

UNITED STATES INTERNATIONAL TRADE COMMISSION

In the Matter of:) Investigation Nos.:
CALCIUM HYPOCHLORITE FROM CHINA) 701-TA-510 AND 731-TA-1245 (FINAL)

REVISED AND CORRECTED

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THE UNITED STATES
INTERNATIONAL TRADE COMMISSION

IN THE MATTER OF:) Investigation Nos.:
CALCIUM HYPOCHLORITE) 701-TA-510 AND 731-TA-1245
FROM CHINA) (FINAL)

Tuesday, November 25, 2014
Main Hearing Room (Room 101)
U.S. International Trade
Commission
500 E Street, SW
Washington, DC

The meeting commenced pursuant to notice at 9:30
a.m., before the Commissioners of the United States
International Trade Commission, the Honorable Meredith M.
Broadbent, Chairman, presiding.

1 APPEARANCES:

2 On behalf of the International Trade Commission:

3 Commissioners:

4 Chairman Meredith M. Broadbent (presiding)

5 Vice Chairman Dean A. Pinkert

6 Commissioner Irving A. Williamson

7 Commissioner David S. Johanson

8 Commissioner F. Scott Kieff

9

10 Staff:

11 William R. Bishop, Supervisory Hearings and Information

12 Officer

13 Sharon Bellamy, Program Support Specialist

14

15 Fred Ruggles, Investigator

16 Christopher Robinson, International Trade Analyst

17 John Benedetto, Economist

18 David Boyland, Accountant/Auditor

19 David Goldfine, Attorney

20 Elizabeth Haines, Supervisory Investigator

21

22

23

24

25

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

3 Law Offices of Peggy A. Clarke, Washington, DC on behalf of
4 Arch Chemicals, Inc., a Lonza Company ("Arch"):

5 Rick Walden, Senior Vice President, Arch

6 Stephen Heard, Business Director Pro Dealer/Repack
7 Private Label, Lonza Americas

8 Kimberly Harrelson, Associate General Counsel, Lonza
9 Americas, Inc.

10 Bruce Malashevich, President, Economic Consulting
11 Services

12 Alex Olcese, President and Chief Operating Officer,
13 AllChem Industries

14 Jim Calais President, AllChem Performance Products

15 Peggy A. Clarke, Law Offices of Peggy A. Clarke

16

17 Alston & Bird LLP, Washington, DC on behalf of Axiall
18 Corporation:

19 Michael Hoops, General Manager, Water Treatment
20 Products, Axiall Corporation

21 Michelle Ritter, Division General Counsel, Chemicals,
22 Axiall Corporation

23 Kenneth Weigel, Alston & Bird LLP

24

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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 welcome you to this hearing on Investigation Nos. 701-510 and 731-1245, involving Calcium Hypochlorite from 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 imports of calcium hypochlorite from China that are sold at less than fair value.

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 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 court reporter, so that he can determine who is speaking. Finally, if you will be

1 submitting documents that contain information you wish
2 classified as Business Confidential, you're requested to
3 comply with Rule 201.6. Mr. Secretary, are there any
4 preliminary matters?

5 MR. BISHOP: Madam Chairman, I would note that
6 the panel in support of the Imposition of anti-dumping and
7 countervailing duty orders have been seated. All witnesses
8 have been sworn.

9 CHAIRMAN BROADBENT: In that case, let us now
10 proceed with opening remarks.

11 MR. BISHOP: Opening remarks on behalf of
12 Petitioners will be by Peggy A. Clarke, the Law Offices of
13 Peggy A. Clarke.

14 CHAIRMAN BROADBENT: You might just stay there,
15 whatever you prefer. But that would probably be easiest.

16 MS. CLARKE: This seems much easier for me.

17 CHAIRMAN BROADBENT: Yeah, absolutely.

18 OPENING REMARKS BY PEGGY A. CLARKE

19 MS. CLARKE: Good morning. I'm Peggy Clarke with
20 the Law Offices of Peggy A. Clarke, counsel to Petitioner
21 Arch Chemicals, Inc. Thank you for hearing us today. We do
22 plan to keep this short. We wish to discuss the injury
23 caused to the domestic calcium hypochlorite or Cal-Hypo
24 industry by the unfairly-traded imports for Cal-Hypo from
25 China.

1 This case also presents a strong uncontested
2 record showing imminent threat of material injury to the
3 domestic industry if duties are not imposed. In fact, not a
4 single Chinese producer responded to the questionnaire in
5 this final proceeding.

6 The record in this case, uncontested by Chinese
7 exporters and manufacturers, or any of the importers,
8 demonstrates that Chinese Cal-Hypo has entered the market at
9 unfairly low prices, using aggressive tactics and has
10 injured the domestic industry. There is nearly a pound for
11 pound correlation between the increasing imports and lost
12 market share by the domestic industry.

13 Prices have fallen even as costs have risen in
14 all channels, although the greatest price impact has been
15 felt in the repacker, private label, distributor channel,
16 which is where the Chinese had originally targeted their
17 sales. Now the domestic industry finds itself competing
18 with unfairly low-priced Chinese imports in all those
19 channels.

20 Cal-Hypo is a commodity product, which no
21 physical or chemical differences between the domestically
22 produced and imported Cal-Hypo. While Arch has worked hard
23 to develop its brands and brand recognition, that brand
24 distinction has been eroded by the relentless move of
25 Chinese product into this market and around the world.

1 As a commodity product, as you will hear today,
2 purchasing decisions are frequently made on the basis of
3 price. The lowest price gets the sale. Therefore, the
4 domestic industry has seen decreasing profitability and
5 other declining financial indicia as a result of the
6 imports.

7 The fact that the financial indicia and market
8 for domestic product have improved since the petition was
9 filed demonstrates that the unfairly-priced imports were the
10 cause of material injury the domestic industry has been
11 suffering. That is the conclusion of my opening statement.
12 Thank you for hearing us today.

13 CHAIRMAN BROADBENT: Great, thank you. Let's
14 see. Commissioner Kieff is not here yet. Vice Chairman --
15 oh actually it's me. Actually, I'm going to yield to you
16 Vice Chairman Pinkert, if you don't mind or --

17 MS. CLARKE: Would you like us -- we have direct
18 testimony.

19 CHAIRMAN BROADBENT: Oh. Well I thought y'all --
20 excuse me, I apologize. I didn't -- you told me you
21 concluded, so I believed you. I apologize.

22 MS. CLARKE: We're not quite that short.

23 (Laughter.)

24 STATEMENT OF PEGGY A. CLARKE

25 MS. CLARKE: As I stated a few minutes ago, I'm

1 Peggy Clarke with the Law Offices of Peggy Clarke, counsel
2 to Petitioner Arch Chemicals, Inc., and again thank you.
3 Today you'll hear from Mr. Rick Walden, Senior Vice
4 President of Arch, who will discuss Cal-Hypo market and the
5 impact the imports have had on his business, and you'll hear
6 from Jim Calais, president of AllChem Performance Products,
7 a purchaser of both domestic and Chinese Cal-Hypo.

8 I note that we also have with us today Mr. Ken
9 Weigel of Alston and Bird, representing Axiall Corporation,
10 along with Mr. Mike Hoops, general manager, Water Treatment
11 Products for Axiall Corporation, the other U.S. producer,
12 and who has submitted a confidential statement in lieu of
13 direct testimony. He is available to answer questions,
14 however.

15 Mr. Bruce Malashevich of Economic Consulting
16 Services, LLC and Mr. Stephen Heard and Ms. Kimberly
17 Harrelson from Arch are also available to answer questions.
18 Arch and Axiall are the two domestic producers of Cal-Hypo.
19 Arch accounts for the majority of the product produced in
20 the United States. Axiall, until 2013, was a part of PPG
21 Industries and accounts for the remainder of the domestic
22 production.

23 The manufacture of Cal-Hypo requires extensive
24 investment to build a plant and hire and train the skilled
25 personnel necessary. These two companies produce 100

1 percent of the domestic-like product, and both are here in
2 support of this petition.

3 In contrast, the Chinese manufacturers and
4 exporters have chosen not to participate in this
5 investigation or to cooperate with it. This hearing is
6 unusual in that it is being held before the Department of
7 Commerce has issued its final determination. Nevertheless,
8 the outcome is known.

9
10 Commerce found a 71.72 percent level of
11 subsidization, including nearly ten percent of export
12 subsidies, and that is unlikely to change in the final
13 determination. That decision was based on adverse facts
14 available after the responding companies refused to answer
15 Commerce's questions in full, and all mandatory respondents
16 withdrew from the investigation.

17 In addition, Commerce found anti-dumping duties
18 of 210.52 percent, after the manufacturer and affiliated
19 exporters withdrew from the investigation. Similarly here,
20 even the few companies that participated in the preliminary
21 investigation have chosen to withdraw from this final injury
22 investigation.

23 But beyond not actively participating, they've
24 chosen not to respond to the questionnaires, and this is
25 consistent with much of what we've seen in the marketplace.

1 The Chinese exporters and some of their importers have been
2 relentless in seeking access to the U.S. market through
3 whatever means possible.

4
5 We've brought several instances of potential
6 circumvention to the attention of Customs and Border
7 Protection, and the Commerce Department has referred
8 information to CVP for further investigation as well. One
9 recent example is an offer to sell Chinese Cal-Hypo for very
10 low prices, with the assurance that the exporter could help
11 the importers avoid anti-dumping duties that might be
12 imposed, and that they had been doing so for other products
13 for years.

14 We know that enforcement is not the Commission's
15 responsibility, but these instances serve to highlight the
16 efforts of the Chinese industry to penetrate the U.S. market
17 without concern for the impact on the domestic industry, or
18 the legalities of the matter. As the record demonstrates,
19 both imported domestically produced Cal-Hypo use the same
20 channels of distribution.

21 Both sell to repackers, private label marketers
22 and distributors. Those customers typically buy bulk
23 product, then repack it into smaller-sized containers, or
24 label the product for retail distribution. They also
25 compete directly with the domestic manufacturers of

1 Cal-Hypo, Arch and Axiall Corporation, in other distribution
2 channels.

3 In recent years, the record shows the domestic
4 industry has seen the encroachment of unfairly-traded
5 Chinese Cal-Hypo directly into those other distribution
6 channels as well. Finally, neither customer perceptions nor
7 price distinguish domestic Cal-Hypo from imported product.

8 Cal-Hypo is a commodity product, eroding the
9 value of Arch's brands, and therefore the domestic and
10 imported product compete primarily on the basis of price, as
11 was indicated by the purchasers' responses to the
12 Commission's questionnaire. Customers do not perceive any
13 difference between the imported and domestic product, and
14 many purchasers do not consider the origin of the product
15 purchased.

16 Now I'd like to turn to Mr. Walden to speak to
17 you about Arch. Thank you, and I'm available for questions
18 if you have any. Rick.

19 STATEMENT OF RICK WALDEN

20 MR. WALDEN: Thank you, Peggy. As Peggy said, my
21 name is Rick Walden, Senior Vice President with Arch
22 Chemicals. I'm here today to represent our company, and
23 more importantly the many people that depend -- have jobs
24 that depend on the manufacture, sale and trade of Cal-Hypo.

25 Cal-Hypo, as you can imagine, is a major product

1 for our company. Arch has been a leader in the Cal-Hypo
2 industry, both in the United States and globally since 1928,
3 when we introduced the HTH brand for calcium hypochlorite.
4 We have production units not only in the United States, but
5 in Brazil and South Africa.

6 We're very proud of our heritage in developing
7 this product for the safety and enjoyment of swimming
8 enthusiasts, and for the advancement of public health
9 worldwide. My objective today is to give you a brief
10 overview of our situation, keeping in mind the public nature
11 of this forum, and to answer any questions you may have.

12

13 This is a seasonal business for us, because so
14 much of our sales are for the maintenance of swimming pools
15 and spas. Typically in the fourth quarter of each year, we
16 enter into negotiations for supply arrangements for the
17 following season. Our sales peak is in the first half of
18 the calendar year, and the remainder of the year is very
19 slow.

