

UNITED STATES INTERNATIONAL TRADE COMMISSION

In the Matter of:
CITRIC ACID AND CERTAIN CITRATE
SALTS FROM CANADA AND CHINA

) Investigation Nos.:
) 701-TA-456 and
) 731-TA-1151-1152 (REVIEW)

REVISED AND CORRECTED

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1 THE UNITED STATES INTERNATIONAL TRADE COMMISSION

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3 In the Matter of:) Investigation Nos.:
4) 701-TA-456 and
5 CITRIC ACID AND CERTAIN) 731-TA-1151-1152 (REVIEW)
6 CITRATE SALTS FROM)
7 CANADA AND CHINA)

8 Thursday, March 26, 2015
9 Main Hearing Room (Room 101)
10 U.S. International
11 Trade Commission
12 500 E Street, S.W.
13 Washington, D.C.

14 The meeting commenced, pursuant to notice, at
15 9:30 a.m., before the United States International Trade
16 Commission, the Honorable Meredith M. Broadbent, Chairman,
17 presiding.

18 APPEARANCES:

19 On behalf of the International Trade Commission:

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

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11 Jennifer Brinckhaus, Accountant/Auditor

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15 In Support of the Continuation of the Antidumping and
16 Countervailing Duty Orders:

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18 Daniels Midland Company, Cargill, Incorporated, Tate & Lyle

19 Ingredients Americas LLC:

20 Christopher M. Cuddy, President, Corn, Archer

21 Daniels Midland Company

22 Eric S. Warner, Jr., Plant Manager, Archer

23 Daniels Midland Company

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25 Daniels Midland Company

1 Christopher Aud, Assistant Vice President,
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4 In Support of the Continuation of the Antidumping and
5 Countervailing Duty Orders (continued):

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7 Incorporated

8 L. Martin Hurt, Director, Global Acidlant Sales
9 Bulk Ingredients, Tate & Lyle Ingredients Americas LLC

10 Carl Vineyard, Staff Representative, United Steelworkers,
11 ("USW")

12 Charles Anderson, Principal, Capital Trade, Inc.

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14 Of Counsel:

15 Joseph W. Dorn, Stephen A. Jones

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19 In Opposition to the Continuation of Antidumping and
20 Countervailing Duty Orders:

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24 Sharon Grant, Vice President, Finance and
25 Administration, JBL

1 Daniel Rainville, President, Jungbunzlauer, Inc.
2 Michael T. Kerwin, Director, Georgetown Economic Services,
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1 P R O C E E D I N G S

2 (9:31 a.m.)

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

5 CHAIRMAN BROADBENT: Good morning. On behalf
6 of the U.S. International Trade Commission, I welcome you to
7 this hearing on Investigation Nos. 701-456, 731-1151 and
8 1152, involving Citric Acid and Certain Citric Salts from
9 Canada and China.

10 The purpose of these five-year review
11 investigations is to determine whether revocation of the
12 anti-dumping order on Citric Acid from Canada and China and
13 the countervailing duty order on Citric Acid from China will
14 likely lead to the continuation of occurrence of material
15 injury within a reasonably foreseeable time.

16 Documents concerning this hearing are
17 available at the public distribution table. Please give all
18 prepared testimony to the Secretary. Do not place it on the
19 public distribution table. All witnesses must be sworn in
20 by the Secretary before presenting testimony.

21 I understand that parties are aware of the
22 time allocations, but if you have any questions about time,
23 please ask the Secretary. Speakers are reminded not to
24 refer to business proprietary information in their remarks
25 or in answers to questions. Please speak clearly into the

1 microphone and state your name for the record, so that the
2 court reporter knows who is speaking.

3 Finally, if you will be submitting documents
4 that contain information classified as Business
5 Confidential, you're requested to comply with Commission
6 Rule 201.6. Mr. Secretary, are there any preliminary
7 matters?

8 MR. BISHOP: Madam Chairman, there are no
9 preliminary matters.

10 CHAIRMAN BROADBENT: Very well. Let's now
11 proceed with opening remarks.

12 MR. BISHOP: Opening remarks from those in
13 support of continuation of the Orders will be given by
14 Joseph W. Dorn, King and Spalding.

15 CHAIRMAN BROADBENT: Welcome Mr. Dorn. You
16 can begin when ready.

17 OPENING REMARKS BY JOSEPH W. DORN, ESQ.

18 MR. DORN: Good morning. This sunset review
19 on citric acid presents two sharply contrasting sets of
20 data. First, for the Period of Investigation, when imports
21 from Canada and China faced no price disciplines, and second
22 for the Period of Review, when subject imports were
23 restrained by the Orders at issue.

24 Applying a counterfactual analysis to these
25 contrasting records, it is very clear that the removal of

1 the pricing discipline of the orders would lead to the
2 recurrence of material injury within the reasonably
3 foreseeable future. During the 2006 to 2008 POI, cumulated
4 imports held between one-third and one-half of the U.S.
5 market. Their quantity and market share grew steadily.

6 As a result, the domestic industry was unable
7 to take advantage of what the Commission described as
8 exceptionally strong demand conditions. The Commission
9 found that citric acid is a commodity, and that suppliers
10 from Canada, China and the United States compete primarily
11 on price. It also found that there was significant
12 underselling, particularly for a commodity-type product.

13 Subject import pricing acted as a cap of the
14 domestic producers' prices. Thus, notwithstanding strong
15 and increasing demand, the domestic industry could not raise
16 its prices to achieve any profits. The price suppression
17 resulted in massive operating losses. As a result, the
18 Commission found that the domestic industry was materially
19 injured by reason of subject imports.

20 The state of the industry dramatically
21 improved with the imposition of preliminary measures in
22 November 2008 and final measures in May 2009. The
23 Commission noted that its finding of price suppression was
24 buttressed by the fact that the domestic industry obtained
25 significantly higher prices for its 2009 annual contracts

1 that were negotiated in the fourth quarter of 2008, after
2 the imposition of preliminary duties.

3 It is clear from public data that the Orders
4 have restrained the volume and the prices of subject
5 imports. After increasing from 2006 to 2008, cumulated
6 imports declined sharply from 2008 to 2009, and remained
7 well below their 2008 volume during each year of the Period
8 of Review. The average unit value or AUV of imports
9 increased from 2008 to 2009, and remained above their 2008
10 level during each year of the POR.

11 The restraining effect of the Orders had a
12 rapid, positive impact on the domestic industry. The AUV of
13 the industry's U.S. shipments increased 57 percent from 2008
14 to 2009. On average, the AUV of the industry's U.S.
15 shipments was 65 percent higher in the POR than in the POI.

16 The positive volume and price effects of the
17 Orders flowed through to the bottom line. From 2008 to
18 2009, the industry's operating income increased from
19 negative \$8 million to positive \$98 million. The industry's
20 average annual operating income increased from negative \$13
21 million during the POI to positive \$80 million during the
22 POR, and average annual capital expenditures more than
23 doubled.

24 No factor other than the Orders can explain
25 this dramatic improvement in the state of the domestic

1 industry that began in 2009 and continued throughout the
2 POR. In contrast to the POI, demand conditions were not
3 exceptionally strong. In addition, production costs and
4 corn prices were generally higher during the POR.

5 Moreover, there have been no material changes
6 in the way citric acid is sold and used in the United
7 States. The conditions of competition that led to the
8 significant and increasing volume of low-priced imports from
9 Canada and China during the POI and that made the industry
10 susceptible to injury from such imports have not changed.
11 Revocation of the orders would rapidly lead to increased
12 subject imports and lower import prices.

13 Both the Canadian and Chinese industries are
14 highly export oriented. In fact, JBL's plant is not
15 sustainable without the U.S. market. Because the United
16 States is a large, attractive market with higher prices than
17 alternative export markets, producers in both Canada and
18 China would substantially increase their exports to the
19 United States if the Orders were revoked.

20 Increasing unfairly-priced imports from
21 Canada and China would cause U.S. market prices to rapidly
22 decline. Canadian and Chinese producers would undersell the
23 domestic like product to increase their market share and
24 their capacity utilization. U.S. producers would have to
25 lower their prices to retain enough sales volume to run

1 their plants continuously.

2 The drop in prices would cause a sharp decline
3 in the value of U.S. commercial shipments and sales revenue.
4 Lost sales would lead to less production, lower capacity
5 utilization and higher per unit fixed costs. The negative
6 volume and price effects would lead to substantial declines
7 in operating income and capital expenditures.

8 In sum, revocation of these Orders would lead
9 to recurrence of material injury within a reasonably
10 foreseeable time. Thank you very much, and we look forward
11 to today's proceedings.

12 MR. BISHOP: Opening remarks on behalf of
13 those in opposition to the continuation of the orders will
14 be given by Frederick P. Waite, Vorys, Sater, Seymour and
15 Pease.

16 OPENING REMARKS OF FREDERICK P. WAITE, ESQ.

17 MR. WAITE: Good morning Madam Chairman,
18 members of the Commission. I am here today on behalf of
19 Jungbunzlauer Canada, in opposition to the continuation of
20 the anti-dumping order on citric acid and certain citrate
21 salts from Canada. Jungbunzlauer Canada or JBL Canada is
22 the only producer of citric acid in Canada, and it operates
23 one of the most modern and efficient citric acid plants in
24 the world.

25 Together with Jungbunzlauer, Inc., the group

1 sales office in the United States, JBL Canada supplies the
2 highest quality citric acid to customers in the U.S. and
3 elsewhere. Later today, senior JBL officials will describe
4 the history and operations of the plant in Port Colborne,
5 Ontario, and explain how JBL markets its citric products in
6 the United States.

7 As one of the four North American producers of
8 citric acid, JBL Canada operates in many ways like the
9 Petitioners in this proceeding. It uses the same raw
10 material feedstock, corn. It is located geographically
11 proximate to the U.S. market, which means that it has
12 comparable transportation costs. Also like the U.S.
13 producers, JBL operates on a profit oriented basis, and it
14 does so without the subsidies which characterize the
15 industry in China.

16 While JBL is largely comparable with the other
17 North American producers of citric acid, it competes under
18 different conditions of competition than the Chinese
19 industry, with very different volume and price trends.
20 After the imposition of the Orders in 2009, imports from
21 Canada have remained in the U.S. market at roughly
22 pre-petition levels.

23 By contrast, imports from China plummeted.
24 These trends are shown in Exhibit 2 of the confidential
25 exhibits that we have submitted to the Commission for this

1 hearing. Canada's unit values were higher than the unit
2 values of U.S. producers during every year of the POR, as
3 well as interim 2014.

4 By contrast, China's unit values were lower
5 than the U.S. producers during every period of the POR.
6 Please see our confidential Exhibit 3. The Canadian
7 industry is limited to just one producer. By contrast, the
8 Chinese industry is the world's largest, accounting for
9 two-thirds of global capacity. JBL Canada has no current
10 plans to increase capacity, whether or not the Order is
11 revoked. By contrast, all of the major Chinese producers
12 have either expanded capacity or announced plans to do so by
13 the end of 2015.

14 Another important difference between Canada
15 and China is the existence of trade barriers in third
16 country markets. With the exception of the anti-dumping
17 order in the United States, there are no trade restrictions
18 on JBL's exports of citric products from Canada to any other
19 market. By contrast, China is currently subject to
20 anti-dumping actions in ten countries, as well as the
21 European Union.

22 The presence of Canadian imports in the market
23 during the POR has not adversely affected the U.S. industry.
24 The volume and market share of Canadian imports have
25 remained relatively stable since 2009, and the average unit

1 values of Canadian imports have been consistently higher
2 than those of the U.S. industry.

3 Yet during this period, the U.S. industry has
4 enjoyed impressive profitability and expanded output, the
5 result, we submit, of the dramatic decline in Chinese
6 imports from the U.S. market.

7 JBL Canada has been and will remain a
8 responsible and reliable supplier to its customers in the
9 United States. Despite the existence of the anti-dumping
10 order, JBL Canada has continued to supply those customers in
11 the U.S. market. In conclusion, we respectfully urge the
12 Commission not to cumulate imports from Canada with subject
13 imports from China, and to find that revocation of the Order
14 on Canada will not be likely to result in the continuation
15 or recurrence of material injury to the domestic industry
16 within a reasonably foreseeable time. Thank you.

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

22 (Pause.)

23 CHAIRMAN BROADBENT: Good morning. I want to
24 welcome the Panel to the Commission.

25 MR. DORN: Thank you, Madam Chairman.

1 Christopher Cuddy will be our first witness.

2 STATEMENT OF CHRISTOPHER M. CUDDY

3 MR. CUDDY: Good morning. My name's Chris
4 Cuddy. I'm the president of the Corn Processing Business
5 Unit of Archer Daniels Midland Company. I'm responsible for
6 all commercial activities of the company's North American
7 sweetener, starch, fiber and acidulent business. I
8 previously held a variety of merchandising and management
9 roles since I joined ADM in 1998.

10 ADM is one of the world's largest agricultural
11 processors and food ingredient providers. We currently have
12 more than 33,000 employees, serving customers in more than
13 140 countries. Our corporate headquarters are in Illinois.
14 We connect the harvest to the home, making products for
15 food, feed, chemical and energy applications.

16 ADM has been in the citric acid business since
17 1990, when we purchased the business from Pfizer. That
18 purchase included two world class citric acid plants, one in
19 Ireland and the other in Southport, North Carolina. We
20 closed the plant in Ireland in 2005, due to a flood of
21 low-priced imports from China into the European market. All
22 of our citric acid production therefore takes place at our
23 Southport plant.

24 Citric acid is a commodity product. Our
25 customers can readily substitute citric acid from Canada,

1 China or the United States as drop-in replacement in
2 virtually every end use. As a result, purchasing decisions
3 are primarily based on price. Citric acid production is
4 capital intensive, and it's important that our plant operate
5 continuously at a high level of capacity utilization.

6 Our need to maintain a high level of capacity
7 utilization compels us to follow market pricing to maintain
8 sales and production volume. Our major customers are
9 sophisticated companies that are well aware of these
10 conditions of competition. They demand that we meet or beat
11 the prices being offered by their suppliers.

12 Purchasers have substantial leverage in sales
13 negotiations, because a small number of purchasers account
14 for a large percentage of U.S. citric acid consumption.
15 Many of the large U.S. purchasers of citric acid either
16 currently purchase Canadian and Chinese citric acid in the
17 United States or in other countries, or they have done so in
18 the past.

19 Even the limited number of purchasers who
20 generally purchase citric acid produced in the United States
21 monitor prices for imported citric acid and demand that we
22 meet the imported price in order to keep their business.

23 During the 2006 to 2008 period of the original
24 investigations, imports from both Canada and China
25 increased, took market share and suppressed domestic

1 producers' prices, at a time when demand was strong and
2 increasing. As a result, the domestic industry lost about
3 \$40 million over those three years.

4 Like the domestic industry as a whole, ADM
5 experienced significant negative effects caused by the
6 increasing volume of subject imports during the Period of
7 Investigation. Thus, ADM had significant and increasing
8 operating losses during 2006 to 2008. The imports from
9 Canada and China caused a cost-price squeeze. Subject
10 imports acted as a lid on the prices we could charge.

11 Even though the demand growth is healthy
12 during this time frame, the readily available supply of
13 dumped imports prevented us from passing increased raw
14 material prices on to our customers. Due to these
15 unfavorable economics, we made a corporate decision to shut
16 down the Southport plant if we were unable to improve
17 returns on the citric acid business.

18 Since the imposition of the Orders, the state
19 of the domestic industry has greatly improved. There is no
20 question that the Orders have restrained the volume and
21 prices of imports from Canada and China. As a result, the
22 domestic industry was able to regain lost market share, and
23 raise prices to levels that permitted a return to profitable
24 operations during the 2009 to 2014 Period of Review.

25 The only variable in the market that changed

1 was the imposition of duties to offset the dumping and
2 subsidies. In particular, the Orders returned ADM's citric
3 acid business to a profitable state over the past five
4 years. This has allowed us to invest in our plant, as my
5 colleague Eric Warner will explain in greater detail.

6 Our profitability recovered immediately from
7 large losses incurred during the 2006 to 2008 period, and we
8 were profitable throughout the Period of Review. In short,
9 the Orders permitted us to completely turn around our
10 business, which was headed towards termination due to an
11 unfair pricing and increased supply of imports from Canada
12 and China.

13 The conditions of competition today are no
14 different than 2008, except that JBL Canada now makes sodium
15 citrate, and both Canadian and Chinese production capacity
16 has increased. Both of these changes have increased the
17 ability of subject producers from Canada and China to
18 compete directly with each other and with U.S. producers.
19 The United States is an essential market for JBL Canada and
20 for Chinese exports.

21 If the duties are removed, JBL Canada and the
22 Chinese producers will again use lower prices to take sales
23 from us. High prices in the U.S. market relative to other
24 world markets will motivate Chinese and Canadian producers
25 to sell as much citric acid as possible in the U.S. market.

1 Large purchasers will use the leverage of
2 unrestrained imports from Canada and China to force us to
3 lower our prices, to maintain the volume we need to run our
4 plants on a continuous basis. Profitable operations will
5 quickly become unprofitable.

6 If the Orders are revoked, U.S. market spot
7 prices will fall immediately, and contract customers will
8 cite the drop in spot prices to leverage contract prices
9 down. Low-priced imports from Canada and China will
10 undersell our current prices, which will require price
11 reductions on our part in order to maintain volume.

12 We anticipate that U.S. market prices would
13 fall to global price levels, and we would not be able to
14 remain profitable. Accordingly, it is likely that we would
15 be forced to terminate our production and sell the
16 production assets for whatever they might bring on the
17 market.

18 In such an event, we anticipate significant
19 financial losses and worker layoffs as part of the
20 termination of this business. JBL Canada argues that if the
21 Orders continue on China, then U.S. producers will not be
22 harmed by the revocation of the Order on Canada. We
23 strongly disagree. If the Order is revoked on Canada alone,
24 JBL Canada would be able to offer dumped prices to gain
25 sales in the United States.

1 That would push our prices to unprofitable
2 levels, as was the case before the Order was imposed. We
3 would suffer a sharp reduction in spot prices for the
4 remainder of 2015, and a sharp reduction in existing and
5 future contract prices. Moreover, as Martin Hurt of Tate
6 and Lyle will describe to you in a few minutes, the
7 imposition of anti-dumping measures in Brazil against
8 imports from China did not prevent JBL Canada from
9 undercutting Brazilian producers' prices to gain market
10 share in that country.

11 JBL Canada would similarly take advantage of
12 the continuation of the Order against China alone, in the
13 much larger and contiguous United States market, by using
14 dumped prices to increase its sales volume in this country.
15 In short, the Orders have greatly benefitted the citric acid
16 operations of ADM and the domestic industry.

