for 2015.

MR. JOHNSON: So, comparable, not even close. Very different as far as training, as far as knowledge, and as far as the numbers are concerned.

COMMISSIONER JOHANSON: Okay, so stepping back, the numbers are about the same, but the quality or the training, et cetera, involved with some are doing tableting is not the same.

MR. JOHNSON: I guess I don't see the numbers the same in that in the manufacturing side we stay stable in our employment throughout the year. In the tableting and packaging we see the fluctuation going from 150 to 30, and that's a seasonal activity.

COMMISSIONER JOHANSON: Okay. And following up on that, I have a general question for you. And how long can products sit in inventory, and does granulated, chlorinated isos have the same shelf life as tableted, chlorinated isos?

MR. JOHNSON: It essentially does. This product has a very long shelf life. You heard Dave talk about how inventory that is sold to Sam's we bring back into warehouse, keep it through the winter, and then that's the first product that we sell back out the next year. So, essentially, very long, multi-year shelf life for either the granular or the tableted material, as long as you keep them dry.

COMMISSIONER JOHANSON: When then the seasonal nature of production if you keep -- let say you could manufacture it throughout the year and put it in a warehouse?

MR. JOHNSON: Excellent question. The issue is, though, we don't know what customers we're going to be servicing for the next year, and so we will hold some of that, a large quantity in bulk. As we start coming pool season, a lot of our inventory is in bulk with granular-type material. And then as we see the season start to shapeup, we start putting out the tablets that are necessary that we will see needed for fulfilling that market.

COMMISSIONER JOHANSON: So, is there more storage of bulk as opposed to tableting, as to tablet product?

MR. JOHNSON: Well, it fluctuates. As we come into the pool season, the bulk is larger as we go into the pool season and start producing the tablets our bulk inventory comes down on our finished goods or the packaged materials start to increase.

COMMISSIONER JOHANSON: Okay. So, is the tableting more cyclical, than the production of the bulk?

MR. JOHNSON: Completely more cyclical.

COMMISSIONER JOHANSON: I'm sorry. It's taking me a while to catch onto to this.

MR. JOHNSON: That's okay. Yeah, totally, the tableting is completely cycial because the weather is cyclical. We'd love for the weather to be warm all year round and everyone to use their pools, but that's not the case.

So, as we move into the fall and winter months the use of pools goes down, and then we come back up for the next year.

COMMISSIONER JOHANSON: Are there different storage? Does it cost more to store one product over another, the tablet versus the bulk; is that an issue?

MR. JOHNSON: There probably is a higher warehousing fee for the finished goods material, and we try to minimize that. Another issue that -- you know, we talked about the life of the product itself. The life is usually very good. The plastic is represented by one of these buckets here. The actual plastic itself, or the printing or the dyes that are used on the label can start to fade over the years, so we try not to keep that plastic around for a long period of time.

COMMISSIONER JOHANSON: I have just a general question. I don't really know how relevant this is, but dichlor is used for the shock treatment; that is correct? That is used at the beginning of the season, like if you have a pool and you want to clean out the algae, et cetera. It's also used during the year. Let's say if there's a problem with the pool?

MR. JOHNSON: Very often.

COMMISSIONER JOHANSON: Okay.

MR. JOHNSON: If there's a problem with the pool, like I said in my remarks -- if you've had a large swimmer load in your pool the dichlor is added to try and increase the chlorine content very rapidly. The triclor is a slower-dissolving product, so it just adds a continuous, constant amount of chlorine over time. But that dichlor allows you to really attack it with a larger quantity of chlorine all at once.

COMMISSIONER JOHANSON: Yeah, I was at a pool once and the lifeguard kicked everybody out and said this will take care of everything. Come back in a period of time.

MR. JOHNSON: Come back in 30 minutes.

COMMISSIONER JOHANSON: Yeah. And I didn't really believe him, but I guess I can take it from the people who know here.

And sticking with the issue of tableting, and I apologize if you've addressed this already somewhat before, but I'd appreciate a bit more clarification on it.

With respect to your contention that the Commission should included tableters in the domestic industry definition because -- I'm sorry -- should not include tableters in the domestic industry definition because of the small value added by tableters. Could you all cite any Commission determinations which have found that similar amounts of value added were too small or insufficient to be included in the domestic industry?

MR. CANNON: So, we'll handle that in the post-hearing. Off the top of my head, I always think about aspirin. You tablet aspirin and the ratio of tableting to aspirin was higher than here because the aspirin itself is cheaper. All right.

If you tableted sand, the cost of tableting would be really high. If you tablet something that's real expensive, the cost of tableting is really low; but I'll have to find you some cases. Thank you.

COMMISSIONER JOHANSON: Okay. Thank you. I look forward to seeing those.

And yet, more on tableting, Mr. Johnson, in your testimony you talked about the role of tablets in maintaining the level of chlorine in a pool. How technically difficult is it to maintain consistently -- how difficult is it consistently make tablets that will steadily release the chlorIsos in such a way to maintain a constant chlorine level? And do tablets imported from China perform at the same consistency as tablets produced here in the United States?

MR. JOHNSON: Yes, the actual nature of the chlorine is a function of the type of chemical that's being employed there, so as long as the chemical is trichlor isoscyanurate or trichlor, then it has a slower dissolution rate and releases the chlorine at a very defined rate. And that's true whether it's Chinese, Japanese, or from the U.S.

The tablet itself is just a convenient way to place this product into the swimming pool and allow it -- you can put into swimming pool skimmer or where you've got flow coming through from the pool. As the tablets resolve, it releases the chlorine into the water and chlorinates your pool at an acceptable level to prevent bacteria growth or biological growth in the pool itself.

Dichlor, on the other hand, very rarely is tableted. It can be tableted, but rarely is tableted. It's used more in a granular-type of a nature, and the dichlor granule is placed into the water. It dissolves quickly, and so the chlorine that is involved in that molecule is released very quickly into the water.

Again, because of the chemistry, whether it's Chinese, Japanese, or from the U.S., the chemistry is exactly the same. The dissolution rates are the same.

COMMISSIONER JOHANSON: All right. My time's expired. Thank you for your responses.

CHAIRMAN BROADBENT: Mr. Kieff?

COMMISSIONER KIEFF: Thank you very much, Madame Chairman, and thank you. I join my colleagues in thanking the lawyers and the witnesses from both sides for coming and speaking with us today. These are a great set of issues as a long time, long distance swimmer I've been using your product, both sides, for years. And I even wore a white shirt today in a send up to Mick Jagger, so you can tell me how white my shirt can be, and somebody can get some satisfaction.

So, it's the best we can do on a weekday morning. We rock and roll here. This is really, as often is the case in these cases, there are a lot of facts on the ground, so to speak, and then a lot of discussion as well.

And for me, especially when I'm in the middle of the batting order, or at the end of the batting order, as you may know, we randomly set our batting order or our questioning order to a lottery wheel. But when I'm in this point, for me it's often very helpful to ask people to try to highlight, to the extent possible, whether we really are wrestling with disagreements of fact, or whether we are wrestling with disagreements of the legal or economic significance of a fact or facts.

And so, it's in that spirit that I'd like to use the next eight and a half minutes and just try to, in a stylized way, try to figure out what the touch points are. So, I guess the first question really is a legal question, a significant question.

Mr. Cannon, does it matter to your case with respect to Japan whether we consider tableting to be part of or separate from the production industry? Is the debate over tableting outcome determinative with respect to Japan?

MR. CANNON: Actually, I would -- in my view of the facts before you, you could include tableters in the U.S. industry, and I think the record still compels an affirmative determination.

COMMISSIONER KIEFF: Okay. And then, I guess, related to that then what about the opening statements that the Japanese attorneys presented to highlight the different channels of distribution to which your clients responded from their personal experience they hadn't noticed a difference.

Let's assume that we decide there is a difference, would that matter to your case? And let's assume there's no difference, do they lose their case? Doesn't matter either way?

MR. CANNON: Yes, in both questions. And this is a question of fact, right, so the question is, essentially, is there overlap factually. And so, for example, they've argued that, essentially, the Chinese are all tablets and the imports are al granular.

So, if you look at page 4-10 in the staff report, table 4-4, what you see is the quantity of U.S. imports to finished tablets. And if you flip back to the table before that, 4-3, you see imports of granular, not tableted. And you can see right there the volume, how much granular came from China, how much granular came from Japan. And this is, in my view, the problematic Chinese volume, so it's too low, but it's substantial. So, clearly, there is granular from China and Japan. There's no question.

Secondly, factually, they're arguing that their tablets are pressed by tableters and we are importing -- the

Chinese -- I'm sorry -- are importing tablets. What the facts show is that the Chinese are also using tableters. But the thing here is that's missing, or that they're not really calling attention is the way this plays out, right. So, what Shikoku does on the confidential record they basically sell the tableters who then they buy the granular and make a tablet and resell.

What the Chinese do is they basically toll, right, so they pay someone to make a tablet for them and then it's sold. And their argument is that you should care that this is somehow different. The tollers and the tableters are the same company, okay. The people who toll also buy. And if you look at the purchaser questionnaire, you'll see some of the tollers right there. It's the same companies. So, literally, the Chinese granular is going to a Company A, who's tolling it, and they're acting as if somehow this is a Chinese tablet, right.

The Japanese product is coming to that company, and they buy it. And so they're acting like, well, we sell granular and the Chinese sell tablets. And I submit that the way that market happens to work it shouldn't matter to you.

COMMISSIONER KIEFF: So, in effect, am I hearing you right that you're saying these are distinctions without a difference because these are modular industries where one can sell a product and have someone else convert it to a tablet and sell it under their brand, or one can outsource the active tableting and sell it under one's own brand and the overall economic effect is sufficient small that we should consider them to be the same channels of production.

MR. CANNON: Correct.

COMMISSIONER KIEFF: Okay.

MR. CANNON: That's exactly my position. And I would also point out that we're talking here about accumulation, and in the context of accumulation, the longstanding practice in the courts have established that the threshold of overlap is the goods don't even have to be fungible, right. They have to compete in the same geographic market and flow through the same channels.

These goods are literally flowing through the same companies, and they are all reaching the same end users in the form of tablets.

COMMISSIONER KIEFF: Well, sir, very helpful because with the benefit of crystallizing the view on that we can then explore with the other side and they can tell us whether there is a distinction here that does matter, and then we invite both sides to join issue with each other on that in the post-hearing as well as throughout the day in the discussion.

If I could change gears to some details, maybe this is my own love of technology that drives this, but to any of the witnesses -- Mr. Williams or Mr. Johnson perhaps are best. I don't know. But one question is in the production channel for

-- although, actually, Mr. Helmstetter may be the slugger on this one, given your long time on both sides of the fence and the space.

When you go to make the two-chlorine molecule and go to make the three-chlorine molecule, how far down the path for those two molecules is it one single path, and when do you divert? And to what extent can you generate a mix and to what extent do you think customers are either intentionally benefiting from or accidentally suffering from mixture in a product that's coming from any of the distributors, or is that all not a big issue?

MR. JOHNSON: Let me try that just real quick. As far as the manufacturing pathway, the commonality exists in the manufacture of the cyanuric acid molecule. So, we take urea convert it into cyanurate. Once that step is achieved, divergence exists because you then have to use a different process for chlorination of the two-chlorine molecule, dichlor, or the three-chlorine molecule, trichlor.

COMMISSIONER KIEFF: Okay, so you're not going to accidentally generate a mix?

MR. JOHNSON: No, that's very dangerous, in fact.

COMMISSIONER KIEFF: Understood.

So then, one last follow up. When you get your product back at the end of the year and you take it from -- I guess you'd mentioned a box store and you -- one might think about that as in Year One for you a cost because you have to ship in both directions, plus you've got to store it. But in Year Two, it's a benefit to you because it provides you with a volume before you have to ramp up production. Is the extent of that benefit significant or is it minor?

MR. HELMSTETTER: Well, first of all, we do not pay freight both ways. In the agreement, they pay all freight back to our warehouse, and all we do is pay the price that we sold it to them, so that's neutral. And then we have a charge where w clean up the product. If it's been scuffed up in the store or whatever, we'll clean it up. We'll inspect everything. Very, very small cost to do that, and then we ship it again. And so, it's very cost neutral to us.

In fact, I just went through it with the buyer if I will give him a discount so he would hold it. And I said, no. So, it's very, very small.

COMMISSIONER KIEFF: Perfect.

Thank you very much, Madame Chairman.

CHAIRMAN BROADBENT: Commissioner Schmidtlein?

COMMISSIONER SCHMIDTLEIN: Thank you. Thank you very much. I'd like to thank all the witnesses for appearing here today as well. It's been very helpful.

And I guess I'll start by saying that I have a three-year old and a six-year old, so I will confess that I think we've been the cause of a few of those shock treatments over the past few years. So, I am not unfamiliar with loading the pool with chlorine.

So, I wanted to start with a question to Mr. Cannon. You know, I'm fairly new here. I started at the end of April, and so I have to say that I, too, am a bit frustrated by sometimes the lack of data in the record.

And I'm just curious. You said that you were not taking the position that the Commission should be drawing an adverse inference in this case, and I'm wondering why not? And maybe you could enlighten me a little bit. You said this argument has been aired and so forth.

MR. CANNON: So, there's like the concept in the court of appeals and in the law of exhaustion, right. You're supposed to make the argument now if you want to appeal later.

This particular argument is pretty exhausting, lots of petitioners have appeared before you and argued that you should make adverse inferences, and the Commission pretty steadfastly has resisted making adverse inferences. And the logic applied by the Commission has been that, in this case, for example, you have the Japanese producers here. And I have no quarrel with their data. They have all participated in the sense forthrightly, as far as I can tell, every Japanese foreign producer answered a questionnaire, and their data on the record appear fairly to be represented, and there's no qualm with how they participated at Commerce. In fact, Commerce uses their actual data to calculate the dumping in this case.

So, the thing the Commission is usually focused on, at least my reading of Commission precedent, is that somehow they feel it would be unfair to the Japanese, for example, to make an adverse inference from the Japanese and then put them together.

Now, the domestic industry will tell you, and we feel this, and I've argued this before, not successfully, it's unfair to us not to make an adverse inference because we, after all, are here appealing for help, for relief. And if they don't bother to come, we're in a bad position.

Now, all I'm saying here is I don't even need you to be adverse because I think there are sufficient data there to rebuild this gap, at least enough to see what's really happening, and that once you put it together you see it makes sense. And so, I don't need to go that far to adversity. If you want to reinvigorate the argument about making adverse inferences, then I suppose I could address it in my post-hearing brief and get a whole bunch of other brethren of Petitioner, the lawyers who lost that argument again, but anyway.

COMMISSIONER SCHMIDTLEIN: As I look down the row. So, following up on that, you have offered us some alternatives into how to fill the gaps with various other data sets, but do you have a preference? Is it your position that any of them is sufficient? What's the ideal one?

MR. CANNON: Without getting into too much -- trying to stay public and at 30,000 feet, what's in the record from the preliminary and the final, which I've used to create this table, is a way of looking at it. And it's fairly in the record, and it's almost minimal change in the sense of we're only having to pull two questionnaires and add some data.

Another route that the Commission often takes when you have poor coverage is to use the census data. So, if you look at -- the staff has created like a great worksheet where they compare all of the importers' data with what census has in their database for their imports, like company-by-company, and they come up with a line which is like the top three missing importers from the census data.

That, I think, would be a fair number to use. The census data alone could be used. But as I've pointed out, there's a problem with the ATS number coverage. There's also a problem with one of the importers who answered the questionnaire, but is not here. It's quite clear from the data that they're reporting a lot more volume, twice as much as they reported to census. And I think it's historic. Historically, there was a different ATS number. People kept using the wrong number, and so there's some missing volume in census, and that changes the trend.

So, census has a bit of a problem. The ITC database has a bit of a problem. And your staff are the experts, and they collected the data, and I honestly believe struggled with this issue. And I don't purport to say you have to do it one way or the other. I think whichever way you do it you can fill in that missing piece. And just frustrated that it wasn't able to be done like in a pre-hearing staff report so that we would be arguing here on the basis of what I perceive the facts should be instead of trying to create something where you then might look at a final staff report a month from now before you vote and go, okay, it looks a little different than it did before so I feel a little differently about this case.

COMMISSIONER SCHMIDTLEIN: Okay. All right. Well, thank you for that.

Let me switch gears a little bit. I wanted to ask about the manufacturing process and the quality of chlorinated Isos.

In the testimony, and I'm looking at the written testimony that Mr. Williams provided and then Mr. Johnson, I believe. Right, Mr. Johnson.

I just noticed in your descriptions of the process if you look at Mr. Johnson's testimony, and I'm looking at the written testimony you gave us on page 4 where you say in the case of Clearon, you make dichlor and trichlor in the same facility. The process for manufacturing this is identical, whether we're making dichlor or trichlor. The raw materials are identical and both products use the same production steps.

And when I listened to Mr. Williams' testimony and his testimony is that they have two plants, a dichlor plant and a trichlor plant. It's not possible for us to consolidate the two lines and produce both. That would require additional investment, but we're not going to do that because the business is losing money.

So, I was wondering if you could reconcile that for me, and perhaps explain what the substantial investment would be and if it is the same production steps, the same raw materials. Why does that appear to be so different in your testimonies?

MR. JOHNSON: Well, I'll talk about our combined. The fact that we have both lines, the dichlor and the trichlor in the same facility does not by any means infer that we use the same processing lines. There are two separate lines within our plant, okay, one that produces dichlor and one that produces trichlor, and we do not combine those together.

So, why are those in the same facility? Because as you look over the history of time when we built the facilities that was thought process of how we wanted to produce, but we maintain that segregation.

MR. WILLIAMS: Back in the mid-nineties, we purchased this business from Monsanto, okay, and at that time they had two facilities, but the reason it was separated between Sauget and Luling was because there was a urea producer essentially across the street from the plant at that time when the facility was built. And urea is the primary raw material component that goes into the product.

So, now that urea company is no longer there. They're closed down. But our setup is a little bit different than Clearon's in the fact that we do take the urea and process it into CYA, but we move that CYA from Luling up to our Sauget plant, and there we convert that into the trichlor business or the trichlor product.

Now, it just happens to be the way that Monsanto had it set up. It just happened to be the way that we purchased it, and we continued to operate that.

When I first come into this business several years ago, one of the first questions I asked was, hey, we should really think about consolidating these plants on the same site. Unfortunately, the capital investment to do that was probably well over $30 million, and so in a business that's not making any money our company is not going to spend that type of capital.

COMMISSIONER SCHMIDTLEIN: Okay. Thank you very much. My time is up.

CHAIRMAN BROADBENT: Okay, Mr. Johnson?

I was looking at Slide 7 of your presentation or your group's presentation, talking about the long-term decline in U.S. producers, commercial shipments. Is this a long-term decline in the overall demand for chlorinated ISOs? Can you tell me what's happening in the market going forward?

MR. JOHNSON: It is not a decline in the market at all. It is a decline, as you heard me testify, that it is a decline in the share of the market that the U.S. producers participate in. So that the market itself sees a fairly stable or slight increase from year to year, but a very, very slight increase.

You heard others testify about impacts of weather and yes, weather produces a little bit of noise from year to year, but it's very insignificant compared to the 240-260 million pounds, you know. That fluctuates ten million pounds over a year, from one to the next.

So what you see here is solely a decline in the amount of the market that the U.S. producers are participating in. It has nothing to do with the overall market. That market is still strong.

CHAIRMAN BROADBENT: Okay, and then what would you say about the trend towards the salt water systems, though, that are described in our report?

MR. JOHNSON: Yes, there is. There has been a trend. I would call it more of a fad, a new concept that hit the market place. The salt water dechlorinators are nothing more than a way of putting chlorine into a pool. Instead of buying tablets, they're using small electrolytic sales to produce chlorine and put into the pool. So the chlorine is still the main ingredient that's being utilized there.

The use of chlorine sales, in fact Dave's got some better intelligence on chlorine sales. Let me let him talk a little bit about those if I could.

CHAIRMAN BROADBENT: Sure.

MR. HELMSTETTER: Yeah. The chlorine sales came about from the builders, that this was another way to put another 2,500 or 3,000 dollars in their pocket every time they build a pool. So it was a gadget that they put on pools, and they get paid more money for it.

CHAIRMAN BROADBENT: This is the salt water system?

MR. HELMSTETTER: Salt water, yeah. We call them chlorinators; they call them salt waters, because they're actually chlorine generators.

CHAIRMAN BROADBENT: They sound more organic or safe or something, right?

MR. HELMSTETTER: No. They're all chlorine generators. That's what they want a lot of people to think, but they all produces chlorine. So these builders came up with this idea, because they were getting no treadway in the market, and once they put them on, they walk away.

CHAIRMAN BROADBENT: They're getting -- they put them on because they're getting no treadway in the market.

MR. HELMSTETTER: The salt water chlorinator people were getting -- they couldn't sell them. Nobody was buying them.

CHAIRMAN BROADBENT: Right.

MR. HELMSTETTER: So they convinced the builders that every time you build a pool and put one of these on, you'll get another $3,000. So that was a very good marketing method, and they have done that, and about 85 percent of new pools get a salt water chlorinator on it, and then the builder, once he installs it, he leaves, and he doesn't take any responsibility for what happens next.

What happens next is a lot of bad things and 50 percent of the people that buy these things get off of them in the first year. What we see from our numbers is that within the next five years, almost all of the people are off of them. But every time they build a pool, they put one on, because they want their $3,000.

CHAIRMAN BROADBENT: What's the sophisticated marketing technique they use, like just hiding it down there as an addendum on the books?

MR. HELMSTETTER: No, it's not hiding it. They say this is the best thing you've got to have. This is salt water, and they don't say it's not chlorinated, but they say it's salt water, and everybody thinks it's salt water is chlorinated or it's sanitizing your pool.

CHAIRMAN BROADBENT: Right.

MR. HELMSTETTER: It's not. It's chlorine. It makes chlorine gas and sodium hydroxide into your swimming pool and vents hydrogen off, and then those chemicals react, and you make sodium hyperchloride, which is bleach, and that's what chlorinates your pool.

CHAIRMAN BROADBENT: It sounds like kind of scam, like Consumer Reports noticed this?

MR. HELMSTETTER: I love you, but the bigger scam is is that they're not even sanctioned by the EPA. They're not registered by the EPA. They make no claim of sanitizing. It's just sort of implied by the builders. We're trying to get the EPA involved, to do something about it, and they have been resistive because they don't want to make any registrations on salt. We said it's not; it's chlorine. But they say you have to put salt in your pool to activate it.

So it's a big struggle. But they come and go. There's very few pools built every year, maybe less than one percent is my guess, of the total pools out there, a very small amount. So you get 85 percent of those, and then half of them come back on and then the others come on.