20 Demand rapidly declines, and we use this period
21 for maintenance of our large Cal-Hypo manufacturing
22 facility. This seasonality affects our operating economics.
23 As with most large chemical plants, a continuous process is
24 used operating 24 hours a day, seven days a week.

25 Because we are forced to reduce production in the

1 second half of the year as the peak season ends, our per
2 unit cost increased in that period. The combination of
3 reduced volume and increased costs, combined with down time
4 for maintenance, means that we do not generate significant
5 positive income, if any, during that period. Therefore, all
6 or nearly all of our operating income must be generated in
7 the first half of the calendar year.

8 The Chinese imports have been entering at
9 increasing volumes, peaking during that same first half of
10 the year, thus putting unbearable pressure on our
11 operations. Our financial position has deteriorated as a
12 result. This is why we filed this petition.

13

14 We can and will compete with any producer in the
15 world, but we cannot compete with unfairly, low-priced
16 subsidized product from exporters who will do anything to
17 take market share. Before we filed this petition, we saw a
18 relentless, aggressive drive by the Chinese manufacturers to
19 capture market share, driving down prices and causing us to
20 lose sales with every pound of Chinese product that entered
21 into this market.

22 This is exactly what happened to me during the
23 mid-90's in another chlorine derivative business, hydrazine
24 hydrate. As they say, experience is something that happens
25 to you that you'd wished happened to somebody else. We

1 experienced this, and at that time, much similar to this
2 case, we had two U.S. producers.

3 Within a few years, after the aggressive chlorine
4 derivative tactics that the Chinese used to enter the
5 market, both plants were shut down. Over 300 jobs were
6 lost, and a hard lesson was learned. I must say for the
7 first time in years, after we filed this petition, we saw a
8 decline in imports from China for the first half of 2014.

9 For the first time in years, we have gained sales
10 as customers have returned to us. Finally, we have been
11 able to increase prices to sustainable levels. That is the
12 impact of this petition and of the preliminary duties that
13 have been imposed.

14
15 Nevertheless, the Chinese are not surrendering
16 the market. Just the other week at a trade show in Orlando,
17 Florida, many Chinese producers and exporters were hawking
18 Cal-Hypo at various levels of available chlorine to all
19 buyers. As mentioned, the Chinese have been relentless, and
20 have harmed us in all sales channels, as they followed a
21 specific pattern.

22 The Chinese first appeared and competes most
23 heavily in what we call the repacker, private label and
24 distributor channel. This is all unbranded product. Our
25 customers are distributors who buy our product in bulk and

1 repackage it or re-label it to sell under their own brands,
2 or even those distributors for whom we label it with their
3 brands. This is the channel where we are most vulnerable.

4 These customers make a living through buying low
5 and selling higher. In that channel, Cal-Hypo trades purely
6 as a commodity product, sold only on the basis of price.
7 This has been confirmed by the responses of the purchasers
8 to your questionnaires. They confirm that price is the most
9 important consideration. Mr. Jim Calais with AllChem is
10 here today, and he can speak more fully to this.

11 Sales in bulk to this channel account for a
12 substantial portion of our business. In this channel, we
13 compete head to head with the Chinese. Standing alone, this
14 channel accounts for a substantial share of our total U.S.
15 sales of Cal-Hypo.

16
17 Consequently in this channel, subject imports
18 directly harm our business from a volume and pricing
19 perspective. But it has more impact than that. Chinese
20 pricing into the repacker, private label and distributor
21 channel has caused us to reduce prices and restrain price
22 increases across the board, despite our own cost increasing.

23 They have also hurt our branded channels, because
24 repackers, private labelers and distributors and others have
25 been buying the unfairly traded Chinese product and

1 reselling it at low prices, in direct competition with our
2 branded product that we sell in these other channels.

3 Moreover, in 2013, we observed that subject
4 imports are being offered in our downstream retail channels,
5 effectively circumventing the repackers and competing
6 directly with our branded product. Without the margins on
7 our branded product such as HTH that we have historically
8 enjoyed, we would be out of business.

9 In sum, the unfairly priced imports have served
10 to commoditize our product, whether branded or unbranded,
11 and caused price depression. Prices tumbled, even though
12 our material cost continued to rise, and our profits
13 deteriorated despite all our efforts to reduce our cost.

14 2013 was a crossroads for us. That year was the
15 first time China's share of the total U.S. demand rose above
16 ten percent during the peak selling period. The harm that
17 caused to our operating profitability is historically
18 unprecedented, and caused us to file this case.

19
20 That the unfair Chinese imports were the cause of
21 this harm is demonstrated by the improvement in our
22 circumstances since the petition was filed, and preliminary
23 duties were implemented. Imposition of final duties will
24 enable us to compete fairly, even as China continues to try
25 to enter the market through unfair practices. Mr. Jim

1 Calais from AllChem can discuss this more fully. With that,
2 I thank the Commission for their time today, and I'd be
3 happy to answer any questions.

4 STATEMENT OF JAMES CALAIS

5 MR. CALAIS: Thank you, Rick. Good morning. My
6 name is Jim Calais. I am president of AllChem Performance
7 Products. AllChem is a private label, custom packaging
8 water treatment chemical company. We package, label and
9 sell to distribution companies throughout the United States.
10 Thank you for listening to me this morning.

11 One of the most important chemicals we purchase
12 is calcium hypochlorite. AllChem has been purchasing this
13 chemical from Arch Chemicals for many years. We have a very
14 good relationship with Arch, and we consider Arch Chemicals
15 a valued source of supply for this chemical.

16
17 In recent years, as Chinese manufacturers,
18 traders and brokers expanded their market share of calcium
19 hypochlorite in the United States, AllChem has seen
20 declining prices and erosion in our market share of calcium
21 hypochlorite sales. By 2013, the downward pricing pressure
22 on calcium hypochlorite became so severe that we were forced
23 to import some Chinese product in order to remain relevant
24 in the market.

25 Chinese product was not just being imported by

1 domestic brokers and traders, but at times Chinese companies
2 were contacting AllChem directly, and began bypassing
3 AllChem's customers and AllChem, in an attempt to sell our
4 downstream customers in order to sell their product. We
5 wanted to maintain our long-standing customer relationships
6 supplying calcium hypochlorite, but most of our customers
7 make their decisions based solely on price.

8 Unless AllChem was able to match the pricing
9 offered by our competitors, we would lose their business.
10 All things being equal, our customers would prefer to buy
11 from AllChem, because of our service, reliability and trust.
12 The Chinese product was being offered at pricing the U.S.
13 manufacturers simply could not meet.

14 For the reasons stated earlier, rather than lose
15 our customers, we decided we had to shift some of our
16 purchases to Chinese products. I will do my best to answer
17 any questions you may have. Thank you.

18 STATEMENT OF KENNETH WEIGEL

19 MR. WEIGEL: Good morning. As Peggy said, my
20 name's Ken Weigel. I'm with the law firm of Alston and
21 Bird. We are counsel to Axiall Corporation. With me today
22 is Michael Hoops, general manager of Water Treatment
23 Products at Axiall Corporation, which is basically Cal-Hypo.
24 Also with me is Michelle Ritter, the division general
25 counsel of Chemicals at Cal-Hypo.

1 With our prehearing brief, Mr. Hoops submitted a
2 written statement. We did this because much of the
3 information that he wanted to convey to the Commission today
4 is business proprietary and confidential. But we are here
5 today to answer any questions today or in a post-hearing
6 brief, that the Commission may have. Thank you.

7 MS. CLARKE: And that concludes our direct.

8 CHAIRMAN BROADBENT: Good. I want to thank all
9 the witnesses for taking time from their businesses to be
10 with us today. This morning, we'll begin our questioning
11 with Commissioner Kieff.

12 COMMISSIONER KIEFF: Thank you very much. We
13 appreciate the panel coming today, and presenting both
14 argument and testimony. It's hard in a case like this, when
15 we don't have an opposing panel, to try to figure out how to
16 find the information needed to be found, so that we can
17 write an opinion that is based in a full record.

18
19 So it's with that goal in mind that we, of
20 course, carefully read the pre- and post-hearing documents,
21 and use this live session as an opportunity to engage. The
22 first question for me is to just try to wrestle with the
23 role or I should say the line drawing that we, I guess,
24 could do or should do around tableters.

25 Is it your sense that tableters are part of the

1 domestic industry or not, and should that matter to your
2 case or not?

3 MS. CLARKE: Again, this is Peggy Clarke. We in
4 our prehearing brief, we submitted I think it's Annex C, a
5 substantial analysis of the confidential information on
6 tableting. We do not think the companies that tablet only
7 and do not produce granular have sufficient domestic-based
8 activity to qualify as part of the domestic industry.

9 That said, and it's very difficult for me to
10 discuss in much detail in public, there's not much
11 value-added. The level of investment is substantially
12 lower. The level of skill involved is less. It's really a
13 processing step, but minor one, a relatively minor one.

14 That said, we do not think that if the tableters
15 were included it would change the injury analysis.

16

17 COMMISSIONER KIEFF: Okay, and given the
18 inevitable involvement of business proprietary information
19 in this phase of the dialogue, I recognize that inevitably
20 it may just be best to have it on paper after. So I'll just
21 ask some follow-up questions, recognizing that it's probably
22 best not to answer them live, but that you could explore in
23 the post-hearing.

24 So if you could just in the post-hearing brief
25 also drill down on whether you think the detailed analysis

1 in the tableting segment in Table C-1 for the interim period
2 supports a material injury finding or not, and if so, how.
3 And in particular, an issue that we frequently also wrestle
4 with, which is even if there is an injury to that segment
5 that is material, can you tie it closely to the imports as
6 the cause of the material injury.

7 MS. CLARKE: We will be happy to address that in
8 our post-hearing.

9 COMMISSIONER KIEFF: Relatedly, but maybe easier
10 to discuss today, and if not, totally fine to discuss in the
11 post-hearing, is there a distinct demand for tablet form?
12 Put differently, are there users who just have to have
13 tablets?

14 MR. WALDEN: Not to confuse it with another case
15 that the Commission has heard, Cal-Hypo is primarily used in
16 the granular form. There is very little tableting that
17 really goes on with that. And most consumers will use the
18 Cal-Hypo as a shock sanitizer for their pool or spa. And
19 one of the characteristics of Cal-Hypo is it dissolves very
20 quickly. So when you put it in a tablet it's going to
21 dissolve very quickly, so it's really not used that way very
22 often.

23 There are some tabs in a few things out there
24 that people use, but primarily it's in the granular form.

25 So I don't know of anyone that says I have to

1 have a puck, if you will.

2 COMMISSIONER KIEFF: Sure. And then maybe just
3 to follow up on that, why make the puck in the first place?
4 Is it for convenience at one phase of shipping or one phase
5 of distribution?

6 MR. WALDEN: I think it's more for the perception
7 of the end consumer. They're used to a trichlor puck, so
8 they want the same equivalent for a Cal-Hypo. By blending
9 it with different things, we can get some longer-lasting
10 Cal-Hypo in sleeves, in pucks, in everything, but it doesn't
11 compare to the long-last characteristics of the trichlor.
12 So it's a public perception of I'm used to seeing it in this
13 form, I'd like to have it in that form.

14 MR. WEIGEL: Commissioner Kieff, Michael Hoops
15 wants to say a few comments about tablets.

16 COMMISSIONER KIEFF: Please.

17 MR. HOOPS: Michael Hoops. I am the general
18 manager of the Water Treatment Products Group at Axiall
19 Corporation. Mr. Keiff, to answer your question a little
20 more fully, I would say there are some end-use applications
21 where the delivery characteristics of a tablet make it
22 easier for that end-user to use that product than they could
23 in the granular form. A backyard swimming pool, they're
24 going to throw product or broadcast product into the
25 swimming pool. There are applications beyond the backyard

1 swimming pool that the precision of a tablet is important to
2 the end user.