17 Their revocation would cause serious harm to
18 ADM, its employees and their families. Please maintain the
19 Orders for another five years. Thank you.

20 STATEMENT OF ERIC WARNER

21 MR. WARNER: Good morning. My name is Eric
22 Warner and I'm the plant manager at ADM Citric Acid Plant in
23 Southport, North Carolina. I began my career as a
24 maintenance engineer at the South Port facility in 1983 when
25 the facility was owned by Pfizer. I became an ADM employee

1 in 1990 when ADM purchased the plant.

2 Almost six years ago when I appeared before you,
3 our plant in Southport was in dire straits. Today as I come
4 before you our plant is in much better shape, both
5 financially and physically. This improvement is clearly due
6 to the orders. The way citric acid is made has not changed
7 much in the past six years.

8 Production of citric acid is capital intensive.
9 ADM's plant in Southport, North Carolina needs to maintain
10 continuous production and high rates of capacity,
11 utilization in order to obtain satisfactory yields and
12 acceptable costs. Because citric acid is an organic product
13 produced by a lengthy fermentation process it is difficult
14 to slow or stop production.

15 Slowdowns have a significant adverse impact on
16 our per-unit fixed cost production. Shutdowns require a
17 time-consuming flushing and sterilization process in order
18 to resume production. Citric acid is a very small part of
19 ADM total global business, but for the approximately 250 ADM
20 and contract employees who work in the Southport plant the
21 citric business is their livelihood. The same is true for
22 the ADM employees in our Corn Milling facilities in Iowa and
23 Illinois where the substrate for our citric acid is produced.

24 The jobs for the Southport plant are among the
25 best and most sought after in southeastern North Carolina.

1 Despite the fact ADM's plant in Southport is efficient and
2 environmentally friendly, increasing imports from China and
3 Canada seriously jeopardize its continued operation.

4 Our U.S. citric acid operations, including all of
5 the jobs at our Southport plant were at risk before the
6 orders were imposed. As I explained during the hearing in
7 our original investigation -- in your original
8 investigation, we had to lay off a large number of employees
9 and contract maintenance workers in 2006. The remaining
10 jobs at our plant were threatened by the ongoing negative
11 effect of imports from Canada and China.

12 Before the orders were imposed, our unprofitable
13 operations forced us to cut costs very aggressively to
14 maintain our citric acid operations. In addition to the
15 employee layoffs that I mentioned, we had to reduce
16 fermenter output in order to prevent the buildup of
17 inventories. Another major cost-cutting measure we took
18 before the orders were imposed was to defer all but the most
19 critical expenditures to maintain our plant and equipment.

20 Our plant was urgently in need of investment, but
21 the company could not justify additional capital
22 expenditures in light of the negative returns that low-price
23 imports from Canada and China had caused for several years.

24 Before the orders, almost all infrastructure
25 repairs, such as siding, roofing, floor repairs, and

1 painting were placed on hold. Even though equipment needed
2 to be replaced, capital funds were not available for these
3 projects. Instead, the equipment was repaired and patched
4 to try to keep it operational.

5 The orders against Canada and China resulted in a
6 dramatic increase in the profitability of our citric acid
7 operations. This improved profitability has allowed ADM to
8 justify making substantial investments in our citric acid
9 business every year during the period of review.

10 As you'll see from our confidential questionnaire
11 response, our average annual capital expenditures during
12 2009 to 2013 far exceeded those made during 2006 to 2008.
13 The orders permitted us to make numerous improvements in
14 plant and equipment, and also to the rail transportation
15 siding that services our plant.

16 Attached to our questionnaire response is a
17 two-page, single-spaced list of the specific capital
18 expenditure projects that we did not pursue at our Southport
19 plant during the 2006 to 2008 period because of our poor
20 financial performance. We provided that list in the
21 original investigations to show what was needed but was not
22 being funded.

23 Also attached to our questionnaire response is an
24 eight-page list of capital projects that we did complete at
25 our Southport plant during the period of review.

1 In short, the orders on Canada and China have
2 saved our Southport plant. By 2008, we had gone to great
3 lengths to cut costs and improve productivity, but these
4 efforts were inadequate to improve the profitability of our
5 operations in light of unfair import competition from Canada
6 and China. After the orders were imposed, our profitability
7 improved dramatically, and we've made significant capital
8 investments in our facilities every year.

9 Revocation of the orders on either Canada or
10 China would quickly jeopardize our profitability and place
11 the continued existence of the Southport plant at risk.
12 Thank you.

13 STATEMENT OF MARTIN HURT

14 MR. HURT: Good morning. My name is Martin Hurt.
15 I'm the Director of Global Acidulant Sales for Tate & Lyle,
16 a position I've held since January of 2010. I've worked in
17 the citric acid business for 16 years.

18 Tate & Lyle is a multinational company. We
19 operate manufacturing and blending facilities in over 30
20 countries around the world. We employ over 4300 people and
21 have been in business for 150 years.

22 We entered the citric business in 1998 when we
23 bought the citric acid operations of Haarmann and Reimer,
24 which included plants in Dayton, Ohio, Santa Rosa, Brazil,
25 and Selby, UK. In my current position, I'm responsible for

1 all Tate & Lyle citric acid business worldwide. I'm
2 familiar with market conditions and prices in all markets.

3 At Tate & Lyle, we are particularly attuned to
4 the importance of combating unfair trade. We were forced to
5 close the Selby plant in 2007 because of inadequate
6 financial performance that was the direct result of dumped
7 imports from China. Similarly, we still produce citric acid
8 in Brazil, but imports from China, and more recently Canada,
9 have had significant negative affects on our operations
10 there.

11 Unfair imports can have a dramatic impact because
12 citric acid and citrate salts are true commodity products.
13 The order covers citric acid, sodium citrate and potassium
14 citrate. Most of the products sold in the U.S. is citric
15 acid in hydrous form. The second most common form is sodium
16 citrate. Both citric acid and citrates are made to standard
17 specifications, which makes them completely interchangeable.
18 Accordingly, citric acid is a drop-in replacement. This
19 permits purchasers to easily substitute one qualified source
20 for another.

21 Although citric acid requires specialized
22 equipment and substantial technical expertise to produce,
23 from a marketing standpoint it is very simple. All world
24 class citric producers, including the major Chinese
25 companies and JBL Canada produce to the standard

1 specification. Citric acid varies only in particle size and
2 level of moisture. In most cases, even the different types
3 of citric acid and hydrous monohydrate or solution are
4 highly interchangeable. This is not surprising because
5 citric acid is specifically used in aqueous solution and the
6 only difference between these three types of citric acid is
7 the amount of water they contain.

8 Because citric acid is a true commodity product
9 you would expect price to be the paramount factor in sales
10 negotiations, and it is. The major purchasers of citric
11 acid are global companies with sophisticated worldwide
12 purchasing networks. They negotiate fiercely to drive our
13 prices down by a penny or two per pound. They do not haggle
14 about special grade; deliver terms, particle sizes, or bag
15 sizes. The real issue to work out in annual negotiations is
16 price.

17 Prior to the imposition of the orders, the large
18 customers on whom Tate & Lyle depends were regularly using
19 JBL Canada and Chinese prices to leverage down our prices in
20 the annual contract negotiations. We were also losing a
21 significant amount of sales to both JBL Canada and the
22 Chinese producers.

23 As T&L explained at the staff conference in the
24 original investigations, the negative effects of subject
25 imports were so bad that Tate & Lyle was required by its

1 auditors to take a substantial write-off on the value of its
2 citric production equipment and was being forced to consider
3 closing its citric plant in Dayton.

4 Due to the impact of unfair imports, our capital
5 expenditures on the plant were limited to what was
6 absolutely necessary for safety and to keep the equipment
7 operating with no budget whatsoever for upgrades or
8 replacement. In short, prior to the imposition of the
9 orders, the citric acid plant was on a terminal path.

10 The orders on citric acid from Canada and China
11 changed all that. In fact, the improvement in the market
12 became apparent as soon as preliminary anti-dumping duty
13 cash deposits were imposed in November of 2008, which was
14 the middle of the 2009 contracting season. As a result, we
15 were able to obtain dramatically higher prices for 2009.

16 The improvement was not a one-year event. Prices
17 and operating profits for Tate & Lyle have remained much
18 higher than in the pre-order years. This has allowed us to
19 make substantial new investments. For example, we have made
20 investments to deep bottleneck certain processes in order to
21 improve efficiency and increase production capacity.

22 Looking forward, U.S. demand will continue to be
23 soft and likely will decline primarily due to declining
24 consumption of both naturally sweetened and artificially
25 sweetened beverages. Over 50 percent of citric usage is in

1 beverages. The data clearly show that consumption of
2 beverages is declining due to health concerns. You might
3 have seen the article in the Washington Post on Tuesday
4 about declining consumption of diet drinks.

5 The other big change involves the oil field
6 segment of the industrial market. Growth in that segment
7 has been stifled by recent declines in oil prices worldwide.
8 Given these demand trends as well as the ample supply of
9 citric acid, we have no doubt that the Dayton plant would be
10 put back on a terminal path if these orders are revoked.

11 Customers have told us that the orders have
12 forced prices upward and caused them to turn to U.S.
13 producers for more volume. It is important to keep in mind
14 that many of these customers purchased JBL Canada and/or
15 Chinese product in other global markets; thus, they know
16 what they are getting and what prices these suppliers will
17 accept. And in fact, one large customer has told us that in
18 the absence of the orders they would expect to pay no more
19 than 35 to 40 cents per pound in the U.S. market, consistent
20 with the global prices that they pay.

21 These prices would be nearly at the same level we
22 were forced to sell at prior to the order and would again
23 put Dayton on a terminal path. The downward path would
24 resume even if only the order against Canada was revoked.
25 Our recent experience with JBL Canada in the Brazilian

1 market provides an excellent case example of JBL would
2 respond in the U.S. market if only the orders against China
3 were maintained.

4 Tate & Lyle or Cargill are the only two domestic
5 producers of citric acid in Brazil. In 2010, we filed a
6 petition in Brazil against imports of citric acid from
7 China. In July 2012, Brazil imposed anti-dumping measures
8 in the form of a price undertaking for certain Chinese
9 producers and anti-dumping duties on all remaining.

10 Within a few months, JBL Canada entered the
11 Brazilian market in a big way for the first time,
12 undercutting local prices and stealing away some of our
13 largest customers. This is explained in detail in the
14 confidential affidavits attached as Exhibits 25 and 26 to
15 our pre-hearing brief. There's absolutely no reason why JBL
16 Canada would not repeat this behavior in the U.S. market if
17 the order against Canada alone were revoked.

18 U.S. prices are higher than prices in alternative
19 third country markets, such as Mexico. We believe that JBL
20 Canada only ships to lower priced export markets because it
21 cannot increase its volume in the United States without
22 incurring anti-dumping duties. The desire for profit
23 maximization compels a shift of volume back to the U.S.
24 market, but to increase its market share in a declining
25 market JBL would need to lower prices, which it can easily

1 do without the discipline of the anti-dumping order.

2 Even if JBL Canada did not want to lower its U.S.
3 market prices, it would be forced to do so by large,
4 multinational customers who are accustomed to paying lower
5 prices to JBL in other markets. Thank you.

6 STATEMENT OF CHRISTOPHER AUD

7 Mr. AUD: Good morning. My name is Chris Aud,
8 and since 2013 I have worked at Cargill as assistant vice
9 president, Acidulants Product Line Manager. My main
10 responsibilities in that capacity include leading the Citric
11 acid and Glucosamine business for Cargill Corn Milling North
12 America.

13 Cargill is a privately-held, family-owned company
14 that is celebrating our 150th year in business. From our
15 small beginnings in 1865 in Conover, Iowa we have grown into
16 a global company that produces and sells agricultural-based
17 products like citric acid in many different countries all
18 over the world.

19 We currently produce citric acid at our plants at
20 Eddyville, Iowa and Uberlandia, Brazil. Our Eddyville plant
21 is part of an integrated, bio-refinery and corn-processing
22 complex, which provides approximately 1,000 good-paying
23 jobs.

24 The Eddyville citric acid plant uses a share of
25 the dextrose produced in the adjacent corn wet milling

1 complex. While modest in its location in south central
2 Iowa, Eddyville's connected to a truly global market.
3 Citric acid is produced globally and traded globally. There
4 are a small number of world class citric acid producers
5 supplying the global market.

6 The major global players are located in Austria,
7 Canada, China, Brazil, Belgium, and the United States. The
8 demand size of the equation is also global. The largest
9 citric acid purchasers are global in nature and scope. They
10 have offices and buying agents in foreign countries and
11 purchase citric acid from non-U.S. producers for consumption
12 in many different markets, including the United States.
13 They are well aware of the world supply and demand balance,
14 pricing, and availability of non-U.S. citric acid. They are
15 motivated to obtain the lowest prices because citric acid is
16 interchangeable, regardless of source or end use
17 application.

18 Two of the major net export countries are Canada
19 and China. For both countries the total production capacity
20 for citric acid far exceeds domestic consumption. Despite
21 the orders, both countries remain highly interested in
22 serving the U.S. market. The JBL plant in Canada and the
23 largest plants in China were built primarily for exporting
24 to other markets.

25 In 2002, JBL Canada built a Greenfield citric

1 acid plant in Port Colborne, Canada, just across the border
2 from the United States to serve the U.S. market. Although,
3 China's production capacity, as a whole, is greater than
4 Canada's there are only a handful of Chinese producers that
5 are world class and can compete with JBL Canada and the
6 domestic producers for the largest U.S. customers.

7 We see no differences in the abilities and
8 motivations of JBL Canada and world class Chinese producers
9 to compete in a larger way in the U.S. market if the orders
10 are revoked. Because citric acid producers strive to run
11 their plants at full capacity there are powerful economic
12 incentives driving JBL Canada to price below its fully
13 absorbed cost for production if there is no risk of
14 anti-dumping duties.

15 Given the fact that market prices for citric acid
16 have been higher in the United States than in JBL Canada's
17 other export markets, in my opinion, the only reason that
18 JBL Canada has not shipped more volume to the United States
19 in recent years is because of the restraining impact of the
20 anti-dumping order.

21 To sustain needed levels of production at its
22 Canadian plant without incurring U.S. anti-dumping duties,
23 we have seen JBL Canada accept lower prices in other
24 markets, such as Brazil, and in the process undercut our
25 local producer prices. This volume would surely return to

1 the United States if the order on Canada is revoked.

2 Before the petitions were filed in 2008, Cargill
3 was losing money on citric acid. Every year during the
4 annual negotiation cycle, which my colleague, John O'Dwyer,
5 will discuss, our customers were receiving extremely
6 attractive price offers from JBL Canada and importers from
7 China. We could not even pass along cost increases to our
8 customers despite the fact that demand conditions at the
9 time were robust.

10 Since anti-dumping duties were imposed, Cargill
11 has been able to achieve profitable pricing levels for the
12 first time in many years. After minimizing investments in
13 our plant due to negative profits during the 2006 to 2008
14 period of investigation, Cargill has made significant
15 investments during the 2009 to 2014 period of review that
16 enhanced productivity and expanded capacity.

17 We have also increased our investment in general
18 plant maintenance to be able to reliably and consistently
19 supply customers. There is no doubt that citric acid prices
20 in the United States are much higher than in other markets
21 where imports can be sold at dumped prices. If the orders
22 are revoked, the volume of imports would increase and prices
23 would fall. We would lose substantial volume of imports
24 from Canada and China that would undersell our product,
25 resulting in lost sales volume and overall revenue.

1 The negative impact on our operations, our
2 employees, and their families would be significant. These
3 impacts would likely occur almost immediately upon
4 revocation because there's no impediment to increase sales
5 by JBL Canada or Chinese producers in the U.S. market.

6 The lower market prices caused by increased
7 underselling by subject imports combined with the negative
8 price effects of declining demand and non-subject imports
9 would place our citric acid operations at serious risks.
10 Volume losses would compromise our ability to operate at
11 high levels of capacity utilization that are necessary and
12 lower prices and profits would mean a reduction in
13 investments in our assets.

14 If the orders are revoked, continuation of our
15 citric acid operations would be in doubt. Thank you.

16 STATEMENT OF JOHN O'DWYER

17 MR. O'DWYER: Good morning. My name is John
18 O'Dwyer. Since 2010, I've worked at Cargill as a citric
19 acid sales manager. My responsibilities include creating
20 and executing our sales plan, direct account management, and
21 support and guidance to the larger Cargill sales team.

22 In my testimony today I will focus on the market
23 dynamics for citric acid. I like to focus our customers on
24 Cargill's superior quality and service, but the reality is
25 that price is the overwhelming driver in the market for this

1 product. Price in the market is magnified by the way in
2 which most citric acid is bought and sold in the United
3 States.

4 In November and December of every year, Cargill,
5 along with other U.S. producers and importers, negotiates
6 with the purchasers to sell most of its total output for the
7 following year. Because sales are negotiated well in
8 advance to cover a one-year period performance related to
9 non-price factors, such as quality, delivery, availability,
10 and timeliness is a given.

11 If you're big enough to warrant a place at the
12 negotiating table, then the purchasers assume you can
13 deliver a quality product on time. Because we must sell
14 most of output for the following year within a very short
15 window near the end of the year, a few large customers have
16 tremendous negotiating leverage. While the annual
17 contracting process begins in the early fall with the
18 discussions about volumes and price trends, at some point
19 toward the end of the year Cargill and other sellers must
20 meet the customer's price requirements in order book
21 sufficient volumes to keep their plants operating.

22 If one producer misses out on a major order or
23 two early in the selling season, the pressure to lower
24 prices to make up the lost volume can become enormous; thus,
25 just a small amount of incremental volume if offered in the

1 contract market at low prices at a critical time in the
2 negotiating season can shift the market dynamics decidedly
3 against all suppliers.

4 In a commodity market where there are few major
5 buyers and a few major sellers, the size with the majority
6 of marketing power will depend on the balance of supply and
7 demand. This is a key condition of competition in the
8 citric acid market. It is well known that there is
9 substantial production capacity in excess of domestic
10 requirements in Canada and China. That capacity can be and
11 has been engaged to serve the U.S. market, not only in the
12 spot market, but in the all-important annual contract market
13 as well.

14 Virtually, all this capacity would come into play
15 in the U.S. price negotiations if the Canadian and Chinese
16 orders were revoked. All the world's major citric acid
17 producers, JBL in Austria and Canada, COFCO, TTCA, WeiFang,
18 RZBC, and Yixing Union in China are world class producers
19 capable of delivering high quality citric acid, meeting U.S.
20 specifications in substantial volumes. Each of these major
21 producers has production capacity that is equal to or
22 exceeds that of Cargill, ADM, and Tate & Lyle.