So yeah. There was a spike several years ago, and then it's just like the other fads. There's an organic material you're talking about, like a Baquasil brand or something. That's organic, and that's probably in seven percent of the pools. Well, it's been around for 20-something years, and everybody goes "Oh, Baquasil is going to take over the whole chlorine market."

They went bloop, and it just stays. It would be the same thing we think will happen with these salt chlorinators.

CHAIRMAN BROADBENT: Is there -- do you have any data to support that, that it's just a fad and it's going away?

MR. HELMSTETTER: I don't have any data in our system, but my customers tell me they sell less salt every year.

CHAIRMAN BROADBENT: Okay.

MR. HELMSTETTER: But I don't -- I'd have to get them to supply data. I don't sell the systems. This is just what I hear from my customers, and what we hear from the retailers.

CHAIRMAN BROADBENT: Yeah. It would be helpful to get some evidence, if there is any available for the record. Okay. Just generally on demand for pools, what is it that correlates with more pools being built? Is it -- and how do people make the tradeoff, whether they spend their extra money on a pool or something else at their house?

MR. HELMSTETTER: Right now, the trend to add a pool to a brand new house is very low. The last time there were lots of pools being added was before the financial crash in 2008, and when people were refinancing their homes, their bankers and themselves were convincing themselves well, if you're going to refinance, just add a pool or add a hot tub or, you know, get something for yourself.

So lots and lots of people did that. We had a huge boom from 2005 to 2008 in swimming pools, and since that time, the trend has been flat at best on new pools.

CHAIRMAN BROADBENT: What do you think people are spending their disposable money on that they don't --

(Simultaneous speaking.)

MR. HELMSTETTER: --and food.

CHAIRMAN BROADBENT: Yeah.

MR. HELMSTETTER: That's what I spend mine on.

CHAIRMAN BROADBENT: Exactly. So you think it's sort of an overall haven't rebounded from 2008 yet?

MR. HELMSTETTER: We have not. All the trade people say that there's no rebounds. The permits are down. It's a very small market. I mean it's very, very small growth.

CHAIRMAN BROADBENT: Okay, and those Infinity pools that you see advertised on late night TV shows, is that --

that's a smaller thing that uses less chlorine I would guess and --

MR. HELMSTETTER: Those are the pools that you swim in, yeah, against the pump?

CHAIRMAN BROADBENT: Yeah.

MR. HELMSTETTER: Yeah. That's --

CHAIRMAN BROADBENT: Not a big deal huh?

MR. HELMSTETTER: I'd classify that as a fad too, but they're out there and very little chlorine. But I'm not familiar with that much, but a lot of the chlorine is after the sweat in your body, the oils in your body.

So if you're exercising in it, there may be a lot of oil and sweat generated and there may be a high -- for the amount of water, there may be a high demand for chlorine, because that's what causes a lot of problems in your pool is just the bacteria and sweat and oils off your body.

CHAIRMAN BROADBENT: Now do you see -- is there a resistance built up to the effectiveness of chlorine over time?

MR. HELMSTETTER: Chlorine is probably the greatest sanitizer ever known to man. I don't see -- if you dose it properly --

CHAIRMAN BROADBENT: Right.

MR. HELMSTETTER: It will take care of everything. Right now, the Ebola thing in West Africa, they've called us.

We're sending tablets. We're sending them through our affiliates in Europe, because they found chlorine killed Ebola in about five seconds. It just boom.

CHAIRMAN BROADBENT: Oh wow, that's interesting.

MR. HELMSTETTER: Yeah. So we're sending a lot of things there. But it's not a lot of volume. I think we're sending them one container.

CHAIRMAN BROADBENT: Okay. I noticed in the picture that the man doing the tableting was taking it off with his -- he had gloves on, but he was taking it off with his hands. That doesn't seem to be very sophisticated manufacturing. Why do they do that?

MR. JOHNSON: What he's doing is just literally softening the impact. Instead of dropping the tablet that two feet down, he's just softening that impact. It is not very sophisticated. We actually have some other type of devices. They're little slides that it will hit the slide and slide down.

CHAIRMAN BROADBENT: Yes.

MR. JOHNSON: But what I'm trying to show here is the level of sophistication of the tableting process is just not very high.

CHAIRMAN BROADBENT: Right.

MR. JOHNSON: You press a tablet, you put it into a bucket, and all's he's doing is softening that impact.

CHAIRMAN BROADBENT: Right, got it. Okay. Vice Chairman Pinkert. Thanks. Thank you very much.

COMMISSIONER PINKERT: Thank you Madam Chairman, and I join my colleagues in thanking all of you for being here today. We've talked a lot about this issue of tablets versus granular and how that affects the cumulation analysis. But I want to specifically direct your attention, Mr. Cannon, to the thermal paper from China and Germany case, and ask you whether that case, which is cited by the Japanese respondent, whether that case plays into our analysis of this issue in any way.

MR. CANNON: I think my view on that is that this comes back to this factual debate about how the tablets and the granular are being sold, and that fundamentally factually it's wrong on this record to say that the Chinese are only selling tablets. So I find that the premise for applying that precedent doesn't exist.

COMMISSIONER PINKERT: Okay. If there's anything that you wish to add to that in the post-hearing submission, I think that would be helpful.

MR. CANNON: Thank you.

COMMISSIONER PINKERT: Thank you. Now Mr. Helmstetter, you've heard the assessment from Respondents, that imports from Japan have had a stable and responsible presence in the U.S. market during the Period of Investigation, and presumably even before that. Do you agree with that?

MR. HELMSTETTER: I agree that they're very present. The problem I have and one of the reasons for why we filed this petition is that in the past several years, every place I've gone to to try to get business, I'm either told that they're buying Chinese at a price below mine, or they're buying Japanese priced through a repacker at a price below mine, and the same response I always hear is Dave, we love your service, we love doing business with you.

You know, I've done business with everybody in this entire industry, every company I've sold, and they all say the same thing. We wish we could buy from you, but the price is too low. The Japanese price, the Chinese price is too low and I mean that's all I hear. So what we've done is we won't even go below their price, because what will happen is, you know, to try to get more volume.

Every time we've gone below their price, they just drop their price another ten cents. I think there's no basement. So we just said if you want to buy from us on service, or if you want to buy from us because we can make a nice bucket for you or whatever, we'll do that. But here's our price and we're not going any lower. We can't go any lower, because we'll get beat.

COMMISSIONER PINKERT: You've had a lot of experience in this market on different ends of the market, and you've also heard a lot from other folks about what's going on in the market. Is there a difference, based on what you've heard and what you've seen, between the pricing behavior of the Japanese product and the pricing behavior of the Chinese product?

MR. HELMSTETTER: The difference between the pricing behavior is only that the Chinese at one time were all being controlled by one company. Arch Chemicals was importing almost all of the Chinese product. They have reduced their imports, from what I can see, and more Chinese producers have entered the market.

There used to be only one. Ebay was the only one. Now there's four, five, six. I'm not even sure how many there are, is that with the increased number of those and the increased number of Japanese -- Shikoku used to be the only one we'd ever hear of. Now there was -- I can't even think of their names. There's two or three other ones that would bring product in, and it sort of became a free for all, for who could get to the lowest price the quickest.

So we don't want to fuel the fire. So we watched our volume go from, I don't know, it's about 44 million pounds of tri-chlor, dropped it down more than half in just a few years, and it was all on price. Any of our customers that stayed with us and our labels and our programs and our education, you know, all those type of things, they saw small growth, you know, just like the market is.

But everything else left on price. We couldn't go after it because the price would just go lower, and that would affect our existing customers even more.

COMMISSIONER PINKERT: Just to be clear, are you saying that you have not noticed any difference between pricing levels for Japanese product versus Chinese product?

MR. HELMSTETTER: It depends where you're at in the market. I deal at the tablet level. So there's no difference between Chinese tablet prices and Japanese product prices at the tablet level. At the granular level, there probably is. I don't really know. I'm not down there that much. But at the tablet level, you can get -- you know, I've run into the same problem.

I hear Chinese and Japanese prices all the time. I lose business to both and it's, you know, I don't know exactly what they're buying. I mean the buyer's not going to tell me exactly what he's paying. But they must be equivalent numbers, because they buy both products. They buy from the Chinese, they buy from the Japanese-supported repacker.

The Japanese aren't selling tablets directly to these customers, but I know they support them in their efforts to gain that customer with tablets.

MR. WILLIAMS: I'd just like to make a comment about the bulk side of it, because I deal primarily on the bulk side and you asked about the pricing differential between Chinese and Japanese. Essentially, they're in that same type of range, if you will, a buck, sub-dollar kind of levels that just create, you know, chaos in the marketplace for a producer like myself to compete at those types of levels.

I gave specific examples in my testimony, where like Dave, I ran into Japanese competition, where you know, I would come in and try and creep down to a competitive level, and I might get a couple of orders. But within a short period of time, the Japanese will drop their price.

I did an experiment on the west coast. I tested it a second time, and the Japanese dropped the price again. So at some point in time, you just can't keep chasing price.

COMMISSIONER PINKERT: And are you saying, then, that the Japanese pricing levels and the Chinese pricing levels at your end of the market are comparable?

MR. WILLIAMS: Very similar, yes.

COMMISSIONER PINKERT: And that they're both below the prices that U.S. producers are offering?

MR. WILLIAMS: In many cases, yes, absolutely. I had one of my largest customers, Leslie's, you know, they're the biggest retailer in the United States. They have 800 stores across the United States. I had 90 percent of their business a few years ago. Then I had 50 percent of their business, then I had 25 percent of their business.

It was specifically a result of the Chinese offering pricing levels of, you know, sub-one dollar type of levels that I can't compete at.

COMMISSIONER PINKERT: I noticed in your answer there, and I don't want to press the point, but you just mentioned the Chinese again. So I'm wondering about the difference between China and Japan.

MR. WILLIAMS: I mean I can offer the same type of examples into the tableters, where those types of price levels existed, and competing against the Japanese.

COMMISSIONER PINKERT: Thank you. Well perhaps in the post-hearing, if you could give us more information about that, that might be useful. Now have the tableters been compelled to rely more heavily on subject imports of granular ISOs, because U.S. producers have limited the quantity they're willing to provide?

MR. WILLIAMS: That's actually not quite accurate. We've been running at a capacity of well below 100 percent for a number of years, probably in the 70 percent type of range of capacity. So we had no issue supplying. It wasn't until recently, recent developments in the market place, where we had a sudden surge in U.S. demand as a result of the seventh ruling against the Chinese, as a result of the Japanese anti-dumping ruling, as a result of the new Chinese countervailing ruling, we had a lot of domestic U.S. customers suddenly want to surge back to U.S. producers.

We can't ramp up that fast. It's impossible, you know. We have to put additional capital, etcetera, into our plants. We will, if we see those sales continue to materialize. We will add additional capital into the plants. We will debottleneck and we will be adding additional employees next year to handle that incremental demand.

But with a surge like we saw, there was a time where yeah, we absolutely could not handle all the demand at one point in time. Now that's in 2014. That's not prior to that.

COMMISSIONER PINKERT: Thank you.

CHAIRMAN BROADBENT: Commissioner Williamson.

COMMISSIONER WILLIAMSON: Okay, thank you. Petitioners, in your post-hearing brief, could you please address cumulation for threat purposes, and provide more detailed arguments for threat for each country separately? If there's anything you want to say beyond what was in your post-hearing brief, you can also do that.

I think the question Commissioner Pinkert asked of Mr. Williams, and when he said China and then he asked about

Japan, is the kind of thing that needs to be addressed here too.

MR. CANNON: Thank you.

COMMISSIONER WILLIAMSON: Okay, thank you. Also what are your forecasts for demand trends in the near future, and what factors are likely to have the most important impact on demand?

MR. WILLIAMS: I can answer that question, at least from an Occidental Chemical standpoint. The outlook for 2015 is we'll be operational at close to 100 percent capacity on the tri-chlor plant, and we will be looking at probably somewhere around 70-75 percent operating capacity on the di-chlor side.

We've seen great benefits from some of the things I just previously mentioned. Obviously the seventh ruling, the recent Japanese and Chinese countervailing ruling has seen a tremendous surge in people coming back. I've got some capital freed up to debottleneck at the plant, which we're doing currently right now. So you know, we anticipate this to go through 2015 and if the Committee so dictates, we're hoping that with favorable rulings it will continue beyond 2015.

Right now, your preliminary ruling on the Chinese, putting Hebeija-hing back to zero, has created essentially some chaos in the marketplace yet once again.

MR. CANNON: Jeff, excuse me. I think the question is not demand for your product, but demand, meaning overall U.S. consumption or overall market, not specifically what you're saying.

MR. WILLIAMS: Okay. I apologize.

COMMISSIONER WILLIAMSON: Actually, both are relevant, but his answer, the one you just posed is also important.

MR. WILLIAMS: We expect -- we expect demand to stay relatively stable, and we've mentioned the number 240, 260 million pounds. We expect that demand to continue. We just expect to get a bigger piece of the pie, for the reasons that I mentioned previously.

You know, the pools, you know, the last 50 years of pool-building have used isocyanurates. Those pools aren't going away, unless you want a green swamp in the back of your house. So I mean at the end of the day, people are going to continue to maintain those pools for, you know, value, property value, and etcetera.

So that business is there, you know. When you talk about the salt pools and things going in the future, okay, you know, that may have some impact later on for future growth per se. But that 240 million pounds or 260 million pounds, that's there. That's going to be a constant sort of demand moving forward if you will, and we expect that to be there as sort of a baseline, if that makes sense. Does that answer your question?

COMMISSIONER WILLIAMSON: That does. Are there any developments out there that could change demand, in terms of new technologies or new uses, things like that?

MR. HELMSTETTER: Our biggest change in demand is if the housing market comes back and you see a growth there, with young people getting houses, those are the people that like to go into pools. You'll get a lot of swimming pools. We're not seeing that.

COMMISSIONER WILLIAMSON: Good okay, thank you. Thank you. Given the prevalence of over-selling in our price comparisons, why should the Commission conclude that under-selling was significant?

MR. CANNON: So first, I don't think it's that prevalent. We actually feel like you have mixed data, and you've typically found where products are very competitive, that you will often see under-selling by the domestics, because they have to fill their capacity and sell. So they have to cut price, and they're being forced to do that by imports.

So certainly in any commodity product, you know, if you're looking at sugar, prices are going to be up and down, because everyone is forced to the market price, all right. Now secondly, we've got the problem of the missing Chinese data, and if you add the purchaser questionnaire analysis, I think you'll find a lot more under-selling.

Thirdly, you have a generic problem in every case, okay. Every industry that comes before you has been telling you this now for years, and I will try not to rant. You have this issue of direct imports, all right. So when a big producer, Arch, imports from China, you ask them what's your price when you resell it?

When you get the price from Oxy, that's his price to Arch. He sells to Arch. His competition is not when Arch resells; it's when they buy from China. So you're not asking Arch what did you pay for the Chinese material against Jeff's material? You're comparing what Arch resold, because they're an importer, against what Jeff sold to Arch.

Now here, it's even kind of crazier. In your price data for Product 1, right, bulk super sack tri-chlor, he's selling to Shikoku. So you're comparing his price to Shikoku with their price to customers. So of course it's a little bit higher than his price. That's this problem of you always have asked importers to report their price when they sell and ship it, as opposed to what they pay the imports.

Historically, for probably 30 years, this worked, because there was layers. There were levels of trade, right. There would be wholesale to retail and so forth, and importers stood in the market at essentially the same position as producers. That's gone. That is gone in America.

Big box stores now hold auctions for business in China. The U.S. producers go there to quote against their Chinese competition. Importers like Arch force Jeff to quote against the Chinese product, and your pricing tables do not capture that. It's frustrating to me, but I can't be the only one complaining about this.

COMMISSIONER WILLIAMSON: Do they ever go to Japan and have auctions?

MR. HELMSTETTER: Oh I'm sorry, and I don't have a factual data. This is what I'll call street information. But Arch had a deal with Shikoku a couple of years ago, a few years ago maybe, and I think they were dishonorable, and I think they got what they wanted on price from Shikoku and they never closed the deal, and then they used their price against somebody else. So yes, they played Japan. I've played Japan.

COMMISSIONER WILLIAMSON: Okay, and the Japanese, I guess, are going to the auctions in China too?

MR. HELMSTETTER: I think there's a lot of Japanese in China.

MR. CANNON: Having said that, so I don't mean to say your traditional way of doing it, and the data you have are not indicative or useful. They are particularly useful at looking at the quarterly trend in prices, because as you know under the statute, another way of deciding that there's an impact and there's injury is to look at price depression or prices depressed.

I think quite clearly on this database, you can see that. Prices are depressed. They are coming down. They are coming down even though costs are the same or rising, right? So that tells you there's price depression. So you don't need to be sort of obsessive about counting noses, like how many times is one price lower than the other, particularly whereas here we don't have data from the Chinese producers.

COMMISSIONER WILLIAMSON: Well anything you could add post-hearing about the nature of this competition, the fact that you got so many, some would say competitors in the market, and what that might be telling us about pricing, well it would be helpful here, as compared to the two different subject countries, products from the two different subject countries.

MR. CANNON: Thank you.

COMMISSIONER WILLIAMSON: Okay, this is may be post-hearing too. The reporter per pound price for granular and tablet ISOs are somewhat different among the reporting U.S. producers, and what accounts for these differences? You may have to do that post-hearing.

MR. CANNON: Yes.

COMMISSIONER WILLIAMSON: Okay, thank you, and my time has expired. Thank you.

CHAIRMAN BROADBENT: Commissioner Johanson.

COMMISSIONER JOHANSON: Thank you, Chairman Broadbent.

I want to go way back to 1995 and I was wondering, why was there no interest by the domestic industry in 1995 for a continuation of the order on Japan?

MR. CANNON: So when I was a baby lawyer I wrote part of the petition on Chlorinated Isos and Cyanuric acid and chlorinated Isos and it was against Shikoku. And Monsanto was our client and owned the business and the business changed hands. The industry consolidated and the Japanese with the dumping duties, at that time, essentially left. And so the decision was made not to worry about the case and they let it go.

COMMISSIONER JOHANSON: All right. Thank you for your response. All right. That doesn't happen very often, that's why I'm just wondering. Because it's not that sort a period of time. There have been a number of cases involving Isos, chlorinated Isos, so it just kind of struck me that --

MR. CANNON: So we were presunset. Back in '95 there wasn't a feature of the law. The original case was filed in '87, '88, late '80s. So the order had a certain life and it achieved some effectiveness and in those days if you established essentially a three-year track record of not dumping Commerce

Department could just terminate your dumping order, and in that case there was no interest by a domestic industry to continue worrying about the dumping order on Japan or continue prosecuting or fighting, or trying to keep the margins up, or anything. And so the order had its impact. The Japanese either fairly traded or left the market, and the U.S. industry let it go. We nowadays have this whole sort of industry of doing sunsets. So maybe we created something that perpetuates cases, I don't know.

COMMISSIONER JOHANSON: All right. Well, thank you. I mean, this really has no bearing, as far as I can tell on today's investigation. I was just wondering looking at the record to what happened there.

In several places in the staff report, and also in the respondent brief at page 22 and 35 there are mentions of odor or out gassing with respect to the processing of this product. And first of all, is there a -- is this a significant condition of competition and are there difference between the odor of the product depending upon the source, that is between the domestic and subject imports? Because this would get back to, Mr. Cannon, something you had discussed earlier, this as being a commodity or near commodity product.

MR. HELMSTETTER: Yeah, there are differences in odor. Our biggest complaint that we've had in the past probably five or six years now is that our product has no odor. And the consumer calls in and wants to know why it doesn't have an odor, because there must not be any chlorine in it if doesn't smell. So we sort of view it as a negative trait not to have some odor. The Japanese try to push their odorless product. It's not really catching on very well. There's a few niche people that buy it. It's a very simple process to make it. I don't really want to describe it here because apparently not everybody knows how to do it. But we don't view it as a quality difference at all.

COMMISSIONER JOHANSON: Yes, Mr. Johnson?

MR. JOHNSON: If I could just add to what Mr. Helmstetter was talking about. There are various aspects that go -- that can go back into the manufacturing process that will impact what I think we call the quality of this -- of the chlorinated material. I think we as manufacturers here in the U.S. have a very good handle on what impacts that characteristic of gassing or off gassing. I think Japan produces a very good quality product from that characteristic also understanding the things that influence that. The Chinese not quite as much of attention placed there. I think that you can go throughout the market and see that people will differentiate between different producers, the quality, and in fact you could probably identify it more with Japan, the U.S. better or very good quality. The Chinese not as good quality. But the characteristic of quality itself has not seemed to impact the market at all. It has always come back to what is the price. Yes, you know, we'd like to have yours, but it's just, you need to drop the price of it to be able to be considered. So to me that's the quality aspect of what we deal with. Yes, there are some things that are different, but, no, it hasn't impacted our business as far as being able to gain market share or quantity.

MR. CANNON: So when I think there's actually -- talking about this beforehand, there's actually a factor from the tableter standpoint. So we have this photo of a tablet machine, a couple of slides before this. And what you see on that press is you see these dust collector hoses and things like that. And so they have some -- is this the issue or is it a different picture? They have some ability to capture the odor as they process and make the tablets. Or am I not showing the right picture here?

MR. JOHNSON: No, very, very true.

MR. CANNON: Am I talking about it?

MR. JOHNSON: But these are just some of the steps we take to keep the dust down. You know, it gets into employee industrial hygiene and working in better or improved environments. These are things we pay attention to as far as the manufacturer is concerned. But, as far as the actual gassing of the product, that's more down in the chemistry of the material itself, that you have little impurities that get in there. What's the moisture contents that are in there? And all of those can impact the level of gassing that comes off. But not to a major issue. They're still safe to be used or utilized throughout the U.S. industry.

COMMISSIONER JOHANSON: So just to summarize, Mr. Johnson, I believe you stated that at the end of the day there are no -- the difference in quality related to gas between, let's say, Chinese, Japanese, and U.S. product are not enough to impact sales in any significant way?

MR. JOHNSON: That is correct.

COMMISSIONER JOHANSON: Okay. All right. Thank you.

Another question involves California which I assume is a state with a -- probably the largest number of pools, it has a large population. You can swim in pools there throughout -- in parts of the state throughout the year, I would assume, like in Los Angeles, San Diego, et cetera. But California right now is undergoing a drought of historic levels as we all know with reading the newspaper every day and listening to the radio news. Has that impacted sales of Chloro Isis, water restrictions in California?

MR. HELMSTETTER: We saw a reduction in the southwest from our major retailers that sell in that rates, yes, when they restricted water, we saw that. When the water restrictions lift, like they did in Texas, the chemicals that they needed to buy they usually buy and then we see a rebound in the sales.

COMMISSIONER JOHANSON: Has it been significant for you all in the -- I guess the drought has been going on probably two years or so, so it's been during the period of investigation.