3 I would also point out --

4 COMMISSIONER KIEFF: Can you -- I'm just --
5 having spent a long time at a technical school I always love
6 details. For example?

7 MR. HOOPS: For example, a water park that has a
8 wave pool that's a million gallons probably doesn't want
9 somebody there scooping pound after pound after pound of
10 calcium hypochlorite granular into the pool as opposed to
11 having a tablet delivery system that can provide them
12 chlorine on demand as the pool demands it.

13 I would also point out to one of your points, we
14 have been impacted by Chinese product taking a tablet
15 customer away from us during this period as well. So it's,
16 as Mr. Walden pointed out, it's predominant in the granular
17 space particular 100-pound size, but it has crept into other
18 areas as well.

19 COMMISSIONER KIEFF: And are there independent
20 tableters?

21 MR. HOOPS: I will speak for our company. Again,
22 and I think the record would show that we have a
23 relationship with Stellar Manufacturing. I would not --
24 this goes back to one of your earlier inferences as well, I
25 would not count Stellar as an additional producer of calcium

1 hypochlorite. They're using calcium hypochlorite from us
2 and making tablets. They are not adding to the total
3 production of the U.S. industry.

4 COMMISSIONER KIEFF: Are there any wrinkles in
5 this case on the math side that come from the seasonal
6 downtime? Should we keep anything in mind as we look
7 through the data? Is there attachment special we should
8 bake in?

9 MR. MALASHEVICH: Good morning, Commissioner. I
10 am Bruce Malashevich. Of course the underlying data are
11 confidential, but Mr. Walden touched on this. We did an
12 analysis in the process of evaluating this case in the
13 outset. You can do the math in terms of taking a year and
14 subtracting the interim period.

15 In the preliminary investigation, the interim
16 period ending in September in its final phase it ended in
17 June, and roughly speaking, if you subtract one from the
18 other, you will see the financial results in the second half
19 are much less favorable than the first half. In effect the
20 industry has to earn in the first half everything it needs
21 which would remain viable on an annual basis.

22 So the fact that imports primarily enter during
23 that same period has sort of a double-whammy effect on the
24 industry's financial performance.

25 COMMISSIONER KIEFF: Thank you. And then just a

1 final comfort question, I guess, really for the lawyers and
2 really for the post-hearing. In our preliminary
3 determination we use the phrase that was something like the
4 following, "in any final phase we'll further investigate..."
5 a number of times, and of course without the benefit of
6 input from the respondents who were earlier in the
7 proceedings and are not now, if you could just in the post
8 hearing tell us why we should be comfortable writing an
9 opinion despite the inability to gather that information.
10 We've done it before, not suggesting it's a fundamental bar.
11 But it will help us if you could point us to the firmest
12 path in that direction.

13 Thank you, no further questions.

14 MS. CLARKE: We will do that.

15 CHAIRMAN BROADBENT: Okay. I think I'll do my
16 questions at this point.

17 Mr. Walden, to what extent do prices for U.S.
18 produced merchandize reflect the inclusion of premiums for
19 customer service, sort of lead times, or benefits that your
20 firms offer uniquely, domestic producers offer uniquely?

21 MR. WALDEN: Just trying to stay away from any
22 confidential information.

23 CHAIRMAN BROADBENT: Yeah, it's a little tough
24 here, isn't it? I've been trying to do the same thing
25 myself.

1 MR. WALDEN: But we've definitely seen erosion in
2 pricing across all things, across all channels.

3 CHAIRMAN BROADBENT: Right.

4 MR. WALDEN: But primarily where it became
5 unbearable was through the distribution and repacker channel
6 commoditizing the product and then going after it and
7 commoditizing the brand.

8 At one point during 2013, HTH is a proprietary
9 brand of Arch Chemicals and when we would go to the Internet
10 and Google HTH the first several pages would come up would
11 be all Chinese products advertising HTH product on the
12 Internet. So we've seen some big damage to that point. We
13 vigorously protect our trademark on HTH and while there has
14 been a few instances where it snuck in the country labeled
15 that, we pretty at least have got that stopped. But when
16 you have a product and it's kind of like the old Xerox days,
17 if you will, that was the acronym that everyone used to go
18 make a copy of something. HTH was almost like that with
19 Cal-Hypo and henceforth commoditized the product,
20 commoditized the brand. So we've seen price and erosion in
21 all channels.

22 CHAIRMAN BROADBENT: Okay. You've seen price
23 erosion, but I'm just wondering, as a domestic producer, do
24 you at all ask for a premium based on service aspects that
25 you can offer that the importers can't?

1 MR. WALDEN: Yes. We try our best to with our
2 branded products. We supply services, we supply an
3 around-the-clock call hotline for anyone that needs any
4 information. We supply marketing materials for different
5 customers that become a dealer for us. So we do try to add
6 extra services and everything for that branded product.

7 CHAIRMAN BROADBENT: Okay. When people call the
8 hotline, what do they call about?

9 MR. WALDEN: They call for many different things.
10 Primarily for the safety of the product. You can imagine if
11 you have a swimming pool, I don't know how many of you --
12 you're up, or currently have a swimming pool, but if
13 anything goes wrong, if you have some conditions in your
14 pool, water chemistry, you sometimes would think is a simple
15 process. But when your water gets out of balance, whether
16 it's pH, alkalinity, chlorine content, chlorine lock, it can
17 become quite complex and complicated. So they'll call the
18 hotline and we'll walk them through and help them get their
19 pool back in place. If they have any questions about the
20 safety of the product, or heaven forbid someone has ingested
21 the product or something, we'll help them through the
22 process and get them the immediate help that they need.

23 CHAIRMAN BROADBENT: Okay. And then the
24 chlorinated ISO product, how does that compete with the
25 product you produce?

1 MR. WALDEN: It's primarily a substitute product.
2 You can -- essentially you use chlorine to sanitize or to
3 kill the bacteria in your pool. And the ISOs are one form
4 of doing that.

5 It has some deficiencies with the tri-chlor. One
6 of the by-products of tri-chlor is cyanuric acid, it's the
7 way you produce it. And there's a lot of debate out there.
8 But when you build up cyanuric acid levels in your pool, and
9 you will build them up, when you get above a certain part
10 per million level, then you have chlorine lock and the only
11 way you can eliminate the cyanuric acid is by draining it
12 out of the pool.

13 CHAIRMAN BROADBENT: Is what? Sorry.

14 MR. WALDEN: By draining --

15 CHAIRMAN BROADBENT: Draining the pool.

16 MR. WALDEN: -- the pool water out of the pool.
17 So it has some -- a convenience factor that's much longer
18 lasting, but as far as a quick delivery, quick kill to get
19 rid of algae and bacteria and everything Cal-Hypo is by far
20 the premium choice product out there.

21 MS. CLARKE: If we could just turn back to your
22 question about the service issue, Mr. Olcese from AllChem
23 would like to say from his perspective.

24 CHAIRMAN BROADBENT: Sure.

25 MR. OLCESE: Yes, Commissioner. We found that

1 there is no premium that can be derived from the service.
2 Everyone sort of says they want it, but at the end of the
3 day the price is what matters. I would imagine that Arch
4 fields a lot of phone calls from people who haven't
5 purchased their product and are still looking for generic
6 information on calcium hypochlorite. So we found that there
7 is no premium in terms of service or any other support.

8 CHAIRMAN BROADBENT: Okay. Anybody else want to
9 respond to that?

10 (No response.)

11 CHAIRMAN BROADBENT: Okay. Ms. Clarke, can you
12 walk us through, you know, when you sort of decided that the
13 volume of imports was significant here, and how you guys
14 decided together? What was that conversation like?

15 MS. CLARKE: Well, I'll try. Others can jump in
16 on this one. Arch has been concerned about the impact of
17 the Chinese product on their sales for several years. And
18 we have looked at it. We really -- from past experience in
19 trade cases -- advise that, you know, if the market share
20 continued to rise, and the injuries became more pronounced,
21 it became the time to file. As Rick noted -- as Mr. Walden
22 noted, in 2013, the first half of the year import share
23 exceeded 10 percent. That's also when they started really
24 seeing product beyond the bulk repacker private label
25 distribution channel. That's really when they started

1 feeling the injury and they wanted to get in before it was
2 too late, while they could still recover from the injury.
3 And that's the discussion we had for several years, but 2013
4 was the tipping point for them.

5 MR. MALASHEVICH: Madam Chairman, I can add a
6 little bit to that. I participated in that evaluation
7 exercise and the normal course, if we get involved at that
8 point in the process, we design, what I call a mock ITC
9 producers' questionnaire and ask the potential petitioners
10 to complete it and evaluate it and we evaluated, as we would
11 in any case. There are some instances where we advised the
12 client that the facts are just not there. And other
13 instances where they are. In this case, in addition to what
14 Ms. Clarke said, I felt it was very compelling and I
15 personally interviewed Mr. Walden at that evaluation stage
16 that the share of the market as a whole is really not
17 indicative of the market power of the subject imports to
18 influence prices.

19 In our brief we do a calculation of the market
20 share of subject imports of that most price-sensitive and
21 price-driving segment which is to the repacker's private
22 labelers. And you will see that the market share in that
23 sensitive segment is much higher than it is in relation to
24 apparent consumption as a whole. And it's through that
25 channel that prices generally are affected in the

1 marketplace. And that among other factors in facts as they
2 were reported to us convinced me that this is a case of
3 great merit.

4 CHAIRMAN BROADBENT: Okay. Mr. Walden, you
5 mentioned another chlorine product, hydrotone hydrate. Or
6 is that a case that we've done recently or --

7 MR. WALDEN: No, that was a mistake on my part.
8 It was hydrazine hydrate and that was back in the '90s and
9 just getting started and I did not file anything at that
10 time. I wish I had. Maybe those two plants would still be
11 operating today.

12 CHAIRMAN BROADBENT: And that was Chinese
13 competition that you were facing then too?

14 MR. WALDEN: That was Chinese competition that
15 started entering into the market and pricing went -- I
16 remember the days we were essentially selling the product at
17 about \$1.20, 1.25 and within 18 months it went down to 90
18 cents. It got below our operating cash costs and we shut
19 down. So, did not understand all the laws of the land at
20 that time maybe and henceforth kind of, as I say, it's a
21 hard lesson learned. I wish I had taken advantage of the
22 law at that time.

23 CHAIRMAN BROADBENT: Okay. I will yield at this
24 point to Vice Chairman Pinkert.

25 VICE CHAIRMAN PINKERT: Thank you, Madam

1 Chairman. And I thank all of you for being here today.
2 There were a couple of questions that focused your attention
3 on 2013 and the tipping point, if you will in 2013. I'm
4 wondering, how do you account for domestic industry
5 operating margins in the first six months of 2013? And that
6 may not be something you can address in the public session,
7 but I'd like to know the answer to that.

8 MR. MALASHEVICH: Vice Chairman, I think the
9 better part of valor is to answer it post-hearing. This is
10 like Coke and Pepsi, they are two producers, but they are
11 extremely competitive. And please give me liberty to
12 respond post-hearing.

13 VICE CHAIRMAN PINKERT: That's fine. I think
14 when I was at the Commerce Department there was a
15 three-company rule as far as the inadvertent revealing of
16 proprietary information. So I understand the two company
17 problem that you face.

18 Are there real or perceived differences in
19 chlorine content that affect the substitutability of
20 domestic Cal-Hypo in imports from China?

21 MR. CALAIS: Commissioner, Jim Calais from
22 AllChem. We have experience in buying domestically produced
23 calcium hypochlorite as well as imported produced in China.
24 And for the market channels that we sell to, primarily the
25 service trade distribution, they don't care. It's

1 interchangeably in terms of what our customers are looking
2 for. They're shopping it on price.

3 MS. CLARKE: And just to follow up, Commissioner,
4 we did put in some scientific testing that was done without
5 respect to this case comparing Arch's product to Chinese
6 imports and did not see a difference in chlorine or
7 solubility or dissolution rates or anything else. And that
8 is on the record.