23 There are no material quality differences,
24 product availability differences, or logistical
25 disadvantages that might restrict the availability of

1 imports from those countries if the orders were revoked.

2 With respect to product availability, there has
3 been an important change in the market since the orders were
4 imposed that make the domestic industry more vulnerable to
5 the injury caused by imports from Canada. JBL's
6 commencement of supplying sodium citrate from Canada in 2012
7 now put it in an even better position to supply large U.S.
8 accounts in the future.

9 Many customers need and use sodium citrate, but
10 they do not purchase it in full truckloads. Because Cargill
11 makes both citrate and sodium citrate at its plant in
12 Eddyville, we can ship these customers' full truckloads of
13 mixed products which enable us to sell sodium citrate at
14 full truckload prices. JBL is now in a position to do the
15 same thing from its plant Port Colborne.

16 Given the global nature of the citric acid
17 market, the large available capacity in Canada and China has
18 an impact on the negotiating behavior, both major purchasers
19 and sellers in all markets, including the United States.
20 Without the pricing disciplines of the orders at issue,
21 additional supplies of lower-priced imports from Canada and
22 China would shift the existing supply and demand balance in
23 the United States. It could cause the U.S. prices to fall
24 rapidly.

25 Because prices in the United States are higher

1 than the rest of the world, the Canada and Chinese producers
2 definitely would seek to increase sales at our large volume
3 customers in the United States if there were no orders in
4 place.

5 The market impact of Canadian and Chinese
6 capacity in imports is not lost on our major customers.
7 They enjoy a clear view of product availability and pricing
8 from Canada and China because they actively source from
9 these countries and other markets where there are no
10 measures preventing unfair pricing. The largest customers
11 purchase on a global basis from multiple qualified
12 suppliers.

13 Unrestrained Canadian and Chinese pricing in the
14 U.S. market caused material harm to Cargill's citric acid
15 business in the past. I know of no reason why this would
16 not recur in the future if the orders were revoked.

17 STATEMENT OF CARL VINEYARD

18 MR. VINEYARD: Good morning. Thank you for
19 allowing me to be here this morning and speak briefly on
20 behalf of some of the workers in an industry that's been
21 affected by unfair imports. My name is Carl Vineyard, I'm a
22 staff representative for the United Steelworkers Union. In
23 that role I represent production workers employed at the
24 Tate and Lyle facility in Dayton, Ohio. I assist with
25 contract negotiations, arbitrations between the company and

1 the union, and grievance resolution.

2 Although I've only held my position since
3 November of last year, I've worked as a union representative
4 for more than 20 years beginning with the U.S. W Local for a
5 Metal Container Manufacturing plant in Cincinnati, Ohio,
6 which is about 50 miles south of Dayton.

7 I served in many positions there as well as being
8 elected local president for 14 years.

9 Tate & Lyle's Dayton plant is vital to Dayton and
10 the surrounding community. The plant provides good
11 manufacturing jobs with relatively high pay that are highly
12 desirable. They have an opening they routinely get 2-300
13 applications for the position. These are good jobs that
14 provide a good living wage, a wage you can raise a family
15 on. A wage that provides not just basic sustenance, but
16 disposable income, money to purchase some of the extra
17 things or things our brothers and sisters produce right here
18 in the U.S.

19 Moreover, we estimate that each manufacturing job
20 at the plant supports four to five other jobs in the
21 surrounding community. It was not that long ago that the
22 Dayton facility was in serious jeopardy due to unfair
23 imports from Canada and China. During the period of the
24 original investigation, the plant was losing money and
25 capital investment was just not justified.

1 I'm told when the orders went into effect the
2 mood in the plant improved because the workers believed that
3 they could be competitive and profitable if they did not
4 face the unfair import competition. But Tate and Lyle and
5 their employees did not just ask for the Commission to
6 impose duties to help protect their company and the workers,
7 we worked together to improve efficiencies and our
8 competitive position in the market. The workers at the
9 Dayton plant understand that they must do their part to make
10 operations efficient and cost competitive.

11 At Dayton, all the workers hired after 2011 are
12 required to participate in cross-training for different job
13 functions. Cross-training makes each employee more valuable
14 and facilitates more efficient, smooth-running operations.

15 Workers have also made concessions with respect
16 to health care and pension benefits. Tate and Lyles
17 absorbed the bulk of the recent increases in healthcare
18 premiums, but workers have also paid more. They've also
19 agreed to higher deductibles and higher co-pays to help keep
20 the costs down. As to pensions, workers hired after 2011
21 are not included in the prior defined benefit plan. They
22 are now on a defined contribution plan or 401(k).

23 Workers made these concessions because they knew
24 that good manufacturing jobs are hard to find and they
25 recognize that if the citric operation closes, it's unlikely

1 they would be able to find comparable employment in the
2 area. Likewise, the workers saw the significant capital
3 investment by Tate and Lyle to debottleneck the plant and
4 make it more efficient and to maintain operating efficiency
5 and improved product quality.

6 We're very proud of the quality of the product we
7 produce.

8 Since the orders, there have been wage increases
9 for the workers at the plant. Production workers received
10 small increases in 2011 and 2012. In 2013 a 2.5 percent
11 wage increase was negotiated and that agreement also
12 provides for an additional 2.5 percent annual increase in
13 2014 and 2015.

14 If the orders are revoked, the plant will again
15 be in jeopardy. The plant must run continuous and it only
16 makes citric acid. It's truly a 24/7 operation. It's not
17 like we can switch over and run another product. If the
18 plant shuts down, it will not be restarted.

19 We know we can be competitive in a fair trade
20 environment. On behalf of the hard-working employees and
21 their families of Tate and Lyle in Dayton, I respectfully
22 request you vote to continue relief from unfair imports.

23 Thank you.

24 STATEMENT OF STEVE JONES

25 MR. JONES: Good morning. Steve Jones from King

1 and Spalding for the domestic producers.

2 The Commission should exercise its discretion to
3 cumulate imports from China and Canada in this review. The
4 record establishes an extraordinarily strong case for
5 cumulation.

6 At the outset we note that JBL concedes that
7 there's a reasonable overlap in competition between imports
8 from Canada and China and the domestic-like product. And it
9 appears to concede that imports from both Canada and China
10 are likely to have a discernible adverse impact if the
11 orders are revoked.

12 With respect to overlapping competition, the
13 evidence is very strong and JBL summarizes the relevant
14 facts quite well in its brief.

15 In addition, as we discussed in our brief, any
16 minor quality or product mix differences that may have
17 existed between Canadian and Chinese merchandise during the
18 POI, are no longer apparent. Moreover as shown in Hearing
19 Exhibit 1, imports from Canada and China were sold to many
20 of the same customers during both the POI and the POR. The
21 degree of overlap is very high.

22 We are not aware of any case in which the
23 Commission has not cumulated when the facts so clearly show
24 overlapping competition. In fact, it seems clear from
25 previous cases that the stronger the evidence establishing

1 overlapping competition, the less likely the Commission will
2 decumulate based on likely differences and the conditions of
3 competition.

4 JBL's arguments in this case fail to establish
5 any such differences.

6 First, JBL claims the differences in the trends
7 and import volumes during the POR indicate a likely
8 difference in the conditions of competition upon revocation.
9 We would dispute that there's any material difference in
10 volume trends and we will discuss the proprietary data
11 further in our post-hearing brief. But even if the trends
12 during the POR were different, there certainly is no
13 difference in the propensity of the Canadian/Chinese
14 industries to export to the United States in the absence of
15 the orders. JBL points to no evidence of any structural
16 changes in the market that would indicate a likelihood of
17 significantly different trends in the future if the orders
18 were revoked. Imports from both countries entered the
19 United States every month of the POR showing that both
20 countries are highly interested in exporting to the United
21 States and remained active in the market throughout the POR.

22 The wire rod case that JBL relies on it is brief
23 was very different. In that case the market share of imports
24 from Canada increased after the orders were imposed and
25 Canadian production capacity decreased. Moreover imports

1 from Canada oversold the domestic industry in almost every
2 quarterly price comparison during the POR in that case.

3 In addition, there was a significant difference
4 in the product mix between imports from Canada and imports
5 from the other countries subject to review in the wire rod
6 case. Again, we'll explain in our post-hearing brief why
7 this case is easily distinguishable.

8 Second, JBL contends the differences in dumping
9 margins calculated in administrative reviews constitute a
10 difference in the conditions of competition. This argument
11 ignores the Commission's relevant inquiry which focuses on
12 the conditions of competition if the orders are revoked. If
13 the orders are revoked, difference in dumping margins
14 calculated during the reviews will be irrelevant. This may
15 be the reason why we were unable to find any case in which
16 the Commission cited differences in dumping margins
17 calculated during the administrative reviews as a relevant
18 factor supporting decumulation. In this case Commerce has
19 determined that JBL's dumping margin will be 23.21 percent
20 if the orders are revoked.

21 Thus, the likely dumping margins are commercially
22 significant for both Canada and China.

23 Third, JBL cites differences in trade barriers in
24 third country markets, but this fact actually undermines
25 JBL's other arguments. JBL cites antidumping order on

1 citric acid from China and other markets as a reason why
2 China would be likely to increase exports to the United
3 States. But that conflicts with some of JBL's other
4 arguments such as differences in import volume which are
5 meant to show that China would be less likely than Canada to
6 export to the United States. So which is it? Is China more
7 likely than Canada to export to the United States or less
8 likely?

9 In fact, the evidence shows that both countries
10 are likely to export significant quantities of citric acid
11 to the United States if the orders are revoked. There is no
12 difference between China and Canada with respect to either
13 ability or interest to export significant quantities of
14 citric acid to the United States.

15 Fourth, JBL alleges that there are significant
16 differences in the price trends of imports from Canada and
17 China, citing the average unit value data on page I-7 of the
18 prehearing report.

19 As shown in Hearing Exhibit 2, based on the
20 importer pricing data, the trends are not different. In
21 addition, for the reasons we discussed in our pre-hearing
22 brief on page 13, footnote 63, and as shown in hearing
23 Exhibits 3 and 4, the AUV data for China relied upon by JBL
24 are inaccurate for 2009, 2010, and 2011. Instead, the
25 Commission should rely on the pricing data from responses to

1 the U.S. importers questionnaire. That is the best
2 available information on Chinese pricing during the early
3 part of the POR. Those data do not show any differences in
4 price trends which is exactly what you would expect of a
5 commodity product like citric acid.

6 Thus, again, the facts of this case are different
7 from the wire rod case on which JBL relies.

8 Fifth, JBL points to differences in production
9 capacity of the Chinese industry with many producers in the
10 Canadian industry with one large producer located 20 miles
11 from the U.S. border as a difference in the likely
12 conditions of competition.

13 But JBL does not explain why this is a difference
14 in likely conditions of competition if the order is revoked.
15 China's production capacity was much greater than Canada's
16 during the POI. There's been no material change in this
17 regard. We are unaware of any case in which the Commission
18 has decumulated solely based on the difference in size of
19 the industries being compared and where there's been no
20 significant change since the original investigation.

21 In fact, the Commission tends to cumulate in
22 sunset reviews unless it finds that there are several
23 relevant differences in the likely conditions of
24 competition. The evidence demonstrates that both Canada and
25 China have a strong interest in the U.S. market and the

1 ability to increase their exports to the United States if
2 the orders are revoked. Virtually all purchasers perceive
3 the merchandise as highly substitutable regardless of source
4 and there will be head-to-head competition among Canada,
5 China, and the United States for sales to all major contract
6 purchasers if the orders are revoked. There are no likely
7 differences in the conditions of competition that would
8 justify decumulating Canada and China in this review.

9 Thank you.

10 STATEMENT OF CHARLES ANDERSON

11 MR. ANDERSON: Good morning, my name is Chuck
12 Anderson of Capital Trade. The complete turnaround of the
13 U.S. industry since the POI demonstrates a strong and
14 continuing causal connection between imports from subject
15 countries and the economic health of the U.S. industry.
16 That link remains because the fundamentals of the market for
17 citric acid in the United States have not changed.

18 First, citric remains a commodity product.
19 Producers cannot seek substantial higher value added through
20 special formulations or long-term customer relationships or
21 better quality or better service or other non-price factors.
22 Thus, when the product is undifferentiated and sold mainly
23 through competitive annual bidding, the only differentiating
24 factors among suppliers is price.

25 A glance at the quarterly pricing graphs confirms

1 a degree to which citric is a commodity. Please take a look
2 at those graphs in the prehearing report, particularly with
3 respect to how close or not prices from different sources
4 are and more importantly how consistent or not prices from
5 different sources trend and I think you will see patterns
6 that one would expect for a commodity.

7 Second, there are no new uses for citric acid or
8 citrates. While there was a spike in demand for oil field
9 applications during the POR that spike is over and the
10 recent fallen oil prices has dampened drilling activity in
11 the United States.

12 According to the Department of Energy's EIA, oil
13 prices in the United States are not expected to increase
14 significantly in the near future.

15 Third, there have been no new production
16 technologies driving down costs. The basic deep-tank
17 fermentation technology for making citric acid has been
18 around for many years.

19 Fourth, and perhaps most importantly the market
20 dynamics created by the type of buyers and sellers involved
21 and the way in which citric acid is sold, have not changed.
22 This is still a market dominated by a relatively few major
23 buyers and a handful of sellers with each producers' output
24 for the year being sold through competitive annual bidding.
25 This combination creates the conditions whereby small shifts

1 and bid-winning prices depending on when they fall in the
2 negotiating season can have a major impact on overall price
3 levels. That is not to say that competitive conditions in
4 2015 are completely unchanged from 2008.

5 There have been a few important evolutions in the
6 U.S. market. First, flat or declining demand. Demand
7 conditions today are much less robust than they were during
8 the POI. The first year of the POR, 2009, coincided with
9 the trough of the recession and reduced consumption for a
10 number of products that incorporate citric acid including
11 the most important, soft drinks.

12 The U.S. economy and discretionary consumer
13 spending obviously have improved since then. But it is
14 misleading to use the increased consumption over the POR to
15 project demand for the next two years.

16 To gain a better picture, look at the three-year
17 trends in demand from 2006 to 2008 versus a trend in demand
18 from 2011 to 2013 as we show in Hearing Exhibit 5. The most
19 important factor behind softening demand is the long-term
20 decline in soft drink consumption. Soft drinks represent,
21 by far, the largest end use for citric acid. As shown in
22 Hearing Exhibit 6, the trend of declining soft drink
23 consumption is driven by two factors, changes in consumer
24 attitudes towards diet and health, and an aging population.

25 In fact, both Coca-Cola and PepsiCo list these

1 two drivers as their first risk factor in their most recent
2 10Ks. More recent demand trends in market projections
3 clearly undermine the IHS data projection of increasing
4 usage of citric in carbonated soft drinks as well as its
5 overall demand projections.

6 Even if, contrary to our industry's witnesses'
7 opinions demand were to increase modestly, the increase
8 would be too small to insulate the domestic industry from
9 the injurious effects of the increased imports.

10 The second factor is increasing costs. As is
11 evident in Hearing Exhibit 7, both raw material and other
12 manufacturing costs on average are higher now than they were
13 during the POI.

14 The third factor is the changing mix of
15 non-subject imports. After the imposition of the orders,
16 subject import volumes fell dramatically. Non-subject
17 imports from established producing countries, Israel,
18 Brazil, Germany, and Austria replaced some of the lost
19 subject import volume.

20 In the two most recent years, however, new
21 producers in Thailand and an old producer in Colombia under
22 new ownership have displaced much of the non-subject imports
23 from traditional suppliers and at lower prices as the
24 Customs AUV data show.

25 The new Thai producers, Niran, Sunshine Biotech,

1 and COFCO Thailand are Chinese owned and were established to
2 get around antidumping measures in the United States and the
3 EU.

4 We have also reason to believe and the U.S.
5 government has confirmed that Thailand has been used as a
6 platform for circumvented Chinese citric acid. The sources
7 shipping from Thailand along with Supra of Colombia, are the
8 new downward price leaders. These new entrants have driven
9 down import prices as well as overall U.S. prices. It would
10 be wrong to assume that a resumption of imports from Canada
11 alone would occur in the type of market that prevailed even
12 two or three years ago. To gain additional volume, JBL
13 Canada would have to respond to the Thai and Colombia price
14 thereby driving overall U.S. prices downward.

15 The fourth factor is a divergence between prices
16 in the United States and the rest of the world.

17 During the POI prices were as low as world
18 prices. All of the information available shows that since
19 the imposition of the orders, U.S. prices have remained
20 substantially higher than prices in other major markets
21 including Europe, Asia, and South America. Thus,
22 notwithstanding some recent softness in U.S. prices, the
23 U.S. market is much more attractive now, relatively speaking
24 than it was six years ago.

25 With these current conditions of competition in

1 mind, let's turn to a comparison of the health of the
2 domestic industry pre-order versus post-order as shown in
3 Hearing Exhibits 8, 9 and 10, the before and after picture
4 is clear. The performance of the industry during the POI
5 can only be described as dismal. Multi-year operating
6 losses, prices that failed even to cover cost of goods sold,
7 and capital expenditures so low that they could not even
8 keep up with depreciation. Since then the industry has made
9 a complete turnaround. U.S. producers have increased U.S.
10 shipments and as promised six years ago, reduced exports,
11 prices have increased, profits have remained positive,
12 capacity has increased, and capital expenditures are up.

13 Six years ago I sat before you and described the
14 dramatically better projections for 2009 that Cargill, ADM,
15 and Tate and Lyle provided to the Commission at that time.
16 These projections were realized in spite of the
17 recession-driven decline in demand. Substantially better
18 results have followed in 2010, 2011, 2012, and 2013. With
19 hindsight we can now more clearly see the nexus between
20 dumped subject imports and the poor condition of the U.S.
21 industry. There is no other competitive condition that
22 could explain the complete turnaround. In fact, to the
23 extent that the market has changed, it is in ways that
24 increases the domestic industry's vulnerability to injurious
25 dumping in the event that orders are revoked.

1 STATEMENT OF JOSEPH DORN

2 MR. DORN: Joe Dorn for the domestic industry. I
3 will now address why revocation of the orders will result in
4 recurrence of material injury to the domestic industry.

5 As you know, no Chinese producers responded to
6 the Commission's questionnaire or provided any information
7 or argument to suggest that revocation as to China alone
8 would not be injurious. JBL Canada appears to concede that
9 revocation as to China alone would be injurious. That is
10 why it argues so strongly for decumulation.

11 Thus, with no one in the building taking a
12 contrary position with respect to China, I will focus our
13 remaining time on why revocation as to Canada alone would
14 lead to recurrence of material injury.