MR. HELMSTETTER: Our retail sales are up this year at Sam's Club. So -- I shouldn't say that, I guess, but at retail, they're up in that region, or overall, and they've had severe water restrictions. So, I mean, it's sort of like, if sales are bad in one part of the country, sales are usually good in another part of the country.

COMMISSIONER JOHANSON: Okay. So it evens out somehow?

MR. HELMSTETTER: It evens out.

COMMISSIONER JOHANSON: All right. All right. And then I have one more question. I noticed in the -- I believe it's in the staff report that there's an indication that the most demand comes from residential pools. What type of systems are used to clean water in larger pools if it's not chloraisos?

(Simultaneous conversation.)

COMMISSIONER JOHANSON: Let's say a large municipal pool.

MR. HELMSTETTER: Liquid bleach, like Clorox Bleach, except it's not 5 percent, it's 12 or 15 percent. That's the leading bleacher for commercial swimming pools.

COMMISSIONER JOHANSON: Why would a commercial swimming pool, or let's say I grew up in Austin, Texas, University of Texas has some big Olympic sized swimming pools. What would they use and why? If they do not use Chloroisis, why would they not use Chloroisis?

MR. HELMSTETTER: They probably used to use chlorine gas and then that has been pushed out for safety. They went to a sodium hyperchlorant. And it's a very quick response time because it's in liquid form already, nothing has to dissolve. So any product like calcium hyperchloride, trichloridiso centers, dichloride centers, they're not really looked at as a good control agent because they have to dissolve first and then go into the water where the sodium hyperchloride is already dissolved.

COMMISSIONER JOHANSON: All right. Yes, Mr. Johnson.

MR. JOHNSON: If I could just add to that. In these public pool situations, you get a very large fluctuation in swimmer usage. And it's that those surges that are hard to deal with. You heard me talk about how trichlor dissolves at a very controlled rate and supplies chlorine over a very controlled period and it doesn't react to those fluctuations or large fluctuations in swimmer load. And so people have utilized some of these other mechanisms that are easier for them to get chlorine into the pool than utilization of --

COMMISSIONER JOHANSON: So it's not really a price issue then?

MR. JOHNSON: I don't believe so. I think it's loading.

COMMISSIONER JOHANSON: All right. Well, thank you, that concludes my questions. And I would like to thank you all for appearing here today.

CHAIRMAN BROADBENT: Commissioner Schmidtlein.

Excuse me, Commissioner Kieff.

COMMISSIONER KIEFF: Happy to do in whatever order you like.

Maybe to try to help my colleague Commissioner Johanson, am I right in basically hearing you say that in effect when you have big load variance in the pool, you probably need a complicated sensing device and once you have a complicated sensing device, having immediate quick release liquid is not only much more possible, but in fact even more helpful. And so there's that larger capital cost of the complicated machinery for the large pools, whereas for the home user the simply standard dissolution of the tablet is sufficient?

MR. JOHNSON: That is correct.

COMMISSIONER KIEFF: Okay. Let me then switch gears and ask a hypothetical question. What would the world look like for you in business if we were to come to the conclusion that the order stays in place for China, but not for Japan? In effect, to decumulate, how would that look for you?

MR. JOHNSON: I'll throw the towel in first and the summary response to me would be very bad. The Chinese have -- or I'm sorry, the Japanese have very significant capacity. We have seen the increased amount of Japanese material coming into the U.S. over the past few years and growing in quantities and that potential is there and would continue to grow, I believe.

I spoke about the impact that the current dumping is having on our industries and very serious in my comment about there will be some level of reduction of domestic manufacturing capabilities.

COMMISSIONER KIEFF: Any additional or different take?

MR. WILLIAMS: You know, as a bulk supplier, you know, I would be back in. Obviously the Japanese product would be expected to come back into this country. They would be back into that targeted market and I would be back into that targeted market, you know, competing against them and we would probably have some type of, you know, pricing downgrade, and volume downgrade.

COMMISSIONER KIEFF: And so in simple terms am I hearing you both say, in your business view, you currently experience harm from Japan that in your view you attribute to Japan and you apprehend a threat? In other words, that's your view and you're sticking to it kind of?

MR. JOHNSON: That is correct.

MR. WILLIAMS: Yes.

COMMISSIONER KIEFF: Okay. And so then the follow-up question for your counsel and for your colleagues on the other panel is, to help us really understand in a very fine pointed way where the rubber hits the road, where the line is drawn, does it -- does it -- is there, as a factual matter, a different pricing that we're seeing with respect to the Japanese product than we see with respect to the Chinese product? And is there a significance to that -- a legal significance to that difference? And is that significant difference, assuming it exists, outcome determinative with respect to our case law and cumulation? It seems to me those are, at least for the folks here today, the ballgame.

MR. CANNON: So, I don't know -- I assume I'm going to write about this. Philosophically or in your hypothetical there are two things you have to separate, I think. Okay. In terms of causation, volume effects and price. Okay.

Now you heard Jeff testify. He, because of the order in 2014, got a bunch of orders from Shikoku. And rather than go to Shikoku's customers and just take those customers, he decided I'll leave them in place, I'll just supply and put it in Shikoku's bags. So that's what he's doing. That volume without the order goes away. Correct? I mean, that goes away. That is a volume effect. That means our capacity continues to be unused. Right?

We don't get to hire more workers, make more investment and fill that volume.

Now, that's separate from price effects; right? Would the Japanese be as aggressive as the Chinese in the market without a dumping order? Are they in fact -- maybe the Chinese are lowest, and you got Japan, then you got us. You are looking at an array of product in different forms and sizes, with different size customers throughout the market. The Japanese, perhaps just like Clearon, retreated from the bulk business and went into tablets, have focused on a part of the market where they also could survive, and they hang on to that by aggressively pricing in that part of the market. So I think that we would argue that indeed without looking at the Chinese on their own merit, standing alone, there is injury by virtue of the Japanese imports.

But the whole purpose of cumulation is that we shouldn't have to do that. I mean, the Congress put cumulation in the law because it recognized that -- it's the old analogy right. Why is this in the law? It's before we had cumulation, before we could file flowers against nine countries, we had to do country by country. What convinced Congress? All right. It was the man in the alley; right? You're the man in the alley, six people kick you, right? One guy hits you with a bat. Okay. The guy who hits you with the bat hits you harder, but you're weak, and the other people are kicking you, and that hurts too.

Okay. So that's why you cumulate. You don't go to the ultimate issue of the injury before you cumulate. You cumulate first.

COMMISSIONER KIEFF: Yeah, we've been recently Agatha Christie, Not Alley, Murder on the Orient Express, you know, the stab wound, the gunshot, the poison, or clue. Right. Board game or movie.

So you're saying that as long as we can find some injury we don't need to know, as long as it's some and it's above a threshold we're done if we want to think separately about Japan, and you're separately saying, the entire theory of cumulation is so that we don't have to think separately about Japan?

MR. CANNON: Yes. And there's wisdom to it. Because you start to be -- you're into like antidumping metaphysics, right? You're dancing on the head of a pin because you're trying to separate one cause from the other at this sort of fine level. And the statute saves you from that.

COMMISSIONER KIEFF: Okay. And I take that. At the same time we don't want to go too far on it, right, because if that were the case we wouldn't have -- the statute would say, "must cumulate" rather than we should think seriously about it.

MR. CANNON: There I disagree. I think the statute says, when you file a petition on the same day, and when -- and in your words -- there's a reasonable overlap of competition, you must cumulate because we are not in a sunset case where it is discretionary to decide to cumulate. You are in an original investigation and that is because you don't have the history like we do in a sunset case. We don't have the database. We've been at this for a year and so the statute is structured in that fashion. And that saves us the metaphysics.

COMMISSIONER KIEFF: All right. I mean, so then the question for the afternoon panel is, what is the extent of our power to decumulate, and what is the legal authority for it? Because if our hands are tied and we can't, then we can't. No one wants to act ultra virus. If we have the authority to decumulate, then, you know, please show it to us. And assuming we have the authority to decumulate, the question for both sides in the post hearing is to give us as much of a factual record as possible so that we can make a reasoned decision yes or no, one way or the other, but all of this is very helpful. And that concludes my questions for the panel. Thank you very much to the witnesses and the counsel and look forward to the afternoon as well.

CHAIRMAN BROADBENT: Commission Schmidtlein.

COMMISSIONER SCHMIDTLEIN: Thank you. I wanted to follow up on two sort of lines of questions. The first one having to do with the pricing data and just sort of in general, you know, I appreciate your point about the layers of trade and how perhaps this is not an apples to apples comparison in some of these prices. So my question is, you know, how should we consider the pricing data? What are you saying we should do with the pricing data that's in tables, for example, V-3, V-4, you know, have to do with products one and two which seem to be significant products for both U.S. producers and Japanese imports. Product six. And you know, in these products you see overselling. So, --

MR. CANNON: Right. So in V-3 and V-4, the first thing you see is the big holes. Right? In those tables when you look at them, you see the big hole, 2013, there simply are no data from China which should be there. And when you supply that from the purchaser questionnaire, there's absolutely underselling. The same thing with the product V-4. The same phenomenon. There's a hole. When you supply it, you see underselling by imports from China.

Secondly, with regard to imports from Japan and where they're average unit prices are versus the U.S., okay, these two products, if you look at what's happening with these products, these are the bulk granular products. This is not pressed into tablets. Right. So Biolab is not selling this, they only tablet. By and large, this is not Clearon product. This is Oxy product being sold head to head against the import competition. And so actually what's happening here is exactly the direct import phenomenon. This is where Oxy is trying to get the business from Arch and Arch is buying direct. And so you can't really compare Oxy's price because in fact it is at that different level of trade.

But what you can see is that there is clearly price depression. Prices are going down. Right? And the impact of imports in the market is that they force prices down from the supply alone; right? Nobody is arguing on any part of this case that there's a quality issue between Japan and the U.S. Right. If you look at the data -- if you look at the Japanese argument, they're not arguing our quality is inferior. We're at least equal in quality.

So when you have a product that's equally the U.S. versus Japan, we're heads on equal. We have a larger market share than they do. We have to fill our plant. The only way we keep that is we have to be competitive with them. We have to bring our prices down.

So, it is the direction and it's the depression, and it's the fact that we're selling below cost. That's what tells you that we're injured. And you don't need to find those two products, this head count of in this quarter was your price higher or lower?

Now, if you turn to some of the other products, you'll see that it's not always the case; right? In some of the products there absolutely is underselling and buy Japanese product even on the data we have. I mean, if you turn the page, there's a product where the Japanese undersell. Okay. There's no question.

So there is evidence that the Japanese undersell in this market. Right.

Now, Oxy has to go out into a marketplace and try to sell its product. His customers tell him, well, I can get it lower from Japan. Yes, they can. They absolutely can. This is also a bulk granular product. It's not a tablet, product number three. Right. And perhaps the Chinese have so far not found this market and the Japanese escaped them. But the Japanese are absolutely underselling the domestic in this product. So if you want to turn again to Table V-7, all right, there again the Japanese are head to head with the U.S. product. So there's no effect here in the database that we're seeing from China. And what do we see? Underselling by the Japanese versus the U.S. product. And you look at the volume in that table V-7, product number five, look at how much the Japanese are selling versus how much the U.S. is selling. And then look at what happened in 2004. The post petition effect; right, after we filed our case. Switches. And look at the underselling. What does that tell you?

On those products that you've taken a snapshot of eight products, on those products you absolutely can see product by product, there are some products where the Japanese for sure on this database are underselling.

Now, as a businessman he knows when I sell X, Y, or Z product, I'm getting undersold. But I have to sell something, fill my plants on some other product I choose, maybe I've got to compete against the Chinese there, so my price perhaps is even lower. He's got to do that to fill his plan. He's captive to that issue. He doesn't fill his plant, he's shutting it down. And so the dynamic of the market in the supply situation overall drives him to do that. It's rational; right?

COMMISSIONER SCHMIDTLEIN: So it is your position then that it's not that the price in these different products that are being undersold is related to the pricing in products one and two, but it's more in terms of what's happening at the domestic producer's plant and why they're -- so it's not sort of this cross product price sensitivity, it's more this is how it's affecting their operations and that's why you see them having to --

MR. CANNON: Well, I'm trying to explain what I think you see in pricing tables; right?

I mean, in a way we're lucky, in these eight products we have great coverage on the U.S. and the Japanese producers, right? If you look at the percentage of their sales, our coverage is very good. Much better than in many cases. So these products do cover categories of product. Right. They're not perfect, but for those two, they are very good. And what I'm saying is, you don't have to see and just total up how much underselling and overselling. It's mixed. It is mixed in many cases. But what you do see is that when they consistently undersell, they're getting that sales volume. Right.

And all I'm saying is that in other product areas of the market, the domestic producers have to get some volume. They've got to buy volume. So perhaps sometimes they are driven to a price level that could be below the import price. I mean, that could happen. And that's not irrational. In fact, it is what you would expect if the products are very close. That's exactly what you would expect to find mixed. Right. It's when you've got this big difference in quality that you would see all of one or all of the other.

You know, if the Japanese really was of a super grade quality they might always be above the U.S. producer. They could still push us down. Right. I mean, the price of their product could still push down the U.S. But that's not what you see. What you do see is that where they're focused and they're underselling and they're countering the volume.

COMMISSIONER SCHMIDTLEIN: Okay. Thank you for that. It would be helpful if you could, you know, point out in the post-hearing brief the evidence on the record that supports that. I mean, I appreciate -- like that's a good -- that's a good theory about what stuff -- why something is happening, but, you know, what sort of evidence would you site to that would support that? I mean, maybe there's -- maybe it's in a declaration or maybe it's in that what's motivating Oxy --

(Simultaneous conversation.)

COMMISSIONER SCHMIDTLEIN: You know, Oxy Chem is doing --

MR. CANNON: And I'd be happy to do that. But I do think it's also sort of in the totality of the record; right? That is what all of this is about; right? I mean, they are tell you this is how the market works and what they encounter. And that is worth every bit as much as what's in this particular pricing table. And your other data tell you things too. You have average unit values you can look at, there are many ways to sort of appeal this. One issue happens to be underselling. There are others.

COGS to sales ratio. Is it really rational for them, to start selling more product below their costs? I mean, that means my losses are just getting a bit bigger. So no one rationally would do that, much less the incumbents who are here in America with their factories, they're the big players. They own this market.

Why would Oxy, the biggest producer, be the price leader, which is essentially what the Japanese are arguing. That's not rational. They wouldn't go out and cut price. They're going to try to hold the line, at least so they aren't losing money. So when you put it all together, these pricing tables are a piece of it. Okay. And so to make sense of them, I think what I just suggested is when you look at this slice or that slice, you see and in a particular slice really how it's working and you put that in the context of the whole record.

COMMISSIONER SCHMIDTLEIN: Okay. Thank you.

MR. CANNON: Sorry to use so much time.

COMMISSIONER SCHMIDTLEIN: That's okay. My time is up.

CHAIRMAN BROADBENT: Mr. Cannon, can you site any prior Commission final investigations where the Commission specifically adjusted some subject buy-ins or purchaser's data upward as you have requested us to do by relying upon data obtained in the preliminary investigations? Also the preliminary investigation had several data issues, including questionnaire Respondents who were not U.S. producers or tableters but were counted as U.S. producers, tableters for their repackaging operations.

There were also reporting issues for U.S. reporters in the preliminary phase of these investigations. Most of these issues have been addressed and corrected in the final phase. So how can the Commission rely on the preliminary data?

MR. CANNON: Yeah, I agree. In fact there's like one particular questionnaire where one of the importers reported their shipments of U.S., Chinese and Japanese all together. They just reported all their tablets, they didn't distinguish which was which and in the final phase the staff recognized that and just took it out. Took those data out, so I'm saying don't go back to the preliminary numbers and pick up errors that you have fixed. I'm just saying that there is one clear response that you can use to pick up or you can, the staff can do something else, they can use for example the census data.

With regard to press event I'll have to do that in the brief but I can say that I've, I should say that I can say I have been in cases where the Commission has used census data because they couldn't, they didn't get good enough coverage with the questionnaire responses. I don't know about the preliminary questionnaire data being used in a final but I bet you they have, so I will look.

CHAIRMAN BROADBENT: Okay. If could cite for the post-hearing that would be great, okay. Do you agree Mr. Cannon that the Commission decides that tableters are not members of the domestic industry, that the Commission should not similarly consider the financial and performance data associated with all tableting operations of U.S. integrated producers?

MR. CANNON: Yes, so the -- if you made that decision there's like a trick to that right, toward arguing, there's sort of -- this is a shell game that the Respondents are playing here, they are not really pulling back the curtain for you to what's going on okay. So here's the problem, Clearon and Biolab make granular product right and then they turn that into tablets.

Now what the Respondents want you to do is just look at the granular product before it's made into a tablet. So for Oxy that's easy that's all their product. But for Clearon and Biolab to do that what you have to do is treat the granular that they make as a transfer with either company shipment to the tablet business and then recalculated their P&L just on granular, okay, so, yes we can do all of that.

The value added by the tablet is fifteen cents so it's not like money that we are losing on tablets is suddenly going to go away if we back up a stage. They are not making all of their money on the fifteen cent piece for making the tablet, right, it's making the chemical. So when we go through the exercise, what you would find is you get the same aggregate numbers you get now. And you wouldn't be able to just look at granular data from say Oxy whose only some and ignore the granular data from the rest of the industry. You would actually have to do this, you would have to back up and take that intercompany transfer in order to figure out what's the impact on the granular business.

I mean I suppose we could do it, could we do this? We are not having a fit back there? In the post-hearing brief we can show you the U.S. business with no tableting to it. Is he like whining? Having a fit? I think we could work with the staff on this and actually figure out a way to do the intercompany piece, to clean out the financial tableting issue.

CHAIRMAN BROADBENT: Okay, we will think about it.

Mr. Cannon assuming that we do use the Commission's collected price data to determine underselling and that we cumulate subject imports, should we rely on a volume of underselling analysis as established in table 5-13 of the staff report? And should we consider tableters shipments to the country of origin or domestic or should we not consider these at all?

MR. CANNON: So table 5-13?

CHAIRMAN BROADBENT: Right.

MR. CANNON: Oh, okay. How do we count and that's the second half of the question too, how do we count tablets we made using imported material, is that the second half of the question?

CHAIRMAN BROADBENT: Yeah, should we consider tablet or shipments to the country of origin or domestic or shouldn't we consider them at all?

MR. CANNON: Okay so I think you can't consider tablet or shipments at all. And the reason you can't is double counting, right, because we caught that volume when it left our factories once, right. Or it left our tableting line, now I'm talking about independent tableters like toll guys.

CHAIRMAN BROADBENT: Right.

MR. CANNON: Okay. We caught that volume already in consumption once. We caught it on the import side when it came in once. If you recount a Toller's shipments or even someone who buys and then makes a tablet and ships, if you call that domestic and recount you are just double counting. You are either double counting domestically double counted imports but you double counted something, because it is the same volume right.

CHAIRMAN BROADBENT: Um hum.

MR. CANNON: And the super sack left the factory that was a shipment that's for consumption, you can't count that same iso again after it is made into a tablet, so I don't think for the consumption piece you should include the sort of stand-alone tableting operations at all. In fact if we didn't consider them part of the domestic industry we wouldn't be into these issues, right.

That's why I mention aspirin. You ought to think things like service centers require the U.S. industry or tableters or whatever, when we didn't ask for them from Turkey or ask for them from China in '96, that wasn't a notion that the Commission had so you didn't make us go through this. Now we've got to this level where when you think of a tablet as part of our industry what it forces us to do is back up double counting and that's what's happening.

And separately I think the staff report correctly treats a tablet made from the Chinese as a Chinese tablet for purposes of comparing prices and then correctly treats a tablet made from U.S. product as a U.S. product for purposes of comparing prices. The reason is that the tablet costs only fifteen cents of that price so it is the same. With a toller, where did they get a toller? That's the sitting, it's the underlying material that's showing you that price comparison that shows the Chinese price or the Japanese prices is below the U.S. price and so that's the correct way to do the pricing comparisons.

CHAIRMAN BROADBENT: Okay. And then I had a question about the Chinese orders that are already in place. Mr. Cannon you argue on page 22 of your brief that the independent impacted the anti-dumping duties on Chinese imports is a condition of competition that should not cause the Commission to deny relief from the subsidized Chinese imports.

MR. CANNON: Correct and so to distinguish it in the law we have argued about post-petition facts correct so after the petition was filed we got better. We think you should not look at that as essentially hurting our case, right. You are entitled by statute to disregard post-petitioner facts.

CHAIRMAN BROADENT: Um-huh.

MR. CANNON: When you are talking about a separate case, a dumping order already in place I don't think that falls within the legal framework of post-petitioned facts because it's a different case. It was already part of the market. It is in essence, background or environment. But it is however, a factor in the market. It is a condition of competition. If the Chinese armed with this discipline that they can't dump.

Now so far they have been able to sell it to subsidy but they can't dump and so I think you are entitled to look at the data in trying to understand what it means, I think you are entitled to look at it and consider that whether the dumping duty really increased in January of 2013 so maybe if there is some decline in Chinese imports, it has something to do with that.

It doesn't have to do with this case it has to do with the other case. But at the same time I think it would be more than ironic to decide that Chinese imports are not injuring us because there volume went down is a totally separate case. Because they were dumping more, you are going to find less evidence of injury by virtue of the subsidies so I think that's irrational and I think that therefore your framework calls for you to look at in the box of conditions of competition rather than post-petition facts.

CHAIRMAN BROADBENT: Right, okay. Thank you for those answers, I appreciate it. Vice Chairman Pinkert?

VICE CHAIRMAN PINKERT: Thank you Madame Chairman. I just have a couple of follow-up questions. Is there is a focus on sales to big box retailers driven down the domestic industry pricing and adversely affected the bottom line?

MR. HELMSTETTER: Sales are big boxes of the best part of our business. What we have seen is when the Chinese products or the Japanese products started entering the tableters we started seeing quotes to the big box guys at low prices in the past couple of years which we never saw before and we had to respond by lowering our prices, so we have lowered our prices at the big box stores.

VICE CHAIRMAN PINKERT: Anybody else on the panel on that issue?

MR. WILLIAMS: I don't sell to big box stores, can't really reply to that.

VICE CHAIRMAN PINKERT: Okay. Thank you. Now I had asked earlier whether tableters have been compelled to rely more heavily on subject imports of granular because U.S. producers have limited the quantity they are willing to provide and I got an answer to that but it was kind of at the end of the round and I want to make sure that there is not anything that this panel wants to add on that point.

I took the answer to be that this was a problem that occurred as a kind of post-petition affect but anyway go ahead.

MR. JOHNSON: I'll at least comment from me that from my perspective that we have not limited granular availability to any re-packagers, in fact you have heard Dave testify that we have, we have met with them and tried to make those sales, the problem is they want our sales priced at equivalent Chinese or Japanese material and that's where we have to allow that in for Clearon when we said we can't go down to that pricing level.