9 VICE CHAIRMAN PINKERT: Thank you very much. Any
10 other comments on that question on this panel?

11 (No response.)

12 VICE CHAIRMAN PINKERT: Okay. Do marketing
13 support obligations make it difficult for Chinese suppliers
14 to sell to certain purchasers?

15 MR. WALDEN: Not in my opinion. They seem to be
16 able to sell to all the customers out there. And as it
17 becomes more commoditized, it's strictly on a price-basis
18 only. Have not bought any of the Chinese stuff. Jim, do
19 you want to --

20 MR. CALAIS: I don't think so. Based on our
21 experience I've talked to a lot of our customers who have
22 been contacted directly by other Chinese producers, brokers,
23 traders, there doesn't seem to be any issue in some of our
24 customers buying the Chinese product and making a marketing
25 support an issue.

1 MR. HOOPS: If I may, Mike Hoops, Axial
2 Corporation. I would concur with the gentlemen. When
3 you're talking about particularly the service trade
4 marketing support is not a factor there. It's simply price
5 and the guy driving around in the Sun Belt taking care of 15
6 pools in a day or 50 in a week, he's buying on price. And
7 you can do all the marketing in the world and it does not
8 provide a differentiation.

9 VICE CHAIRMAN PINKERT: Well, where the purchaser
10 does impose these marketing support requirements, is it your
11 testimony that the subject imports could be -- could provide
12 that support for the -- for example, the big box retailers?

13 MS. CLARKE: This is Peggy Clarke again. I will
14 say that one of the issues you have is you have seen is many
15 distributors buy imports and the distributors are perfectly
16 capable of providing that market support into a big box
17 retailer too.

18 So while it may or may not come directly China,
19 since the companies requiring marketing support are not
20 requiring U.S. product, they're requiring marketing support,
21 there's nothing that prevents them from supplying that with
22 Chinese product.

23 MR. WALDEN: Just another piece of it. And
24 you've all probably been into a pool store and you'll see
25 various brands of product up on the shelves and they'll get

1 their marketing support from us and then sell the Chinese
2 imported product at, you know, somewhat less discount. And
3 we educate them, we train them, we teach them and they sell
4 the Chinese product. And that was happening more and more.

5 MR. HEARD: Mr. Commissioner, Stephen Heard with
6 Arch. In support of Rick's comments earlier, the Chinese
7 producers provide the same marketing support that we would
8 in this repacked private label channel either directly or
9 through their brokers that are here in the states. There's
10 really no difference in the marketing support we can provide
11 and they can provide in the channel we're discussing today.

12 VICE CHAIRMAN PINKERT: Would you agree though
13 that sometimes the folks that are producing the subject
14 imports can benefit from the marketing support that's
15 provided by domestic companies?

16 MR. HEARD: Can you restate the question, sir?
17 I'm sorry.

18 VICE CHAIRMAN PINKERT: Right. I thought that
19 what Mr. Walden was suggesting was that there could be some
20 piggybacking on the market support that's provided by
21 domestic companies, but I wasn't hearing that from you. So
22 I'm wondering, is your testimony different from his?

23 MR. HEARD: No, I think he's saying in the retail
24 environment, in a retail store, we provide all the service,
25 you know, around our products and Cal-Hypo from China can

1 easily be substituted and piggybacked on that.

2 My comment was more, when we sell product to the
3 repacked private label channel that we're discussing today,
4 all the services we provide into that channel can easily be
5 provided by a Chinese producer and/or their broker in the
6 states.

7 As Rick mentioned earlier at a recent
8 international trade show based here in the U.S. every
9 Chinese producer was there to represent their product to
10 this marketplace.

11 VICE CHAIRMAN PINKERT: Thank you.

12 MS. CLARKE: Commissioner we would be happy to
13 expand on Arch's experience in the big box channels that you
14 are asking -- also asking about in our post-hearing brief.
15 It would require confidential information.

16 VICE CHAIRMAN PINKERT: That would be helpful
17 thank you. Another factor that may or may not limit the
18 competition in the U.S. market between subject imports and
19 the domestic production is branding and I think Mr. Walden
20 you mentioned the brands that are out there in the U.S.
21 market. Is branding a factor that limits the ability of
22 the subject imports to penetrate the market?

23 MR. WALDEN: Not really. It used to, it used to
24 stand for quality but after a certain period of time the
25 Chinese quality has improved where it is equivalent quality

1 today and after a long enough side by side comparison it
2 doesn't take too long to convince the end user so we are
3 eroding our brand equity if you will. And once again, they
4 compete strictly on price.

5 MR. OLCESE: Commissioner we had an instance
6 where a customer placed orders with us subsequent to the
7 starting of the investigation because their Chinese supplier
8 said they couldn't supply then wanted domestic product which
9 we provided then.

10 And when the Chinese supplier indicated they could get
11 product, not only cancelled the order with us but went with
12 the Chinese supplier's house brand instead of the private
13 label brand that we were going to be packaging for that
14 customer. So they don't even value their own brand let
15 along someone else's brand.

16 VICE CHAIRMAN PINKERT: Mr. Hoops I saw you
17 shaking your head affirming that testimony, do you want to
18 make that public?

19 MR. HOOPS: Sure I would concur with what is
20 being said here particularly in the space that we were
21 talking about here with re-packer private labeled
22 distributor. We wish the brand meant something but you
23 can't differentiate yourself with the brand, price dominates
24 that in the conversation.

25 VICE CHAIRMAN PINKERT: Thank you very much.

1 Thank you Madam Chairman.

2 CHAIRMAN BROADBENT: Commissioner Williamson?

3 COMMISSIONER WILLIAMSON: Thank you and I too
4 want to express my appreciation to the witnesses for coming
5 this morning. Just to continue on branding question for a
6 minute. Since I live in Manhattan and don't know where any
7 pool stores are, I haven't been to one even though I love to
8 swim so I guess the question is what's -- when you go into a
9 pool store -- when you go into a store to buy this is the
10 packaging basically the same?

11 There are some products where you go in and you
12 look at the package of the grander product or the well-known
13 brand and you look at the other packaging and you say the
14 packaging is of some value to you. Is this relevant here
15 or is it basically it all comes in some kind of plastic bag
16 and none of them break on you?

17 MR. WALDEN: Pretty much what you just said
18 there. The Chinese are becoming more sophisticated in
19 their packaging techniques. They have had our labels, they
20 copy our labels, they copy our registration numbers they
21 copy everything we do so it doesn't take long for the
22 packaging to start looking very similar.

23 COMMISSIONER WILLIAMSON: It's all pretty.

24 MR. WALDEN: And that's another issue we have is
25 with the circumvention that we have brought up many times.

1 Many of these places, many of these Chinese producers will
2 use our registration numbers on their packaging so that's
3 not correct, it's not fair and it's not right but it still
4 happens. So the packaging as you said at your last -- it
5 has become pretty much equivalent.

6 MR. CALAIS: Back to an earlier question Jim
7 Calais here of AllChem. I can't even tell you how many
8 times over the years when I have a customer that buys a
9 service size like a 100 pound plastic drum and we give them
10 the choice of what brand would you like it in they say we
11 don't really care, we just need the best price and that
12 happens constantly. And it's happened increasingly since
13 the Chinese have been in this market.

14 COMMISSIONER WILLIAMSON: Okay. Mr. Heard?

15 MR. HEARD: Steven Heard to your question about
16 packaging in a retail environment, these are very strong
17 chemicals and they have to be packaged properly and their
18 guidelines around child resistant packaging nomenclature
19 that has to be followed so those packages when they come in
20 from China are to that standard so they would be very
21 similar to what you would see in the U.S. producer's brands
22 for child resistance.

23 COMMISSIONER WILLIAMSON: Okay thank you for
24 those answers.

25 The pre-hearing report describes several end uses for

1 Cal-Hypo including the chlorinated swimming pools,
2 disinfecting the water and wastewater and sanitizing laundry
3 and food. Can you give me an idea of what percent of U.S.
4 consumption of Cal-Hypo falls into each of these end uses?
5 If you can't do it off the top of your head we can do it
6 post-hearing.

7 MS. CLARKE: I think we are going to have to look
8 post-hearing brief. None of them know it off the top of
9 their head but we will try to answer that in the
10 post-hearing.

11 COMMISSIONER WILLIAMSON: Okay.

12 MR. WEIGEL: Yeah, I'm trying to remember, I
13 think some of that information is also confidential.

14 COMMISSIONER WILLIAMSON: Okay no I can
15 understand, okay, thank you. A similar question and Arch is
16 pretty focused of course on a particular channel in the
17 market, the re-packers private label distributors and that's
18 what we have mostly been talking about. What are the other
19 channels in this market and what share of the overall market
20 does each account for and how would you describe competition
21 in these other channels? I'm not sure how far you want to
22 go on that here.

23 MR. WALDEN: Not very far but I will tell you
24 this, competition is fierce.

25 COMMISSIONER WILLIAMSON: Okay.

1 MR. WALDEN: But I think most of that question
2 needs to be answered in the post-hearing brief.

3 MS. CLARKE: I think most of the information that
4 we would be able to give you on that is confidential.

5 COMMISSIONER WILLIAMSON: Okay, good thank you.

6 Commissioner Kieff really kind of posed the question and
7 asked you post-hearing to address some of the issues that we
8 said we wanted to take a further look at in the preliminary.

9 I'm just going to throw out some of them and see if you
10 want to say anything on them now. We already talked about
11 branding, what about the effects of certification
12 requirements for Cal-Hypo used in tablet feeders designed by
13 domestic Cal-Hypo producers, is this very important?

14 MS. CLARKE: We actually talked about this some
15 and Rick can answer but to start with we went back and
16 looked at the public pre-hearing staff report and on that
17 particular issue and if you look at the staff report on this
18 issue you will see that the response is pretty much split
19 close to 50-50 on whether it made a difference or did not
20 make a difference.

21 You will want to elaborate to the extent you can
22 in the public field but that would be useful. We do have
23 some information to provide in our post.

24 COMMISSIONER WILLIAMSON: Okay.

25 MR. WALDEN: We certainly match our feeders and

1 we both design and build to our chemistry. Chemistries are
2 always a little twerky if you will so we try to match them
3 and then we also combine those with a very strict set of
4 standards to get MSF approval. And in my opinion it if the
5 end person has an opportunity to at a price to put a
6 different tablet in there, they will probably do so.

7 MR. OLCESE: Commissioner that's been our
8 experience that customers and users will replace one tablet
9 with the other regardless of the branding or the
10 manufacturer even though they are not supposed to.

11 COMMISSIONER WILLIAMSON: It's like with the
12 liquid soap, you could pour it.

13 MR. OLCESE: Exactly that's a great example.

14 COMMISSIONER WILLIAMSON: Okay thank you. Have
15 there been any allegations that the domestic industry is or
16 has -- about whether the domestic industry has been willing
17 to supply a small Cal-Hypo purchasers? Often when we have
18 small companies in here on Respondent's side they say well
19 we couldn't get it from the big guys.

20 MR. WALDEN: There is not a company out there
21 that we haven't tried to sell Cal-Hypo to. And in the
22 preliminary that comment was made from a smaller supplier
23 that actually we had been trying to sell for quite some time
24 and after the preliminary we were able to sell them some
25 product so yeah there -- we are a chemical producer and

1 we'll sell Cal-Hypo to any distributor out there that wants
2 to buy the Cal-Hypo.

3 COMMISSIONER WILLIAMSON: Okay and there was also
4 an issue raised about the importance of service obligations
5 and whether or not to around the clock customers you provide
6 around the clock service to customers and take back big box
7 stores and other large Cal-Hypo users. I take it that you
8 have already basically said the Chinese are suppliers and
9 this market can do that too?

10 MS. CLARKE: Yes, again if you look at the
11 responses to the questionnaires there is a table, I just
12 can't remember the proprietary quite frankly, that issue was
13 not significant and as we have noted in terms of the
14 services and that includes take backs, et cetera. There's
15 nothing in there that restricts the Chinese from supplying
16 that. There's nothing in it that restricts the importers
17 from taking back the material and holding it.