15 To begin with, as explained in Statement of
16 Administrative Action that accompanied the Uruguay Round
17 Agreements Act, the Commission must consider its prior
18 injury determination because the period of investigation is,
19 quote, "The most recent time during which imports of subject
20 merchandise competed in the U.S. market free of the
21 discipline of an order. If the Commission finds that
22 pre-order conditions are likely to recur, it is reasonable
23 to conclude that there is likelihood of continuation or
24 recurrence of injury." End quote.

25 The SAA further provides that, quote, "An

1 improvement in the state of the industry related to an order
2 may suggest that the state of the industry is likely to
3 deteriorate if the order is revoked" end quote.

4 Following those directives from the SAA, and
5 applying the three statutory factors of volume, price
6 effect, and adverse impact, it is clear that revocation as
7 to Canada alone would lead to recurrence of material injury.

8 Starting with the initial statutory factor, the
9 volume of imports from Canada would be significant if the
10 order were revoked. Exhibit 11, which I hope you have
11 before you, shows the trends in JBL Canada's citric acid
12 capacity and exports to the United States during the POI and
13 the POR. As you will see, the imposition of preliminary
14 duties in November 2008 and the order in May 2009 had a
15 significant restraining effect on the volume of imports in
16 2009 and thereafter.

17 JBL Canada has greater ability and motivation to
18 increase exports in the United States in a reasonably
19 foreseeable time than it did during the POI. First, as is
20 shown in Exhibit 12, JBL Canada is as export-oriented today
21 as during the POI. It is not just export-oriented, its
22 exports are focused on the United States. JBL admits that
23 it built its plant in Canada to have close access to large
24 U.S. purchasers of citric acid. Thus, notwithstanding
25 China's far greater capacity, JBL Canada poses as much of an

1 immediate threat to the U.S. industry as China.

2 Second, as shown on Exhibit 13, JBL Canada has
3 more capacity now than in 2008. With the most modern plant
4 in America, JBL Canada is very likely to have higher
5 depreciation expenses and thus higher fixed costs than any
6 U.S. producer. Thus, it is highly motivated to maximize its
7 exports to the large contiguous U.S. market.

8 Third, while JBL Canada exports to other
9 countries, it has an economic motivation to shift those
10 exports to the higher-priced U.S. market if the order is
11 revoked. This is shown on Exhibits 14 and 15. That shift
12 could come immediately as the major purchasers conduct
13 business with JBL on a regular basis throughout the world.

14 Fourth, as is shown on Exhibit 16, Chinese
15 exports to Canada have increased significantly since the
16 U.S. order was imposed. These imports from China have
17 suppressed Canadian market prices and made the U.S. market
18 all the more essential to JBL Canada.

19 In sum, the size, proximity, and prevailing
20 market prices relative to other potential export markets
21 make the U.S. market a vital market for JBL Canada. It has
22 more ability and more motivation to serve this market going
23 forward than it had in 2008.

24 Turning to the next statutory factor, imports
25 from Canada would have significant negative price effects if

1 the order were revoked. During the POI imports from Canada
2 undersold the domestic-like product in 63 percent of pricing
3 comparisons and acted as a cap on U.S. producers' prices.
4 As a result the domestic industry could not raise prices to
5 the level needed to break even, much less to earn any
6 operating profit. The imposition of the preliminary and
7 final measures led to increased prices for imports from
8 Canada.

9 Exhibit 17 shows the change in AUV of imports
10 from Canada from the POI to the period of review. The
11 Commission should consider whether the extent of
12 underselling declined after the petition was filed and after
13 the preliminary and final measures were imposed.

14 If the order were revoked, the extensive
15 underselling that occurred during the POI would rapidly
16 recur. JBL Canada would increase its exports to the United
17 States to maximize its profits. Because demand is not
18 increasing, it would have to increase its market share to
19 increase its sales. To do that, it would have to undercut
20 the prices of the domestic-like product. In fact, JBL
21 Canada would likely undersell even more than it did during
22 the POI because it would have to compete more with
23 non-subject imports now than it did then, and because the
24 exceptionally strong demand conditions of the POI are no
25 longer present.

1 As shown on Exhibits 18 and 19, U.S. prices for
2 imports from Canada and the domestic-like product are
3 closely linked. The large purchasers who source from both
4 Canada and the United States would surely require U.S.
5 producers to match the prices they received from JBL Canada.
6 Any reduction in Canadian prices would lead to lower prices
7 for U.S. producers.

8 Turning to the final factor, revocation of the
9 order on Canada would have an adverse impact on the domestic
10 industry. The higher volume of low-priced imports from
11 Canada would take market share from the domestic industry as
12 it did during the POI. This would cause capacity
13 utilization to decline and per-unit fixed costs to increase.
14 U.S. producers would have to respond by reducing their
15 prices to avoid further lost sales to keep their plants in
16 continuous operation. Profitability would quickly decline
17 as a result of the lower sales revenues due to lower prices
18 in sales volume and higher per-unit fixed costs due to lower
19 production.

20 The domestic industry's operating income
21 increased from negative \$8 million in 2008 to positive \$98
22 million in 2009 due to the elimination of unfair pricing.
23 Prices would fall just as quickly and profits would fall
24 just as quickly if the order were revoked. With declining
25 financial results, the domestic industry would sharply

1 reduce capital expenditures to the levels of the POI.

2 JBL Canada argues the domestic industry is
3 profitable now, is not vulnerable, and does not need the
4 protection of the order. The SAA, however, makes clear that
5 where the improved condition of the industry is related to
6 the order, that is a reason to continue the order, not to
7 revoke it.

8 Moreover, the domestic industry is vulnerable
9 within the meaning of the SAA because it is, quote
10 "susceptible" end quote to material injury by reason of
11 dumped imports for the following reasons: First, the
12 commodity nature of the product, the price sensitivity of
13 sales negotiations, and the imperative to maintain high
14 operating rates means that the domestic industry's financial
15 condition can change dramatically in a short period of time.

16 For example, the industry's operating income fell
17 41 percent from 2012 to 2013 largely due to non-subject
18 imports and circumvention of the orders on China.

19 Second, U.S. producers and JBL Canada would
20 compete for sales to a limited number of large-volume
21 purchasers with no pricing discipline in effect. JBL Canada
22 could quickly undercut U.S. producers' prices to take volume
23 from these important base-load accounts.

24 Third, in contrast to robust demand conditions
25 during the POI, demand is projected to decline in the

1 reasonably foreseeable future. That would intensify
2 competition for available sales volume if the order were
3 revoked.

4 That concludes our direct presentation and we
5 look forward to your questions. Thank you.

6 CHAIRMAN BROADBENT: Thank you. I want to
7 thank all the witnesses for coming and taking time from
8 their businesses to be with us today. This morning, I'll
9 begin our questioning with Commissioner Johanson.

10 COMMISSIONER JOHANSON: Thank you Madam
11 Chairman, and I would like to begin by thanking the industry
12 representatives, Mr. Vineyard representing workers in the
13 plants, and also counsel for appearing here today. I have
14 to congratulate you as well. You all had 34 seconds left.
15 I think that's the closest anyone has gotten to not going
16 over the line, so I appreciate that.

17 As counsel is aware, both the preliminary and
18 final votes in the original investigation were 3-3. 3-3
19 votes are rare at the Commission, and I don't know if these
20 3-3 votes are relevant in this five-year review. But the
21 fact that there were 3-3 votes both in the prelim and in the
22 final determinations did catch my attention. That might be
23 the only time that it's ever happened. I don't know.

24 So I'd like to begin by looking back at the
25 original investigation. The dissenters in the original

1 investigation found that while they considered the industry
2 as a whole, variations in individual market participants'
3 sales and performance demonstrate that the overall
4 industry's performance was affected by inter-industry
5 competition."

6 Even the majority views noted that
7 inter-industry competition among the three domestic -- that
8 there was inter-industry competition among the three
9 domestic producers. To what extent is inter-industry
10 competition impacting the domestic producers' performance
11 currently, and how do you anticipate that it will impact the
12 industry's performance going forward?

13 MR. DORN: Commissioner, I don't know of any
14 U.S. industry that comes before you with multiple producers,
15 where there's not intra-industry competition. That's a
16 given. It's not unusual to this case. You know, the folks
17 who voted no are not here in the room today. The folks that
18 voted yes are in the room today. I'm aware of that fact.

19 But as the -- as Commissioners, as Vice
20 Chairman Pinkert and Commissioner Williamson pointed out,
21 that intra-industry competition argument doesn't fly,
22 because what happened in the end of 2008, after the
23 preliminary duties went into effect? You still had the
24 three U.S. producers competing head to head to get large
25 volume sales to these large accounts, and yet prices went

1 way up. They went up 57 percent. The AUV of the industry
2 went up 57 percent from 2008 to 2009.

3 None of the U.S. industry participants went
4 away. They're still competing with each other. They were
5 competing with each other without the discipline of the
6 pricing orders in the POI, and they couldn't raise prices to
7 a level to break even, much less make a profit. Then when
8 the discipline of the Order is imposed, they're able to
9 achieve prices that allow them to make very good profits,
10 especially in 2009.

11 There's nothing different going forward.
12 It's the same three producers. There's a little bit of
13 increased capacity in the U.S. industry. But otherwise,
14 they're selling the same products, competing the same way
15 for the same customers. So I don't think the intra-industry
16 competition argument flies any better today than it flew
17 back in the time of the original investigations.

18 COMMISSIONER JOHANSON: Thank you, Mr. Dorn,
19 and I'm going to go back just one more time to the original
20 investigation. The dissenters in the original investigation
21 found that the U.S. market experienced tightness in supply
22 during the Period of Investigation, and that was
23 particularly during 2008.

24 How do you respond to the dissenters'
25 characterization of the citric acid market at that time, and

1 is that a condition that has existed at any time during the
2 Period of Review? Further, do you anticipate such a
3 condition in the foreseeable future?

4 MR. DORN: Well, you had very robust demand
5 conditions during the POI. The Commission noted that demand
6 conditions were exceptionally strong. So you had -- unlike
7 the last three years of the POR, during the 2006 to 2008
8 period you had a sharp increase in demand, which is shown on
9 one of our hearing exhibits, I believe.

10 (Pause.)

11 MR. DORN: I'm fumbling for it. But anyway,
12 there was a big increase in demand from 2006 to 2008, and
13 things are fairly flat right now. I think the Commission
14 noted in its affirmative determination in the original
15 investigations that market conditions really changed after
16 the petition was filed in April of 2008, and you saw in
17 terms of cumulated imports that the extent of underselling
18 decreased with the filing of the petition.

19 The fact that purchasers knew that there was a
20 chance of high duties being placed on imports from Canada
21 and China necessarily had some impact on the market. But
22 in our view, that's related to the pendency of the petition,
23 and the imposition of preliminary duties. So that's why you
24 had this market reaction and prices went up.

25 So that to me shows the causal link between

1 the subject imports and the health of the U.S. industry.

2 MR. ANDERSON: And Commissioner Johanson, if I
3 might add, I worked on that original investigation, and I
4 looked into those allegations of tightness. We did an
5 analysis at that time and showed that almost all of those
6 were -- took place after the petition was filed, and the
7 petition's filing did create uncertainty in the market, and
8 it was not just physically a shortage of supply.

9 People started scrambling around and looking
10 for inventories that they otherwise normally wouldn't carry.
11 It was associated with that, and it was very temporary. I
12 think the record shows now that there hasn't been any real
13 complaints about -- significant complaints about shortages
14 of supply. There's plenty of supply available between
15 subject imports, non-subject imports and U.S. domestic
16 production.

17 MR. DORN: Now that I found my exhibit, it's
18 Exhibit 5. If you look at that, you'll see the increase in
19 consumption from 2006 to 2008 on the left bar, and on the
20 right bar you'll see the increase from 2011 to 2013. Now
21 JBL, they try to make the point that consumption increased
22 during the POR starting with 2009 as the base year, which of
23 course was the trough of the Great Recession.

24 So we think it's inappropriate to be looking
25 at consumption trends going back to 2009, especially when

1 you're looking to the reasonably foreseeable future. You're
2 looking out the next two years. The increase from 2009 to
3 2011 is really not relevant. What's more relevant is the
4 increase from 2011 to 2013, and the demand projections from
5 the industry witnesses.

6 So I don't think you're going to see the
7 tightness of supply, certainly from a demand perspective
8 going forward, in contrast to the POI.

9 COMMISSIONER JOHANSON: Thanks for your
10 explanations. Mr. Jones, I'd like to follow up on what you
11 were speaking on earlier, regarding the AD margins that
12 Canada has received.

13 I know that you've already discussed this, but
14 would you mind speaking a bit further on this issue, because
15 the margins for Canada in these recent administrative
16 reviews are very low, although you did note that the margins
17 in this investigation coming out of Commerce were high. Do
18 you know what the disparity is there?

19 MR. JONES: Steve Jones. Commissioner
20 Johanson, you know, the administrative review margins
21 reflect, we believe, JBL's change in pricing behavior,
22 adjustment of its prices in response to the imposition of
23 the Order. We think that that is, directly linked to the
24 existence of the Order.

25 What Commerce's role is in looking at the

1 likely dumping margin if the Order is revoked, is not to
2 look at the pricing behavior of the exporters with the Order
3 in place, but to look counterfactually at what's likely to
4 happen if the Order is revoked. Commerce's practice is to
5 determine that, not by looking at administrative review
6 margins, but by looking at the margins that were imposed in
7 the original investigation as the best evidence, the best
8 information on what's likely to occur if the Order's
9 revoked.

10 What Commerce determined is likely to be the
11 margin upon revocation, is under the statute what the
12 Commission must look at. We think that it's clear that that
13 is the margin that is relevant under the statute, and the
14 Commission's practice, we think, and determinations on the
15 cumulation sunset review shows that that's the margin.

16 To the extent that the Commission looks at
17 margins at all, that's the margin that the Commission will
18 look at.

19 MR. DORN: Joe Dorn. If I can just add one
20 point to that. Looking at Exhibit 17, our hearing exhibit,
21 look at the difference in the prices from -- of imports from
22 Canada in 2008 versus 2009.

23 COMMISSIONER JOHANSON: I'm sorry, which
24 exhibit is that?

25 MR. DORN: Exhibit 17, Hearing Exhibit 17. So

1 you know, if JBL had maintained its prices at 2008 levels
2 and you'd had the administrative review, you'd have high
3 dumping margins throughout the Period of Review. But
4 instead, they increased the price in the United States.
5 That's what's supposed to happen.

6 That's how these Orders are supposed to work.
7 This is a good thing, and what we're saying and what the
8 Commerce said is if there's a revocation, you're going to go
9 back to the dumping situation. Their price is going to come
10 down, and there will be a dumping margin again.

11 COMMISSIONER JOHANSON: All right. Thanks for
12 your explanations. My time has expired.

13 CHAIRMAN BROADBENT: Commissioner Kieff.

14 COMMISSIONER KIEFF: Thank you, Madam
15 Chairman, and I join my colleagues in thanking the Panel for
16 coming today. It's very helpful to get a sense of the
17 engineering and practical business and labor and community
18 impacts on cases like this, and it's through your direct
19 involvement that we get that benefit. It's really important
20 to our decision-making.

21 We also have a practice, of course, here of
22 having a transcript and these hearings can go over a
23 significant amount of time, and you have the ability to
24 provide post-hearing submissions. In keeping with that
25 practice, whenever one of us has an unavoidable conflict, to

1 require us to miss part of the hearing, we will go back,
2 read the transcript and read the written submissions.

3 I just want to mention to this Panel and the
4 other Panel that I have a conflict later today, and so won't
5 be here for the whole day. But I look forward very much to
6 reading what you each are able to provide here today and
7 afterwards in writing. I benefit a great deal as well, and
8 appreciate greatly my colleagues' questioning you on these
9 topics.

10 So I'm looking forward very much to reading
11 their questions and your answers. Recognizing, then, that
12 there's a short amount of time and that I don't have to ask
13 every question because of course my colleagues will be
14 asking more, let me if I could direct some questions to both
15 panels, and ask for some drilling down later in the
16 post-hearing on some of these questions.

17 So first of all, if I understand -- let me
18 also just mention. I preface these questions with my own
19 personal desire to try to highlight, at least for myself, to
20 make sure I'm understanding what you each are saying. Where
21 exactly the two sides, if you will, agree, and where exactly
22 they disagree, and what are the outcome-determinative
23 consequences of those agreements and disagreements.

24 Of course, you could disagree strongly over
25 something that might not matter to the outcome. You might

1 agree wholeheartedly on something that might not matter to
2 the outcome. The opposites could be true as well. So I
3 hear one significant disagreement on the question of
4 cumulation with respect to Canada, and I hear one key focal
5 point in that part of the disagreement to be the conditions
6 of competition.

7 And I just want to encourage you each in the
8 post-hearing to try to highlight the precise nature of the
9 differences in the conditions of competition. We've heard
10 already, for example, the importance of the similarities in
11 the conditions of competition. But if you could highlight
12 the differences, and then highlight what impact there is, if
13 any, that comes from those differences.

14 It might be the case that you agree with each
15 other that there are significant differences, but that those
16 differences you might disagree with each other over, whether
17 those differences matter to our decision about cumulation.
18 As I jotted them down, I understood some of the key points
19 of difference to be the following. This is not an
20 exhaustive list; I'm just telling you what I've heard, so
21 that you can tell me later whether I heard correctly.

22 Feedstock, geographic location with attention
23 focused on shipping costs, degree of subsidy, volume and
24 price behavior during the Period of Review and overall size.
25 Those seem to be some key differences, but again the key

1 question might then be whether those differences matter to
2 the question of cumulation.

3 Another question with respect to conditions of
4 competition, and perhaps to impact, would be why product
5 from Canada seems to have remained in the U.S. market at
6 what might be seen as high levels despite the Order? Does
7 that tell us anything about what U.S. purchasers want, and
8 again, does that matter? It might not matter.

9 Even if we were to try to focus in on a
10 Canada-only determination, we might then have to ask
11 ourselves the inevitable hard questions about the future.
12 No one can predict the future, but we're asked to try to
13 figure -- we're asked to try to make guesses about it,
14 informed guesses. So why wouldn't shipments to the U.S.
15 increase? Even if they were high before, why wouldn't they
16 increase if the Order were lifted with respect to Canada?
17 What is going on in other countries with respect to imports
18 from Canada, and does that tell us anything about what might
19 go on inside the U.S. with respect to imports from Canada?

20 So for example, what is going on in Brazil?
21 Is there underselling in Brazil, and if there's underselling
22 in Brazil, does that mean there's dumping in Brazil? And
23 there was already some discussion this morning about
24 long-term contracting versus spot market negotiating.