VICE CHAIRMAN PINKERT: But that's not an example of limitation of quantity right, that's -- you are not willing to sell at that price level up to a certain quantity and then above that at a higher price level?

MR. HELMSTETTER: No, we've never turned anybody down for volume reasons. I mean if anyone wants to buy product, I have plenty of product.
Most people don't want to pay my price.

MR. JOHNSON: You have also heard me testify about the amount of capacity utilization we have right now and there is plenty of capacity. We would love to try and get that, in fact our plan is to get our capacity utilization up and it's a, that's a matter of cost and spreading out this fixed process for Clearon. But we have never turned down anyone because we don't have product available.

MR. HEMSTETTER: In fact most of our budget for 2015 relies on selling bulk product back to these tableters that we have sold in the past because our price will now be acceptable.

VICE CHAIRMAN PINKERT: Thank you. Two other follow-up questions, the first one is probably for the post hearing. There's been a lot of discussion about the pricing comparisons in the staff report and Mr. Cannon you talked specifically about the relationship that you see between Japanese pricing and price depression. I would like you to take a look at the staff report comparison on pricing product number one and tell me in the post-hearing whether you think that is an example of price capping by the subject imports.

MR. CANNON: Thank you.

VICE CHAIRMAN PINKERT: And then my last question has to do with an issue that's come up -- that came up in a recent investigation, having to do with price leadership in the domestic market and I want to give you an opportunity to talk about whether price leadership is a significant factor for us or should be a significant factor for us in determining whether there have been adverse price effects in this case?

MR. WILLIAMS: I assume you are talking about price leadership. I, you know, at the end of the day we are the biggest ISO producer in the United States. It would be counter intuitive for me to take prices down. My management frowns upon that type of progress in the industry so I'm always trying to push prices up. I'm always trying to go into accounts and if I can be competitive I try and put our company at that type of price level but as indicated just recently I did announce a price increase in 2011. I did announce another price increase just recently here in July of this year, so I don't know if I'm answering your question per se but we don't -- I'm really not from a company standpoint, allowed to drive prices down to attack volume per se. I have to do it from a competitive standpoint, a competitive pricing and go into the accounts in that mindset.

MR. CANNON: And I would just observe from the standpoint of the confidential record and the answers to the purchaser's questionnaire, you have a great many purchases who just did not answer is there a price leader, a large number of companies that are identified as the leader, maybe an unusual number. You have situations in fact where domestic is identified as leading prices up and so in this particular case, on this record it is a little difficult to put a lot of weight on price leadership.

In fact that's another sort of tell-tale that maybe this is more than mere commodity and less about quality because when you have a product that trades like a commodity, it doesn't matter who cuts the price, it can come from anyone, in any direction. Once it goes down everyone is forced to follow and so I would think that in this case that label, price leader or whatever, I think you will see it's a pretty mixed bag and there's a lot of purchasers who just don't identify the leader.

VICE CHAIRMAN PINKERT: Any other comments on that issue on this panel?

MR. HELMSTETTER: I think historically from my perspective and my customer's perspectives, we looked to the two largest people who control the, I think it's product as the price leaders and that's historically who they were and that has gone away and what I see today is now whatever the lowest price import and people sort of build prices from that price up. It's not coming top down, it's coming bottom up and it's a --

everybody asks why nobody's leading, we try to lead but we are a very small percentage of the you know mass merchant market, nobody follows us so we are out on a limb again.

We raised our prices just recently, I don't think anybody is following us right now, so we may lose our biggest account, but I won't know that until he tells me if we have him for the business next year or not.

VICE CHAIRMAN PINKERT: Thank you and that concludes my questions in this round.

CHAIRMAN BROADBENT: Mr. Williamson?

COMMISSIONER WILLIAMSON: Thank you just a follow-up on one of Mr. Pinkert's questions. The fact that you are selling to, maybe you are selling to trying to sell to large retails mass marketers. The problem is not because you are selling to them, because the problem is that you are selling to them or is the problem because of what the importer competition is trying to sell to them at? The price they are trying to sell it?

MR. HELMSTETTER: The problem with the big mass merchants is when you talk to the buyer he has an army of people that assist him in finding out what the prices are throughout the entire industry at all levels and all services. What I've seen in the past two to three years is that that the big buyers have become very aggressive and know very well what the import prices are coming in and we have been threatened that we would lose total accounts if we didn't concede our prices and we did concede our prices and this year we said we drew a line in the sand and said we will no longer be in business, you go with the imports because we can't support it and right now it's open. We have got to finish the negotiation but we have told them this is the price and we will not retreat off the price and if he doesn't like it we are out of business.

COMMISSIONER WILLIAMSON: Okay. Thank you for that clarification. With that I have no further questions and I would like to thank the panel for their answers today.

CHAIRMAN BROADBENT: Commissioner Johanson?

COMMISSIONER JOHANSON: I have no further questions.

CHAIRMAN BROADBENT: Commissioner Schmidtlein?

COMMISSIONER SCHMIDTLEIN: I just wanted to ask one follow-up question to Mr. Williams. Given the Chinese prices and the fact that you have a co-production arrangement with the Japanese company, has Oxy ever considered doing a co-production arrangement with a Chinese company and if not, why not?

MR. WILLIAMS: Not at this time. With the Chinese producers, I guess I could answer that by just saying that we had a type of relationship with Shikoku in the past where I have supplied them on a spot basis for a number of years, so I had the relationship you know with the customer, I have never had a relationship with a Chinese company.

COMMISSIONER SCHMIDTLEIN: All right, thank you.

MR. CANNON: There's a structural difference too. Shikoku is a subsidiary, they are a U.S. subsidiary of Shikoku in Japan. The Chinese producers don't operate that way. They sell through brokers, traders, they sell through a large importer arch, but they are not, there's not -- they are not a producer right. So if Arch for example stops buying from the Chinese and instead buys from Jeff and you would just look at that well that's a sale. This whole word co-producer is kind of like he sells to Biolab, that's a co-producer, Biolab is a manufacturer. We don't talk about that but I mean it is nothing, there's no magic to the word but what it does tell you is that or what it does sort of -- what they are trying to dress up here is that Shikoku is owned by Shikoku in Japan so if they cannot get supply from Japan, and they have an existing set of customers, then they can supply those customers with Jeff's material.

And in fact I think this same tablet is some of the ones we were seeing that when a kit gets applied from Oxy, part of that is he had the shortest is he is trying to help Shikoku supply those same customers so.

COMMISSIONER SCHMIDTLEIN: Okay, all right thank you for your response. I don't have any further questions.

CHAIRMAN BROADBENT: Just one more piece of information. When did the big box retailers start being significant players in this market? Maybe Mr. Johnson or Mr.

Williams?

MR. HELMSTETTER: Bix box guys have always been significant ever since Walmart and Home Depot. Lowe's became big box stores across the U.S. which is probably fifteen, twenty years ago.

CHAIRMAN BROADBENT: Okay.

MR. HELMSTETTER: They've probably have always owned 40 to 45 percent of the total market share for finished goods ever since they started their rapid expansion across the U.S.

CHAIRMAN BROADBENT: Great, okay. All right thank you. I want to thank all of the witnesses for coming today, I really appreciate it. The Commissioners have no further questions. Does the staff have any questions for this panel?

MS. HAINES: Elizabeth Haines, staff has no questions, thank you.

CHAIRMAN BROADBENT: Thank you and do the Respondents have any questions for this panel?

MR. JANZEN: No.

CHAIRMAN BROADBENT: Got it, okay, thank you. In that case I think it's time for our lunch break so let's come back at five of two if we could. We will resume at that time, the hearing room is not secure so please leave your confidence -- don't leave any confidential business information out and once again thanks to our witnesses for their time in coming here today.

(Whereupon a lunch recess was taken)

AFTERNOON SESSION

MR. BISHOP: Will the room please come to order.

CHAIRMAN BROADBENT: Mr. Secretary, are there any preliminary matters for the afternoon session?

MR. BISHOP: Madame Chairman, I would note that the afternoon panel and opposition to the imposition of the antidumping and countervailing duty orders have been seated. All witnesses have been sworn.

CHAIRMAN BROADBENT: Thank you, Mr. Secretary. I want to welcome the afternoon panel to the ITC. I would like to again to remind all the witnesses to speak clearly into the microphone and state your name for the record for the benefit of the court reporter. You may begin when you're ready.

MR. JANZEN: Thank you very much. We'd like to start right off with Mr. Pettoruto, to my right.

MR. PETTORUTO: Good afternoon. My name is Nicolas Pettoruto, and I am the president of DelCal, Inc. And DelCal is the exclusive U.S. marketing agent for Shikoku, and has been since 1987.

DelCal and Shikoku have been together for almost 40 years, and I certainly appreciate the opportunity to appear before the Commission today to offer my testimony and answer your questions. And I hope it will be helpful as you consider all of the information before you in this investigation.

I would like to address three issues in particular.

First, the unique role of Japanese imports in the U.S. market and how they came to fill this role. Second, the way prices are formed in the granular chlor Isos market, and third, some aspects of Shikoku's strategy for the U.S. market.

Before turning to these points, I would like to take a step back and recall my reaction in August of 2013 when the petition in this case was filed. At first I literally was shocked that Oxy and Clearon could accuse Shikoku of hurting them through our pricing behavior in the U.S. market.

During Shikoku's decades of participation in the U.S. market, we have never used aggressive pricing to grab market share. It has always been just the opposite. Customers have turned to us when the domestic producers would not supply them. Our customers were prepared to pay premium prices for our high quality product and reliable customer service.

Given the way we have always behaved, I thought how could we possibly be accused of causing harm to U.S. producers. But then I learned that the way the antidumping law works domestic industries can easily tack on additional countries when filing a petition against their real target. I firmly believe that the case against Japan has absolutely no merit. Our prices are the highest in the market. We do not import or sell tablets and we do not focus on the same customer segments as U.S. producers of granular Isos.

Let me now turn to my three main points. As the

Commission knows from Shikoku's questionnaire responses, we only import bulk granular Isos from Japan, and we resell this granular product to a number of unrelated U.S. tablet manufacturers.

Our customers, the tableters, specialize in manufacturing granular Isos, sometimes combined with other chemicals, into a range of tableted products that are sold in that form to pool supply distributors or retailers. Shikoku and DelCal sell granular Isos in bulk quantities to tableters. Skikoku does not sell tablets in the U.S. market, and so we never sell tablets to distributors or retailers.

The granular trichlor that we sell to tablet manufacturers must first be converted into tablets before entering the distribution or retail channels. Likewise, the much smaller volume of granular dichlor we sell first must be repackaged before entering theses channels. We supply many U.S. tablet manufacturers with granular product.

The basic Shikoku/DelCal business model of supplying granular chlorinated Isos to U.S. tablet producers has not changed in all of our many years of participating in the U.S. market. What has changed, however, is how U.S. producers serve that granular market.

First, in 2005, Clearon decided to internally consume its self-produced granular product for conversion into tablets rather than sell its granular product to third parties for tabulating. When it made this switch, Clearon began to compete with its former customers, the independent tableters by selling its tablets to distributors and retailers under its own brand names.

Clearing's business decision left many U.S. tablet producers without their main source of supply. These former customers of Clearon needed a new supplier, and Shikoku and DelCal stepped in to fill that supply gap.

Also, in 2008, BioLab, the other vertically integrated U.S. tablet producer decided to withdraw some of its major brands from the distribution market on a national scale. The distributors found themselves without a key supplier of tablets, and as a result, they turned to independent tablet producers to fill that supply gap. These tablet producers asked Skikoku and DelCal for the additional granular supply that they needed.

Unlike Clearon and BioLab, we have chosen to focus our business on filling demand for independent tableters, and we do not compete with these customers by selling tablets. Oxy, the largest U.S. producers of granular Isos still only manufactures granular product, although it does toll produce some tablets. However, Oxy has also, through its way of doing business, created some demand for Shikoku's granular supply.

As part of a very large chemicals manufacturer, Oxy's Isos business focuses on very large volume accounts. This plays to our strength as we supply smaller volumes to independent tablet and producers. In fact, we are now reselling Oxy's products to these customers, as I will describe in a moment.

I would now like to turn to the issue of pricing and try to shed some light on two aspects of how pricing is established in the U.S. market for granular Isos. The first aspect is who determines the baseline prices in the market. I can tell you with certainty that it is never Shikoku, and we account for the lion's share of Japanese imports. The one supplier of granular product who is large enough to do and actually does in practice is Oxy. Oxy is the price leader in the granular market.

The other aspects of pricing is the premium that we are constantly are able to maintain for Shikoku's granular product. Quality is of paramount importance for our customers. Why is that? Because, as Mr. Eisch will be able to explain better than I, higher quality in this industry means more consistent granulation and low moisture and low off-gassing.

These qualities, in turn, make tablet production more efficient, help the tableters manage the health and safety risk inherent processing Isos, and reduce the potential to damage to packaging materials, processing equipment, and storage facilities. Simply put, tablet producers pay more for the level of quality Shikoku provides because using our product makes their job easier and less costly and Isos are not a pure commodity product. Quality differences matter and will show up in prices.

One of the reasons I was surprised by the antidumping petition against Japan is that we always price responsibly. That is as high as we can get in a given market condition and never try to gain customers or increase volume by lowering our price. In fact, Shikoku and DelCal have specifically rejected this method of gaining U.S. market share, recognizing that it will really only hurt us in the end.

When I appeared before the Commission staff about a year ago, I discussed the co-production arrangement with Oxy. I was quite surprised to see that Oxy is attempting to describe its relationship with Shikoku as just an ordinary sale to a customer. What I see from my vantage point of participating in this arrangement every day is quite different.

First, our co-production arrangement is now entering its fifth full season and is continuing to grow. The details of the arrangement are described in Shikoku's confidential submission to the Commission. However, the basic contours of the arrangement, including the fact that Shikoku is supplying Oxy-made granular product under Shikoku's brand names are very well known in the Isos marketplace. The arrangement is producing win/win outcomes for both parties.

For Shikoku, the arrangement is valuable because Shikoku has for many years sought to shift more of its sourcing to U.S. tablet producers to U.S.-base supply. Mr. Ide will provide more detail on this point in his testimony. The co-production arrangement also helps Shikoku by ensuring a second source of high quality granular supply for our customers and the volumes demanded and when needed.

As for Oxy, I believe that the co-production arrangement has been favorable because it has allowed Oxy to manufacture more granular product and reach more customers than would otherwise have been possible as Oxy is now able to take advantage of our extensive customer network and marketing expertise, and our longstanding relationship with many independent tablet producers who are not part of Oxy's small group of large volume accounts.

Just consider the fact that Oxy has chosen to use us to deliver their granular products to tabeleters and under our own brand name. This unique arrangement, and I know of no one other like in the industry, must be advantageous to Oxy or they would not have chosen to do so. Oxy could well have chosen to market directly to these customers served by the co-production arrangement. This does not sound like a typical buyer/seller arrangement to me.

I would also like to note that Oxy is not the only U.S. producer of granular Isos that Shikoku is actually helping through our responsible participation in the U.S. market. BioLab, which produces only trichlor is another example. BioLab purchases bulk dichlor from Shikoku to help it offer a full product line.

I would also like to note that there are a number of other factors that have impacted our market in recent years. These include adverse weather conditions, changing consumer spending trends, and other factors that I would be pleased to elaborate on if that would be helpful.

For all of these reasons, I really do not understand why Japan was dragged into this case. It just isn't right, and as I hope you will agree. Thank you.

MR. JANZEN: Thanks Nick. We'd now like to turn to Mr. Ide of Shikoku Chemicals Corporation, sitting right behind me.

MR. IDE: Good afternoon. My name is Hirotaka Ide, and I am general manager of the Operation Management and Planning Department SCC Corporation. I've held different positions with Shikoku since 1990. During all my years with my company, I have been closely involved with the chlorinated Isos business and with our export to the U.S. market. I appreciate the opportunity to be here today. I'd like to offer a few brief comments for the Commission to consider.

First, Shikoku has long tradition of responsible participation in the U.S. market. Shikoku is a founding member of the Isocyanurates Industry Ad Hoc Committee. Since its founding in 1979, Shikoku has invested much time and money and worked alone with the U.S. producers to help create an appropriate regulatory framework in the United States pool industry.

For example, we're helping to develop Model Aquatic Health Code that sets standard for the use of chlorinated Isos in publicly owned swimming pools. This initiative, along with many others, help all participants in this market, including Clearon and Oxy to sell chlorinated Isos in this market. Shikoku has provided details of these investments in our questionnaire responses.

Second, since early 1990s, Shikoku has been exploring the way to supply our U.S. customers with granular products made in the U.S. Like many other companies have done, we'd like to make some products closer to where our customers are located. This is because U.S. sourcing helps Shikoku manage the exchange rate risks, ocean freight, and U.S. warehousing costs, and rapidly rising energy cost in Japan. Shikoku has explored and continues to explore many options, including Greenfield investments and purchase of existing production facilities in the U.S.

As you know, Shikoku has a co-producing agreement with Oxy. For Shikoku, this is a step in the direction we want to take. I believe it is also good for Oxy because they utilize the DelCal marketing network through the co-production agreement and sell more of the granular product to the U.S. market, U.S.

tablet producers.

Third, I would like to address the capacity of Shikoku plant in Tokushima. Until this case started, we had no surplus capacity at this plant. Now, we are in a transition period and planning other uses and application for this capacity that aren't related to the U.S. market because we have long wanted to shift more production to the U.S. anyway, regardless of the case of planning for the future use of the Tokushima plant is well underway.

I provided some detail on the Shikoku plant in my confidential written statement. I could provide more detail, confidentially, after the hearing if that would be helpful. Thank you very much.

MR. JANZEN: Thank you Mr. Ide. Jim?

MR. EISCH: Good afternoon. My name is Jim Eisch, and I'm the Chief Operating Officer of a group of companies that include Suncoast Chemical, a producer of tableted isocyanurates.

We manufacture our tablets in Clearwater, Florida, and sell them nationally to unaffiliated dealers, distributors, and to our own 220 franchise stores. We sell our tablets under the brand names of Suncoast Chemicals and Value Chlor, and we produce more than 20 national and regional brands. We are a significant player in the U.S. tableting industry with the capacity to produce more than 10 million pounds annually.

I've worked for Suncoast Chemical related companies for more than 20 years, and have served as Chief Operating Officer for the last 12 of those.

From my perspective, it makes no sense for Japan to be in this case. The biggest domestic producers of bulk chlorinated Isos claiming that are being injured by Japanese imports, but what I see is quite the opposite. From my vantage point, as a purchaser of millions of pounds of granular product annually, I know I am paying a premium for Japanese product. I also have no choice but to rely heavily on imports as the domestic producers actually make it harder for me, if not impossible to purchase their product.

Let me start out by saying our tableting operation plant in Clearwater, in Clearwater, Florida, tableting requires a highly specialized equipment designed to work with Isos, which is a Class I oxidizer. Tableting presses are large pieces of machinery that are both costly to purchase and quite expense to maintain. Constructing a tableting plant can easily exceed $1 million. Additionally, tableters spend hundreds of thousands of dollars annually to maintain equipment and to support engineers.

We require plant managers with sophisticated knowledge of chemical reactions. At Suncoast, we had created a work environment in which we carefully control the caustic gases released by tableting. Our system is so effective and clean that our operators are not required to wear protective respirators.

In recent years, Suncoast had an increasing hard time finding granular product from the U.S. suppliers. I believe other tableters have had the same experience. Let me explain why. For many years, Clearon was the major supplier of bulk product to tableters, including Suncoast. But around 2005, Clearon changed its business model, choosing to manufacture tablets that compete with us for sales to our dealers and our distributor customers rather than to supply us and other tableters with granular raw material for our production lines.

By becoming our competitor, Clearon eliminated itself as a granular supplier to Suncoast. They were willing to sell us only at prices that made it impossible for us to compete with them. While we understand Clearon's decision to try and capture the significant added value of manufactured tablets, the bottom line is that they will no longer be willing to supply us with granulated Isos.

That only left one possible supplier of bulk Isos. Occidental. Oxy has concentrated its sale of bulk Isos to two core customers, Leslies Pool Supply, a major competitor of ours, and Pool Corp. Oxy has not seriously attempted to sell any bulk Isos to us for the past five years. Jeff Williams claims that he contacted me in 2010 offering to sell granular product. The limited contact in 2010, with no follow up, was not a serious sales effort. In the focus of this contact was the possibility of having us toll produce for Leslies, Oxy's main customer and our competitor. We had no choice but to look at foreign producers to meet our demand for bulk Isos.

I attended the conference here last September and heard Mr. Williams of Oxy testify that his tableters' customers "Are not overly concerned about the quality of product or service or even the source." I am a tableter and I am very concerned about the quality of granular product I purchase. It affects the efficiency of my tableting operations, my costs, and the quality of my tablets.

Service is also important. DelCal and Shikoku take pride in the quality of their product and their customer service. There's a reason I am willing to pay a little more for their product.

Mr. Williams also testified that the quality of the Chinese product has improved over the last five years. Not so. It was poor five years ago and remains poor quality today. We tried some limited quantities in 2012, the product remained very poor. There are two main differences in Chinese and Japanese granular chlorinated Isos that I'd like to describe.

First, there's a consistency and size of granules. This is an important consideration for my production prospect because the more uniform size of the granular the more efficiently we can press it into a tablet. It may help to compare to salt. Imagine some table salt in your hand. You will see the grains that are small and uniform in size. This is invariably what you see when you examine Shikoku's material.

Now imagine a handful of rock salt. You will see some grains of many different sizes. Some like chunks, other close to powder, and absolutely no uniformity. This is what I have come to expect from the Chinese product. The granules are inconsistent in size and have powder particulate. This created significant issues with our tableting process because with these products our production required us to use respirators and creates unwanted safety concerns with our employees.

We had to also continuously monitor our tableting equipment to ensure that we were producing tablets of a consistent size, a hardness, and look. This reduced our production efficiency and increased our production cost. The inconsistent granulation size of a Chinese product also causes tablets to be very soft and prone to breaking or chipping. Breaks and chips increase the surface area of tablets, which impacts the dissolve rate. When tablets dissolve faster they over chlorinate a swimming pool.

Customers expect to purchase tablets that provide a consistent dissolve rate in the pool, and broken and chipped tablets make this very extremely difficult to achieve. This is a significant quality issue. Production using Shikoku Isos do not pose these challenges.

The second quality I'd like to describe is a moisture content. Moisture is the enemy of Isos, and Chinese granular

Isos has more moisture content. The higher the moisture content material coming into the plant the higher level of off-gassing. The gas released by Isos are caustic and can destroy packaging materials, metal, including facility roofs and other metal-based equipment.