18 MR. WALDEN: They are essentially starting to set
19 up their U.S. marketing companies to supply the same
20 services. You can then compete strictly on their
21 subsidized pricing.

22 COMMISSIONER WILLIAMSON: Okay, what about the
23 extent to which imports are limited with respect to chlorine
24 content and whether or not big box stores require purchasers
25 want Cal-Hypo with certain chlorine content?

1 MR. WALDEN: In your big box stores Cal-Hypo is a
2 class three oxidizer and anything above 55 up to 60% now and
3 henceforth they like to have the class one oxidizers, not
4 near as flammable, hazardous and there they own their
5 shelves in their stores so that's what we produce for them.

6 But the Chinese can produce it at that same level and I
7 don't know if they currently have registrations for those
8 levels or not but that would take then about 30 days to get
9 that registration.

10 COMMISSIONER WILLIAMSON: Okay and is that
11 relevant to the chlorine content in the product?

12 MR. WALDEN: That is 60% is the demarcation line
13 between a class three and a class one oxidizer at this time.

14 MS. CLARKE: And when we talk about 60% he is
15 talking about the chlorine content.

16 COMMISSIONER WILLIAMSON: Okay, yes, gottcha.

17 MR. HEARD: Mr. Williamson just to be clear it is
18 the same chemical as the Cal-Hypo that we have been
19 discussing this morning, it is just blended down with
20 magnesium salts to reduce the reactivity of the product and
21 there is no barrier for the Chinese to not do this. You can
22 easily get a registration in the U.S. for this type of
23 product.

24 COMMISSIONER WILLIAMSON: Does that mean when you
25 reduce it down you have to use more of it or?

1 MR. HEARD: Yes, sir to reach the right amount of
2 chlorine in a pool you would have to use more of the
3 product, yes sir.

4 COMMISSIONER WILLIAMSON: Okay and then you go
5 put in a tester in there to see if you got it.

6 MR. HEARD: Correct.

7 COMMISSIONER WILLIAMSON: Okay, thank you for
8 those answers.

9 CHAIRMAN BROADBENT: Commissioner Johanson?

10 COMMISSIONER JOHANSON: Thank you Chairman
11 Broadbent and I would also like to thank the witnesses and
12 their counsel and economists for appearing here today. Why
13 does the domestic industry command such a large part of the
14 market in terms of the market share?

15 MS. CLARKE: Maybe Bruce can answer that in more
16 detail but the bottom line because they have been here
17 longer, they were the producers and now others are coming
18 in.

19 MR. WALDEN: Excuse me as I said we introduced
20 the HCH brand of calcium hypochlorite in 1928. We had
21 proprietary processes, we had patents and as those started
22 running out the Chinese started copying our patents, copying
23 our product, copying our labels and then used the subsidized
24 price to attack his own price so we have had a large share
25 of the market and the same way it was in hydrogen hydrate

1 and within a very short period of time without action, that
2 will reverse, no doubt in my mind.

3 MR. HEARD: Mr. Commissioner another issue is
4 this is a very difficult product to ship on the steam ship
5 lines and the Chinese have been able to penetrate this
6 market with their Chinese carriers into this market place
7 easier than other countries have been able to.

8 MS. CLARKE: And it should be noted that the
9 Chinese carrier, which is not subject to the same
10 restrictions for shipping as the other lines, does not ship
11 -- will not ship -- has refused to ship anyone other than
12 Chinese product.

13 MR. WALDEN: So and thanks Steve for reminding me
14 of that very important issue. As I mentioned we compete
15 world-wide, we sell product in Europe, South African, India,
16 Australia, we try our very best to sell just a little bit in
17 China, so when we started seeing the shipping rates of what
18 the Chinese owned shipping company was shipping Cal-Hypo
19 for, we went to them and asked them to ship for us and they
20 responded and flatly refused to ship our product.

21 Same product, same content, same everything, if
22 anything albeit our safety characteristics of our product up
23 against anyone, anywhere, anytime so it's not a quick
24 pro-quo when it comes to shipping.

25 COMMISSIONER JOHANSON: All right thanks for your

1 answers on that. That's a hard one to -- I won't comment
2 on that because that's a whole other issue I think but I
3 understand your frustration there. What is it about this
4 product and market which provides that we do not see more
5 imported products from non-subject countries?

6 MR. WALDEN: There is very few Cal-Hypo plants in
7 the world outside of ours except for China. There is one
8 in India that is still using the calcium process versus the
9 sodium process so their quality is not quite up to par.
10 And once again, the shipping of calcium hypochlorite at the
11 65 or anything above 60% basically a class three oxidizer
12 and very constantly, very expensive to ship. You have to
13 ship it in refrigerated containers, you can only put 22
14 pounds, that is essentially a half-loaded container and most
15 of the shipping lines, there's only a couple that will ship
16 it and they are not going to ship it if it is not a
17 reputable company but only in shipping lines.

18 So bad quality with the process that they are
19 currently using and availability of shipping lines.

20 MR. HEARD: I would add Mr. Commissioner that
21 it's a very aggressive manufacturing process so maintenance
22 and capital to keep the plant operating is pretty high
23 compared to other chlorine manufacturing opportunities that
24 exist out there. You are continuously maintaining your
25 plant.

1 MR. WALDEN: I think we have mentioned it in the
2 preliminary but it's a chlorine derivative business and when
3 you manufacture and you take salt out of the ground and you
4 manufacture caustic chlorine, mother nature says you get one
5 tone of caustic and one ton of chlorine, caustic is in short
6 supply around the world, chlorine is very long, so to sell
7 the more caustic you have to produce the chlorine.

8 Calcium Hypochlorite is not the easiest process
9 in the world to build, it is not inexpensive to build, and
10 it's a very as Steven said it's a very aggressive process
11 so people would normally look for other things for their
12 chlorine so they could keep manufacturing the caustic to
13 sell after the short market.

14 COMMISSIONER JOHANSON: All right thanks for your
15 responses. In Arch's pre-hearing brief at page 16 the
16 argument is made that there are no significant causes of
17 material injury to the domestic industry besides subject
18 imports. The argument specifically comments on demand in
19 non-subject imports. In the staff report, however, at
20 footnotes 11, 12 and 13 at pages 65, 66 and also on page 613
21 a number of events are identified that appear to have
22 impacted the performance of each company during the period
23 of investigation and that did not seem to have anything to
24 do with subject imports.

25 Could you all please explain why any performance

1 declines during the period of investigation are not
2 attributable to these other factors or how notwithstanding
3 these events, we should define material injury as a result
4 of subject imports from China and please answer this to the
5 extent you can now and to the extent you cannot if you could
6 please address this in the post-hearing and I realize some
7 of this is likely proprietary.

8 MS. CLARKE: I believe much of it is proprietary
9 at least on our behalf. I'm not going to speak for Axiall
10 on this issue, I don't know Bruce do you have anything to
11 add on the specific capital constraints?

12 MR. MALASHEVICH: I think it's too dangerous in a
13 public setting even to try quite frankly but I will be happy
14 to work with the producers to answer your question
15 post-hearing if I may.

16 COMMISSIONER JOHANSON: I understand your caution
17 and it is something which I would appreciate you all delving
18 into to help me better understand the situation on the
19 domestic industry. In the staff report at table 2-8 a
20 number of purchasers indicate that U.S. product was superior
21 to the Chinese product in various purchasing factors such as
22 availability, delivery time, reliability and technical
23 support and service. The staff report also notes at page
24 228 the comment from one purchaser that it only purchases
25 Cal-Hypo from China if the color and quality match those of

1 the U.S. product. Are there color and quality differences
2 between the products from the two sources and to what extent
3 does this factor in the decision to purchasers?

4 MR. CALAIS: Jim Calais from AllChem. We have
5 purchased domestic material for many, many years and not so
6 long the imported Cal-Hypo from China and perhaps early
7 there might have been a slight difference but it's our
8 customers -- if you sent them an unmarked drum and asked
9 them to tell you whether this was domestically produced or
10 imported they couldn't tell you.

11 COMMISSIONER JOHANSON: All right.

12 MR. HOOPS: Mike Hoops of Axiall. I would just
13 confirm that as well. We have had discussions, over the
14 years, is it white, is it gray, is it what shade of gray and
15 you are splitting hairs if we put it out on the table here I
16 might not even be able to get it right as to which one is
17 mine, it's that close.

18 COMMISSIONER JOHANSON: Miss Clarke?

19 MS. CLARKE: Yeah I will note there are to the
20 extent they are useable photographs of Chinese and Arch
21 product in our pre-hearing brief and also post-conference
22 brief along with the testing material that shows physically
23 there is no difference. If you look at the photographs,
24 ideally photographs are not great, I recognize that, but I
25 don't think you will see a difference in color or size or

1 anything else among them.

2 COMMISSIONER JOHANSON: All right I'll revisit
3 that although once again we do have this comment from this
4 one purchaser noticing color and quality differences. So I
5 assume you would state that it is not fair to say that
6 Chinese material is serving a lower end market segment than
7 U.S. product?

8 MR. WALDEN: It is very safe to say.

9 COMMISSIONER JOHANSON: Okay I assumed you would
10 give that answer but I just wanted to verify. I would have
11 been surprised if you said otherwise. All right I am almost
12 out of time so I am going to end my questions here but I
13 will plan to come back in the second round and ask more
14 questions, thank you.

15 CHAIRMAN BROADBENT: Commissioner Kieff?

16 COMMISSIONER KIEFF: Thank you very much and
17 thank you for your answers to everyone else's questions to
18 they are all very helpful. Let me ask if you could just
19 tell me a little bit more about the Chinese shipping of this
20 product and in particular if you could let me know is it --
21 does it boil down to a short term cost factor for them?
22 They simply are able to ship more dangerous product without
23 safety measures. And if so, are there collateral or
24 unintended or less observed costs like for example, more
25 fires, more explosions, more rust, more contamination of

1 other products on the boat.

2 My sense of this is that sticking a good oxygen
3 source in a contained space is -- can be a challenge in a
4 lot of ways right from rust to fire to ruining other things.

5 Can you just tell me a little bit more about what happens
6 on those boats? The ones that do ship this product from
7 China?

8 MS. CLARKE: This is Peggy Clarke. We looked
9 into this because this is one of our subsidy allegations.
10 I will note that in the late '90's - early 2000's there were
11 several fires about ships that sank some ships and might
12 have damaged some ports at which point the insurance
13 companies, the P&I clubs that insure American shipping
14 imposed a lot of restrictions. That's the refrigerate
15 container has to be on deck. You can only ship "x" number
16 of kilos per container load, "x" number of containers per
17 ship, to really reduce the thing.

18 COSCO does not insure through the P&I clubs
19 therefore it is not subject to those constraints. That is
20 one of the issues that we have in that Arch has seen
21 particularly in other countries where the COSCO ships are
22 carrying a larger volume of Cal-Hypo per container.
23 Whether there have been specific explosions I don't know.

24 COMMISSIONER KIEFF: I'm sorry I just want to
25 make sure that I'm following you. So you are saying that

1 implicitly or explicitly the Chinese government is providing
2 an insurance subsidy as a way to help this particular
3 carrier carry an otherwise much higher risk product with a
4 lower safety set of mechanisms.

5 MS. CLARKE: At least implicitly COSCO is
6 stated-owned.

7 COMMISSIONER KIEFF: Right. All right. I'm just
8 making sure I follow the logic.

9 MS. CLARKE: It's not so much yes, there is an
10 implicit -- they don't ensure -- they do not insure through
11 the insurance clubs, is my understanding.

12 MR. WALDEN: Absolutely correct, and Cal-Hypo,
13 there are several chemicals that cap and actually has the
14 last right of refusal, and there's very few shipping lines
15 outside of COSCO that will carry it. The Chinese have,
16 from time to time, put Cal-Hypo on other ships, and quite
17 honestly they intentionally mislabel it. So they do not
18 follow the criteria.