25 This is a topic that comes up in a number of

1 our cases. But it would help us if both sides were to
2 explain more about what's -- how those two behaviors to
3 negotiate and interact in this case, and what significance
4 there is from those interactions.

5 And then a couple of other just note -- things
6 that like with my colleague Commissioner Johanson jumped out
7 at me. So I noticed that of the six Commissioners who
8 touched this case before, five of them, at least at some
9 point, voted negative. In addition to being two 3-3's,
10 there was a lot of movement. So does -- should we take
11 anything from that? Maybe, maybe not.

12 It looks like during the original Period of
13 Investigation, prices were not falling, but seemed to be
14 rising before the petitions were filed. So one question is
15 are those facts or is that an incorrect perception, and a
16 second question is does that matter and how does it matter?

17 And then lastly, there seemed to be a lot of
18 change in geopolitics in the Middle East in particular,
19 including what might be described as war, and right. Saudi
20 Arabia is now in Yemen. There's a lot happening. That
21 might shift oil field demand and does that shift -- would
22 that shift matter to this determination, and if so how.

23 I know gave a lot. The beauty of all of this,
24 of course, is that the questions themselves have been
25 described. So if your notes are short, that's okay. We all

1 can look back and I know that we all benefit greatly from
2 what you'll be providing today and in your post-hearings.

3 So I'll just yield the rest of my time and
4 thank you very much, and I look forward to looking
5 everything over. Thank you.

6 CHAIRMAN BROADBENT: Commissioner Schmidtlein.

7 COMMISSIONER SCHMIDTLEIN: Thank you, Madam
8 Chairman, and I'd like to also join my colleagues in
9 thanking the witnesses for traveling here today, and
10 spending their time to answer all questions. So I want to,
11 I guess, follow up on a few things that have been said, and
12 specifically I mean this question about cumulation and the
13 fact that Canada has remained in the market at, as
14 Commissioner Kieff just said, what might be called high
15 volumes or significant volumes.

16 So when you take that fact, along with the
17 fact that the Canadian producer increased its capacity
18 during the Period of Review, which at that time did not know
19 whether or not and still doesn't know whether or not the
20 Order will be lifted. So it could have access to the U.S.
21 market without the discipline of that Order.

22 Can you respond to that fact, and specifically
23 whether you think or whether you would agree that that might
24 suggest that Canada wouldn't necessarily increase its
25 volumes to this market, given that it's been in the market

1 consistently over the POR, and that when it increases
2 capacity, it obviously was focused on different markets.

3 So doesn't that suggest that they wouldn't,
4 you know, be coming back to the U.S. market in substantially
5 more volume, substantially higher volume?

6 MR. DORN: Joe Dorn. Let me begin by
7 directing your attention to a couple of the hearing
8 exhibits. We think in terms of motivation, Hearing Exhibits
9 14 or 15 are relevant. One would think that if you have a
10 plant that's right on the U.S. border, it was built to serve
11 large U.S. purchasers, it would have lower freight costs,
12 that you want to focus most of your exports to that market.
13 With the imposition of the Order, they have had a pricing
14 floor mean in essence during the POR.

15 So what does that pricing floor? They could
16 only go so low. They've been very careful. They've
17 monitored it. They go down to -- they are .05 percent, you
18 know. They can't go any lower than that, because they'll
19 pay more duties. But they've got a floor right now inside
20 the U.S. But they don't have any floor when they sell to
21 Brazil or other markets.

22 So we would ask you to look at the prices
23 they're receiving in the United States, versus their
24 exports, which are shown in Exhibits 14 and 15, and just use
25 common sense as to what's their motivation. If that pricing

1 floor is eliminated, they can sell at whatever price they
2 want to in the United States, without incurring any dumping
3 duties.

4 Would you not expect them to divert some of
5 their existing exports from lower-priced markets to the
6 higher-priced U.S. market? Also, if you look at another
7 exhibit we have, which shows the increase in capacity,
8 you'll see they have more ability today than they had back
9 in 2008. That's Exhibit 13. It's obviously greater than
10 2014 than in 2008.

11 In addition, during the POI, they did not have
12 the ability to sell sodium citrate in the United States.
13 They've admitted on the public record that they began to
14 produce sodium citrate during the POR. So as Mr. Hurt
15 testified, they can now sell citric acid and sodium citrate
16 together in full truckload. So they're in a better position
17 to sell to the United States.

18 So what the Commission has generally looked at
19 in past cases is motivation and ability. In our view going
20 forward, they have a motivation to sell more to the United
21 States, and they have the ability to do that because of
22 their increased capacity and their broader product line,
23 which now includes sodium citrate.

24 So take away the price floor, they'll be able
25 to be more aggressive in going after these large volume

1 customers, because they can get their prices to the level
2 they need to to increase their market share.

3 COMMISSIONER SCHMIDTLEIN: Thank you. You
4 know, in sort of a related question, can you explain a
5 little more or I guess more specifically respond to the
6 Respondent's argument that the prices in the United States,
7 that the U.S. producers are the price leaders first of all,
8 that most producers or maybe purchasers, or the majority of
9 purchasers, indicated that one of the three U.S. producers
10 were the price leaders, and that actually these spot sales
11 that wouldn't affect -- or to a large extent wouldn't affect
12 the prices that are being negotiated on these longer-term
13 contracts?

14 MR. DORN: We think if you look at the entire
15 record, that the U.S. producers are generally the upward
16 price leaders, and the importers are generally the downward
17 price leaders. The term "price leader" means different
18 things to different people. But clearly during the POI, it
19 was clear that the imports from Canada were downward price
20 leaders. Look at the AUV of imports from China and the AUV
21 of imports from Canada in 2008.

22 That might be telling as to who was the
23 downward price leader then, when you didn't have the
24 discipline of the orders, when JBL wasn't trying to
25 eliminate its margin of dumping. They have an Exhibit 6 to

1 their prehearing brief, in which they compare prices paid by
2 purchasers, and we'll be providing a counter-exhibit using
3 the same data, but presenting it a little bit differently,
4 to show who had the highest price in each quarter.

5 Was it the U.S. industry or JBL Canada? We
6 think that will be telling, based upon the same data that
7 they're using.

8 COMMISSIONER SCHMIDTLEIN: Are the contracts,
9 the annual or longer-term contracts that the U.S. producers
10 are into, and I understand that it's not just U.S. producers
11 but I guess some of the importers also use those contracts,
12 are they renegotiable? In other words, can you, you know,
13 if the prices are dropping, can those contracts be
14 renegotiated?

15 MR. HURT: Martin Hurt with Tate and Lyle.
16 The answer is yes, particularly with the large end users.
17 They have such a powerful buying force that if market
18 conditions change, if let's say as an example, JBL were to
19 come in and undercut pricing substantially, that's a change
20 in market condition. It would not be unusual to be summoned
21 to their office to renegotiate pricing, to match that
22 pricing they're now seeing from JBL.

23 MR. AUD: I agree.

24 COMMISSIONER SCHMIDTLEIN: Thank you.

25 MR. DORN: With regard to the spot market versus

1 the contract market, I think it's important to look at
2 Exhibit 1, which shows these large purchasers who are buying
3 from Canada and China, and these guys don't just buy spot.
4 These are large volume customers, especially in the POI,
5 less so in the POR, due to the discipline of the Orders, but
6 especially in the POI. You have the same players showing up
7 at these annual contract negotiations. Correct?

8 MR. HURT: Correct.

9 MR. DORN: So, don't get the impression that the
10 importers are playing the spot market and the domestic
11 producers are playing in the contract market. It's not that
12 way at all. And the U.S. producers also participate in the
13 spot market in a significant way, but generally, through
14 distributors. They might call those contract sales because
15 they have a contract with the distributor, but the
16 distributor is selling in a spot market. So, there's
17 head-to-head competition, both in the annual contracts and
18 in the spot market.

19 COMMISSIONER SCHMIDTLEIN: Did you want to add
20 something, Mr. Hurt?

21 MR. HURT: Yeah, again Martin Hurt, with Tate &
22 Lyle.

23 Just to further elaborate on what Joe said, we do
24 contracts with distributors and they play in the spot
25 market. They don't summon us for a price negotiation. They

1 just stop buying from us. They just stop. So, then we have
2 to by, de facto, renegotiate a price with them to meet their
3 spot price in the marketplace. So, that occurs very
4 frequently.

5 MR. DORN: One other thing, before I forget it,
6 with respect to distributors, which I think is very
7 important, JBL makes the point with respect to cumulation
8 that they can ship citric acid solution to the United
9 States, whereas the Chinese producers are not doing that
10 from China. And you can elaborate on this Martin, but my
11 understanding is distributors perform that role for them in
12 creating the solution, but then distribute it to customers
13 who need the solution.

14 MR. HURT: Correct. We're not insulated from
15 that mode of transportation or form of material.
16 Distributors do, in fact, solubilize the material when
17 shipping in bulk quantities to end users. Large end users.

18 COMMISSIONER SCHMIDTLEIN: All right. My time
19 is up. Thank you very much.

20 CHAIRMAN BROADBENT: This would be for Mr. Cuddy.
21 You stated that import prices acted as a lid on your prices.
22 Can you explain to me how that works?

23 MR. CUDDY: Thank you for the question. This is
24 Chris Cuddy with ADM.

25 Yes, any time that you have imports coming into

1 our market, you really have no ability to raise prices above
2 that level. So, in essence, they cap the price for all the
3 domestic marketers.

4 CHAIRMAN BROADBENT: And so that means that the
5 imports are coming in at a higher price than U.S. prices.

6 MR. CUDDY: No. What that means is they come in
7 and set the price and lead the market down. That, in
8 essence, we don't have the ability to raise it above the
9 price that they set.

10 CHAIRMAN BROADBENT: But you're selling at a
11 lower price than they're setting.

12 MR. CUDDY: No, not necessarily at a lower price,
13 but you have the inability to move it higher because of the
14 base load that they're bringing. I mean you can bring your
15 price high. You just won't sell any volume.

16 MR. DORN: Madam Chairman, during the original
17 investigation the Commission found that the imports were
18 acting as a ceiling or a cap on U.S. producers prices. They
19 said there's mixed overselling and underselling, more
20 underselling than overselling, but in any event, the
21 importers were setting a ceiling or a cap and that prevented
22 the domestic industry from raising prices even to the level
23 required to break even much less to clear any profit.

24 CHAIRMAN BROADBENT: Yes, I mean it's kind of an
25 interesting theory. Were there other cases where we've done

1 this before?

2 MR. DORN: Well, I think it generally comes up
3 when you find there's no underselling and then you decide
4 well, you know, you can have price affects even without
5 underselling. And that was common in like the cement cases
6 where you would not necessarily have any underselling, but
7 the incremental volume and the nature of cement you know you
8 have to meet competitive prices. The incremental imports
9 would cause prices to decrease or at least prevent them from
10 increasing.

11 During the period of investigation in this case
12 from 2006 to 2008, you also had the traditional measure of
13 price suppression in that the producers' cost of production
14 were going up. And while prices were increasing during a
15 period of robust, increasing demand the industry wasn't able
16 to raise prices enough to keep pace with increasing costs.
17 So you had that measure of price suppression as well.

18 CHAIRMAN BROADBENT: Okay. Mr. O'Dwyer, you
19 stated that JBL in Austria is also a major source of supply
20 that doesn't face restrictions in selling into the United
21 States.

22 What prevents JBL in Austria from selling here in
23 large volumes and underselling the U.S. product?

24 MR. O'DWYER: John O'Dwyer with Cargill.

25 So, JBL Austria they produce a high quality

1 product that is interchangeable with any of the other
2 products produced in the industry and so they will export
3 product from their local market just like their Belgium
4 producer does as well into the U.S. for customers that are
5 looking for product from them. So, there's really nothing
6 that prevents them from exporting product from Europe into
7 the U.S.

8 CHAIRMAN BROADBENT: And how much have they been
9 exporting?

10 MR. O'DWYER: Their exports out -- I don't know
11 the numbers off the top of my head or if we even provide
12 those. Typically, if I remember, they're going to be some
13 of the specialty salts that are coming from Europe,
14 specifically from JBL into the U.S. market.

15 MR. DORN: Joe Dorn.

16 Madam Chairman, our major point would be that JBL
17 Austria has no desire to ship product from Austria to the
18 United States if it's being made in Canada because the
19 Canadian plant was built, and their business plan is built
20 on the United States. That's why they built that plant
21 there. Their idea was to serve the United States from
22 Canada, not from Austria.

23 CHAIRMAN BROADBENT: Okay. Going back to
24 Commissioner Schmidtlein's earlier discussion, and then also
25 Exhibit 14, doesn't the fact that JBL's export prices to the

1 United States are higher than Canadian sales prices to a
2 substantial degree mean that JBL can sell at a lower price
3 than they are currently selling and still not be dumping?

4 MR. DORN: Well, if you look at the timeframe
5 there for those data, they overlap the time period of the
6 administrative reviews. And in fact, they've always been
7 found to have dumped. The dumping calculations are
8 complicated because you've got to make adjustments back to
9 an "ex-" factory price, the price comparison. You also have
10 a constraint in terms of their home market prices. If
11 they're sold below the cost of production in Canada,
12 they're not used for the price-to-price comparison.

13 So, it's more complicated in terms of dumping
14 than this table would suggest. JBL Canada is not coming in
15 here and saying they have a big, negative dumping margin,
16 right? I mean they have to admit they've been found to be
17 dumping during the entire period of review. And our point
18 is that they have a floor right now that keeps their price
19 to the United States higher than to other markets.

20 CHAIRMAN BROADBENT: Right, but it just seems
21 like --

22 MR. DORN: That's what's reflected.

23 CHAIRMAN BROADBENT: They could be more
24 aggressive in their underselling and still not be dumping.

25 MR. DORN: Well, you know I would agree with you

1 if they came in and argued and convinced you that they had
2 like a 10 percent negative dumping margin, but they are
3 dumping right now. I mean these data that you have in front
4 of you in Exhibit 14 overlap the time periods for
5 administrative reviews where the Department of Commerce has
6 found dumping.

7 CHAIRMAN BROADBENT: Okay. I don't know -- one
8 of the company people if you could give your sense on what
9 your projections are for raw material prices in the future
10 and how you think that'll affect prices for citric acid.

11 MR. AUD: Chris Aud with Cargill. I guess I'll
12 start off, be the bold one to answer that very difficult
13 question.

14 If we could predict corn prices, which is the
15 main ingredient going into our process, I probably wouldn't
16 be here. I'd be doing something else, but having said that,
17 the corn prices that we're enjoying today are relatively
18 low, historically speaking. You know a lot of different
19 factors come into play. When you look at future corn
20 prices, not only U.S. supply and demand in terms of corn and
21 planted acres and harvested acres, but South America and
22 other parts of the world, so you know today they're
23 historically low. And as recent as 12 months ago, you know
24 they were on the historic high side. So, to predict what
25 the future raw material costs are going to be primarily

1 relative to corn is a very difficult thing to do.

2 MS. KOTULA: This is Corey Kotula with ADM.

3 Just to supplement what Chris said, if you look
4 over the period of review, our pricing to the market has not
5 been able to follow the corn fluctuation, so looking into
6 the future as corn fluctuates it's not necessarily a clear
7 indicator of what our pricing will be in the market.

8 CHAIRMAN BROADBENT: So, your prices have gone
9 down then?

10 MS. KOTULA: Correct.

11 CHAIRMAN BROADBENT: I think I'll stop with my
12 questions there at this point. Commissioner Pinkert?

13 VICE CHAIRMAN PINKERT: Thank you, Madam
14 Chairman, and I thank all of you for being here today to
15 help us understand this industry and what's likely to happen
16 if the orders are revoked.

17 I want to begin with a question about channels of
18 distribution. I know that was discussed in both briefs, but
19 are the channels of distribution of the domestic product and
20 imports from Canada sufficiently distinct as to diminish the
21 likelihood of an adverse impact if the order on Canada were
22 revoked?

23 MR. HURT: Martin Hurt, Tate & Lyle.

24 We see no distinction whatsoever. JBL plays in
25 all the channels that we play in today.

1 MR. ANDERSON: If I might elaborate. I'm not a
2 company person, but I think it would be valuable to take a
3 look at the channels of distribution information from the
4 POI versus the POR. There has been a shift, but it was very
5 similar between the Canadian and the U.S. during the POI.

6 One reason it's similar is because if you're a
7 citric acid producer and there are these very few large
8 buyers they're incredibly attractive. You want to try to
9 get some volume committed for your plant for the next year.
10 So, if you have the ability to compete in that market, and
11 that market is price based, you will try to sell your output
12 in that segment.

13 So, even if there's been some shift -- you know
14 recently I think it is relevant to look back at the POR to
15 see how similar or different the Canadians were in terms of
16 channels of distribution versus the U.S.

17 VICE CHAIRMAN PINKERT: Thank you.

18 Mr. Dorn, do you have an additional comment on
19 that issue?

20 MR. DORN: No, Mr. Vice Chairman. Thank you.

21 VICE CHAIRMAN PINKERT: Now, that is a good
22 transition to a broader question, and I direct this one to
23 Mr. Dorn. If we were to apply your counterfactual analysis
24 in this review, would that commit us to keeping the orders
25 on in perpetuity? In other words, does the argument prove

1 too much?

2 MR. DORN: Well, I think that you know things are
3 going to change over time. It doesn't keep it in place in
4 perpetuity. But I don't know of any other case where you've
5 seen such a turnaround from the last year of the POI to the
6 first year of the POR in the performance of the industry,
7 and that, to us, shows a very strong causal link between the
8 subject imports undisciplined price behavior in the state of
9 the domestic industry.

10 And as we've tried to show in our pre-hearing
11 brief and some of our hearing exhibits, you cannot explain
12 that improvement in the domestic industry from other
13 factors. I mean you know consumption would be the first
14 thing you'd look at, was there a big change in consumption
15 from 2008 to 2009?

16 Well, yes, there was, but it was not in favor of
17 the domestic industry. And was there's a big change in cost
18 of production, no, not in favor of the domestic industry.
19 So, the only thing that changed was the discipline of the
20 orders. We think that you should look at the SAA and look
21 at what Congress intended with respect to the counterfactual
22 analysis and the fact that you're supposed to look at
23 whether the improvement of the state of the industry is
24 related to the imposition of the orders.

25 It seems to us it's a very strong case in showing

1 that revocation would lead to pre-order conditions and
2 declining performance, but I'm not saying that that's going
3 to work five years from now.