The off-gassing also, of course, poses potential health risks and triggers a need for workers to wear protective gear. The quality of the finished tablet is also affected, as they will also have off-gassing. Nobody in this industry can control moisture content in the Isos better than Shikoku, making it a preferred choice of operation for us and our operators.

We have experienced significant problems with lead times when receiving Isos from Chinese suppliers. In contrast, I have never had a delivery with Shikoku's granular that we purchased through DelCal.

Let me briefly address something in our questionnaire response. Suncoast is a purchaser and reported that Chinese and Japanese are always interchangeable. The question posed by the Commission asked whether granular Isos from Japan and China can be used interchangeably, and I responded always because I can and have used granular from both sources in my tableting machines.

I also reported that granular Isos from both sources met minimum quality requirements. However, I also reported that non-price factors are always significant between granular product from Japan and China, and that the Chinese product is inferior with respect to surpassing minimum quality standards.

I want to emphasis that just because that Chinese product meets minimum qualities does not make it desirable to use. The problems I encountered with my tableting operation using Chinese granular product were so severe that despite the discount they offered I stopped buying it.

Now, let me explain how tableting prices works from a market perspective, from my perspective as a tableter. Clearon and BioLab, the largest tableters in the U.S. today, have a dominant position in the U.S. tablet market. As a result, they control the retail prices at the mass purchase level through their respective customers, Sam's Club, Costco, BJ's, Home Depot, and Wal-Mart. We have no choice but to follow their tablet pricing.

And let me make it clear, they are selling these tablets at the lowest prices I've seen in decades. They are not doing this because of import competition. They are competing vigorously with each other and pulling the entire market down.

Shikoku has been a predominant supplier of bulk Isos to the U.S. tableting market for a very long time. This is not a new development and certainly not one which has hurt the U.S. producers, who have effectively chose not to supply my company. Also, as in many years that we have been purchasing bulk granular from Shikoku, they have never instituted a decrease to us.

Finally, I want to be sure you understand what this case means to Suncoast and other independent tableters. Japan has become our only reliable supply partner, and we pay premium for this. Duties on Japanese granular product could mean serious trouble for all independent tableters. Essentially, this would leave us with only two possible suppliers, Clearon and Oxy. Both of these companies compete with us, either directly or through their major customers.

Imagine the type of impossible commercial squeeze we would be in if we had to source from them. Thank you.

MR. JANZEN: Thanks Jim. Before turning it over to Mr. Klett here, I'd like to comment very briefly on two points, one, the Commission's test for determining if there is adequate competition between subject imports to justify accumulation, and two, the role in the Commission's analysis of dumping margins calculated by the Department of Commerce.

In their pre-hearing brief, Petitioners argued that we have confused the discretionary standard for accumulation that applies in sunset reviews with the mandatory requirement accumulate that applies in investigations, but we are doing nothing of the sort we maintain.

The statute does not direct mandatory accumulation in every investigation. It's not a black and white test. Instead, once you get pass the threshold consideration of simultaneous filing and initiation, which we concede are fulfilled here, the statute instructs the Commission to examine whether the subject imports compete with each other, and if they do, whether they compete with the domestic-like product.

The statute, thus, requires a factual analysis to determine on the specific facts of each investigation whether competition is present, and if it is, as the Commission has interpreted this test over the years, whether there is a reasonable overlap of competition. And if there is not, then accumulation is not warranted.

Two of the factors that the Commission considers in determining whether there is a reasonable overlap are particularly relevant in this case, the degree of fungibility between subject imports and the channels of distribution through which they participate in the U.S. market. These are also the two specific factors that the Commission stated it would examine more closely in this final phase.

As we laid out in our pre-hearing brief, and as Mr. Klett will explain further in a moment, this record provides a great deal of evidence of the very limited degree of fungibility between the Chinese and Japanese imports, that is, the degree to which these imports are equivalent in physical characteristics and value. These data relate to differences between the Chinese and Japanese imports in form, differences in physical characteristics or quality, and a very telling sustained and significant difference in pricing.

Turning to channels of distribution as shown in our pre-hearing brief at Exhibit 2, and as Mr. Klett will also be describing shortly, the channels through which the imports from the two subject countries reach U.S. customers are quite stark. These differences are analogous through the differences that lead the Commission not to cumulate in the thermal paper from China and Germany case, noting that there was no head-to-head competition at a level required to show a reasonable overlap of competition. So too, we maintain, on the facts of this record.

There are some other factors too that underscore an absence of reasonable overlap. While Petitioners dismiss the co-production arrangement between Shikoku and Oxy, who, by the way, are the largest producers of granular product in Japan and the United States, this arrangement underscores the fundamentally different ways in which Chinese and Japanese imports participate in the U.S. market.

The major U.S. producer of granular Isos chose long before the filing of this petition to partner with the primary supplier of Japanese granular product to market its granular Isos to additional customers, and doing so under the Shikoku brand name. No comparable arrangement of which we are aware is present for any of the Chinese suppliers who, at any rate, are supplying mostly tableted rather than granular product into the U.S. market.

Now, I will turn just very briefly to the issue of the relevance of dumping margins calculated by DOC. The statute instructs the Commission, of course, to consider the margin of dumping in its impact analysis, but there is good reason in this case to accord very little weight to this factor.

Petitioners reference the dumping margins in their pre-hearing brief, and we heard more about that this morning. And they invite the inference that margins are somehow indicative of underselling by Japanese imports in the U.S. market, but that inference is unwarranted. The margins calculated by DOC measure differences in pricing between the U.S. and Japanese markets, and there are very substantial structural differences between these markets that explain DOC results, including the virtual absence of independent tablet manufacturing in Japan and the small market there due to the existence of very few residential pools.

Such differences can be described as giving rise to technical dumping, that is, a margin resulting due to structural differences between the two markets that does not reveal a thing about price discrimination. More importantly, though, for purposes of the Commission's analysis here, DOC's dumping analysis has no relevance to the pricing of Japanese granular, vis- -vis, that of U.S. producers or whether there is injury. In fact, the data before you show pervasive overselling by the Japanese imports, as Mr. Klett will also further describe.

Thanks.

MR. KLETT: Good afternoon. My name is Daniel Klett. I'm an economist with Capital Trade, testifying on behalf of Japanese producer and importer Shikoku. I will address three issues.

First, the facts support decumulation of imports from Japan and China based on limited fungibility and significant differences in channels of distribution. Second, there are no adverse volume affects associated within imports from Japan or cumulated imports. Third, there are no adverse price affects associated with imports from Japan or cumulated imports.

There are individual sets of public and proprietary handouts to which I will be referring. As to cumulation, all chlor Isos imports from Japan are in granular form with almost all U.S. commercial shipments also in granular form. Much of this is granular trichlor shipped to tableters to manufacture trichlor tablets.

In contrast, a large share of U.S. shipments of chlorIsos imports from China are trichlor tablets. Tableters would never substitute trichlor tablets for granular trichlor as an input into their manufacturing of trichlor tablets. Thus, you have a large volume of chlor Isos imports from China, tablets, that are not interchangeable at all with granular imports from Japan.

While a small share of imports from China are sold in the U.S. market in granular form, the record shows a very limited degree of fungibility here as well. Petitioners are incorrect that interchangeability is defined in the Commission's standard purchaser questionnaire is the same as fungibility as that term is defined in economics.

Please look at Public Slide 1, which is the purchaser question on interchangeability. The parenthetical defines interchangeability as "can they physically be used in the same applications?" Given this description, I would expect most purchasers to have reported "always," as they, in fact, did, as their tableting presses probably can, as a technical matter, use granular chlor Isos from either Japan or China in their tableting presses to produce trichlor tablets.

However, the degree of fungibility has a value or price-based component, which reflects quality and other differences that increase or decrease the value of a product from a given source. The question on interchangeability must, therefore, be assessed in conjunction with the question on whether non-price factors are significant.

In comparing Japan and China, 9 of 13 purchasers reported that non-price factors were always or frequently significant. This would not be true for a pure commodity product traded exclusively on the basis of price. Moreover, seven of eight purchasers reported that they never use granular chlor Isos from different sources in the same tablet.

These differences in quality result in a relatively large and consistent price discounts the Chinese-origin granular is below Japanese-origin granular that you see in Tables 5-3 and 5-4 of the pre-hearing report. These price differences clearly reflect the limited degree of fungibility between chlor Isos imports between Japan and China.

Channels of distribution for Chinese and Japanese materials also differ significantly. Please look at the Business Proprietary Slide 1. All imports from Japan are in granular form, with most sold to tableters. Shipments to tableters are a much smaller share for imports from Japan. And I also note we are not contending as Petitioners asserted this morning that there is a complete lack of overlap. That's not our position, and I don't think that's required to find decumulation.

The pre-hearing report, Table 2-1, does show more overlap with respect to China's shipments to tableters because it counts shipments of imported granular to U.S. tableters for toll manufacturing into tablets the same as U.S. commercial shipments of granular to tableters, and that breakout is also in the chart.

However, these are fundamentally different types of transactions. Shipments of granular product to toll producers are not commercial shipments, i.e., they are not shipments pursuant to a sale. The first point of competition in the U.S.

market occurs only when the toll-produced tablets are sold in the marketplace by the importer, tollee, after toll conversion. It is, thus, necessary to focus on the tollee's sales because this is where the imported product enters into competition with the U.S. producers, in this case tablets.

I will now turn to volume effects. BPI Slide 2 summarizes the market shares reported in pre-hearing report Table 4-12, but with some additional information and adjustments for import volume from Japan that was double counted.

Because the market share trends for U.S. producers, as you can see from the market share transfer U.S. producers, effectively, any volume related declines in the domestic industry's in dicta are the result of overall demand declines, not market share increases by subject imports, either by Japan alone or on a cumulated basis. In other words, other negative demand side factors during the POI, such as poor spring weather conditions in 2013 and 2014, in competition from competing products, such as salt chlorine generators must explain any declines in the U.S. industry's volume-related in dicta.

In addition, implicit in both the market share tables in the pre-hearing report and in Petitioner's pre-hearing brief is that tableting is not U.S. production. If tableting is U.S. production, then imports of granular product with U.S. commercial shipments first being of tablets produced in the U.S. should be U.S. origin, not subject imports.

The practical affect of this is that any subject import granular volume that is toll manufactured into tablets in the United States should be counted as U.S. origin in any market share analysis. We presented a market share analysis on this basis in Exhibit 5 of our pre-hearing brief. But regardless of the approach used, the data show no adverse volume affects with respects to import from Japan or from Japan and China on a cumulated basis.

There are also no adverse price affects. Table 5-13 of the pre-hearing report shows the volume of subject imports from Japan and China that undersold and oversold U.S. producers. It is more helpful to look at volumes of underselling rather than instances.

Also relevant is the commercial significance of the volumes of U.S. producers' sales that undersold or oversold subject imports. BPI Slide 3 summarizes these relationships for both Japan individually and for Japan and China on a cumulated basis overselling dominates. This could not be characterized as a pattern of mixed underselling.

In their pre-hearing brief discussion of price effects, Petitioner's examples of lower prices at pages 30 to 31 in at Exhibit 6 are exclusively related to imports from China. It appears to me the Petitioners are attempting to piggyback an affirmative adverse price finding for Japan based on allegations of adverse price effects for China alone. Even on a cumulated basis, however, as you can see in this chart, overselling still dominates.

The weakness of Petitioner's price case is evident at pages 38 and 39 of their pre-hearing brief where they tally the instances of over- and underselling and then conclude from this information that "Without more the record, thus, establishes that subject imports sufficiently undersold domestic producer prices to force the domestic producers to reduce their own prices at the risk of losing sales volume." However, there is more. First, the Commission has volumes associated with these instances of underselling as I just described and as in BPI Chart 3.

Second, the Commission has information from purchasers that identify the firms that they believe to be price leaders. Please look at Public Slide 2, which is an excerpt from the pre-hearing report. I've highlighted the names of the U.S. producers named as price leaders. Importers of chlor Isos from Japan are not mentioned at all.

Petitioner's price argument for Japan alone is weak. Essentially, they argue that because U.S. product and imports from Japan both meet minimum quality standards and because prices for both fell during the POI that "Dumped imports depressed U.S. producers prices." That logic makes no sense. When the Commission sees prices for U.S. producers and subject imports both declining it evaluates whether subject imports were a material cause of the price decline.

As I just discussed, imports from Japan largely oversell U.S. producers. Moreover, a large share of the few instances of underselling that do exists were the result of U.S. producers raising prices. So, even here the underselling could not be associated with adverse price effects.

It is U.S. producers, not importers of chlor Isos from Japan that are identified as price leaders. In addition, tableters have reported that Shikoku never initiated price decreases for granular chlor Isos to them in order to capture sales.

Petitioners make two other price-related arguments for Japan that should be rejected. First, recognizing the weakness of the price comparisons in the U.S. market, in their pre-hearing brief they repeatedly referred to comparisons between prices in Japan and in the United States. This is not how the Commission evaluates price effects, and for good reason. The presence of dumping, the pricing difference between two markets is not an indication of injury. If it were there would be no need for a separate price effects analysis by the Commission.

Second, Petitioners assert that post-petition price effects prove pre-petition adverse price effects. This not the case, imports from Japan and China are major sources of chlor Isos imports to the U.S. market. It is Econ 101 that when you restrict supply into the U.S. market you would expect to see upward price pressure. If subject import volumes from Japan decreased in 2014 due to this case, it is not surprising that you might see prices increase; however, this pattern does not necessarily -- it does not necessarily follow that there were adverse price effects to the U.S. industry during the pre-petition POI period based on price competition from Japan individually, or from Japan and China on a cumulated basis, and that is the reason you look at factors such as underselling, price leadership, and price trends during the POI for your price analysis. Thank you.

MR. JANZEN: And unless anyone on the panel is burning to weigh in with any additional points, I think that concludes our affirmative testimony. And I believe we have a few minutes left that we'd like to reserve for rebuttal.

CHAIRMAN BROADBENT: Okay. Thank you very much. Thank you to all of the witnesses for coming today and being away from their businesses to be here.

This afternoon we're going to begin our questioning with Commissioner Johansen.

COMMISSIONER JOHANSON: Thank you Chairman Broadbent, and I would like to thank all of you for coming here today.

I'd like to ask you -- well, start off with one question concerning differences between the Japanese and Chinese product. How do Petitioner's support claims of large quality differences between Chinese and Japanese product when the majority of purchasers reported that Chinese product was interchangeable with Japanese product and that most purchasers reported that Chinese product always or usually met their quality specifications?

MR. KLETT: Commissioner Johanson, this is Dan Klett.

I think Slide 1 in my direct presentation goes to that question, and that is that when you read the definition of interchangeability where most purchasers did report "always" the definition is can they physically be used in the same applications, and that's a fairly broad standard. In other words, can a tableting machine technically use Chinese granular or Japanese granular, and most purchasers said "always" and Mr. Eisch reported always in his questionnaire. But fungibility, I think, has an economic concept as well. And the Commission actually did ask other questions in its questionnaires that address that as well.

In other words, Question 4-13, which follows this question says, "Are factors other than price always sometimes important?" And the response to that question actually most purchasers said, yes, factors other than price frequently or always are important. So, you do have a quality distinction between Japan and China with respect to granular, notwithstanding the fact the purchasers said "always" in response to Question 4-2.

And I think Mr. Eisch can clarify or go into detail as to in his experience what the quality differences are, even though he answered "always" to this question, and I think it's not just Mr. Eisch. When you read some of the statements of the tableters that we put in your brief they had many of the same views as he expressed.

COMMISSIONER JOHANSON: Thank you. Mr. Eisch, do you have anything to add to that?

MR. EISCH: Well, just from a practical standpoint, we look at the product from China comes in it's very gassy. It's very powdery, especially when the tableting process when you have powder in a room it creates a caustic environment. The particulate in any dust-collecting system is one of the hardest things to control because if the dust gets out there then the chlorine level gets high and associates then have to put respirators on and we have to go to a different process. So, the Chinese product is very powdery, very inconsistent in granulation, and off gasses because of its high moisture content.

The Shikoku material is the granulation is very similar, low moisture and we have very, very little particulate in the air, and we don't have off gas during the process.

COMMISSIONER JOHANSON: And this morning I brought the issue of off gassing with Petitioners, and they contended that that in the minds of consumers to be a plus for the product because it demonstrates that the product is, indeed, chlorine, which is going to work when you put it in the pool. Could you comment on that? Do you have a view on that statement?

MR. EISCH: Certainly, and it's completely opposite. I mean we have a 220 store retail chain, which we sell Isos to all those customers, and the last thing you want to be able to do is have a customer walk to your pool, somebody who has swimming pools, and you open the bucket and the gas is so bad it knocks you down. I mean our whole goal is from a consumer level we get complaints to that regard, not, oh, this doesn't affect me so the chlorine's not there. They don't want to have to go in there, hold their breath for 30 seconds while you try to grab a tablet, and then run 10 seconds away to breath. So, the off-gas is extremely important to us from the consumer level, and it's also from a store level, and our customers from a store level.

If you walk into a retail environment, if you have pails that are off gassing, your whole store is shot. You're going to damage your computer equipment because the off gas is going -- we have huge issues with POS equipment when we get into off-gassing.

COMMISSIONER JOHANSON: POS being?

MR. EISCH: Retail sales equipment at the register to run up sales. The computers just fry because the fans are going; you're taking the particulate in the air and the off gas.

You're destroying the buildings. You're destroying shelvings, which are metal coated, painted. I mean the off gassing of a product in a retail store is significant.

COMMISSIONER JOHANSON: All right. Does anyone else want to comment on that?

MR. JANZEN: Yes, Commissioner Johanson, I'd like to get back to the initial question that you asked. How do we deal with these interchangeability data? And they beg what is a big question in this case. Are we dealing here with a pure commodity product, or are we dealing with something else, a product where there is some kind of a range of qualities? And we think that we're very far away from a pure commodity product.

And one way of teasing out of the data what is happening here is again that sustained and significant pricing difference that you see between the Chinese granular product, which came in only in that form in limited qualities during the POI, and the Japanese product. So, that sustained, significant pricing difference must reveal something about quality differences in the product or something about a different mode of participation in the U.S. market. We think a big part of that explanation is a quality difference, that is, a distinct and as we have heard Mr. Eisch describe, articulable and pronounced quality difference.

COMMISSIONER JOHANSON: Yes, Mr. Eisch?

MR. EISCH: Can I just add one more, if I could? I put "always" because it's an EPA-approved product. I mean as long as it's got an EPA-approved standard, then technically, I should be able to do -- it's an acceptable. And I think as a tableter -- I won't speak for all of them -- but that would have been my mentality why I put "always."

COMMISSIONER JOHANSON: Thank you for your responses. Mr. Eisch, I still have another question for you. Well, actually, it's open to any of the people on the panel, but you might be in the best position to address it because you brought it up.

At page 8 of the Respondent brief, you talk about the total capital required to build a tableting plant, and you mentioned a figure today, but I don't want to repeat it because I don't want to get it wrong because there's some proprietary data here in the brief, so I'm not going to bring it up. But to be honest with you, that doesn't seem like a great deal of money, the amount of money that's being discussed to build a plant. When I think of building a plant, I think of a few more zeros on the end of that. I was wondering if you could address that, the whole issue of, once again, how tableting differs from manufacturing of the product?

MR. EISCH: Sure. Well, clearly, it's not -- I mean we saw the pictures. It's not all the tubes all over there, but I mean for a tableters and for what our business is to sell into the dealer, to sell into the consumer, to make a million dollar investment into that and learn the process, learn how to handle it is not an easy -- you just don't go stick a -- I think it's definitely not as easy as he made it look up there, that you just stick it in a machine and you pop a tablet out.

So, yes, maybe for them when they owned it, the big chemical guys owned huge, I guess they don't look at it as being significant. For somebody like us, who are mostly mom and dad businesses or small businesses, it's a substantial investment.

COMMISSIONER JOHANSON: Mr. Janzen?

MR. JANZEN: Yes, I just wanted to add briefly to Mr. Eisch's comments. I'm just looking back to page 8 of our brief. I think we'll have to address this in a confidential submission post-hearing, but it seems as if the passage you're referring to goes to annual maintenance and not just what it cost to build a plant in the first place, or at least that's part of the discussion here.

COMMISSIONER JOHANSON: Yes. Go ahead. I'm sorry.

MR. JANZEN: Very quickly, the other point is that Appendix D of the pre-hearing report lays out responses pertaining to capital required to build a tableting facility, and some of the figures cited in Appendix D are of a much more considerable magnitude than I believe some of the company-specific data you're seeing on this page.

And finally, I just wanted to note that Petitioners this morning were portraying a vast difference in the complexity between granular production and the manufacture or the production of tablets, and we're not trying to say that these are equally complicated or capital-intensive processes. Our argument is simply that you have enough in dicta before you to conclude that it is a sufficiently complicated process to warrant inclusion of the tablet producers in the domestic industry.

COMMISSIONER JOHANSON: All right, thank you, actually the figure I was referring to is on page 8, three lines down so that's the one so just for reference if you want to reference it further in the post-hearing brief. Thank you and my time is expiring.

CHAIRMAN BROADBENT: Commissioner Kieff?

COMMISSIONER KIEFF: Thank you Madame Chairman and I join my colleagues in thanking this afternoon's panel as with the morning panel for both attorney argument and economic and business testimony. Just to I guess stick with our current discussion about the tableting system and our I guess our cultural references, the closest I can go is Lucy on the chocolate assembly line, picking up the chocolates and stuffing them in her mouth and pocket, but I guess what you are saying is that although that seems kind of easy it still takes a light touch or a special touch and I guess along those lines I'm trying to kind of get my arms around how light and how special that touch has to be so for example when you ship your product or when you sell it out of your stores, do you -- how carefully do you seal it?

How hydroscopic is the product? How much does it soak up water and how carefully do you have to seal it so that especially in a place like Florida it doesn't soak up a lot of water between when it's put in the box and when it arrives at the customer?

MR. EISCH: Well clearly if Lucy was wearing a gaff mask and you had a whole bunch of things because if she makes oil with that chocolate it would probably catch on fire and burn the place down, so that's how sophisticated and how when you compare those two.

When we tablet the product control moisture we put dust in bags in the product.

COMMISSIONER KIEFF: I see.

MR. EISCH: Okay so we do have a seal on the bucket and that's why when you look at whether or not you have a material from Japan or someone else, the amount of off casting in that bucket is significantly less to almost non-existent with the Japanese product and that's why it's a choice of us to go with that to our customer base.

COMMISSIONER KIEFF: Is there a difference as well in how the raw product gets shipped to you, a tabletor, so do you or does the Japanese powder come across the ocean in its sealed container and the Chinese powder comes across the ocean in an open poured you know.

MR. EISCH: No, the Chinese mound and then the same, it comes in a container in 2200 pound super sacks. Just to let you know from a transportation, it is a hazardous, it does require labeling and it does require certain shipments, like you can't ship it over air without certain poundage or the consumer perhaps that can be used and transported.