19 There have been several ships lost at sea, and
20 I'm happy to say none of those have ever been involved with
21 Arch Chemical.

22 MS. CLARKE: And I will note there is information
23 on the record, I believe it's in our petition, with respect
24 to both the refusal to ship Arch product and the offers to
25 ship it on other carriers calling it something else other

1 than Cal-Hypo.

2 COMMISSIONER KIEFF: All of that's helpful for
3 the post-hearing. Sorry, I didn't mean to cut you off. I
4 just meant to say please in the post-hearing highlight that,
5 and also if you can, try to explain in the post-hearing, in
6 whatever way you can, what evidence there might be, maybe
7 even your economist can do this, just if I'm understanding
8 the argument. The Chinese shipper is self-insuring. It's
9 state-owned. That is an implicit, direct but implicit
10 subsidy in the service of shipping an otherwise pretty
11 expensive product to ship.

12 MS. CLARKE: Yeah. Our subsidy allegation is
13 sort of twofold. One is that the lack of constraints on how
14 they ship it or lesser constraints, making it cheaper per
15 unit to ship. Also, we believe COSCO -- is their overall
16 charge as well. So it's a combined, a combination of the
17 two.

18 COMMISSIONER KIEFF: And then the next set of
19 questions, I recognize, are a little abstract, and maybe
20 best for post-hearing. But I'm curious if you could
21 explain, talk a little bit about the interactions, if any,
22 between a cause of action of this type and causes of actions
23 or legal restraints that might sound in other areas of law,
24 for you or against you.

25 So for example, you talked about, in effect, the

1 cost of educating -- maintaining a workforce, an educated
2 forward-deployed workforce who can face a customer and give
3 intelligent answers about tech support, and a back office
4 tech support.

5 Many trademark owners, so-called branded
6 companies, will face those costs. They will then face
7 competition of the type you describe, and they will then
8 engage in a lot of interactions with the people they're
9 educating, and some of those interactions will face various
10 state and federal forms of consumer protection or unfair
11 competition pushback.

12 On the flip side, the brandeds will assert a
13 range of causes of action like, for example, trademark
14 infringement, trade dress infringement, and broad forms of
15 unfair competition. I'm just curious in the post-hearing,
16 so that you have time to think about this, none of these is
17 a gotcha, although I recognize that any time you raise the
18 notion of a vertical restraint that sounds bad in the modern
19 antitrust parlance that's not a per se problem; it's a rule
20 of reason.

21 If you could talk a little bit about how those
22 other areas of law might interact with this, and whether
23 this cause of action, in a sense the record built in it,
24 might help or hinder those other causes of action, and
25 whether we should keep any of that in mind when making a

1 decision in this cause of action.

2 It might be that there are all sorts of
3 interactions, but they're just irrelevant to our basic
4 decision. But even if they're irrelevant, it would help if
5 you could flesh them out a little bit in the post-hearing,
6 in a way that's usually when you've had time to reflect.

7 MS. CLARKE: We will have to do that in the
8 post-hearing. We'll have to review the various issues that
9 arise, and how they reflect one way or the other. But we
10 will try to address that more thoroughly in the
11 post-hearing.

12 COMMISSIONER KIEFF: That's great, and then just
13 to help, you know, so you might think about, for example,
14 there are some -- I used to teach this stuff, so of course I
15 remember all the examples that the students love. So
16 there's the, you know, high end photographic equipment,
17 trademark, trade dress and unfair competition type causes of
18 action, because of course non-branded equipment ends up
19 taking up an immense amount of tech support cost, and tech
20 support cost is really paid for by the branded, not by the
21 so-called generic or knock-off or gray or black market
22 product.

23 These are all terms of art in that literature.
24 They're not designed to be complimentary or disparaging of
25 either side. Of course, in district court causes of action,

1 you have damages and injunctions available. In 337 action,
2 you have exclusion orders, including a general exclusion
3 order. So each of these different remedies might be
4 relevant.

5 Then lastly, of course, there are other
6 regulatory obstacles that competitors sometimes face.
7 You've hinted at them a little bit today, like EPA
8 registrations, as well as other safety regulatory regimes
9 including, for example, OSHA. So I just ask, are there
10 interactions among all of those other avenues for
11 interacting with your Chinese competitors, and should we
12 keep them in mind. That concludes my questions for the day.
13 Thank you all very much.

14 MS. CLARKE: Thank you.

15 CHAIRMAN BROADBENT: Thank you, Commissioner
16 Kieff. Let's see, a couple of questions here I had
17 remaining. I think I heard you argue that the domestic
18 industry needs to operate at full capacity utilization in
19 order to be profitable. If we were to remove the subject
20 imports from the market, would the domestic industry be able
21 to realize full capacity utilization?

22 MS. CLARKE: Bruce, do you want to take a shot?

23 MR. MALASHEVICH: I really can't speak to that.
24 I know the statistics obviously. But I think the individual
25 producers would have to respond from their own perspective.

1 MR. WEIGEL: At least for Axiall, we can address
2 our capacity utilization issues in the post-hearing brief.

3 MR. WALDEN: Take the Chinese product out of the
4 import statistics, and I think it would be safe to say both
5 companies would be more profitable than they are today. I
6 mean just do the math, and once again, we'll be in
7 competition for those same end customers, so depending on
8 how you split the things.

9 But certainly I would anticipate both companies
10 picking up, you know, certain customers and distribution
11 models and everything else. But we would certainly be more
12 profitable if they were out of here, and as a matter of
13 fact, this year is going to be better for us. We've been
14 able to pick up some customers as I've so stated, and we're
15 starting to see some pricing come back, which has helped us
16 immensely.

17 MS. CLARKE: In our post-conference brief, we can
18 provide some analysis of capacity utilization once the
19 petition went into effect and prior to that, with the
20 decrease in imports versus the increasing imports, and maybe
21 that can answer your question in more detail.

22 CHAIRMAN BROADBENT: Well, I was just thinking.
23 Are there other factors that limit full production?

24 MR. WALDEN: Not really. It's a matter of
25 demand. We have supply and if demand is out there, then

1 we're able to -- and, you know, the breakeven point, and
2 once you get past that, you're getting better every day.

3 CHAIRMAN BROADBENT: The staff report describes
4 several uses, end uses for Cal-Hypo, including the swimming
5 pool use that we've talked about, but also disinfecting
6 water and waste water and sanitizing laundry and food. Can
7 someone give me an estimate of sort of what percent of U.S.
8 consumption falls into these relative categories?

9 MS. CLARKE: We will do that. It does require
10 confidential information. Can we do it in our post-hearing
11 brief? They don't have rough estimates. We discuss this a
12 little briefly. They don't have rough estimates off the top
13 of their head. They have to do some research. But I think
14 you will require individual responses from the two companies
15 on that, to some extent.

16 CHAIRMAN BROADBENT: Right. But can you just
17 give me like an order of magnitude, some rough sense?

18 MS. CLARKE: Pool and spa business is by far the
19 biggest, perhaps you know, versus municipal water versus --

20 MR. WALDEN: Yeah. Let Stephen answer that one.

21 MR. HEARD: I would say the market split's about
22 80 percent residential pool and spa use, versus industrial,
23 commercial, municipal uses at 20 percent.

24 CHAIRMAN BROADBENT: Okay.

25 MR. HEARD: Thank you.

1 CHAIRMAN BROADBENT: Okay, and then Mr. Walden,
2 you were talking about your facilities that you built and
3 have built in I think Brazil and South Africa you mentioned.
4 What is the global market? What kind of demand do you see
5 building out there for this product or not building?

6 I mean it seems to me it's a very useful microbe
7 killing infections in water supply and so forth in
8 developing countries. You read in the papers more and more
9 shortages of water and problems there. Do you see any big
10 growth in demand globally?

11 MR. WALDEN: We do see some growth, primarily in
12 the feeder and the industrial treatment arena.

13 CHAIRMAN BROADBENT: What was the first one, the
14 feeders?

15 MR. WALDEN: With our feeders --

16 CHAIRMAN BROADBENT: The feeders, yeah.

17 MR. WALDEN: --and the product being used there
18 to give a very specific control of Cal-Hypo for that. We
19 built these plants in those areas because if you look at the
20 world, you have the by far and away more pools in the United
21 States than any other place. The second heaviest place for
22 pools would be in Brazil. The third place is Spain,
23 followed by France, and then South Africa is very
24 concentrated.

25 Henceforth the reason we have manufacturing

1 plants in South Africa, and then with the transportation and
2 the shipping, especially with South Africa, Johannesburg the
3 primary area being inland quite a bit, it's a little
4 difficult to get it in through Durban inland up to
5 Johannesburg and the weather.

6 So we see increasing demand there, but by far and
7 away it's primarily in the swimming pool and spa arena, and
8 if you look at the number one market in the world, which is
9 the United States, the housing construction still hasn't
10 come back and, you know, there's a limited amount of pools
11 that are being built today.

12 You need a middle class or disposal income and
13 property rights before you're going to put in a pool, and
14 until the economy and housing start coming back immensely,
15 we're not anticipating a huge increase in treatable swimming
16 pool water. Pools being built today are somewhat smaller
17 than what were in the past.

18 So as the larger pools retire and the smaller
19 ones come in, it takes more pools to get to the treatable
20 water base. So we see demand increasing, but not
21 significantly around the world in this channel for us.

22 CHAIRMAN BROADBENT: Okay. So it doesn't seem
23 like you're emphasizing the drinking water market as much?

24 MR. WALDEN: We are emphasizing the drinking
25 water market, but it's -- there are other means of

1 delivering chlorine to the drinking water that are more cost
2 effective, and they have issues.

3 Until we can -- until we can get those issues
4 brought to light with the scientific community and
5 everything, and speaking of sodium hypochlorite that
6 degrades into perchlorates, and there's a lot of studies by
7 the CDC going on with that right now.

8 So we are seeing somewhat increasing in domestic
9 drinking water with the Cal-Hypo industry, but it's got a
10 ways to go yet.

11 CHAIRMAN BROADBENT: So what are the barriers to
12 delivering it in drinking water?

13 MR. WALDEN: The barriers to delivering Cal-Hypo
14 is your feeder system, and the analysis of the water for an
15 exact delivery of chlorine to the domestic drinking water.
16 The barrier really right there is it's so much cheaper to
17 use bleach, if you will, sodium hypochlorite. It's much
18 more cost effective for the municipalities to do that, so
19 that's primarily where they go to.

20 They used to use in the United States chlorine
21 gas, chlorine cylinders. But safety issues and homeland
22 issues and everything has saw a decrease in the chlorine
23 cylinders. A lot of companies have gone to bleach.

24 CHAIRMAN BROADBENT: Okay. Mr. Calais, are you
25 pretty much agreeing with that perspective?

1 MR. CALAIS: Yes I do, and I think it -- again,
2 that example of -- I think if I understood your question,
3 you were asking about what are the barriers for not
4 increasing perhaps more rapidly the use of calcium
5 hypochlorite in drinking water. Mr. Walden said well
6 bleach, and why, and it's because it's more cost effective,
7 it's cheaper.

8 I think that just highlights the sensitivity of
9 the growth in calcium hypochlorite use in this country in
10 the swimming pool, which is the biggest sector, is not
11 growing that fast. It's pretty almost flat, and I think
12 that just means they're much more susceptible to imports
13 from China that are priced way below.

14 So same example. They're buying on price.
15 Bleach is cheaper than calcium hypochlorite to treat
16 drinking water. So they're going to gravitate to bleach for
17 now.

18 CHAIRMAN BROADBENT: And why isn't bleach used in
19 swimming pools?

20 MR. CALAIS: It is. There are a variety of
21 chlorine chemicals that are used to treat swimming pools.
22 That's one of them.

23 CHAIRMAN BROADBENT: Okay. So you all don't see
24 any particular growth globally that would take off some of
25 your capacity or kick off some of your production, where you

1 could export?