4 VICE CHAIRMAN PINKERT: Thank you.

5 Now, Mr. Anderson, I'm trying to understand the
6 argument about the market structure of the purchasing
7 industry. And you mentioned the market structure of the
8 domestic industry and the market structure of the
9 purchasing. Is there a significant difference between those
10 two market structures, or are we basically talking about
11 highly concentrated purchasers and highly concentrated
12 domestic industry?

13 MR. ANDERSON: Yes, you're talking about an
14 oligopoly/oligopsony situation, few buyers and few sellers
15 that basically the available product is allocated to the few
16 buyers through the few sellers through this competitive
17 bidding process. That's a unique condition of competition I
18 don't think you see very often in front of this Commission
19 when you have so much concentration on both sides.

20 In addition, the way it's sold through this
21 competitive bidding process really magnifies the impact of
22 price in a way that you normally don't see because if you
23 are a producer and you get behind in the annual contracting
24 seasons in terms of volume because you lose a few key
25 accounts -- and there are very few key accounts here -- you

1 basically hit the panic button and you decide to lower price
2 in order to get the other key accounts.

3 So, it's a market where if there's a shift in
4 volume that basically tilts the supply/demand balance in
5 favor of the buyers then the buyers will use that to
6 leverage prices down dramatically.

7 We saw that in spades in the POI. The buyers
8 wouldn't even let the producers recover their cost of goods
9 sold corn increases. They said, no, there's too much
10 product available. We're just going to buy at -- you have
11 to meet the market price. So, that's essentially, I think,
12 a kind of market that you don't often see and it really
13 makes it much more sensitive to prices.

14 To complete that thought because Canada seems to
15 be a more popular subject here than China I'll stick with
16 Canada. If you look at the available supply capable of
17 coming back to the United States and try to project what
18 that impact is going to be on prices in the United States in
19 profits, it's material. It's significant.

20 It's the Iron Law profit maximization, if, in
21 fact, the United States is the highest price in the world
22 they're right next door to the United States. Why would
23 they not shift that volume to the United States? That's the
24 question I think you have to ask.

25 VICE CHAIRMAN PINKERT: I'd like to ask the

1 business representatives on this panel whether it's your
2 view that the Canadian product has played merely a
3 supplemental role in the U.S. market, in other words,
4 actually benefiting the domestic industry because it's only
5 playing that supplemental role in the U.S. market?

6 MR. AUD: Chris Aud with Cargill.

7 I would not characterize it as a supplemental
8 role. We see them as a direct competitor that we go
9 head-to-head with. And there have been times when we enter
10 into negotiations with customers where we've walked away
11 from business and chosen not to participate at the price
12 levels that were being offered by JBL Canada, and so we do
13 not see them as a supplemental supplier. We see them as a
14 major competitor.

15 MS. KOTULA: I would agree. There's been many
16 opportunities over the past five years that we've lost
17 business to JBL because of their undercutting our prices in
18 the market and acting as a direct competitor.

19 MR. HURT: Martin Hurt, Tate & Lyle.

20 I would concur with these two statements. They
21 are not a supplemental supplier. I would also comment that
22 it has been our experience in the Brazilian market that they
23 took -- JBL took full advantage of a pricing condition
24 instituted against the Chinese in that market to protect
25 both Tate & Lyle and Cargill from dumping to sell at prices

1 below Chinese prices in order to steal market share and
2 supplant volumes that they needed just to fill capacity.
3 So, the behavior, I think, that would occur in the U.S.
4 without the order has been demonstrated without a doubt in
5 Brazil.

6 MR. AUD: Chris Aud with Cargill.

7 I just wish to echo that. Jose Guttierrez, our
8 general manager down in South America for Cargill, provided
9 an affidavit that you've received, and so I just reference
10 that as follow up to that.

11 VICE CHAIRMAN PINKERT: I'd ask for the
12 post-hearing that Mr. Hurt or anybody else on the panel
13 supplement your answer by explaining how JBL is able to sell
14 below the Chinese price in some instances.

15 MR. HURT: In fact, they're just dumping. I mean
16 they're dumping in the Brazilian market. If you take a look
17 at public information, their volumes were up 50 percent in
18 calendar year '14. And the first two months of this year
19 they're up another 17 percent already at prices below what
20 the Chinese minimum import price is.

21 I think we submitted information to that affect
22 in the exhibits, so we'd encourage you to take a look at
23 that, and it fully demonstrates what they're doing.

24 VICE CHAIRMAN PINKERT: I understand. And I'm
25 simply asking Mr. Anderson, Mr. Dorn, or anybody else on the

1 panel to help us understand the economics of that, if you
2 will, in the post-hearing.

3 MR. ANDERSON: Just quickly, the economics are
4 pretty clear. The Chinese prices are restrained in Brazil,
5 but that still is -- it's still lower than the U.S. price,
6 but it must be higher than prices that JBL Canada can get
7 elsewhere, so it come into the market. To try to marginal
8 cost price, which is make some contribution to its fixed
9 cost because it can now sell volume in that market and so
10 even if that price is below the U.S. price if there's a
11 contribution to fixed overhead it's rational for them to
12 sell in that market. Having said that, it's more rational
13 to sell in the U.S. market because the prices are higher.

14 VICE CHAIRMAN PINKERT: Thank you. Thank you,
15 Madam Chairman.

16 CHAIRMAN BROADBENT: Commissioner Williamson?

17 COMMISSIONER WILLIAMSON: I too want to express
18 my appreciation to all the panelists for testimony today.

19 Mr. Vineyard, I was wondering -- I know the
20 Dayton plant is unionized. To what extent are the other
21 plants in the U.S. market does USW represent? And if you
22 don't know maybe some of the others could address that.

23 MR. VINEYARD: My understanding, Commissioner, is
24 that the other two plants are not unionized.

25 COMMISSIONER WILLIAMSON: Okay. Does anyone know

1 about the JBL plant in Canada?

2 MR. VINEYARD: Commissioner, I know the
3 steelworkers do not represent that plant, so I don't know if
4 another organization would, but I know we don't.

5 COMMISSIONER WILLIAMSON: Okay. Thank you. I
6 was just wondering about that.

7 I want to go back to some basics, and I was just
8 wondering how the production process differs for citric
9 acid, potassium citrate, and sodium citrate and has the
10 production process for any of these products changed during
11 the period of review, and if so, how?

12 MR. WARNER: Eric Warner.

13 Could you please repeat the question?

14 COMMISSIONER WILLIAMSON: I was just wondering
15 for the three products, citric acid, potassium citrate, and
16 sodium citrate how does the production process for these
17 three products differ and has the process changed any?

18 MR. WARNER: The process has not changed at all.
19 The citric acid is manufactured first and then you just take
20 the citric acid and react it with sodium citrate or
21 potassium citrate -- I'm sorry -- sodium hydroxide or
22 potassium hydroxide to form potassium citrate or sodium
23 citrate.

24 COMMISSIONER WILLIAMSON: Okay. So, without
25 getting into business propriety information, which of these

1 products is the most profitable? Would it be the two where
2 you do the additional stuff?

3 MS. KOTULA: This Corey Kotula with ADM.
4 Typically, the further down the process the more valuable
5 the product.

6 COMMISSIONER WILLIAMSON: Okay.

7 You mentioned that JBL is not able to, I guess,
8 ship sodium citrate as well as the basic citric acid, and
9 the advantage of that you could now fill a truckload. And I
10 was just wondering -- and this may have to be post-hearing
11 -- how significant is this advantage? I mean how times are
12 you shipping less than this truckload of citric acid they
13 can add the sodium citrate to fill it out?

14 MR. O'DWYER: No, I was going to say it happens
15 more often where a customer requires mixed loads, so you
16 could put both citric acid and sodium citrate on a truck to
17 help with their inventories and overall costs. I don't know
18 that number. We can probably in the post-hearing come up
19 with it, but it happens more often than you would think.

20 COMMISSIONER WILLIAMSON: Yes, I just wanted to
21 know how significant is this? Thanks.

22 I was wondering whether -- and this may be have
23 to be post-hearing -- have any of the firms ever been unable
24 to supply the full volume of citric acid requested by a
25 customer since 2006, and if so, can you tell us when and

1 under what circumstances? This might be post-hearing.

2 MR. AUD: Chris Aud with Cargill, and we will
3 provide the detailed response in the post-hearing brief.
4 The period from 2006 to 2010 is where I'm a little fuzzy on,
5 but I will say that we did have a period in 2011 or 2012
6 where we had a very minor amount of product which
7 represented under a half percent of our total volume
8 produced over the five-year period of review that we ended
9 up having to source mostly from our Brazilian colleagues in
10 order to take care of our customers.

11 And so we have not had a time period where we've
12 shorted or cutoff a contract to customer over that period.

13 COMMISSIONER WILLIAMSON: Okay.

14 MS. KOTULA: ADM has had no supply issues during
15 this period.

16 COMMISSIONER WILLIAMSON: Okay. Thank you.

17 MR. HURT: Martin Hurt, Tate & Lyle.

18 I've been in the business, the citric acid
19 business in some form or fashion with Tate & Lyle for 16
20 years and in that 16-year period we had one year where we
21 did have some production difficulties, that was in 2014. We
22 went to great expense to remedy that. And we'll provide
23 details about that in the post-brief hearing.

24 MR. DORN: Joe Dorn.

25 I might add that I think the pre-hearing report

1 suggest that you also had production problems in 2013; is
2 that correct?

3 MR. HURT: No, there were no issues in 2013, only
4 2014.

5 COMMISSIONER WILLIAMSON: Okay, because often you
6 hear from the other side that you can't depend on these
7 guys.

8 How important do you think the purchasers want --
9 it is to them to have a secondary source of supply and that
10 you just being able to go to a spot market or do they want
11 to have contracts in place too?

12 MR. HURT: Martin Hurt, Tate & Lyle.

13 In most cases it's company policy, just from a
14 risk management standpoint, for purchasers to have two or
15 more suppliers in case there is an issue with one, whether
16 it be citric acid or caustic or whatever it is. So, it's
17 really not unusual for a customer to have more than one
18 supplier.

19 COMMISSIONER WILLIAMSON: Does that usually mean
20 they want a fixed contract with two, or is it just that they
21 know they can go to the other one and the quality would
22 be --

23 MR. HURT: Well, I can only speak for our
24 contract. I would presume that what they would typically do
25 is whatever share of their total consumption you contract

1 with them the remaining share of that consumption is
2 contracted with that second supplier, whomever that may be.
3 It could be a small amount, could not be, it just depends,
4 but the fact is that they have a second supplier online
5 should any issues arise.

6 COMMISSIONER WILLIAMSON: Okay. Thank you.

7 Mr. Hurt, I'm going to stay with you. You
8 mentioned that contract prices might be renegotiated to
9 respond to lower import prices. Can you provide in
10 post-hearing any contemporaneous documentation, such as
11 emails, that would show an instance where import prices were
12 used to leverage domestic prices downward? In other words,
13 what I'm sort of getting at is there is this towards the end
14 of the year people tend to negotiate the contracts, the
15 long-term contracts, but you indicate that I guess these
16 contracts do have provisions where if something happened in
17 the middle of the year they can change them. And I'm trying
18 to understand how?

19 MR. HURT: If you were to read the language in
20 contracts, there's really no clause in there that provides
21 an escape, a legal escape for pricing. The problem that we
22 run into in the marketplace is that you have purchasers with
23 such powerful buying power that you really don't have a
24 choice if they come to you and say, hey, the market
25 conditions have changed. You've put us at a disadvantage

1 with existing pricing. We need to talk about a lower price
2 and so you end up renegotiating it. You might have legal
3 grounds to force compliance, but you probably wouldn't do
4 business with them again after that contract ended. So,
5 it's a matter of practicality as to how you manage that
6 whole process.

7 COMMISSIONER WILLIAMSON: Okay. And the reason
8 why I'm asking I think, Mr. O'Dwyer, you're the one that
9 talked about if the orders were lifted you would see an
10 immediate change in price. And I was trying to figure out
11 how to this is going to be, what, a month and a half from
12 now, and that's a long way from November, December, how
13 does that immediately change the price?

14 (Simultaneous conversation.)

15 COMMISSIONER WILLIAMSON: You certainly give an
16 indication of it, but I want to get a better feel on it.

17 MR. DORN: Joe Dorn, Commissioner, just to-- we
18 were talking about this yesterday and I think I had it in my
19 testimony that if the order is revoked, you see an immediate
20 change in spot pricing. And then you'd see a change in
21 contract pricing for 2016 when it came up in the contracting
22 season in November and the guys around the table looked at
23 me and says, no. I said, what do you mean? He said, well,
24 they wouldn't wait until then. If there was a sharp change
25 in spot prices, they would come to us and ask us to

1 renegotiate our prices for the current contract.

2 COMMISSIONER WILLIAMSON: That's interesting.
3 You've got relatively few producers and relatively few
4 purchasers, and yet you think the purchasers have the
5 advantage.

6 MR. HURT: If I may make one more comment. I
7 think it just underscores how critical pricing is in the
8 marketplace. If you're not at the right price, you do not
9 get the volume. And so it's something that has to be
10 constantly monitored and you have to meet the prices. Thank
11 you.

12 COMMISSIONER WILLIAMSON: Okay. But if there is
13 anything post-hearing, you can submit, that would further
14 cement this point down would be helpful.

15 My time has expired. Thank you.

16 CHAIRMAN BROADBENT: Commissioner Johanson?

17 COMMISSIONER JOHANSON: Thank you, Chairman
18 Broadbent. And I'd like to get back to a very basic
19 question which no one has asked yet and I didn't ask it the
20 first round because I figured someone else would do it. But
21 that is with the estimated demand for soft drinks in coming
22 years, you have this IHS chemical economics handbook which
23 seems to indicate that consumption is not on the decline.
24 In fact, it will go up at a moderate rate. Then, again, as
25 you all point out and newspapers have written that soft

1 drink companies are laying off people and they predict that
2 consumption will decline. I've seen those articles myself.
3 And that was just my assumption that that was the way the
4 market was going. Could you all speak further on this?

5 MR. HURT: Martin Hurt, Tate and Lyle. Yeah, we
6 would disagree strongly with IHS on that point. The soft
7 drink industry or the soft drink, particularly carbonated
8 soft drinks have been on the decline now for a number of
9 years, roughly at 2 percent a year. Still declining maybe
10 at a bit slower pace. And it's really wrapped around
11 consumers' concerns about the caloric intake of full-calorie
12 sweeteners whether it be sugar or high fructose corn syrup.
13 And now there's a heightened concern in the consumer mind
14 about the health and safety of high intensity sweeteners and
15 thus the article that was issued this week in the Washington
16 Post about the decline of diet sodas.

17 So the point of all that is that we do not see
18 this strong demand. So you're going to have more players
19 fighting for a lesser volume of citric acid in the
20 marketplace because of that and that will put price pressure
21 on everyone and we see it as an issue.

22 Thank you.

23 MR. AUD: Chris Aud with Cargill. So just to add
24 to that. We as Cargill, our own internal estimates are very
25 consistent with on a high level what Mr. Hurt laid out. And

1 so we do see it declining going forward. And as evidence of
2 that, not the only factor, but a major factor in our recent
3 shutdown of our Memphis refinery which produced high
4 fructose corn syrup and primarily serves the CSD, the
5 carbonated soft drink market was shut down in the fourth
6 quarter of 2014 and winded down in the first quarter of
7 2015. So it's a real life case where we made the decision
8 that cost us a significant amount of money, as a company, to
9 shut that plant down, in part due to how we see demand going
10 forward in the CSD market.

11 MR. BOWMAN: But you're talking about domestic
12 demand for soft drinks, not in export markets? Excuse me to
13 interrupt, but --

14 MR. AUD: Yes, primarily North America.

15 COMMISSIONER JOHANSON: See, that was my next
16 question, believe it or not.

17 I used to work on HSCS issues so I'm somewhat
18 familiar with what is happening in that market. But, Mr.
19 Dorn, did you want to add something?

20 MR. DORN: Just before we leave that point, with
21 regard to IHS estimate, which I believe was a publication
22 dated 2012, we think the prediction was wrong then because
23 they obviously hadn't been looking at the data with respect
24 to consumption of soft drink and other beverages, and to the
25 extent it had any credibility in 2012 which is probably

1 based on data from 2011, it's clearly wrong today based on
2 what we're seeing and going forward. And also just to point
3 out that I understand that beverages account for 50 percent
4 or more of citric consumption.

5 MR. HURT: In excess of 50 percent. And when you
6 add powdered beverages in some cases could be as high as 70
7 percent. So it's a real significant consumer citric acid in
8 the U.S. market.

9 COMMISSIONER JOHANSON: And it is used, I believe
10 Mr. Aud pointed out, it's used in both sodas produced with
11 HFCS sugar and also with the dietary types of sugar or
12 sweeteners rather?

13 MR. HURT: Right. And in noncarbonated as well
14 and powdered soft drinks as well. So it's very ubiquitous
15 as a part of the formula in beverage applications.

16 COMMISSIONER JOHANSON: How about, let's say with
17 sparkling waters that are flavored, is that citric acid
18 also?

19 MR. HURT: Yes. It can be used as a flavoring
20 agent in those and in fact is.

21 COMMISSIONER JOHANSON: Okay. Because sales of
22 those might be going up; right?

23 MR. HURT: Well, it depends, you have to drill
24 down. I mean, that data is available. I don't have it in
25 front of me, but if it's got a high-intensity sweetener

1 right now in it, and citric acid is being used in it as
2 well, consumer demand will probably decline against that and
3 take with it, you know, the consumption of citric acid. So,
4 it can vary a little bit if you start to drill down. But in
5 general it's declining.

6 COMMISSIONER JOHANSON: I am curious about
7 sparkling waters, because I do see people replacing that
8 with sodas and I have, I mean, in my household that's the
9 case. So I might want to look into that a bit more. I
10 don't know how big that market is. I don't think it's real
11 big. But, once again, if people are moving away from sodas
12 to sparkling waters, that could take some of the market up,
13 couldn't it?

14 MR. HURT: You know, the size of the CSD market
15 is so overwhelming in the beverage marketplace, it's just
16 not going to be possible for a small area like sparkling
17 water to overcome that. It's just -- the volumes are far
18 too great in CSBs, diet or --

19 COMMISSIONER JOHANSON: We did just look at
20 Commissioner Schmidtlein's bottle of sparkling water and we
21 did not see anything. But that is not flavored though. A
22 number of waters are flavored.