COMMISSIONER KIEFF: But does the Chinese product, is there a need to maintain the Japanese product in a dry state while shipping that does not bind so hard when shipping the Chinese product?

MR. EISCH: When the product comes to us, it comes in 2200 pounds super sacks and then we tablet it into product. When we have Chinese material, or have had in years passed, it passed the building down so when we would actually pay sometimes leaving the containers out in the yard and pay the pourage fees or storage fees because we didn't want to bring that product into the warehouse because it would gas the building.

COMMISSIONER KIEFF: It seems like there is a factual disagreement between the morning panel and the afternoon panel and you know both could be true. But it seems like the morning panel has -- enjoys relationships with its customers and with its factories that relate to granular size and granular humidity with more cavalier attitude. That may be totally consistent with their industrial organization model. It seems like you relate to your customers collectively and then relate to your product in a more attentive manner with respect to the granular size and humidity content of the product.

In the post-hearing brief it would be very helpful if both sides could provide evidence of how the people in your respective industrial organization chains relate to grain size and humidity and in particular not only your own world, your own friends, but each other's. So if one of you have evidence that the other's customers actually like your flavor if you will, that means that the customer is less discriminating than we are hearing, but if it means that your customers like your flavor that means that the customers are more discriminating and it seems to suggest that maybe we have here a tale of two very different industrial organization models that cuts in favor of different channels of competition, which cuts in favor of decumulation as one of the factors.

It might not be outcome determinative, but it would be relevant and the factual evidence about how the customers relate will drive our analysis, should drive our analysis, it should be in the record, so for example, if you have customers who say I stuck my face in the five gallon drum and my eyes watered up, please don't send me any more of those five gallon drums, that's useful evidence.

If we have evidence of customers saying, "Wow I love the whiff of fresh chlorine that makes me feel clean, I want to buy more of that," that would be evidence on the other side. Either way I could imagine both, but it's not my imagination that should drive my decision, it's your customers respectively that should drive our analysis and we need - the stories you've told are each compelling and we have no reason to do anything but to believe you both, but we need evidence to understand the reality and then we need evidence to tell us whether there really are two channels here or not. I think that really, at least for me, will help a lot.

I'm curious, am I missing anything about, I mean is that essentially your story this afternoon that this is a different channel and a different IO model you sell to you know smaller stores, more consumer relations, is that in effect the deal?

MR. JANZEN: That is part of it. There are many layers that we can unpack post-hearing on that issue but I think there are a few points that we should make right now very briefly. In discerning quality differences we have been talking largely about granular product and the difference between Chinese granular product on the one hand versus Japanese granular with the Oxy product put alongside that as being of generally comparable quality. In fact that is the basis for the co-producer agreement comparable quality.

COMMISSIONER KIEFF: But am I correct in you describing that in effect there's a big difference between

Chinese if you will and Japanese.

MR. JANZEN: Yes.

COMMISSIONER KIEFF: And then with respect to the difference between Oxy and Japanese, the difference is about overall relationship to store size if you will, that Oxy maintains a big chunk of its relationship with big box stores and that DelCal sells to companies like Suncoast that are generally they are not trivial, they are not insignificant but they are not the Walmarts and the Cosco's.

MR. KLETT: Commissioner Kieff, this is Dan Klett, I think there is actually two dimensions of this. One is that you heard this morning I think from the Clearon witness that their sales of tablets to the big box represent maybe 50 percent of the overall market. Well DelCal doesn't, Japan doesn't sell tablets at all or to the big box. We've got 50 percent right off the bat where there is no overlap.

Then when you get to sales of granular, Shikoku sells granular, Oxy sells granular, then there I think we are getting to the point you are making about you know, which customers to whom they sell, whether there's differences in their business models with regard to whom they sell and that goes into the co-production agreement between Shikoku and Oxy as well. So I think there are two dimensions and we can amplify that.

COMMISSIONER KIEFF: Yeah and then I guess the same hypothetical question which is what does the world look like to you if we have an order that applies with respect to China but not Japan, that's one hypo and then the other hypothetical is what does the world look like if we have an order that applies to both countries. How are they different and in particular I take it you are going to tell me that if there's an order that covers China but not Japan, that the Japanese product will be in the U.S. market but it is generally going to be at a much higher price and it's generally going to be a price follower even with respect to the so-called low humidity, more uniform grain-size products?

MR. JANZEN: Right. So to take the first part of what does the world look like if there is an order against China but not against Japan, we would expect to see continued participation of Shikoku in this market along the same lines that we have seen throughout the OI and those terms of engagement with the U.S. market are defined by first of all relationships with a number of, let's call them independent tableters, such as Suncoast. Relationships that have been in place for quite some time, and also the provision of high-quality granular product that sells at a premium and in absence of aggressive pricing or trying to increase market share through lower pricing as Mr. Pettoruto can describe better than I based on his years in the industry.

So that's, that's the first hypothetical. The second hypothetical if you want me to --

COMMISSIONER KIEFF: I'm nervous about using my colleagues time so maybe --

MR. JANZEN: We'll address post-hearing.

COMMISSIONER KIEFF: That's great and I apologize for going over but thank you.

CHAIRMAN BROADBENT: Okay, Commissioner Schmidtlein?

COMMISSIONER SCHMIDTLEIN: Well maybe this is a follow-up, I'm trying to follow the conversation, but in terms of the areas where Japan and China compete, I had a question about your first chart in the business proprietary package of slides. I guess I have two questions, just to simplify and make sure I understand. Your argument is Japan sends granular to tablet makers and China sends granular not tab or no sends tablets and that's why they don't compete, this is to simplify it?

MR. KLETT: Correct. We are not saying they don't compete at all. I mean what this chart is just trying to show is that Japan by and large sells granular to tableters while China is in that market as you can see from the percentage. Most of their sales are actually tablets that go to retailer's distributors rather than sales of granular to tableters so we think the degree of overlap is limited.

We are not saying it is completely isolated but it is very limited.

COMMISSIONER SCHMIDTLEIN: So of course this brings me to the next question which is where should the line be? It seems like I'm asking this question at every hearing but obviously you concede there is some level of competition.

MR. KLETT: I think that's where it's useful to look at channels of distribution and degree of fungibility some previously if you will, because where you do have competition in the sense that you have granular going to or Japanese granular going to tableters and you have may have some Chinese granular going to tableters, the degree of fungibility between the two is very limited for the reasons that Mr. Eisch expressed. So in terms of where that line should be in numbers, I'm not sure that's any easy one to, to actually give you a hard and fast number with respect to what degree of limited overlap is sufficient to find limited overlap.

But I think that looking at fungibility in context of where you do have overlap is also significant.

MR. JANZEN: If I may add to Mr. Klett's answer briefly.

COMMISSIONER SCHMIDTLEIN: Sure.

MR. JANZEN: Of course in the vast majority of cases in recent years are the Commission encountered with multi-country cases has seen fit to cumulate and that has often been motivated by a finding that the interchangeability data are showing you know seeing the same or mostly the same. In other words, subject imports can easily be used regardless of origin by whoever is using them in the U.S. market.

But we think what we have here is a situation much closer to the one before the Commission in the thermal paper case where you had imports from different countries coming in in different forms and serving different segments of the market even though they were all within you know the definition of subject merchandise and there were no findings of separate, domestic-like product.

Here we have a multiplicity of factors that are showing the Chinese and Japanese imports engaging with the U.S. market in different ways and what we hope we can do is articulate on based on your existing four part test, looking expressly at fungibility and expressly at channels of distribution that we have this list of factors, so looking only at fungibility, you know it's not just a question of minor differences that we can articulate and form.   We also have corroboration of this difference in the pricing data, we are seeing a very pronounced significant pricing difference sustained throughout the POI and we are trying to explain why does that exist.

We think that exists because of participation and through different channels, through differences in physical quality that customers know about, you know regardless of how they answered the interchangeability question, however, that this difference exists and that it is very meaningful for their operations and then layered on top of that are some harder to quantify elements such as the level of customer support and care that a supplier like Shikoku is able to offer.

Mr. Pettoruto and DelCal are on the road every day, they are with their customers, they are on the phone they are talking to the independent tableters. They are participating daily in that market, which is a fundamentally business proposition than making a quick spot sale through some broker that might be of Chinese product but maybe you don't even care if that's how you are buying the product so it's a different way of engaging in the market that manifests itself in these price differences and we will certainly try to you know elaborate on the data we have already put forward post-hearing.

Does that start you?

COMMISSIONER SCHMIDTLEIN: Yeah, that's very helpful, thank you. One other question though on this chart, I assume this data is derived from the staff report?

MR. KLETT: Commissioner Schmeidtlein, yes it is. It is derived from the staff report or from questionnaire data.

COMMISSIONER SCHMIDTLEIN: Okay.

MR. KLETT: Although it's also derived from, there is some information that was in the Petitioner's pre-hearing brief, there is some information with regard to the gaps in the China data that I included in this chart as well.

COMMISSIONER SCHMIDTLEIN: Okay, so this is my question I guess. Is the China data fixed for the gaps that the Petitioners raised? Do you all have a reaction to that complaint about the data in terms of effect that the Chinese have not participated here?

MR. KLETT: Commissioner Schmidtlein I looked at the Petitioner's pre-hearing brief and I also followed their confidential submission this morning and I think, although I haven't studied the numbers closely, I think that they are correct that there are gaps in the China data with regard to the importer questionnaires and you know how there's various ways in which that can be supplemented.

One thing they didn't do though in their market share analysis is if the Commission finds that tableters are part of the U.S. industry, there's a market share variation that has implications for your market share analysis as well as that's not included in their analysis but even filling in the gaps as they suggest I've looked at the data that way as well and there is no adverse volume effect from Japan and I don't even think there's ever sliding effects from China, even on that basis and we can elaborate in our brief, but factually there are gaps and there's ways to supplement the record.

COMMISSIONER SCHMIDTLEIN: But in terms of looking at whether they compete with the competition, the limited degree of competition, have you looked at that? Because obviously then you're --

MR. KLETT: There actually is information in the record and that as well. For example one of the importers that Petitioners said submitted information in the preliminary but didn't submit information here, actually did have some information on the channel of distribution into which that went so you can, you even have some information based on the channels that the Chinese product is going into the U.S. market with once you fill in the gaps, or at least it's possible to get some of that and we can attempt to do that as well.

COMMISSIONER SCHMIDTLEIN: Okay. So just to change gears a little bit, there was the mention of selling to these big box retailers and can you comment on how you think, what kind of power do you think those types of purchasers yield in the marketplace? How do they affect the conditions of competition? In terms of and you know I'm specifically getting at you know what kind of power do they yield in setting price?

MR. JANZEN: I think Mr. Eisch is well equipped to respond to that.

MR. EISCH: We have been in business, we are going into our 40th year this year and the mass merchant always sets the price, they are the big dog. I mean we are going to follow the mass merchant. We've done it for the 40 years we have been in business, we are not going to allow the mass merchant to go out and try to undersell us and even if we have to sell it lower than we have to sell for a margin, we will meet their price.

So we are a price follower. They set the prices, they have actually, they finish their pricing modules now, they -- before we even start discussing with Nick and next year, 2015, that price is already set. They already know what the mass merchants are going to charge, they already know what the retails are going to be and then we follow come January when Walmart sets or Home Depot, or one of the big box sets, then we try to follow.

COMMISSIONER SCHMIDTLEIN: And when you say mass merchant, are you referring to Oxy or are you referring to Home Depot?

MR. EISCH: That's where I'm talking Home Depot, Walmart.

COMMISSIONER SCHMIDTLEIN: Right.

MR. EISCH: And then we did, up to about four years ago, I can't remember four or five years ago we used to always follow Sam's which is Clearon's customer and Costco and it was determined a couple of years ago that the prices that those boxes were so low we couldn't do it so we actually took a business risk by aborting our 35 year history at that point of always matching the mass merchant and on those big box stores we just couldn't match it because the price was too low, so we are actually higher than them today.

COMMISSIONER SCHMIDTLEIN: Thank you very much. My time is up.

CHAIRMAN BROADBENT: Mr. Eisch could you describe sort of the difference in what goes on in your operation where you need sort of a uniform product from China and then told producers that use I mean, excuse me you require uniform product from Japan versus comparing it to toll producers that use imports from China.

MR. EISCH: Well I could speak to ours. What we did in ours is we got into it in the 90's, '95-'96, and we built it from scratch and our process was that we had visited the predecessor to Clearon which was Olin's plant back then and we saw the white suits and everything and we said you know we don't want to do that so we actually worked in our own environment and created a self-enclosed environment.

So what we did is we eliminate any air into EPA so we don't have any EPA issues that we are emitting chlorine or off-gas into the environment. We actually recirculate everything and then we water it down and then we bring it back in and recondition it and bring it back in. So we have a huge scrubbing system on the process, we sort of do that to enable our associates not to have to go in with a gas mask, with the white suits, with all the items that we have that you normally wear in a traditional tableting. So we invested that in, it was even probably in our environment in Florida, we are at 90 plus humidity all the time during summer. It was harder for us to do probably than we thought it was, we learned quite a bit, but that's the way we do it, but I don't know if it's done anywhere else that way.

CHAIRMAN BROADBENT: Where were you observing when you said, before you said after operation?

MR. EISCH: Back then we used to be a sole supplier. We didn't tablet it in the 90's we were buying from a company called Olin Chemical which then ultimately sold the plant to Clearon and then we were actually visiting that plant back in the day because we were a one hundred percent buyer of product from Olin.

CHAIRMAN BROADBENT: Okay and you don't have this, you couldn't really describe what you think is going on with the plants that are using the Chinese imports?

MR. EISCH: There's one thing about tabletizers, we are probably pretty private about what we do and I haven't visited any other plant.

CHAIRMAN BROADBENT: Okay. All right and we are a little hampered here without having those witnesses to talk to. Did I hear you mention Mr. Eisch the decrease in price as a result of inter-industry competition between those producers? Can you describe that dynamic in greater detail if you said it?

MR. EISCH: Well I guess when you look at, we look at the price and we look at the retail price by the mass merchants and we follow that price. I guess my comment has been over the last number of years, the mass merchant has gone down not up, so we have had to follow the price down on ISO's in that the mass merchant's the one driving that price down, not the re-packer or the tableter because we don't control that retail price.

CHAIRMAN BROADBENT: Okay. Mr. Janzen?

MR. JANZEN: Yes, Chairman Broadbent, I wonder if I might just invite Jim to say a little bit more, Mr. Eisch to say a little bit more about his experience using the Chinese granular product. I think that will help answer the first component of your question because he has some experience in this facility, basically -- the Chinese product.

MR. EISCH: Yeah, years ago we ran the product ten years ago and we ran quite a bit of it prior to I think around '05 or prior to that. The product came in, we couldn't - our system couldn't maintain the particulate. We went in we have sensors in our place they went off. We acquired people to go into respirators, it got to a point where we had to then put people on the machines to watch the powder come in, you would get chunks in that would clog the sheets.

You would get misconsistency in tableting, they would break and we were constantly adjusting the weights of the machine, the weights of the tablets, because our tablets are eight ounces and we are trying to make sure each one is eight ounces. We couldn't get them in, customers like to see crispness in the tablet, that is an impact, even though your --

it's a chlorine puff they like to see crisp corners I mean that's something that we pride ourselves on on our product.

So what happened is we ran that product and when we determined that it was too costly for us to do from the environmental and our employee, we actually at one of our town hall meeting, we have an annual two, and one every six months a town hall meeting, we brought the associates in and we told them that we were no longer going to do it and we got a standing ovation from our associates.

CHAIRMAN BROADBENT: Okay. Great, Mr. Eisch do you know why Oxy is unable or unwilling to sell granular product to anyone other than Leslie's or to Pool Corp?

MR. EISCH: I know that they, I don't know why they don't sell. I know that they don't sell it to us because it is the competition and they just would never looked at going into it. Years ago we did buy, we had prior management did try to make an effort to sell us. We did have a relationship. When you get into the ISO it's more than just a spot sale, you have to get in to a relationship of the supplier. Can they meet your commitments? Can they meet the quality? Can they meet everything that fits into your business plan and many years ago, probably ten years ago the prior management reached out to us, they wanted to develop a relationship with us.

We actually did end up doing quite a few pounds with them. Management changed and the new management didn't carry that forward.

CHAIRMAN BROADBENT: Okay. Mr. Janzen and Mr. Klett, could you give us some recommendations on how we should handle or consider the issues with volume of imports from China? You know I understand from testimony that an importer from China did not participate in the, and alleged to be circumventing, and you know the things that we ought to be taking into account on the imports with respect to China that we should not attribute to Japan. I mean how would you, it seems to me that you guys are relatively between the two countries are more good actors and I think it's helpful to sort of describe since the Chinese didn't want to participate here, sort of your perspective on how you see their activity in the market?

MR. JANZEN: Sure, I'm happy to address that and I think maybe Mr. Klett can also address the component of the volume component of the question. We do agree that some of the allegations we are learning about in the marketplace and competitioner's concerning possible circumvention of the Chinese product further illuminate the differences in the manner in which the Chinese and the Japanese imports are participating in the U.S. market.

We are aware of no such allegations with respect to Japanese product and in fact Shikoku accounts for the overwhelming majority of Japanese imports and I don't think that there are any concerns about the robustness or accuracy of the volume data that the Commission has for Japan.

Now getting to the second part of your question, how do we deal with these admittedly significant data gaps on the Chinese side of the analysis?

Of course you know we are also troubled that not all parties are taking seriously the responsibility to respond to Commission questionnaires. We don't like that. We think that's wrong. But we also are concerned about the fairness and equity dimension of that gap in the event that the Commission were to engage in a cumulated analysis and we are concerned about an outcome in which there is a gap filler or the application of adverse inferences or facts available in a manner that would affectively penalize the Japanese imports for what we see as fully responsible behavior during the POI and no meaningful volume or price effects discernable from this record so we acknowledge that there is you know a difficulty here for the Commission and we acknowledge that there is latitude and flexibility for the Commission in trying to fill some of those data gaps, but we are also very concerned about them not being filled in a way that will ultimately be prejudicial to the position of the Japanese imports.

And let me just ask Dan if I can supplement.

CHAIRMAN BROADBENT: Please, yeah.

MR. KLETT: I think you said it well and I don't have anything to add to that.

CHAIRMAN BROADBENT: Yeah, he answered it much better than I asked it. Good, let's see, I think it is Vice Chairman Pinkert?

VICE CHAIRMAN PINKERT: Thank you Madame Chairman and I thank all of you for being here and helping us understand these issues. I want to begin with an issue that we have discussed quite a bit today on both panels but Mr. Klett you talked about the economic concept of fungibility. I'm wondering did you take a look at the concurrent footnote that I had on thermal paper on that concept?

MR. KLETT: I apologize I did not.

VICE CHAIRMAN PINKERT: Well let me give you the Cliff notes version of that. What I regarded as the concept of fungibility that would be useful for purposes of this cumulation inquiry would be one that looks at whether the purchaser is indifferent at comparable cost as between the two forms of the product and I'm wondering if perhaps you might take a look at that and address it in the post-hearing for purposes of this case.

MR. KLETT: I'd be happy to Commissioner Pinkert. In general I think that at comparable cost in terms of price, if prices between Japan and China were the same would purchasers be indifferent between one and the other I think the answer clearly is no, but we can go into that in our post-hearing brief.

MR. JANZEN: And if I might add very quickly to Mr.

Klett's answer I think that to the extent the purchasers are tableters, there would not even be a choice. It is they must purchase granular product and you know unless they are simply deciding for some commercial reason to resell tablets, then you know they are only purchasing granualar product, the major raw material for the tablet production process.

And as we have noted before the overwhelming majority of the Chinese product in this case is entering the U.S. market in tableted form. We can't say that is exclusively so, there has been some granular product entering but it has been overwhelmingly tablets and therefore hitting different populations of purchasers which we think is also very important for illuminating the different channels here.

VICE CHAIRMAN PINKERT: Thank you. Now one of the arguments I heard this morning was that tableters should not be included in the domestic industry because they would be largely unaffected by any commercial harm resulting from subject imports. I hope I have that reasonably accurately transcribed, is that a good argument for not including them in the domestic industry?

MR. KLETT: Commissioner Pinkert this is Dan Klett. I think they are mixing whether tableters should be included in the domestic industry and then the second component is whether they should be included or excluded as a related party. I mean I think whether tableters should be included as part of the domestic industry really goes to your factors in terms of whether there is sufficient value added, you know, capital investment things of that nature.

In terms of whether they are insulated, then if you find tableters should be part of the domestic industry, then you have a question as to whether they should be excluded as a related party and I think that's, that's the point they were making so I don't think it really addresses whether they should be included as part of the domestic industry in the first place.

VICE CHAIRMAN PINKERT: Thank you. Now I noted that in your brief you suggested that if the tableters were not included in the domestic industry, then it would be important to exclude the tableting operations of the domestic producers from U.S. production, from the U.S. industry. Would that be the fairest outcome of all?

MR. KLETT: Well I think it would be the logical outcome if you were to find the tableting is not sufficient to be U.S. production. In other words, if you find that tableting is not sufficient to be U.S. production, why should you exclude just the independent tableters, or the independent tableting operations and include the tableting operations of the domestic producers and I know Mr. Cannon this morning said well we then have to redo our financials, you know, and I didn't quite understand that because the questionnaire asked for financials for their granular operations, I'm sorry, and for their tableting operations separately.

So I don't understand why there would be a need for them to go back and redo their numbers. If you were to find that tableting should be excluded, you know, regardless of whether independent or part of an integrated operation.

VICE CHAIRMAN PINKERT: But I take it you are not expressing a view that that approach that takes the tableting out for everybody would be the most apples to apples kind of analysis we could do?

MR. KLETT: Well I think it's our position that the tableting should be part of the domestic industry and that's the if you want to call it fair, but that's the most appropriate outcome for the analysis based on the factors for whether tableting should be included in the domestic industry or not, to include the independent tableters, but logically if you decide that tableting is not part of the domestic industry or is not sufficient production then you should exclude tableting all together.

MR. JANZEN: And if I could just briefly supplement Mr. Klett's point I think just as a general matter of policy and this was stated I believe most recently in the nickel steel, or nickel plate case, the Commission generally tries to capture in the domestic industry all of the producers whether they are toll processors or processors for their own account, upstream, downstream, if they are making some version of the domestic-like product, regardless of the commercial arrangement and how they relate to the other producers, it is logical and appropriate to capture them all in the domestic industry in the definition of the domestic industry.

Now of course we have to demonstrate to the Commission that what the tableters do is sufficiently, is a sufficiently complex and difficult process that you know, that test is satisfied but there is this broader policy that I think tilts toward inclusion of tableters in the domestic industry, whether they are the independent or the tableting components of what's called the vertically integrated producers.