2 MR. CALAIS: I'm not that familiar with outside
3 the United States. So you'd have to go to Mr. Walden on
4 that.

5 MR. WALDEN: I'm not looking at any plans to
6 build any new plants anywhere in the world.

7 CHAIRMAN BROADBENT: And then do you export from
8 your plants in the U.S.?

9 MR. WALDEN: We do.

10 CHAIRMAN BROADBENT: To where?

11 MR. WALDEN: We export to Europe primarily, and
12 we also export some to the Middle East, Northern Africa and
13 the Caribbean, and then some into the Andean Pact arena. If
14 we have any operating issues in South Africa or Brazil, it's
15 a great backup. We back up each other.

16 CHAIRMAN BROADBENT: Right. What are you seeing
17 in the European market? Are they as phobic about this
18 chemical product as a cleaner as they are for chlorinated
19 chickens?

20 MR. WALDEN: That's another issue within itself.
21 But if you look at the European market, it is primarily
22 dominated by the Isos and the Spanish producer over there,
23 and Russia won't allow us to put chlorine on chickens over
24 there. So that's kind of hampered the carcass industry a
25 little bit.

1 So Europe is not a huge market for us. If it --
2 and my European friends that were visiting last week would
3 hate to hear me say that. But if it went away, it really
4 wouldn't affect my bottom line all that much. It's a tough
5 market over there.

6 CHAIRMAN BROADBENT: Okay. Commissioner Pinkert.

7 VICE CHAIRMAN PINKERT: Thank you, Madam
8 Chairman. Mr. Malashevich, given when the tipping point
9 occurred for this industry, is this a better threat case
10 than it is a present injury case?

11 MR. MALASHEVICH: Respectfully, I think they're
12 both strong to an equal measure.

13 VICE CHAIRMAN PINKERT: Do you want to elaborate
14 on that in the post-hearing?

15 MR. MALASHEVICH: Certainly, I'll be happy to.

16 VICE CHAIRMAN PINKERT: Thank you, because I
17 can't talk about the specifics of 2013 and some of the
18 numbers. But perhaps you can take a look at that and
19 elaborate in the post-hearing.

20 MR. MALASHEVICH: I'll do so, yes.

21 VICE CHAIRMAN PINKERT: Thank you. Now what
22 makes the private label segment of the market so price
23 sensitive?

24 MR. HOOPS: I'll go ahead. Mike Hoops with
25 Axiall. I think when we go back to what we've been focused

1 on here, the repackers, the private label, the distributors,
2 a big portion of that ends up in what I call the service
3 sector. As I alluded to earlier, in the Sun Belt, it's not
4 always the homeowner who goes to the store and makes the
5 purchase decision and takes care of their own pool. Many
6 of those people outsource that to a service guy, who drives
7 around on a route and does, like I said, 15 pools a day, 50
8 pools a week. So you lose that identity. The homeowner
9 doesn't really know what that service guy is doing with his
10 pool. They just, you know, you come home after work and you
11 paid the guy 90 bucks a month or 150 bucks a month, whatever
12 it was, and he provided that service for you. So at that
13 point, there's no opportunity to really have the homeowner
14 driving for a particular product, a particular brand. It's
15 washed away the identity of really who the manufacturer even
16 is. So I hope I answered your question there.

17 VICE CHAIRMAN PINKERT: Thank you. The reason I
18 asked the question is because it would seem to me that the
19 appeal of private labels is that typically they're going to
20 be lower-priced than some of the other branded product out
21 there. But I wanted to give you an opportunity to tell me
22 whether that was right or wrong.

23 MR. HEARD: Mr. Commissioner, I would say in this
24 space, you're absolutely correct, in that the retailer would
25 own the brand or the distributor would own the brand. So

1 the responsibility to market and promote that brand lies
2 with them.

3 So the sourcing of the raw material is absolutely
4 cost driven. To get the product in a package is all about
5 the price, and then they're responsible for the marketing
6 and promotion of those brands, since it is their private
7 label.

8 VICE CHAIRMAN PINKERT: Thank you. Mr. Walden,
9 you're shaking your head in the affirmative.

10 MR. WALDEN: Yeah, I totally agree with that.
11 Most pool owners are very much like my sister. They'll take
12 their bottled water, they drop it off at their local pool
13 store, then come back in the afternoon and they give her a
14 bag of stuff and say go put this in your pool. Doesn't want
15 to be concerned with it, doesn't want to be bothered by.

16 So brand really -- you don't go into a pool store
17 shopping for brands like you would in a grocery store, and
18 looking for a high end catcher product versus the low cost,
19 my private brand. So it's really dependent upon that pool
20 store, and there's over 10,000 pool stores in the United
21 States that do this, and that's where a lot of the repackers
22 send their product and use their brand name stuff.

23 VICE CHAIRMAN PINKERT: Thank you. To what
24 extent do domestic producers compete with their customers
25 for downstream sales?

1 MR. WALDEN: We compete vigorously at all levels.
2 How about that? I just --

3 VICE CHAIRMAN PINKERT: That's a start.

4 MR. WALDEN: We have, you know, there's true
5 competition. We have some good customers that are
6 competitors of ours, and a lot of it goes on price so -- is
7 that a good answer Stephen?

8 MR. HEARD: I would agree.

9 MR. WALDEN: I didn't get kicked, so I guess that
10 was okay.

11 MR. HEARD: Yeah. It's a small industry and many
12 customers are also competitors, are also suppliers of some
13 services. So if you misbehave, people know about it very
14 quickly in this industry. So I would say it's highly
15 competitive amongst all the players in the channel.

16 MR. HOOPS: Mike Hoops of Axiall. I think if you
17 look at what we submitted in advance, we can put more in a
18 post-hearing brief. But the way we go to market and the way
19 others go to market aren't exactly in alignment. There are
20 different approaches as to who you sell to and who they sell
21 to. So I think, you know, I'd be out of line if I tried to
22 get into too much detail in this forum on that.

23 VICE CHAIRMAN PINKERT: The reason I asked that
24 question is that it might be argued that the -- that subject
25 imports are needed as an alternative source of supply to

1 where there's competition between the producers in the
2 United States and their own customers.

3 So I wanted to give you an opportunity to address
4 that, if -- not that the argument has been made to us today.
5 But if it were made, what would the answer be?

6 MS. CLARKE: Just to answer briefly, I think part
7 of it is you do see a customer here, testifying that they
8 too are hurt by the imports, and I'm sure, though I won't
9 guarantee it, these guys no doubt find themselves competing
10 with each other, but they still are buying from each other
11 as well.

12 MR. WALDEN: No reason to disagree.

13 VICE CHAIRMAN PINKERT: Okay well I know it's a
14 sensitive topic and maybe there's more that you can add in
15 the post-hearing. With that I have no further questions
16 for the panel and I look forward to the post-hearing
17 submission I appreciate it.

18 CHAIRMAN BROADBENT: Commissioner Williamson?

19 COMMISSIONER WILLIAMSON: Thank you I just have
20 one question and this is you know a general question. If I
21 own a swimming pool, I always loved them but you Mr. Walden
22 you mentioned that Cal-Hypo is a shock product and there is
23 another case that we had where there was one version was for
24 shock and the other was for day-to-day, does that limit the
25 use of Cal-Hypo because I assume you need to shock only when

1 there is some kind of event or in the beginning of the year,
2 am I wrong? I'm just trying to get an idea of the use of
3 the product.

4 MR. WALDEN: The use of the product is you have
5 many conditions or many things that affect the condition of
6 the pool, you always want a residual chlorine level like you
7 do on your drinking water but now you know two to five parts
8 per million, it's a convenience factor more than anything.
9 And if you use a say if you use an ISO tablet to maintain
10 your chlorine level and you have a lot of swimmers over, you
11 have a rain event and that's going to give you enough
12 chlorine into the water to keep the water clean, safe and
13 clean.

14 So what you will do is you will take a bag of
15 shock and you will disburse it over there and it gives you a
16 boost, if you will, because it is very quick dissolving
17 chlorine, you can get back in the pool very quickly versus a
18 slow dissolving ISO so the convenience factor is
19 overwhelming.

20 There are many parts of the world where Cal-Hypo
21 is used as a primary sanitizer verses the ISO and that's
22 because that part of the world has got used to you go out
23 and you take a scoop a day and you throw it in your pool, so
24 you can do it that way but most home owners especially here
25 in the United States, they don't want to fool with their

1 pool every day, they will be out there Sunday afternoon and
2 that's about the only time they get into it any more so it's
3 that convenience factor.

4 If you let a pool go for an entire week, then
5 this way it gets out of balance and everything else so.
6 Yeah and you do have di-chlor is used as a shock product as
7 well. Not as prevalent as Cal-Hypo but is still out there
8 and there are now some tri-chlor shock products but it
9 doesn't dissolve as well as and has separate issues as well.

10 COMMISSIONER WILLIAMSON: Okay thank you for that
11 answer. With that I want to thank the witnesses for their
12 testimony.

13 CHAIRMAN BROADBENT: Commissioner Johanson?

14 COMMISSIONER JOHANSON: Thank you Chairman
15 Broadbent. Could you all please describe certification
16 requirements for Cal-Hypo and whether such requirements
17 favor the purchase of domestic product over Chinese product
18 in any segment of the U.S. market?

19 MS. CLARKE: I'm assuming you are talking about
20 APA registration or NSF certification for the feeders or we
21 are just trying to make sure we understand what the
22 certification requirements are or are you talking about
23 individual customers?

24 COMMISSIONER JOHANSON: Individual customer
25 certifications.

1 MS. CLARKE: Do any of you feel that your
2 customers require that you certify?

3 MR. HOOPS: I would answer that that Cal-Hypo is
4 an, you know, EPA registered product, required that way by
5 FIFRA and so the EPA pretty well dictates the approval
6 process and what we have to put on the back of the label,
7 EDPS establishment numbers, et cetera. So EPA is the proof
8 FIFRA is the governance that we have to follow.

9 COMMISSIONER JOHANSON: So that's basically it as
10 far as certification goes?

11 MR. WALDEN: Yes that essentially is it and now
12 that we have supplied all the data and everything to EPA
13 it's just a matter of siting that data and in 30 to 60 days
14 later you can have your registration.

15 COMMISSIONER JOHANSON: All right, yes anyone
16 else? Okay I thought I saw a hand, my apologies. On page
17 5-7 of the staff report many purchasers named either both
18 the U.S. producers as price leaders in the U.S. market, I'm
19 sorry, named either or both U.S. producers as price leaders
20 in the U.S. market, is that description consistent with your
21 sense of the market?

22 MR. WALDEN: Yes.

23 MS. CLARKE: In general I think they are the
24 predominant parties nonetheless they can't keep the prices
25 up so you know are they price leaders? They are not the

1 ones leading them down, but they are going down.

2 COMMISSIONER JOHANSON: All right thank you.
3 What do you all think will be the demand trend for Cal-Hypo
4 over the next couple of years and what will be the drivers
5 of that trend?

6 MR. WALDEN: We have alluded to it a little bit.
7 I am not expecting, especially in the United States, a
8 tremendous increase in treatable water for the swimming pool
9 arena for the reasons we have already mentioned. The other
10 areas will be municipalities as people become better
11 educated to degradation of bleach and po-chlorites and the
12 issues that po-chlorites have with your drinking water I
13 think we will see people going to more of a Cal-Hypo base
14 but it is going to take some time and we have got some
15 issues to overcome from the technical aspect. From
16 delivery to supply to having the feeder systems to supply
17 the chlorines you need for the domestic drinking water,
18 excuse me I apologize.

19 MR. HOOPS: Mike Hoops I'll try to maybe add a
20 little color to that. I think it's well known on the
21 residential swimming pool business industry statistics say
22 that there will be 50,000 new pools a year on an installed
23 basis of 5 million so you are looking at a 1% growth. Some
24 would argue it's 2% growth but there are other people
25 filling in their backyard pool so that segment is not a key

1 driver. When you start talking municipal drinking water,
2 waste water, et cetera you could probably follow the
3 population trend.