23 MR. HURT: If it's flavored, like say a
24 raspberry.

25 COMMISSIONER JOHANSON: Right.

1 MR. HURT: It's going to have citric acid in it.

2 COMMISSIONER JOHANSON: Okay.

3 MR. HURT: Not all of them are.

4 COMMISSIONER JOHANSON: Okay.

5 MR. HURT: If I could make one more comment?

6 COMMISSIONER JOHANSON: Yes, go ahead, Mr. Hurt.

7 MR. HURT: And I'm ashamed to tell you this,
8 because -- but if you go to a sales meeting with our sales
9 people and we've got 50 people in the room, you might see a
10 half a dozen carbonated soft drinks in front of them, most
11 of the time it's this. I mean, it's a true reflection of
12 the consumer demand to change water consumption continues to
13 increase and that takes directly away from the beverage
14 consumption in the U.S. So it's a big deal. It's a big
15 deal for our industry.

16 COMMISSIONER JOHANSON: Yeah, I can see that
17 myself. I was at a park last week with my kids and we
18 walked by a birthday party, a family had some children there
19 and they're all being served bottles of water, which I think
20 is a real change, at least from when I was growing up. But
21 that's -- I won't dwell on that. I'll look at the numbers
22 you all provide instead. And also the other parties.

23 And getting back to the other question I had,
24 it's my recollection that the largest per capita consumption
25 of sodas, of soft drinks is in Mexico. I could be wrong on

1 that, but I used to work on HFCS issues and as you all know,
2 there have been a lot of disputes between the United States
3 and Mexico involving sugar and HFCS and I've read about that
4 before. But do you all know if that's the case? And if so,
5 wouldn't the Mexican market take up a fairly -- conceivably
6 a fairly large percentage of your production or Canadian
7 production as well? Do you all know about that issue?

8 MR. HURT: Again, Martin Hurt at Tate and Lyle.
9 I do not know what that per capita consumption is. What I
10 can say about the Mexican market, is that it's an
11 unprotected market. The Chinese dominate that market with
12 in excess of 50 percent market share. We cannot compete in
13 the Mexican market against their pricing.

14 COMMISSIONER JOHANSON: Okay. Thanks.

15 The domestic producers have described that with
16 the imposition of the orders, the condition of the industry
17 has substantially improved in terms of shipment volumes and
18 prices, financial condition, capital expenditures, and R&D,
19 and that starts at your brief at page 13. How do we square
20 that with the data that we have respecting the industry's
21 performance across all measures during the period of review
22 with the domestic industry's allegation that it is in a
23 vulnerable condition?

24 Further, based on the industry's actual
25 performance during the period of review, where is

1 vulnerability demonstrated on the record?

2 MR. DORN: Commissioner, thank you for that
3 question. I touched on it briefly in my hearing testimony.
4 That's a major argument that JBL Canada makes that there's
5 no vulnerability here. The Commission has generally looked
6 at vulnerability in terms of the financial condition of the
7 industry. We don't agree with that. We think the SAA makes
8 clear that vulnerability goes beyond that and you should be
9 looking at the susceptibility of injury from subject
10 imports, not just the financial condition.

11 Even so, the financial condition of the industry
12 has worsened during the latter part of the POR. There was a
13 41 percent drop in operating income from 2012 to 2013. The
14 operating income margin is half of what it was at the
15 beginning of the POR. This Commission generally views the
16 current operating income margin as fairly healthy, based
17 upon your precedent because I think it's around 13 percent.

18 But what we would ask you to look at is how
19 quickly things changed in this industry from 2008 to 2009
20 with the imposition of the orders and how quickly things
21 could change if the orders were removed. Because of the
22 factors we've talked about in terms of a few buyers and a
23 few sellers and how they change the negotiating leverage at
24 the table and annual contract negotiations and you could
25 have a downward price spiral pretty quickly and that could

1 lead to decreasing profits pretty quickly.

2 And also in terms of vulnerability we think the
3 Commission should be looking at the other conditions of
4 competition like the fact that this is a commodity product,
5 very price sensitive. We should also be looking at the fact
6 that demand is declining going forward for the next couple
7 years.

8 So viewing all the evidence together, it's our
9 view that the industry is vulnerable to injurious imports if
10 the orders are revoked. We will address that more in the
11 post-hearing brief.

12 COMMISSIONER JOHANSON: Thank you, Mr. Dorn.
13 Commission Schmidlein has given me permission to follow up
14 briefly on that. If you could answer this briefly, or if
15 you would like in your brief.

16 You mentioned the decline in the domestic
17 industry's performance in 2013 or in recent times, what has
18 caused that?

19 MR. DORN: Well, as we've said in our testimony,
20 it's due to two factors, increasing non-subject imports from
21 Colombia, Thailand, and others, which are not constrained by
22 the discipline of an order, and also circumvention with
23 respect to the order on China. We provided information on
24 that. We have one finding from the public statement of
25 Assistant Commissioner Gina Jeter about Customs collecting

1 \$17 million in antidumping duties on product that was
2 declared to be non-Chinese origin. I believe it was
3 transshipped through Thailand. And we've also provided
4 confidential information, I think it's our last exhibit to
5 our pre-hearing brief, about information we've given to
6 Customs. We believe there's a significant ongoing
7 investigation that's likely to find more evidence of
8 circumvention of product coming in from China.

9 And I might just add, there's two points there.
10 Circumvention, of course, is relevant to your consideration
11 of revocation with respect to China. But also in terms of
12 the import trends, we think that the data for Thailand are
13 overstated because we think a good portion of those imports
14 from Thailand are actually originating from China and so the
15 record is not clean there.

16 COMMISSIONER JOHANSON: Thank you for your
17 response.

18 CHAIRMAN BROADBENT: Commissioner Schmidtlein.

19 COMMISSIONER SCHMIDTLEIN: Thank you.

20 So I wanted to follow up one of the -- the
21 central issue or one of the central issues for me is this
22 question of what does the fact that Canada remained in the
23 market at such significant volumes tell us? So I have a few
24 questions and they all sort of relate to that idea. And the
25 first one is, Mr. Hurt, I wanted to follow up on something

1 you said which was pricing is critical in the marketplace a
2 few minutes ago. And so my question is, you know, if citric
3 acid is the commodity, which I just heard, I think, Mr.
4 Dorn, you mentioned that again, why has Canada been able to
5 stay in the market at such significant volumes with higher
6 prices during the period of review?

7 MR. HURT: In our experience in the marketplace,
8 we compete, you know, not only against the ADM and Cargill,
9 but we compete against other imports as well. And we get
10 priced against all these people. So, again, Joe mentioned
11 the complicated formula that is used to determine the
12 dumping margin. As that overall pricing in the marketplace
13 is dropped, I mean, in my view the overall market price is
14 relative to the price that say JBL may come into the market
15 at in driving that price down, you know, in recent
16 conditions.

17 COMMISSIONER SCHMIDTLEIN: Well, I mean, I guess
18 you all do disagree that over the period of review the
19 prices of Canadian product has been higher than U.S. prices?

20 MR. HURT: We would disagree with that.

21 COMMISSIONER SCHMIDTLEIN: You disagree with
22 that?

23 MR. HURT: Yes, we would.

24 COMMISSIONER SCHMIDTLEIN: So what accounts for
25 the higher AUVs then?

1 MR. HURT: The higher what?

2 COMMISSIONER SCHMIDTLEIN: Average unit values.

3 MR. HURT: I don't know.

4 COMMISSIONER SCHMIDTLEIN: Is it a different
5 product mix? Do you have an idea of like what --

6 MR. HURT: I don't have our data on that. I'll
7 defer to Joe on that comment.

8 MR. DORN: Yeah, I think we'll have to address
9 that in the post-hearing looking at the confidential data.
10 I mean, I think I can say on the public record here that
11 there's a mixed overselling and underselling. The degree of
12 overselling and underselling is different in the POR and the
13 POI and we think the explanation for that is very clear
14 because now they have a floor they have to price above.

15 COMMISSIONER SCHMIDTLEIN: So why are they
16 getting any sales then of commodity product? I mean,
17 they're in the market -- I just looked at the numbers and
18 it's not quite as high as obviously 2008, but it's a fairly
19 substantial amount. And so this is a commodity product, why
20 are they able to get those sales in the face of, as you just
21 mentioned, non-subjects coming in?

22 MR. DORN: We'll show this in our post-hearing
23 brief. But if you look at their Exhibit 6 of the
24 pre-hearing brief we're going to present the data a little
25 differently and for just -- for most -- I'm constrained

1 about the public --

2 COMMISSIONER SCHMIDTLEIN: Sure, sure, if it's
3 easier you can just leave it for the post-hearing.

4 MR. DORN: We're going to show that the
5 difference -- if you look at the data a little bit
6 differently and just compare who is the highest price each
7 quarter, is it a U.S. producer or the Canadian producer?
8 And I think that will tell you a lot.

9 They're starting to suggest the volume continued
10 at approximately the same level. That's not true. If you
11 look at our Exhibit 11, which shows the drop in the volume
12 of imports from Canada from 2008 to 2009, and it's remained,
13 you know, at low levels relative to 2008 --

14 COMMISSIONER SCHMIDTLEIN: But wasn't '08 a
15 little bit of an aberration? I mean, it looked like to me,
16 you know, when I looked at the numbers, if you look at '09,
17 '10, '11, '12, it looks very similar to '06 and '07. It
18 goes up in '08 and comes back down and then stays like
19 relatively --

20 MR. DORN: I don't see how you can respectfully
21 suggest -- I don't see how you can say that the last year of
22 the POI is an aberration.

23 COMMISSIONER SCHMIDTLEIN: Well, I meant in terms
24 of --

25 MR. DORN: -- the whole case was based upon, and

1 the Commission found that there was a steady increase in the
2 volume and market share of the imports. And that 2008 was
3 the endpoint of that and so that's where they were. And so
4 if you took the trend from 2006 to 2008, if you look at our
5 Exhibit 11, you can extend that trend out and that's where
6 we say imports from Canada would have gone.

7 Especially when you look at the second bar, the
8 bar in red on Exhibit 11, which shows what's happened to
9 their capacity. Look at their exports to the United States
10 in relation to their capacity. And I think that clearly
11 shows that the order has had a restraining impact on the
12 volume of imports from Canada. Now, it's clear that it's
13 had an even larger restraining effect on prices from Canada
14 because they had to raise their prices from 2008 to 2009
15 because they didn't want to pay antidumping duties. They
16 have an affiliated U.S. importer. They don't want to just
17 keep selling at the same price and then give it back to the
18 U.S. government in duties. They did what they had to do
19 which was to raise their price. When they raised their
20 price, that price was then in effect a much higher cap or
21 lid for the U.S. producers, so the U.S. producers could
22 raise their prices.

23 COMMISSIONER SCHMIDTLEIN: Okay. I take your
24 point, all right. So Mr. Jones, I wanted to follow up with
25 you on the subject of cumulation, and specifically here, JBL

1 is the single producer in Canada, has remained in the market
2 at, you know, I guess we can argue about whether it's
3 consistent levels or a slightly lower level than it was in
4 '08 and so forth. But let's just say significant levels.

5 Can you, and this is despite the higher AUVs,
6 which I know you're going to address in the post-hearing and
7 what that means. Can you comment on whether this is similar
8 to the PET Film case in Brazil, which we had a few months
9 ago and decumulated Brazil. They were the single producer
10 in that country, had been in the market and so forth. Maybe
11 you can comment right now. Why isn't this like Brazil? Why
12 isn't Canada like Brazil?

13 MR. JONES: Steve Jones. Commissioner
14 Schmidtlein, I'd be happy to do that. This case is kind of
15 the polar opposite, I think, from PET Film, because in PET
16 Film, what you had was clear evidence that the exporter in
17 Brazil was not -- was no longer interested in shipping
18 subject merchandise to the United States.

19 It had better markets in Brazil and the home
20 market, and had better markets elsewhere. In that case, the
21 higher price markets were in Brazil and not in the United
22 States, and it really had no interest in the U.S. market.
23 Plus it had a significantly different product mix than the
24 producers from China and the UAE.

25 So there were significant differences in

1 competition there, in likely competition in the event of
2 revocation. Here, you have JBL, its interest in the U.S.
3 market, its continuing interest in the U.S. market could not
4 be greater and it could not be clearer, and it's admitted
5 that on the record.

6 Its business plan is predicated on access to
7 the U.S. market, and without selling to the U.S. market, it
8 would be finished. So it has to have the U.S. market, and
9 in addition, there are no differences in product mix here.

10 The prehearing report showing the responses of
11 purchasers and importers along the factors that the
12 Commission usually looks at, shows that the products are
13 very, very comparable, a high degree of comparability for
14 citric acid and other types of subject merchandise from all
15 three sources.

16 So there is no difference in product mix that
17 would suggest a decline or a lessening in the intensity of
18 the competition between the three sources since the Period
19 of Investigation, and in fact as the witnesses have
20 testified, that likely competition is even greater now
21 because of JBL's commencement of production of sodium
22 citrate during the POR.

23 So in conclusion, this is the polar opposite,
24 180 degree different case from PET Film from Brazil.

25 MR. DORN: Commissioner Schmidtlein, if I

1 could just add one other point. With regard to a continuing
2 presence in the U.S. market, I have to go back to the
3 library on this. But I'm sure that there are a number of
4 cases where the Commission said that's a reason to continue
5 the order.

6 You have statements in your decisions saying
7 that they remained a continuous presence in the U.S. market
8 at significant volumes, even with the discipline of the
9 Order, which is indicating their interest in staying in the
10 U.S. market, and that's a reason for continuing the Order
11 and not revoking it in your past decisions.

12 COMMISSIONER SCHMIDTLEIN: Okay. I think
13 that's ^^^^ I think that's -- basically we've answered my
14 questions through this conversation for this round. Thanks.

15 CHAIRMAN BROADBENT: Yeah. Just getting back
16 to Commissioner Johanson's questions earlier, I haven't had
17 a chance to look at this chemical economics handbook, but
18 I'm guessing that we're talking about a lot of growth in
19 your sort of traditional export markets, which in terms of
20 citric acid consumption; is that right? Mr. Aud, I would
21 say.

22 MR. AUD: Specific to citric acid in export
23 markets, we'd agree. A small, small portion of our business
24 goes to export markets. So I wouldn't be able to articulate
25 what that looks like.

1 CHAIRMAN BROADBENT: So is that different
2 between Cargill and ADM, in terms of it seemed to me that
3 the export picture here was really diminishing. As the U.S.
4 prices were going up and up, the domestic producers here,
5 when you used to be exporting to I'm thinking Mexico and
6 Canada and Europe, are shrinking. Is that not right?

7 MS. KOTULA: That would be accurate. I mean
8 we've reduced exports outside of the market and increased
9 our sales in the U.S., because of the --

10 CHAIRMAN BROADBENT: Because of the high
11 prices here?

12 MS. KOTULA: The higher pricing in the U.S.,
13 and then the lower global prices that are under our cost to
14 produce.

15 CHAIRMAN BROADBENT: Okay, but do you worry
16 that you're kind of consigning yourself to a market where
17 demand is projected to really shrink, given all the health
18 concerns that we have here?

19 MS. KOTULA: We would have to give you a
20 response on a confidential basis.

21 MR. HURT: May I comment for a minute?

22 CHAIRMAN BROADBENT: Sure. That would be
23 helpful.

24 MR. HURT: I would say Tate and Lyle is
25 concerned about that. Obviously in a declining consumption

1 market, you know, the fighting for the volumes as they
2 shrink is going to become more fierce, and will be
3 exacerbated by JBL in the marketplace if there is no Order
4 against them. We too have increased our shipments to just
5 the U.S. market, lower shipments to Mexico, lower ships to
6 Canada. Pretty much non-existent past those two export
7 markets, and it was really because of the Order.

8 I mean it just made more sense to support the
9 U.S. market, and citric prices were much improved as a
10 result of that Order.

11 CHAIRMAN BROADBENT: So over the -- since the
12 institution of the -- I guess since the institution of the
13 order, how much have exports fallen from the U.S.?

14 MR. HURT: We have that number. I would tell
15 you it's very, very, very low in terms of exports for Tate
16 and Lyle. But we'll provide that number in the post-hearing
17 brief.

18 CHAIRMAN BROADBENT: Both now and earlier,
19 much earlier?

20 MR. DORN: Well, I think the -- there's
21 information I think in the prehearing report, showing the
22 trend of exports during the POI versus the POR, and that
23 would be dealing with confidential information. With the
24 imposition of the Order, exports have fallen off. So a
25 greater share of U.S. capacity is being allocated to serving

1 the U.S. market as opposed to export markets, if that
2 answers your question.

3 CHAIRMAN BROADBENT: Yeah, and then what
4 markets internationally are projected to grow in this
5 product? In the future, where is the significant growth
6 going to be?

7 MR. HURT: Once you get outside of the U.S.,
8 there is some growth anticipated. So particularly in what
9 we call the BRIC markets, Brazil, Russia, India, China. The
10 problem with that, with the exception of Brazil, where we --
11 we have a plant there, and we're protected to a certain
12 extent from the Chinese and unfortunately not from JBL.

13 But in the remaining markets, we just cannot
14 compete against the Chinese. There's no hope of really
15 taking advantage of that growth in non-protected markets
16 outside the U.S.

17 MR. ANDERSON: If I could turn that into more
18 of a macro picture, if you look at the global market, there
19 will be increases in demand for products that use citric in
20 the more developing parts of the world. However, if you
21 look at Chinese citric acid capacity, and the prices at
22 which China sells to the rest of the world, it's not really
23 a viable market for the domestic producers, because the
24 prices are just simply too low.

25 But I would add that JBL Canada's facing those

1 same market dynamics, in the sense that these other
2 alternative export markets aren't that attractive to JBL
3 Canada as well, for the same reason. That basically means
4 that the U.S. market is where the U.S. producers are really
5 forced to play for the most part, as well as JBL Canada.

6 CHAIRMAN BROADBENT: So JBL Canada's not
7 increasing on the rest of the world?

8 MR. ANDERSON: I don't want to get into
9 confidential information. We'll address that more in the
10 posthearing brief.

11 CHAIRMAN BROADBENT: Right. Yeah, understood.

12 MR. ANDERSON: They do claim that they're
13 trying to -- trying to develop alternative export markets,
14 except those markets are lower priced. And so why would you
15 go over, go after the lower-priced markets if there was a
16 market protected from China right next to you, and you had
17 the opportunity to ship at much higher prices to that
18 market?

19 CHAIRMAN BROADBENT: Okay, all right. I saw
20 something in the staff report that there was a NAFTA Panel
21 Review that was requested regarding the AD administrative
22 reviews. What was the -- was there a settlement or what
23 happened? What was the result of that NAFTA Panel
24 discussion?

25 MR. ANDERSON: The Panel review was terminated

1 because of a failure to meet a deadline to file the
2 complaint. So it never went anywhere.

3 CHAIRMAN BROADBENT: Got it, okay. That
4 answers that. Just a question on capacity utilization. Is
5 there a difference between listed capacity and practical
6 capacity? In other words, once an operation starts hitting
7 a certain capacity utilization rate, does it start to hit
8 bottlenecks that limit the ability to increase supply?