VICE CHAIRMAN PINKERT: Thank you. Now turning to Mr. Eisch, you testified that you pay a premium for the Japanese product and you may remember that I asked the earlier panel about whether there were price differences between the Japanese product and any other product that is involved in this investigation. Would there be a reason for the differences in testimony that I observe between these two panels?

Is it possible that you are both right?

MR. EISCH: Well I know I'm right. We do pay a premium to us I think when you compare to the Chinese and what's out there I mean we do pay a premium out there. I don't know necessarily what everybody else is paying, I only know what quotations we get and so I know that for what we have offered, I do know that we pay a premium over. I don't know if that answers it.

VICE CHAIRMAN PINKERT: A premium over what?

MR. EISCH: Over what our other quotes are, from what we get from somebody else, a supplier, it could be a supplier or is a supplier.

VICE CHAIRMAN PINKERT: So for us to understand any or try to resolve any differences in testimony, wouldn't we have to have something more specific so that we actually knew what you were looking at when you said do you pay a premium, there would be a range of quotes from different suppliers presumably and we would have to know who those suppliers were wouldn't we?

MR. KLETT: Commissioner Pinkert this is Dan Klett. I mean you do have information in the record. I mean you have your pricing data you have granular Japan versus granular China in your pricing data. And it supports the Japanese product being higher priced than the Chinese product.

VICE CHAIRMAN PINKERT: But I'm asking about Mr. Eisch's testimony. We had testimony from the panel earlier. I detect an ostensible difference in opinion about this and I'm trying to drill down to see if we can make a determination about which testimony is more credible so it may be necessary to know exactly what Mr. Eisch is looking at when he makes that judgment. Yes, please?

MS. SLATER: If I can just chime in I've been trying to be very quiet, uncharacteristically back here but perhaps we can help you out with that Commissioner Pinkert post-hearing and working with Mr. Eisch to see what kinds of information we could supply on a confidential basis.

VICE CHAIRMAN PINKERT: Thank you very much. Thank you Madame Chairman.

CHAIRMAN BROADBENT: Commissioner Williamson?

COMMISSIONER WILLIAMSON: Thank you very much. First thing I appreciate the testimony of our panelists this afternoon. I wanted to just kind of finish up the later question of Mr. Pinkert. Are there any quality differences between tablets from China made from granular Chinese product and those made from other tablets, other product? I mean you talked about the differences in the granular from China, but when you get to the tablet form that is sold, can you say that one is, is there distinct quality differences?

MR. EISCH: Absolutely, because when you get to the Chinese product. When you get to the product you talked about if you looked at a hockey puck, the edges are crisp, you see a consistent form of the look of the tablet and it looks like it's a higher quality tablet. When you get a Chinese tablet, the edges aren't going to bind because you have a different granulation sizes, so you are going to have air pockets, you are going to have pitting on the top of the surface, you are not going to get, your edges are not going to be crisp. They are more prone to break when they are put in the bucket or during transportation.

Our customer will get on the bottom of the bucket more fines, more chips and breaks.

COMMISSIONER WILLIAMSON: We've seen a lot of Chinese products were you know at one point are low quality but it seems like some of the Chinese manufacturers learned to do it better, is there any evidence of that in this case? You talked about I think you said 2005 that you had another problem I don't know whether or not you looked at the Chinese product recently. Is there any trends there that should be relevant here?

MR. EISCH: We had heard that the Chinese product was supposedly getting better and the reps that were telling us that so in 2010 I think it was we did bring a container in and we found that the quality was as poor as it was back then in the '05 area.

COMMISSIONER WILLIAMSON: Okay. What about in terms of, I know that we talk about someone had mentioned that the Chinese were bringing in tablets, were bringing in granulated, but if you look at 2011-2012, is that still the case, this is on table 4-3, you may want to address that post-hearing as to whether or not it is such a distinct difference in the market.

MR. EISCH: Yes we will certainly address that point post-hearing. Confidential data is required to address it fully but there was basically a blip, a spike in the imports of the Chinese granular product during one portion of the POI and we think we can show you that that was in aberrational year, the overall trend with the marketplace has shifted towards, largely is Chinese product entering into the U.S. market in tableted form. We think one of the drivers for that has been that so many tableters are having problems processing Chinese granular products. So an obvious work around is to go down-stream and sell tablets.

Now we will need to elaborate on that post-hearing.

COMMISSIONER WILLIAMSON: Okay thank you. And invite the Commissioners to offer their view on that too, thank you. Thank you for that. I asked the question this morning by applying the six factor test in domestic production, are there any factors that you think should be given more or less weight and I was wondering whether or not you all had a view of factors that should be more important, that we should give more weight to in looking at this question?

MR. JANZEN: Maybe I can start. One of the factors that we think is particularly important is the level of capital investment and we have seen very few new entrants into this market, presumably if it were very easy to tablet if it were a trivial function that came through the public school cafeteria on a slide that we saw this morning presumably then there would be people moving in and out of this industry. But we haven't seen that. There has been a relatively stable number of independent tableting operations in the country so I think that fact might what capital investment is, is an important indicator.

But of course the others have to be afforded weight as well depending on the facts of each case and probably in a different investigation a different factor might be more illuminating.

COMMISSIONER WILLIAMSON: Okay, okay, thank you for that. So in post-hearing please respond to Petitioner's arguments that appropriate circumstances exist that exclude certain firms from the domestic industry definition under the related party provisions.

MR. JANZEN: We will certainly do that post-hearing. I just wanted to comment now though that we don't think that exclusion or not of those particular parties really would make a significant difference in the larger analysis but we will address as to the specific companies.

COMMISSIONER WILLIAMSON: Okay, thank you. Including the granular product from Japan that is sold to re-packagers does it compete with domestic producers, granular sales to distributors or retailers are you claiming that re-packaging should be considered a domestic production?

MR. KLETT: Commissioner Williamson we are saying that tableting should be considered part of domestic production and where it really has an implication in the data, and it really has to do more with China than Japan and that is that with China you have granular imports that are toll produced in the U.S. and then sold as tablets by the importer.

And where it has an effect on the data is that that if tableting is U.S. production, then that importer's sale of the tablet, after toll production in the U.S.is the first point at which the product enters into competition in the U.S. and at that point it is U.S. production, not China origin, so that has implications for your market share analysis.

It also has implications for your pricing your staff actually broke out the kind of three pricing variations in the tablet. The tablet pricing tables that included that as one variation so I think it is our position that tableting is U.S. production and that imported granular that is tableted in the U.S. before being sold by the importer in the U.S. is U.S. origin.

COMMISSIONER WILLIAMSON: Okay. Say that last sentence again.

Imported tableting, granular tableted --

MR. KLETT: There's a distinction that's a subtle distinction but I think it's an important one in terms of your data and that is Shikoku brings in granular it sells to tableters. You're capturing competition at that level of trade because it is making a non-point sale to tableters, so even if those tableters to whom Shikoku sells are considered to be U.S. producers, it doesn't really affect your competition analysis, it may affect your industry you know, addition analysis but it doesn't affect your competition analysis.

There's a difference when you have an ink board of granular by an importer and this is the case with China that goes to a toll producer and is toll produced, that Chinese granular is co-produced in the U.S.

COMMISSIONER WILLIAMSON: I understand, the importer retains ownership but in terms of economic effect, or practical effect, the cost of the tablet, the value added of the tableting is probably pretty much the same and so the end costs, there is competition between the imported Chinese and the imported Japanese isn't there, with domestic producers of granular?

MR. KLETT: No because --

COMMISSIONER WILLIAMSON: I mean not legally maybe in terms of that, but in terms of the practical what's going on.

MR. KLETT: No but even economically there isn't. I mean for example the importer that is bringing granular from China that importer during the POI for example did not buy domestic granular so there is no competition at that level of trade. What happens is that that importer has imported granular, toll produced from these tablets and sells that tablet into the U.S. and in fact Clearon made the point, they said that they compete with Arch for sales to the big box retailers. Arch, they are competing with Arch's sales of tablet, not Arch's importers of granular Chinese product.

So the competition between Arch and Clearon is when Arch sells the tablet that was made from the imported granular, not granular to granular so I think that there is an economic difference in terms of how the products compete in the market and where they compete.

COMMISSIONER WILLIAMSON: Okay. Okay I might come back to that, thank you.

CHAIRMAN BROADBENT: Mr. Johanson is next.

COMMISSIONER JOHANSON: Thank you Chairman Broadbent. Mr. Eisch I'd like to go back to something that we discussed earlier, I just wanted a little bit more information. On page 8 of the Respondent brief and actually this is open to anyone on the panel, but there is a number given on the capital required to maintain the equipment in an existing tableting plant and that figure is given. I was wondering if in the post-hearing brief you all could further break down the annual maintenance figure that you all site on that page and specifically I was wondering if that covers the salary for the maintenance personnel and the reason I am bringing that up is because this morning Petitioners talked about the different level of pay provided to people who do the tableting versus the manufacturing side and I just want to get a little bit more on that to counter perhaps or respond to what they say to this point.

MR. JANZEN: And we will certainly lay that out in detail post-hearing but let me just ask Mr. Eisch if he can provide any public testimony on that now?

MR. EISCH: I have to look at the numbers.

COMMISSIONER JOHANSON: Okay, that's fine I'm just trying to be careful here not to discuss anything proprietary. All right, sometimes in Commission investigations they claim prices can be explained to some extent by following the raw material prices. Is there anything like that occurring with this period of investigation? Are there any difference in raw materials in China, Japan and the United States and have there been changes over the raw material prices which would impact the price of the products in the market?

MR. JANZEN: I can address that briefly with respect to the Japanese industry and I think with the help of Mr. Ide we can elaborate post-hearing but certainly the cost of the production has been rising rather significantly. In Japan it is mostly driven by energy, rising energy costs in recent years, more than it is raw material costs. So that has made production in Japan relatively more costly and is an additional driver for Shikoku's you know longer term planning with respect to the U.S. market as Mr. Ide alluded to earlier this afternoon so I think looking at it from the Japanese perspective, it is more today the question of energy prices than changing raw material prices.

And you are talking I believe about the production of the granular form.

COMMISSIONER JOHANSON: Right. Rather either form but in this case should be if you are talking Japan it would be granular correct?

MR. JANZEN: Correct.

COMMISSIONER JOHANSON: Right either way and I have seen the difference in energy prices are due in part to the decline in the use of nuclear power?

MR. JANZEN: It absolutely is, yes um-huh.

COMMISSIONER JOHANSON: Okay. Has the situation in Japan is there an increasing use of nuclear power at this point? I believe at one point there was a moratorium. Could you all perhaps address that?

MR. JANZEN: Sure we can address it post-hearing but let me just ask if Mr. Ide is able to give a comment on that now. He is a native speaker of Japanese but maybe there is some limited testimony he can provide.

MR. IDE: Well I think after 2011 March, 2011, March '11 we had big accident at the Fukushima Nuclear Power Plant. Since then we have all nuclear power plants shut down. There is still negotiation going on for the local government and local people but they could re-start nuclear power plant. There is a lot of resentment against the nuclear power plant for the native citizens so it is very difficult to restart nuclear power plant sooner.

It is very unforeseeable for the future with starting nuclear power plant.

COMMISSIONER JOHANSON: So at this point in time they are simply not being used, is that correct? It's not a question of building new plants it's a question of the need to operate existing plants?

MR. IDE: Operating, we don't rely on the nuclear power plant that's there.

COMMISSIONER JOHANSON: Okay, thank you and your English is very good. So feel free to participate further if you would like. And I want to get back to the packaging issue that is obviously something I've been thinking about today. Do you all agree with the Petitioner's view that there is no special technique involved in formulating and assembling a tablet and that the rate at which the tablet dissolves is simply a function of the chemical involved? I know you addressed the first section of what I just stated earlier, but maybe a bit more on that but in particular what the whole issue of the rate at which a tablet dissolves is simply a function of the chemical in the product.

MR. EISCH: I guess I would have to disagree with that and I guess that was the first thing that it brought to my mind when I heard that this morning is then why do I put it in a hockey puck. I mean if it dissolved at the same as a granular then why go through the process of sometimes we have one inch tablets, sometimes we have three ounce tablets, sometimes we have sticks, I mean there's different components from a floater to a RO chlorinator to a certain size so yes the flow rate is important to us and we believe it is important to the consumer and it's important to get the proper flow rate so that you are not out there on a daily or having chlorine spikes in your pool because you are hitting, you know soft tablets that dissolve really fast and therefore your chlorine level went up over three which isn't good to swim in or over four and then or you hit it too hard and all of a sudden it didn't dissolve fast enough and now your chlorine demand is not there and so you have kids swimming in a pool with a chlorine level that is under safe.

So yes to us it's very important to get the compaction rate, to get the dissolve, we go through tests on that to make sure that we have compaction rates, we have dissolve rates and now we are getting the flow across the tablet, so yes I would disagree with that that granular, you could just pour it in there.

COMMISSIONER JOHANSON: Would you contend that the rate of the product dissolving in Chinese product is different than that of Japanese and U.S. product?

MR. EISCH: Absolutely our experience is that the dissolve rate on the Chinese tablet is extremely inconsistent.

COMMISSIONER JOHANSON: Okay, thank you for your response there. I would also like to bring us to another issue which was raised this morning by Petitioners and that involves salt water systems. Do you agree with the Petitioner's ascertains this morning that salt water systems are a fad and that half of salt water systems are converted to conventional systems within a short period of time or something?

MR. EISCH: I about fell out of my chair. We've been, I've been with Suncoast for over twenty years. My first four years of my involvement with Suncoast was to spend four years going back and forth to Australia. About 70 to 80 percent of all pools in Australia are chlorinated with salt water chlorinators and it was slowly coming over to the U.S. The manufacturers were starting to bring it over and we felt as a retailer we needed to understand the impact of that.

Again we are a retailer and since we have 220 retail stores, the builders picked it up. There's about 85 percent of all new construction for the last number of years has gone to salt. There is a growing sentiment going to salt. We've had from 2009 our increase in sales in salt are tremendous, all of our systems. So as it being a fad, I'm not sure how when 85 percent of all new construction has a salt and that we are selling, our increase in volume over 2009 is over 70, 80 percent of the unit sales.

We don't see anyone every wanting to sell, it comes with a three year warranty from the manufacturer, so I don't ever see anyone in our retain environment coming back to us in a year and getting rid of them. We don't see a 50 percent conversion rate back to ISO's. We do see it's a very convenient. Many of our customers like swimming in the salt. It provides them with some of the smoother skin like a water softener to some degree.

We do see the market continuing to grow, not go down and we think that's a huge impact on ISO's in the future.

COMMISSIONER JOHANSON: All right thank you.

Contrasting opinion. I'd like to address another issue which was raised this morning by Petitioners.

This morning, Petitioners essentially stated that there is no major difference between the form in which the subject imports entered, because although imports from Japan are primarily granular, there are largely destined to be made into tablets anyway, and I assume that I correctly stated what Petitioners did. If I did not, please let us know in the post-hearing brief. Could you perhaps address that?

MR. KLETT: Could I just address is quickly. Commissioner Johansson, this is Dan Klett. I mean all trichlor granular or most trichlor granular ultimately does go into a tablet. But the issue for the Commission is at what point does competition occur in the United States.

For Japanese, it's imports of granular that sold as granular to tableters. That's the first point of competition. So even if the tableter to whom Mr. Pettoruto sells converts that into a trichlor tablet that's made from Japanese granular, so what? That's one step further removed from the first point of competition.

So I just don't understand their point in terms of evaluating competitive effects. There is a real difference between China and Japan.

COMMISSIONER JOHANSON: All right. Well thank you for your responses. That concludes my time. I'm going to have to ponder some of this a bit further, but I certainly appreciate your answers.

CHAIRMAN BROADBENT: Commissioner Kieff.

COMMISSIONER KIEFF: Thank you very much, and just to follow up on some of the factual differences, my customers love grain variation in size. My customers hate grain variation in size. My customers hate salt. They swear off it in a week. My customers love salt, it makes their skin feel smooth.

Where we have these kind of stark, factual differences, it is very helpful to us to have in the post-hearing brief evidence, especially evidence in the form of what a federal court litigator might call "business record evidence," especially evidence from third parties that's not litigation-induced.

So for example, if in your ordinary course of business you receive customer feedback and log it in your business logs, that's terribly helpful evidence. If there are trade journals that talk about the waxing and waning of the demand for salt pools, or trade journals that talk about the longevity of the demand for salt pools, especially if they're trade journals that have citations to factual evidence, empirical evidence, even if consumer surveys, the kind of consumer surveys that we could then look at to see whether they are more or less reliable than other consumer surveys.

If you -- having long enjoyed being a trial lawyer, I really enjoy evidence and enjoy figuring out where it comes from and what one offers it to prove, I at least will enjoy looking at whatever you provide us, and it sometimes helps. But in that spirit at the same time, it's also possible, of course, that both sides are right, and you know, even the term "quality" can sometimes take on a pejorative edge.

I happen to absolutely recognize the high and beautiful quality of a nice, brand new Mercedes sedan, a brand new Infinity sedan, a brand new Cadillac sedan. I also happen to own and enjoy driving a 1999 Toyota Camry. I really enjoy respecting those who buy the new high quality. I hope they respect me too, and I respect myself.

Put differently, it might be worth in the post-hearing brief for you each explaining a little bit. So for example, Claron might have a powder that is different from Oxy

Chem, but Claron might have a customer base that's very happy with that difference. So there may be different segments of the market.

The difficult question for us to wrestle with after we understand whether in fact those are differences is what significance there is to that difference, and that gets to, I guess, a question for the lawyers and the economists on this panel and the other, which is to ask whether the definition of fungibility each side is offering is a definition that is completely in line with the definition of fungibility the Commission has been using, and if not, whether you're asking us to change that definition and if so, why it's a good thing to make that change, why that's appropriate.

Keep in mind that if you adopt different approaches to the definition of fungibility, you can bump up against other substantive legal issues. So for example, if we broaden the concept of fungibility quite a bit, do we take the injury determination for cumulation and kind of put it into the fungibility determination? Are we somehow combining issues?

Then lastly, when we think about how much overlap is enough, the question that a number of my colleagues have been asking, how much overlap is enough, where do we draw the line, you know, think about the Commission practice so far recently has been in the neighborhood of 20 percent.

Do you think we're in that neighborhood today, and if so, are you asking us to change our definition of overlap? Should we be more stringent or less stringent? Those are all interesting, debatable questions. I look forward to reading those debates in the post-hearing. We probably won't resolve them today.

So just in the spirit of looking forward to that dialogue on paper, let me just again thank everybody, and you're certainly welcome if you would like to say something. I don't mean to cut you off, but I also don't want to take any more time than any of us needs. So if you would like to say something, please do. But if not, I just look forward to reading both sides in the post-hearing, and I have no further questions. Thank you very much.

CHAIRMAN BROADBENT: Thank you.

MR. JANZEN: And we look forward to providing those answers post-hearing.

CHAIRMAN BROADBENT: Okay. Commissioner Schmidtlein.

COMMISSIONER SCHMIDTLEIN: I'm not sure if this has been asked and answered, since I had stepped out a couple of times. But I just had one follow-up question. We had been talking a lot about the quality, differences between Japanese and Chinese product. Is it your position that Japanese product is of superior quality to the U.S.-produced product or comparable quality?

MR. JANZEN: Commissioner Schmidtlein, maybe I can begin, and I would suggest that Mr. Pettoruto also provide some perspective on this issue. Where we see a stark and very meaningful difference that manifests itself in different pricing is between the Japanese and the Chinese granular product, and we're talking about granular product, because that's the only form that Shikoku supplies.

Now there is a quality hierarchy but, and Mr. Pettoruto will address this in a moment, that the view of Shikoku is that Oxy's granular product is on par or close to the quality of the Shikoku product, and that is one of the principle factors underlying the co-production agreement. Again, product from both suppliers, from both manufacturers, is basically being, you might say, commingled.

We haven't used that term. But effectively commercially, it's being commingled, and all sold under the Shikoku brand names. So we see an equality of more or less consistency of product quality when that comparison is made. Perhaps, Nick, you'd care to elaborate on that?

MR. PETTORUTO: First of all, I'm going to show my age and we have traditionally used the term "co-producer, co-production arrangements" for sure. That goes way back to there Olin days, between ICI and Olin, where we base-loaded their plant and it was referred to as a co-production agreement at that time. So many, many years ago.

I can safely say this. In my many years of involvement associated with Shikoku Chemicals, I've never had a rejected container and I'd have to estimate how many containers that was. But it was a huge number of containers. Since 1978, we have never had one rejection due to a quality issue.

COMMISSIONER SCHMIDTLEIN: Are you aware that U.S. producers have had rejected containers?

MR. PETTORUTO: I can speak for Shikoku.

MR. JANZEN: I wonder, Nick, if maybe you can also -- the comparison between the Shikoku and Oxy product that is pursuant to the co-producer arrangement?

MR. PETTORUTO: Yes. As you know, we're involved with a co-production arrangement with Oxy, and we have tested the Oxy material, and we were very satisfied to make a conclusion that the product is of equal quality to Shikoku material, which makes it much easier for us to become more involved with that Oxy co-production agreement, and we have had no rejections by customers.

We have been involved -- we're in our fifth year now with the co-producer arrangement with Oxy, and we have had no rejections at all from a quality standpoint.

MR. EISCH: And I guess I'll speak for Metabler (ph), is that I asked my plant guys, and they clearly would rather have Shikoku material. But they do say that the Oxy material we have run through the co-producer agreement runs well. They have not had any problems with it.

COMMISSIONER SCHMIDTLEIN: And do you have any knowledge of the other product produced by U.S. producers?

MR. EISCH: I only asked them on that, because we haven't had experience with Claron except many, many years ago, and they told me that they thought Claron's material would probably be accepted, but would be a distant third, not an equivalent to the one and two.

COMMISSIONER SCHMIDTLEIN: All right. I don't think I have any other questions. Thank you.

CHAIRMAN BROADBENT: Okay. I'd like to talk to Mr. Ide and also Mr. Pettoruto. Can you explain what led Shikoku to begin its shipments to the United States in the 1960's? Why has Shikoku not taken a more aggressive approach towards selling to the U.S. market? Why have you adapted a stable high price strategy?

MR. JANZEN: Might I just suggest that maybe Mr. Pettoruto begin, because I believe it's safe to say you've been working longer introducing Shikoku product into the U.S. market than Mr. Ide has been working at Shikoku, if that is acceptable?

MR. PETTORUTO: Thank you for the question. The year was 1960.

COMMISSIONER SCHMIDTLEIN: Yeah.

MR. PETTORUTO: Okay.

COMMISSIONER SCHMIDTLEIN: 1960's.

MR. PETTORUTO: Yeah. My involvement was 1978.