4 We have 300 million Americans is it going to 305,
5 is it going to 310 but it's not like it's going to 400, I
6 don't believe. So you know, there's not inherent growth you
7 know from the macro level. So then it gets down to can you
8 convert somebody off of whatever their existing approach is
9 and convert them over to a Cal-Hypo approach and that, you
10 know, is what we all do but that is a tough sell.

11 The macro isn't driving significant growth for us
12 so hopefully that --

13 COMMISSONER JOHANSON: What about taking
14 construction, housing construction in the United States, I
15 assume that would increase demand?

16 MR. HOOPS: Well there's a difference between new
17 home construction and new pool construction.

18 COMMISSIONER JOHANSON: They don't operate
19 somewhat in tandem?

20 MR. HOOPS: They don't go hand in hand. The
21 decision of a homeowner to add a pool is a personal choice.
22 When you have places in the Sunbelt up in Phoenix for
23 example, in the new subdivisions there, there's obviously
24 going to be a higher density of pools so if that market
25 takes off again you will have more in-ground pool

1 construction in conjunction with home building, but that is
2 not where the growth is going to be driven for us.

3 COMMISSIONER JOHANSON: I assume that California
4 has the highest number of pools just given the population
5 and the climate. Has the water situation in California in
6 namely the ongoing draught impacted pool construction in
7 that state?

8 MR. HOOPS: I would be just providing supposition
9 there. I'm not aware of a lot of places where somebody has
10 been told that they can't fill their pool for the season or
11 they can't utilize their pool but in terms of the draught
12 influencing the housing market I'm not aware of any
13 correlation at this point.

14 COMMISSIONER JOHANSON: And Mr. Hoops you have
15 mentioned that some people are filling in their pools is
16 that a trend? Why would someone fill in a pool?

17 MR. HOOPS: You get old.

18 COMMISSIONER JOHANSON: Okay and you get tired of
19 having to maintain a swimming pool is that the fact --

20 MR. HOOPS: You are now the grandparents. The
21 kids have moved away, you have moved to the Sunbelt and the
22 grandkids are no longer in your area. It's just not
23 something that you need for personal enjoyment so you just
24 make a decision no longer to utilize the pool. That's a
25 trend more in the upper Midwest and Northeast than it would

1 be in the Sunbelt. You know we have had a migration
2 population-wise to the Sunbelt states.

3 MR. WALDEN: Pools have a 30 year life and when
4 you are faced with a 10 to 20 thousand re-build or
5 re-surfacing build then you make the decision yeah I would
6 like to have a garden out there instead of a swimming pool.

7 COMMISSIONER JOHANSON: Thank you.

8 MR. WALDEN: With the older pools as I mentioned
9 were larger pools, the trend is for smaller pools to be
10 built so you need more pools to be built to take care of the
11 ones that are being abandoned if you will. Two 10's to
12 make equal the 20 that is going plowed under.

13 COMMISSIONER JOHANSON: Okay in stepping out of
14 the POI I am just curious about this but how long has
15 Cal-Hypo from China been present in the U.S. market and have
16 any suppliers exited the market in reason years from China?

17 MR. HEARD: Chinese Cal-Hypo has been present in
18 the U.S. market I want to say at least 10 to 12 years maybe
19 longer. We can probably address that in the post-hearing
20 brief and give you the actual dates, but it has been a long
21 time that they have been in the marketplace.

22 MR. WALDEN: And when they first came in the
23 quality differential was significant and they have closed
24 that gap over the years and I would say the real target
25 that's happened in the last 5 to 7 years is where we really

1 started seeing the ramp up. You know they were always
2 there but the quality and everything else was something we
3 could certainly compete on and it's no longer the case, and
4 it's coming down to price.

5 COMMISSIONER JOHANSON: All right thanks for that
6 response. And this following question deals with something
7 which was the subject of a fair amount of discussion during
8 the Chlor-ISO hearing that we had fairly recently. Could
9 you all please discuss the use of salt systems in the U.S.
10 market and how the increasing use of salt systems have
11 affected the demand for your product?

12 MR. WALDEN: Probably and once again, it has
13 affected it but even with a salt pool, don't forget that is
14 still a chlorine pool and you still have to have the shock
15 treatment just like you would with the ISO so Cal-Hypo is
16 probably to a lesser extent than the ISO's would be.
17 Because here in the United States, the primary use of the
18 Cal-Hypo is a booster treatment if you will, after a heavy
19 bather or rain event or an algae event.

20 COMMISSIONER JOHANSON: This is more like the
21 di-chlor is that it?

22 MR. WALDEN: Di-chlor is also used as a shock
23 it's a granular product that you use but not as nearly as
24 effective and as quick dissolving as a hypo.

25 COMMISSIONER JOHANSON: So you don't see that

1 being a major competitor di-chlor versus the hypo?

2 MR. WALDEN: I don't see that as a major
3 competitor but normally the characteristics of the product
4 we can compete quite well against that.

5 COMMISSIONER JOHANSON: I guess you could say you
6 are either at an advantage or a disadvantage in this
7 investigation because all the Commissioners have a pretty
8 good read on chlorinated water after the chloride so after
9 this hearing.

10 MR. WALDEN: You are well informed.

11 COMMISSIONER JOHANSON: Yeah it's quite amazing.
12 Yeah my kids get a real kick out of me telling them we are
13 working on pool water cases. And I think I have time for
14 just one more follow-up to that. What impact do you see,
15 or do you see any impact at all following up on your answer
16 will the use of salt systems in the United States have on
17 demand going forward in your read? I assume you say not
18 much.

19 MR. WALDEN: For the Cal-Hypo not as much as
20 beyond the tri-chlor but of the 50-55,000 pools being built
21 a year, two-thirds of them are going on salt. We would
22 prefer to see them going on the Cal-Hypo instead of a salt,
23 but they have been pretty stagnant at that two-thirds rate
24 and an ISO system has some very distinct disadvantages to it
25 and there's a lot of education that needs to happen to the

1 public because many people, including my wife, will sit
2 there and tell you I don't want a chlorine pool I want a
3 salt pool when in reality the salt is nothing more than a
4 chlorine generator sitting in your back yard and running up
5 the high cost of electricity. The carbon footprint is not
6 very nice, so we will see what happens in the future. But
7 salt is a very deteriorating system.

8 COMMISSIONER JOHANSON: I didn't realize that.
9 So it uses more energy? It's like a constant filter is
10 that the idea?

11 MR. WALDEN: You actually have electrolysis unit
12 on the back of your plant that's running electricity through
13 it to convert the salt into chlorine so it's not a very
14 efficient use of electricity to convert salt into chlorine
15 in your pool.

16 MR. HEARD: It would be like having a chloralkali
17 plant in your backyard. That's what an SCG is on a
18 residential pool.

19 COMMISSIONER JOHANSON: Yes anyone else?

20 MR. HOOPS: These guys are exactly right. Not
21 to mention a chloralkali plant in your backyard, it's got a
22 different carbon footprint than we do producing Cal-Hypo in
23 a modern large scale operation. I would concur that the
24 salt systems are going to have much more of an impact on
25 the tri-chlor product than they will on the Cal-Hypo

1 product.

2 COMMISSIONER JOHANSON: All right, thanks for
3 your responses my time has expired.

4 CHAIRMAN BROADBENT: I just have one or two
5 questions.

6 Mr. Hoops and Mr. Walden can you both describe to me how
7 your company's compete with each other and I'm guessing
8 there's a lot of competition between you both think Coke and
9 Pepsi, and sort of what market segments that competition is
10 the most intense?

11 MR. HOOPS: We are going to compile some market
12 you know, pie chart in the post-hearing brief but I would
13 answer the question that we compete vigorously every day for
14 the customer base that is out there. So it is vigorous
15 competition day in and day out.

16 MR. WALDEN: We pass each other in the hallway
17 going in to see the customers.

18 CHAIRMAN BROADBENT: That's the last of my
19 questions. Commissioner Pinkert do you have any questions?

20 Okay, the Commissioners have no more questions oh excuse
21 me, Commissioner Johanson?

22 COMMISSIONER JOHANSON: Thank you Commissioner
23 Broadbent, I have one more question and I don't know if you
24 will be able to respond to this given that the Chinese
25 participation has been not very full but in the United

1 States in a number of investigations that we have conducted
2 there is a noticeable advantage to U.S. producers due to the
3 relatively low cost of energy in the United States compared
4 to some other producing countries of various products.

5 Do you know what the situation for energy is in
6 China compared to energy costs for you all when you produce
7 this product?

8 MS. CLARKE: I can't do it one by one, but I can
9 tell you that Commerce did find an electricity subsidy in
10 China.

11 COMMISSIONER JOHANSON: Okay thanks, that is
12 useful information. I guess it's most useful because I
13 understand from the staff report that energy costs are a
14 significant factor in your production, one of the more
15 significant factors.

16 MR. WALDEN: As I mentioned the product comes
17 from the generation of caustic chlorine so the electricity
18 used in a large Chlor-Alkali plant is one of the primary
19 costs that goes into production and then we take the
20 chlorine and go from there but as Commerce found and we have
21 known for quite some time if you are a Cal-Hypo producer in
22 China and you are buying and you are state owned, and you
23 are buying caustic chlorine from the state owned, that
24 transfer price of the caustic chlorine is much cheaper than
25 what you will see here in the United States.

1 MR. MALASHEVICH: If I may add a bit
2 Commissioner, we are all aware that when the Commission
3 hears cases involving subsidies that it is supposed to take
4 into account the nature of the subsidy and for most cases it
5 doesn't receive much attention either because the subsidy
6 rates very low or it remotes from the lowest of production.

7 This case is quite different and I would
8 recommend the Commission take a close read at the Commerce
9 Department's determination because when you think about this
10 product it's all about freight and energy and the subsidies
11 involved here hit both of those factors of production so
12 it's an unusual case in that respect and of course the rate
13 that's calculated 70 plus percent also is unusual.

14 COMMISSIONER JOHANSON: All right thank you for
15 your responses I have no further questions. I would like
16 to thank all of you for appearing here today.

17 CHAIRMAN BROADBENT: If the Commissioners have no
18 further questions does the staff have any questions for this
19 panel?

20 MS. HAINES: Staff has no questions.

21 CHAIRMAN BROADBENT: Okay, thank you. Mr.
22 Secretary are there any responding parties participating at
23 all today?

24 MR. BISHOP: Madam Chairman there are no
25 responding parties participating.

1 CHAIRMAN BROADBENT: Okay in that case we will
2 move to closing statements, you all have five minutes for
3 closing and you may begin when you are ready.

4 CLOSING REMARKS OF PEGGY A. CLARKE

5 MS. CLARKE: I think you've heard some today and
6 we obviously have questions to follow up but you have heard
7 a fairly consistent you know, what everyone here has said
8 from their experience which is diverse that it's price
9 drives the decision that the product does not distinguish
10 between the Chinese product and the domestic product by
11 physical appearance.

12 That brand does not really protect them, that
13 marketing support does not protect them from the competition
14 and overall they are facing a price constraint, the product
15 has been coming in and increasing quantities and driving
16 down prices and their industry, both at the producer level
17 and at the distributors who buy domestic product are finding
18 it difficult to compete with the subsidized low-priced
19 Chinese product. With that I believe we are done.

20 CHAIRMAN BROADBENT: Great. I want to express
21 the Commission's appreciation to all of you that came today
22 to participate in our hearing. Your closing statement,
23 post-hearing briefs, statements responsive to questions from
24 requests from the Commission and corrections to the
25 transcript must be filed by December 3, 2014. Closing of

1 the record and final release of data to the parties will be
2 on December 31, 2014. Final comments are due on January 5,
3 2015 and with that this hearing is adjourned. Thank you.

4 (Whereupon the meeting was adjourned at 11:31
5 a.m.)

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CERTIFICATE OF REPORTER

TITLE: In The Matter Of: Calcium Hypochlorite from China

INVESTIGATION NOS.: 701-TA-510 and 731-TA-1245 (Final)

HEARING DATE: 11-25-2014

LOCATION: Washington, D.C.

NATURE OF HEARING: Hearing

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