CHAIRMAN BROADBENT: Okay. Well historically, sort of what's your sense of --

MR. PETTORUTO: We have developed a very stable sales efforts with existing accounts, that frankly speaking many of whom we still retain today, and it was strictly involving -- at that time, there were actually two producers in the U.S., and Shikoku was a producer from Japan. The plant was started in 1964, I think, and we've been involved with direct marketing strictly for the swimming pool chemicals, ever since then, on a very stable, very stable level and growing kind of as the market grows.

As of today, we supply about 11 out of the 13 tableters. That's where we are right now.

MR. JANZEN: And if I could then maybe jump in to try to clarify the question, I think part of it was why has Shikoku not sold more aggressively from Japan into the U.S.

CHAIRMAN BROADBENT: Right.

MR. JANZEN: And during the POI, there was a very significant constraint, namely the production capacity of the Tokushima plant in Japan.

CHAIRMAN BROADBENT: Right.

MR. JANZEN: And so there was no opportunity really to increase the U.S. export volume from -- significantly from the level that was in place during the POI.

CHAIRMAN BROADBENT: Okay.

MR. JANZEN: Does that --

CHAIRMAN BROADBENT: Yeah, and what's your plan for that plant now?

MR. JANZEN: Maybe I can just introduce the issue, and see if Mr. Ide would like to comment. He spoke very, very briefly before about plans for that facility.

CHAIRMAN BROADBENT: Right.

MR. IDE: Yeah. Our plant in Japan (indiscernible) currently operates at 75 percent operation ratio, which is not economic at this moment.

CHAIRMAN BROADBENT: Okay.

MR. IDE: For our plan. You know, we -- our plan, we are certainly more productive to U.S. customers by U.S. sourced material, while we are trying to use up our Tokushima plant capacity for the additional demand, for the significant new use application, which you have underway. The plan is well underway.

So we can -- although some favorable issues, conditions appear for the export, for encourage to the other countries. But we know those factors are always fluctuating, so we will use up the Tokushima plant for mostly for the domestic Japanese market, not to the U.S. market.

MS. SLATER: And if I might, Commissioner Broadbent, just to supplement, Mr. Ide has provided a statement that's in our prehearing brief, with more specifics about the plans for the plant. But if the Commission has particular questions about that, we'll be happy to provide post-hearing specifics.

CHAIRMAN BROADBENT: All right. Mr. Ide is -- Shikoku the only producer of ISO chlorinated in Japan, and are there other firms that produce the same product in Japan?

MR. IDE: Regarding the chlorinated ISOs, I know there is three producers (indiscernible) in Japan.

CHAIRMAN BROADBENT: And I understand the other two don't sell in the U.S., right?

MR. IDE: Their exposure is quite limited, I think. But we don't see too much of their activity in the United States market.

CHAIRMAN BROADBENT: And why is that?

MR. IDE: Well, we never raised the question because these are competitors. So we try to find out, and we find out, we can answer the question after the post brief.

CHAIRMAN BROADBENT: Thank you. Okay. Vice Chairman Pinkert.

COMMISSIONER PINKERT: Thank you. I just have a few additional questions. Mr. Eisch, you said that Claron wouldn't supply granular to you at prices that would have enabled you to compete with them.

Do you have any specific evidence that they were price discriminating against you, that they were charging you more than they were charging other customers, or that they were making offers to you at higher prices than offers that they were making to other customers?

MR. EISCH: No. My comment is in regard that if you take their price, what they're selling to Sam's, and if you take that price per pound, because that's ultimately what you pay for a bucket is the price per pound at retail, and then if you put in there the bucket, the tolling, the labor, the transportation and you back all of the other raw material costs associated with that bucket, then that gets you to a baseline cost of what the granular you're basically selling to the big box store.

At that pricing when they quoted us, it was nowhere near that price. So we couldn't compete with them without losing on that whole, on the price at retail to the granular price. So that's why we said that price wasn't competitive to the marketplace. It wasn't competitive to what you're selling to your big box stores, and therefore you're making us extremely uncompetitive in the marketplace.

COMMISSIONER PINKERT: Okay. So you're not saying that they didn't want to sell to you. You're saying that their prices just weren't that good?

MR. EISCH: I'm saying is that in the beginning, when they went -- in 2005, when they went directly against us, it was a competition, okay, where they were actually going out to a customer and they determined that they wanted to compete with us at that tabular level, at that dealer level.

So we broke off at that point, because they changed their business plan. Then over the last number of years, they've come up to us, up to the POI, the pricing was at a point where when we did the math back, that that price was not competitive to the marketplace.

So we rejected their offers to sell us, because we felt like they were just -- I mean they're giving us pricing that we can't even compete with their customer. So it wasn't to us a legitimate offer, because we weren't -- they weren't partnering in a competitive aspect. Then since the POI, where they've had discussions with my guys in my plant about trying to come up with some way to getting to that point.

For right now no, we don't have a pricing that puts us in that competitive marketplace, to compete with them at the mass merchant.

COMMISSIONER PINKERT: Thank you. Now you also said that Oxy didn't make a serious effort to sell to you.

MR. EISCH: Uh-huh.

COMMISSIONER PINKERT: And I'm wondering, did you request a price quote from Oxy on the granular?

MR. EISCH: To go back to -- again, I went back a couple of years ago, and the relationship's always been because our biggest, one of our biggest competitors is Leslie's, and Leslie's a retail store and we're a retail store.

Back in the day, when we -- probably 10, 12, probably ten years ago, when Harry Thomas was there running the business, he wanted to develop a relationship with us. We actually did produce some products for him. We did toll some and we did produce some, and we bought some granular.

Then it seemed like when the management left, it sort of like it just went away. It went to a new management. The relationship went further away, and then when it switched to Jeff in '10, he called me and asked me, and talked about tolling and whether we wanted to get that and develop a further relationship. But that was it. After the phone call, I mean I haven't heard from him in years.

COMMISSIONER PINKERT: So are you saying that really the initiative is with Oxy in that situation, and that you're just sort of waiting to see if they're going to make an effort?

MR. EISCH: I think the hard part you have with Occidental and us is that they're supplying our biggest competitor. So how do you have a supplier who is selling a large competitor of ours in the same market, when -- I guess that's hard for us to determine, and there's other out there with Shikoku, who's a partner with us.

How do you discuss strategically what's going on in the marketplace? How do you discuss how do you want strategically to lay out new products, when you're dealing with a manufacturer that's their largest customer is our competitor? So I think back then it was the discussion on the phone was I don't know if it makes sense for us to ever come to that, because I don't know how we could overcome that.

COMMISSIONER PINKERT: Okay, and then finally, you testified about being in a commercial squeeze situation, if the -- if the orders go into effect in this case. Did the preliminary duties put you in a commercial squeeze situation?

MR. EISCH: The preliminary -- right now, we have commitment through Shikoku on product through '14. So we haven't had any issue, because he had this co-producer agreement with Oxy. He's supplying us the product at the price that we were quoted on, but prior to the preliminary. So the answer would be no, not right now.

But if it goes against Japan, I guess that's when the squeeze occurs, because okay. I'm dealing with two people. One's -- both of them are my competitors in the dealer market and in the mass merchant market. So you know, long-term relationship.

I've been with them a very long time. How do you -- how do I ultimately be treated fair and how do I know that I'm treated fair when I'm not the 100 pound gorilla in this. I'm the small business man who's going to try to compete against his largest and their largest customers.

That's where I guess I feel like I'm in a squeeze because I have no out. I have no one else -- I have nowhere else to go, and how am I going to be assured that I am treated fairly from a quote standpoint and from a pricing standpoint?

COMMISSIONER PINKERT: Thank you very much. I have nothing further for the panel, unless somebody else on the panel wishes to comment. No? Thank you, and I look forward to the post-hearing submission.

CHAIRMAN BROADBENT: Commissioner Williamson.

COMMISSIONER WILLIAMSON: Thank you. Just a couple of things. Post-hearing, in your post-hearing brief, could you please be sure to address all the statutory threat factors.

MR. JANZEN: Certainly.

COMMISSIONER WILLIAMSON: Okay. I was also wondering what are your forecasts for demand trends in the near future, and what are the factors likely to have the most important impact on demand? We talked about the salt, salt water, fine. But what other factors are we looking at?

MR. JANZEN: You know, we can talk about a number of factors right now without implicating confidential data. I think really there are two groups of factors here. One are maybe the exogenous shocks, you know, things that are impacting overall demand in the marketplace.

I think then separately there are the things that the suppliers of tableted product to the big box retailers are doing to pricing. But I think your question goes more to the former, and we really see several categories of demand driver.

Weather, for the last several years, has been one, and a number of industry sources have confirmed, and including through some publicly released materials associated with Poolcorp's public filings to the SEC, have confirmed the impact of these weather conditions that have reduced demand. That's one.

Another one, of course, is salt chlorine generators. We've talked at length about that today. I think those two are maybe a little --

COMMISSIONER WILLIAMSON: Excuse me. That's kind of a -- so you say a gradual trend? It's not a dramatic thing.

MR. EISCH: I would have called it gradual a long, long time ago. I mean we're not at -- we're long past the gradual trend. We're in full. It's one of our largest sales increases each year at retail. It's one of the -- probably the biggest item we advertise in our mailer.

We put them on TV now. Six years ago, we wouldn't have put a salt generator on TV. Today we advertise salt generation. So I think your past, what I would say infancy and you're in a full bore movement of an uphill curve.

COMMISSIONER WILLIAMSON: So short term, is that going to have an impact on demand?

MR. EISCH: Well absolutely, because every time I sell a salt generator, I take that customer out of an ISO. So I mean if I tell -- like if I have a customer who uses 100 to 120 pounds on an annual basis of ISOs to chlorinate their pool, and they go into a salt generator, then I've lost that 120 pounds in ISOs. And I haven't just lost it for that year; I've lost it forever.

So every year that -- when you have 85 percent of the builds going into pools, and then I have huge increases and then the thousands of units we're selling at retail, which means there's -- I know there's -- you could probably get it from the manufacturers the number of salt generators nationally. They're taking those ISOs out of the marketplace.

COMMISSIONER WILLIAMSON: Good, thank you

MR. KLETT: Commissioner Williamson, there's also a more macro factor in terms of demand, and that is, you know, housing starts and pool construction. I mean if you see over time the decline in pool construction due to the weakened economy in 2008 and the very weak housing market had an effect.

We can provide in a post-hearing brief, because Poolcorp, which is one of Oxy's major customers, is a publicly traded company, and they have PowerPoint presentations where they give some projections.

I would like to make one point with regard to this morning, where you saw a lot of comparisons between the 2004-2005 and the current POI. We attributed those declines to imports. If you look at demand in the economy between 2004 and 2005, and current in terms of new pool construction, they're completely different. So I think there's more going on between those two periods than just imports.

COMMISSIONER WILLIAMSON: Thank you. Mr. Janzen, was there anything else?

MR. JANZEN: Yes, just very briefly. One additional layer to the changing demand story, I think, is shifting consumer preferences. This is really a separate point from what's going on with new home construction and new pool construction.

Mr. Pettoruto, during the preliminary phase of the investigation, provided testimony concerning how many consumers are shifting dollars that may once upon a time have gone towards pools, towards other types of home improvement projects -- decks, outdoor kitchens, and we've also touched on that in our brief and can try to elaborate on that demand factor as well, and where we see that headed post-hearing.

COMMISSIONER WILLIAMSON: Well, if you have the kitchens, you ought to have the pools too.

MR. JANZEN: Ideally all, but choices have to be made.

COMMISSIONER WILLIAMSON: Okay. One last question, and this actually can be for post-hearing. I think I may have misunderstood you. I believe in your brief, you pointed to imported granulated dichlor ISO from Japan, and that it's sold -- you mentioned that I guess it is sold -- is repackaged and sold in the U.S.

I think you implied that it was not competing with domestic dichlor product that is sold to retailers. I'm not sure if I misunderstood that correctly or not.

MR. KLETT: No. I think -- Commissioner Williamson, this is Dan Klett. I think you did understand that correctly, and our point is that most or first of all all of the imports from Japan come in in granular form, and a very large percentage of that is sold to tableters in granular form. So that the imports from Japan don't compete, don't compete as tablets in sales to retailers.

They do compete in the sense that a trichlor import in granular sold to a tableter like Sun Coast is transformed into a trichlor tablet, and that trichlor tablet made from Japanese granular is sold to retail. But that's one step down the competitive chain. The competition occurs, and also, if you find tableters to be U.S. producers, that's U.S. product not Japanese product.

But the first point of competition between Japan and U.S. producers is the sale by SIC of granular product to tableters. So Japanese product doesn't compete as tablets to retailers.

COMMISSIONER WILLIAMSON: But it competes as product to tableters, who may buy domestic or may buy Japanese imported.

MR. KLETT: Both. I mean Oxy sells granular to tableters and Shikoku sells granular to tableters. But there's some overlap, but there's some distinction in terms of the tableters to whom they sell as well. So there's some distinction at a customer level as well.

COMMISSIONER WILLIAMSON: Okay, thank you. With that, I have no further questions. Thank you.

CHAIRMAN BROADBENT: Okay. Any further questions? Okay. I'll ask the staff at this point if they have any questions for the panel.

MS. HAINES: Elizabeth Haines. Staff has no questions.

CHAIRMAN BROADBENT: Okay. Do the Petitioners have any questions for this panel?

MR. CANNON: I guess not.

CHAIRMAN BROADBENT: Okay, all right. All right, thank you. In that case, I want to thank the panel for their testimony, and I'll dismiss you now.

MR. JANZEN: Thank you.

CHAIRMAN BROADBENT: With that, we'll come to the closing statements. Those in support of the petition have zero minutes from direct and five for closing, for a total of five minutes, and those in opposition have 14 minutes from direct and five for closing, for a total of 19 minutes.

As is our custom, we'll combine those two times, and you don't have to take all your time. We will start with those in support of the petition. You may begin when you're ready.

MR. CANNON: Thank you, Madam Chairman, Commissioners. I heard some agreement, sort of, from their economists with regard to the missing data. So I just want to go back and talk about the pink sheets, ours and theirs, and put a little perspective on things.

So if you look at page 7 in our presentation, this is where we recreated what we think the market should look like. I'd like to make some observations starting at the top, the first line, apparent domestic consumption. You can see apparent domestic consumption in 2002, 2003, 2004 ranged from 250 million tons to about 300 million tons. You heard testimony that today consumption ranges from about 240 to I think they said 260. You can see the estimates recreated, and the magnitude. Right? This tells you something about salt pools; right? Because this is how much people are using Isos. And demand for Isos has not been degraded by salt pools, certainly in this period.

So the data give you a perspective on that issue. The fact is, there are already thousands of pools all over America using Isos. The fact that new pools being built use salt does not take away the demand that already exists and the data tell you that.

Secondly and more importantly, if you look down at import shipments, all imports, look at total imports. In the first case when it was China and Spain, and Japan wasn't a problem. The total from China and Spain together amounted to 65 million pounds. That was the maximum point it reached.

Look at the Japanese total. Now, that's not on page 7. You have to turn to page 8. But there we are on page 8, at the top of the page, we see in our period '11, '12, '13, there's the total volume from Japan. Japan has not been stable, static, a steady presence in the U.S. market. Japan has risen from a fraction of a 20 percent market share to these numbers today. And it is still going up. It is going up and it reaches its high point at the end of the period of investigation.

So, it was almost taken as a given that Japan is sort of this benign presence in the U.S. market. It's always been here, it will always be here, and it's not harming anyone. That is not true. That is not borne out by the facts in this record. That is certainly not borne out long term.

Now, Mr. Pettoruto started his testimony with "we never used aggressive pricing to grab market share." Even the staff report now in the C tables, in the revised table, you can see the percentage Japanese market share. What you will see is it is going up. Today the Commerce Department on Shikoku announced a dumping margin of 60 percent. They are selling Isos in the United States at a price that is 60 percent below the price at home. And they are telling you that. We're not that interested in the U.S. In fact, we need a local supplier, Oxy, to be a partner here. Why then are they selling in this market at all.

Why? If you look at your staff report in Section 7, you will see a line item for Shikoku. It shows their total capacity and it shows their shipments to the United States. Why are they selling here? Why have they been selling here for the last three years? They load their plant by shipping to the U.S. The notion that without the dumping order they would have this benign presence, this supplier agreement as a coproducer with Oxy is nonsense. It is not credible. And you will see that that line of production, this so-called "coproducer" status that they have -- by that definition, Biolab is the coproducer. But the status that they have doesn't emerge in any significant volume until after the dumping orders go on.

Now, Mr. Petturuto also said we should look at -- I'm sorry, the attorney said, "we should look at what would you expect in a post-order world where China has a CBD order?" We know what to expect. What happened when the dumping order went on China in 2005? The Japanese came into the market. So we can clearly see what to expect. And I see I never got to the other pink sheet, but there's time in my brief, and I thank you for your attention.

CHAIRMAN BROADBENT: Thank you. We'll look forward to your brief. Thank you very much.

MS. SLATER: Good afternoon. Valerie Slater on behalf of Respondents. And you thought you would get away without hearing from me this afternoon.

I will not take the full 19 minutes unless I completely get on a roll. I have to say, I learned a lot today. I did not know that large swimmer load was another word for pool party. But I'll certainly use that the next time I have a pool and send an invitation.

I want to just hit a few points. Obviously we've got a lot of things to talk about in our post-hearing brief and I think there are some indeed very stark difference in the facts that have been presented here to you today. And I think we will be able to demonstrate with pretty strong evidence what the truth is with respect to some of those facts in our post-hearing brief.

I also think that your view of this market has to be informed by a lot of the data that you do have which is quite complete with respect to Japan.

Let me just start out by saying -- picking up on Mr. Cannon's analogy with respect to cumulation that the purpose of the statute was to prevent someone walking through a dark alley from not being saved because they were being attacked by six different people, one of whom pinched, one of whom kicked.

I think what we have in this case when we talk about Japan in this market it's more akin to the good neighborhood who turns on the light, and, you know, tries to keep things a little bit calm. To compare the Japanese and their participation in this market to one of the thugs in the alley is completely incorrect given the record you have here.

Cumulation is an issue squarely presented in this case. And granted, it's not one that in investigations you face very often. Many of you asked a question, Commissioner Schmidtlein, about where is the line? Where do we stop? Well, like everything else that this Commission does, there are very few bright lines. All of these cases require you to look at an enormous body of fact and to figure out where you should wind up given the precedent and given the law. And I want to talk that just for a minute.

The statute does not direct you to cumulate in every investigation. You are directed to cumulate only if the imports compete with each other and with the domestic-like product, and you have an entire analysis that you can go through. So I want again to emphasize that this is a matter of discretion and factual analysis for the Commission with respect to cumulation. It is not a given, it is not a speed bump as Mr. Janzen called it.

Look, the truth is, the Chinese and the Japanese do not compete in any significant way in this market, and that's true for so many different reasons and your data show this to you in so many different ways.

I'm going to talk about that a little and what we've heard from the petitioners on this. The petitioners have a few inconvenient facts to deal with.

We've looked at the forms in which the two products come into the market and very important here is that the Japanese product is sold -- completely sold into the market as granular. The Chinese imports are either imported as tablets, or the Chinese importers produce them into tablets before they are sold in the market. That's a critical distinction. And that's one reason when you look at the channel data, you see very little overlap. And we had some good graphics and good charts in our brief. We'll try and give you a little bit more of that post-hearing, but when you look at the channels of distribution and how it flows into the market because of that difference in form, you see very little overlap.

And even in the places where there is some overlap, and I would submit to you that that's a small amount, even where you see that overlap, what you see if you break it down, we've done some of this for you prehearing, we'll try to do more post-hearing, is that that overlap is a bit fictitious because you've got different customers involved. You have other ways in which you can see that they're really not hitting each other.

There's other indications that these imports don't compete and that goes to the issue of fungibility. We know that these imports are not fungible in probably the best possible way that you could know that as somebody doing economic analysis, the pricing is different. Your data shows you pervasive overselling with respect to Japan. And, you know, by listening to my good friend and excellent attorney, Mr. Cannon, try and dance around that pricing data, the fact of the matter is that the pricing data is showing you how the Japanese imports are participating in this market and showing you very clearly that they participate differently and that they are not fungible with the imports from China.

You just heard Mr. Cannon again emphasize the dumping margin. And you all know that dumping margins have nothing to do with whether pricing is injurious here. A dumping margin is a function of a difference between a home market price and a U.S. price. It tells you nothing about whether that U.S. price is injurious. And we didn't have questions about that and I think you understand it. But it's because of the absence of other price effects that the petitioners emphasized that repeatedly in their briefs and in his last five minutes, that's what Mr. Cannon wanted to talk to you about in part. And I think that's indicative. That doesn't tell you anything about impact.

On volume, the increases that you've seen from Japan have been modest, but here's what's important. We've shown you the data and we'll point to it again very clearly in our post-hearing. The places in the market where the Japanese imports have increased are not where market share has been lost by the U.S. industry. And let me repeat that. The granular segment of the market is not where you're going to see market share losses. And you have to look at this market really break it down.

You heard this morning several times in answers to your questions the domestic industry saying to you, well, it depends on what segment of the market are you talking granular, are you talking tablets, things are different in those segments. And when you understand where the Japanese product is, and only is, you understand clearly -- and where the domestic industry is, in each of those markets, you can see it in your data that the loss of any market share could not possibly have been from the Japanese imports.

There are several key factors which I'm so pleased to say the Commission has picked up on today because of your questions, and we'll again emphasize this in our post-hearing brief. But you also have before you a domestic industry which has chosen to focus on particular customer segments of the U. S. market.

When Mr. Williams of Oxy got up today on the first page of his testimony he explained to you who he is and what his company does, and he said, we sell to larger players like Leslie's, PoolCorp and Biolab. That's their market segment. That's where they focus. That is not where you see Japanese imports who are serving those independent tableters.

By the same token, if you take a look at what you see form Clearon, the other petitioner, what you see from Biolab, you're going to see something very different than where you see these Japanese imports positioned in the market.

So, pay attention to all of these differences. We have laid them out for you prehearing. We will try and do it as clearly as we can and unpack it as Mr. Janzen likes to say, but this is a case which cries out, first of all for decumulation, and secondly for a negative determination with respect to Japan.

Thank you very much. Can I save the extra time for another case?

CHAIRMAN BROADBENT: No.

(Laughter.)

CHAIRMAN BROADBENT: Thanks, Ms. Slater.

I want to express the Commission's appreciation to everyone who participated in today's hearing. It was a worthwhile day. Your closing statements, post-hearing briefs, statements responsive to questions, and requests of the Commission and corrections to the transcript must be filed by September 17th, 2014. Closing of the record and final release of data to the parties will be on October 1st, 2014. Final comments are due October 3rd, 2014, and with that, this hearing is adjourned. Thank you very much.

(Whereupon, at 4:48 p.m., the hearing was adjourned.)