9 I ask this because we've seen allegations,
10 both in the original POI and the current POR, that the
11 industry was incapable of supplying purchasers at certain
12 times, and I also note that the industry has increased
13 capacity despite having ^^^^ has increased capacity despite
14 having excess capacity.

15 MR. ANDERSON: I'll start out with that one.
16 I think this is an industry with practical capacity and
17 listed capacity are fairly similar.

18 CHAIRMAN BROADBENT: Right.

19 MR. ANDERSON: And here's the reason why,
20 because practically, you have to run the plant 24-7, 350
21 days a year or something like that. So the practical
22 capacity is very close to the list capacity. It's difficult
23 to even slow down the production process, because that
24 creates all sorts of technical problems that Eric or
25 somebody else can describe to you more. So there's no big

1 sort of difference between practical and list capacity.

2 CHAIRMAN BROADBENT: Okay. How has the growth
3 of non-subject imports of citric acid in the U.S. market
4 affected your firm's -- why do you think the non-subjects
5 were able to grow at almost 50 percent since the imposition
6 of these Orders? I think they're coming from Thailand,
7 Belgium, Colombia and Germany.

8 MR. HURT: Martin Hurt, Tate and Lyle. They
9 took advantage of the Orders that were in existence, are in
10 existence here against Canada and China, and saw this as a
11 great opportunity to sell at higher pricing for them, versus
12 competing elsewhere, and it's just a simple matter of
13 economics, as to why their shipments to the U.S. have
14 expanded so dramatically and forced our pricing down at the
15 same time in the marketplace.

16 CHAIRMAN BROADBENT: Okay. So they're really
17 getting sucked in by the higher prices here?

18 MR. HURT: Correct.

19 CHAIRMAN BROADBENT: Okay, and does that
20 competition worry you? I mean --

21 MR. HURT: Absolutely, particularly the
22 circumvented material.

23 CHAIRMAN BROADBENT: Right.

24 MR. HURT: By the Chinese, and that greatly
25 concerns us, because that has impacted our margins and our

1 financial performance at Tate and Lyle.

2 CHAIRMAN BROADBENT: Okay, and most of that's
3 coming from Thailand you think? Is that where the
4 circumvention is the biggest?

5 MR. HURT: Well we -- speaking globally,
6 because it's not just Chinese material through Thailand.
7 We've also -- in fact, the Brazilian government revoked the
8 import license for Indian material, because they determined
9 that the Chinese material or that the Indian material is
10 actually Chinese material being packaged in India. So it
11 goes beyond just Thailand from a concern standpoint.

12 CHAIRMAN BROADBENT: Right.

13 MR. HURT: From a volume standpoint, it is
14 primarily Thailand that we're concerned about, on a
15 circumvention basis.

16 CHAIRMAN BROADBENT: Okay, good. Well thank
17 you very much. Commissioner Pinkert.

18 VICE CHAIRMAN PINKERT: Thank you, Madam
19 Chairman. Mr. Jones, you talked a little bit about the
20 cumulation issue in PET Film and I appreciate that, despite
21 the fact that I may not have agreed with the Commission's
22 outcome on that issue in that case. There's another case
23 that I'd like you to talk about with regard to cumulation,
24 and that's the Xanthan Gum Investigation.

25 Now admittedly, that was not a sunset review.

1 That was an investigation. But nevertheless, there's some
2 issues that may appear to look similar in that case, and I'm
3 wondering if you've looked at that on the issue of
4 cumulation, and in particular what Chairman Broadbent and I
5 said on that.

6 MR. DORN: Mr. Vice Chairman, I'll need to go
7 back and study that case. I do have some familiarity with
8 it, and I think the decision there was based upon a lack of
9 overlap, reasonable overlap of competition, because you had
10 differences in product mix, you had differences in channels
11 of distribution, and you had differences in end use.

12 That was the case that was made. Here, JBL
13 Canada agrees with us with respect to reasonable overlap of
14 competition, right? I mean you read their prehearing brief.
15 They did a very good job. We agree with most of what they
16 said, and going through all the factors and find yes,
17 there's a reasonable overlap of competition.

18 So and as Mr. Jones said, not only is there a
19 reasonable overlap of competition here, there is as good a
20 case as you could have, I mean just look at our Exhibit 1,
21 showing the customers who purchased from Canada and China,
22 and these are big purchasers.

23 So I don't think you've ever decumulated in a
24 case where you've had such strong evidence of overlap of
25 competition between the subject producers.

1 VICE CHAIRMAN PINKERT: Thank you. Any other
2 comments on that issue on this Panel?

3 (No response.)

4 VICE CHAIRMAN PINKERT: Okay. Well, I hope
5 that you can supplement that in the post-hearing, with a
6 discussion of the position that the Chairman and I took in
7 that case.

8 MR. DORN: We certainly will. Thank you.

9 VICE CHAIRMAN PINKERT: Thank you. Now do you
10 have any explanation for the change in 2013 in the volume of
11 imports from China?

12 MR. DORN: I don't know whether it was up or
13 down. I would make the point that, you know, given the --
14 given the relative levels of imports from China, you're not
15 talking about huge absolute changes, because there was such
16 a decrease from 2008 to 2009. But I would -- go ahead.

17 MR. ANDERSON: The only thing I would add is
18 that, as you may know, there have been very few Chinese
19 producers who have been going through annual reviews,
20 suggesting that very few Chinese producers have even
21 attempted to sell with the dumping duties and the
22 countervailing duties in place. Cash deposits for
23 countervailing and dumping duties have been kind of volatile
24 at Commerce, there have been periods when the dumping duties
25 have gone down, but the countervailing duties have gone up

1 later.

2 I think the movement in the duties can
3 explain, in large part, sort of the volatile changes in
4 volumes coming, reportedly I would say coming from China.
5 Joe is right. Because you're starting from such a small
6 base, you know, that small changes will lead to large
7 apparent percentage differences.

8 MR. DORN: Just having the data in front of me
9 now, I'm assuming that's probably related to a change in
10 RZBC's cash deposit rate, and maybe Yixing Union. But I
11 have to study the time line to be able to give you an
12 intelligent answer.

13 VICE CHAIRMAN PINKERT: Thank you. I have two
14 more questions that are similar to one aspect of
15 Commissioner Kieff's question, where we're looking at
16 whether any difference in the position taken by the two
17 sides really makes a difference to the outcome of this case.

18 I want to start with this question of whether
19 JBL is replacing shipments of its affiliate in Austria. Now
20 if we assume that that's true, does that really make a
21 difference?

22 MR. DORN: No.

23 VICE CHAIRMAN PINKERT: Okay. Then let me --

24 MR. DORN: Hold on. To be serious, I mean our
25 whole case is built upon the fact that JBL situated its

1 plant on the border of the United States, and the business
2 plan for that plant is to sell as much of its production in
3 the United States as possible. You have the lower -- you
4 have lower freight costs. It's much simpler to sell to the
5 United States. You have concentrated, you know, large
6 volume purchasers. They say within 500 miles of their
7 plant.

8 So that's their -- that's their business plan,
9 and the fact is that those imports were found to be dumped
10 and were found to cause injury. There has been no finding
11 of dumping from Austria. There's been no finding of injury.
12 So we think the fact that they change their global supply
13 pattern is of no relevance.

14 VICE CHAIRMAN PINKERT: Thank you.

15 MR. JONES: Vice Chairman Pinkert, if I could
16 just add to that. If you're referring to sodium or
17 referring to sodium citrate specifically, as Mr. O'Dwyer
18 testified and as others have said, the fact that JBL can now
19 -- now does produce sodium citrate in Canada -- is a
20 relevant change since the Period of Investigation. It makes
21 JBL much more competitive with certain customers. Maybe not
22 with everybody, but with certain customers that are
23 purchasing or want mixed shipments, and it makes them a more
24 formidable competitor, as Mr. O'Dwyer testified.

25 VICE CHAIRMAN PINKERT: Yes. I was referring

1 to the trisodium citrate. My other question has to do with
2 vulnerability, and I understand that you're making an
3 argument that the industry is vulnerable, and I'll certainly
4 look at that argument as we go forward.

5 But if one concludes that the Orders have
6 helped the domestic industry, and that just looking at the
7 current condition of the domestic industry, it does not look
8 vulnerable, does that dictate an outcome in this case?

9 MR. DORN: Not at all. I mean obviously a
10 finding of vulnerability is not necessary for a
11 determination that the Orders should continue. In fact, the
12 SAA makes it very clear that the fact that the industry has
13 improved is not a reason to revoke, if there's some
14 connection between that improvement and the imposition of
15 the Orders, and that's what we have here.

16 Now we're not saying we need a finding of
17 vulnerability to prevail. It's just that we think that if
18 you look at vulnerability in the sense of susceptibility to
19 injury, as we think was intended by the SAA, then this
20 industry's clearly susceptible to injury upon revocation.

21 VICE CHAIRMAN PINKERT: So you don't view it
22 as a question of whether just looking at the current
23 condition of the industry, the industry is doing pretty
24 well?

25 MR. DORN: That's correct. We think you ought

1 to look at the conditions of competition and the fact that
2 it's a price sensitive product, and all the other points
3 we've made, that makes this industry particularly
4 susceptible to increasing dumped imports. There was a huge
5 change when the discipline was imposed, and there can be a
6 huge change when the discipline is removed, you know.

7 Changes in prices are going to flow through
8 the bottom line. So what looks like, you know, a fairly
9 decent operating income today can turn into a negative
10 operating income tomorrow, based upon the conditions of
11 competition, and based upon what happened during the Period
12 of Investigation.

13 VICE CHAIRMAN PINKERT: Is there an analogy
14 between that circumstance and the circumstance in which we
15 found vulnerability in another case that you're aware of?

16 MR. DORN: We'll look for that. It's my
17 understanding that the Commission has generally equated
18 vulnerability with weak financial condition, and we do not
19 claim that we have a weak financial condition today. But
20 what we say is we're susceptible to a downward spiral in
21 pricing, and therefore negative operating income if the
22 Orders are revoked.

23 VICE CHAIRMAN PINKERT: Thank you. Thank you
24 Madam Chairman.

25 CHAIRMAN BROADBENT: Commissioner Williamson.

1 COMMISSIONER WILLIAMSON: Okay. Thank you,
2 Madam Chairman. I have a -- we're going to be jumping all
3 over, just to try to tie some things up, and one question is
4 if you assume there is an overlap, you know, you establish
5 there is overlapping competition between the Chinese and
6 Canadian product, I take it the way I took Mr. Waite's
7 argument was that it's still all China's fault, and I'll ask
8 him that this afternoon. But I was wondering if you want to
9 comment on that. If not, you don't have to. But I can go
10 to the next one.

11 MR. JONES: Commissioner Williamson, Steve
12 Jones. To the extent that that is Mr. Waite's argument,
13 he's wrong. I think the evidence during -- from the record
14 of the Period of Investigation shows that it was not all
15 China's fault, and those conditions of competition have not
16 changed, and I think --

17 COMMISSIONER WILLIAMSON: You don't need to --
18 I mean I have a lot of other questions. So if you think
19 he's wrong, he's wrong.

20 MR. JONES: Okay. I appreciate that,
21 Commissioner Williamson. I'll stop there and you can ask me
22 if you'd like follow-up. Thank you.

23 COMMISSIONER WILLIAMSON: Okay, thanks.
24 Another question that hasn't come up much, and I was
25 wondering the role of, shall we say, inland transportation

1 costs, and how is the product shipped to the different
2 customers, because I assume that would be relevant here in
3 terms of given where JBL Canada is located. So I was
4 wondering if anyone would want to comment on that, and what
5 does that say about the conditions of competition,
6 particularly if the Orders are revoked.

7 MR. HURT: This is Martin at Tate and Lyle.
8 I think the answer to that is the very reason that they're
9 situated just across the border where they are today, that
10 provides them a competitive, logistical position to be able
11 to service large customers, medium size customers, any
12 customers within the United States. So the position of the
13 plant alone, I think, provides that answer.

14 COMMISSIONER WILLIAMSON: Okay, because I do
15 remember the South Carolina plant, which I think we visited.
16 It was right by the Fort. But it would seem to be far from
17 a lot of other places. So does most of the stuff go by
18 truck, rail, or does it just depend on the size of the order
19 and the customer?

20 MR. HURT: A combination of both. A
21 combination of both. For us, primarily truck. For Tate and
22 Lyle, primarily truck.

23 COMMISSIONER WILLIAMSON: Okay, thank you.

24 MR. O'DWYER: John O'Dwyer with Cargill. The
25 majority of our product is moved by driving a truck as well.

1 COMMISSIONER WILLIAMSON: Okay.

2 MS. KOTULA: ADM would agree as well, mostly
3 truck shipments.

4 COMMISSIONER WILLIAMSON: Okay, thank you.
5 There's been a lot of talk about product mix today, and just
6 to be clear, this is not -- because this is a commodity
7 product, I mean there's been a lot of talk about AUVs. But
8 I was thinking because this is not really -- these are
9 commodity products we're talking about. The question of
10 product mix is not really a big issue here. Is that a fair
11 statement?

12 MR. ANDERSON: I think in terms of AUVs,
13 that's a fair statement, that product mix is not an issue.
14 However, the mix between spot and contract is an issue, and
15 this is one of the reasons why we think it's misleading to
16 look at simple AUVs from Canada versus the United States,
17 because the data will show that there's a very big
18 difference in prices between spot prices and contract
19 pricing.

20 So therefore depending on what your mix is,
21 you can have a different AUV. That's why we think when
22 you're looking at any of the pricing questions, you should
23 be looking at the pricing product. Product 1A, Product 1B,
24 they are really the core of the market for citric acid and
25 hydrocitric acid, either sold on a spot or contract basis.

1 That's the type of pricing information you should be looking
2 at.

3 COMMISSIONER WILLIAMSON: And that was going
4 to be my next question, because I said the original
5 investigation pricing data showed mostly overselling by
6 imports for contract sales and underselling for spot, and I
7 was wondering how you would characterize the underselling
8 and overselling during the Period of Review and what do you
9 think going forward?

10 MR. ANDERSON: I would characterize it in the
11 Period of Review as mixed in both the spot and the contract.
12 I would also caution you to disaggregate it by time a little
13 bit, because it's clear that right after the imposition of
14 the Orders, there was a lot of volatility in pricing. If
15 you look at more recent periods, the last two or three
16 years, I think you will see a much more consistent pattern
17 of pricing.

18 COMMISSIONER WILLIAMSON: Do you want to
19 characterize that pattern or now or post-hearing?

20 MR. ANDERSON: I would characterize it as
21 mixed, is what you would expect for a commodity.

22 COMMISSIONER WILLIAMSON: Okay. Going
23 forward, if the Orders were revoked --

24 MR. ANDERSON: Going forward, again, you can
25 only sell the stuff on price. It is a commodity, and

1 setting aside the AUVs between like Canada and the United
2 States, if you look at the pricing data and you know, it's
3 kind of funny, because JBL decided to disaggregate it,
4 because there are only four players.

5 And that's funny. We had thought about doing
6 the same thing in presenting it to the Commission. They
7 emphasized who was always selling at the lowest price.
8 We're going to take that same and show who's the highest
9 price. What that will show is that between Canada and the
10 United States, on the pricing product data, which is the
11 most specific information available, it's definitely a mixed
12 situation.

13 MR. DORN: Commissioner Williamson, if I can
14 just add one point. You might look at Exhibits 18 and 19,
15 our hearing exhibits. 18 is showing spot prices for the
16 United States and Canada, and 19 is showing contract prices
17 for the United States and Canada. As Chuck mentioned,
18 there's a difference between the contract prices and the
19 spot prices.

20 But our point would be there's a linkage
21 between Canadian and U.S. prices for spot, and there's a
22 linkage between Canadian and U.S. prices for contract.

23 COMMISSIONER WILLIAMSON: Okay, 18 is contract
24 and 19 is spot?

25 MR. DORN: Eighteen I think is spot and then

1 nineteen is contract prices.

2 COMMISSIONER WILLIAMSON: Okay. Thank you. I'll
3 look at that further.

4 That also raises the question -- you sort of
5 answered this. I sort of noted a COGS for the domestic
6 industry seems the COGS to net sales ratio rose particularly
7 from 2010 to 2011, and then again in 2013.

8 You talked about non-subject imports I think
9 being a factor, and I was wondering if there were any other
10 factors? I take it wasn't the falling price of corn was
11 kind of not a factor.

12 MR. O'DWYER: John O'Dwyer from Cargill.

13 That's great. I think the greatest factor is
14 competition we are seeing from imports coming into the
15 country, raw material costs all the way to not being able to
16 pass those onto customers. We just have not always been
17 successful in being able to do that during the POR.

18 COMMISSIONER WILLIAMSON: Okay. And Ms. Kotula,
19 you had mentioned the fluctuation in the price of corn was
20 not that big a driver, although it's a very important part
21 of your cost. So, I was wondering what are the other
22 factors that would overwhelm the price change?

23 MS. KOTULA: I mean the majority of it falls back
24 on the availability of supply of citric acid. There's more
25 supply and less demand.

1 COMMISSIONER WILLIAMSON: Okay.

2 MS. KOTULA: As demand decreases we have to lower
3 our prices to be able to fill out our production volumes in
4 order to be able to run our plant efficiently.

5 COMMISSIONER WILLIAMSON: Okay. Thank you.

6 I was wondering has there been any changes in the
7 length and time of your producer contracts with customers
8 since the original investigation because in the original I
9 guess there was like 80 percent of the contracts were
10 long-term contracts -- 80 percent of the sales were in
11 long-term contracts.

12 MS. KOTULA: The majority of our sales are
13 one-year contracts.

14 COMMISSIONER WILLIAMSON: And that really hasn't
15 changed then.

16 MR. O'DWYER: That would be the same for Cargill.
17 The majority are one-year contracts and have been during
18 this entire timeframe.

19 COMMISSIONER WILLIAMSON: Okay. Mr. Hurt?

20 MR. HURT: The majority of ours are actually
21 long-term. The majority volume is long-term today.

22 COMMISSIONER WILLIAMSON: Okay. Thank you. I've
23 covered a lot of topics, but I think I got all the ones I
24 wanted. I want to thank the witnesses for their testimony
25 today. Thank you.

1 CHAIRMAN BROADBENT: Commissioner Johanson.

2 COMMISSIONER JOHANSON: I have I think just one
3 more question, and perhaps Mr. Vineyard you can answer this
4 since you know these plants well since you work on them
5 day-to-day.

6 Domestic producers have described the need to run
7 plants 24 hours a day, seven days a week. Why is this the
8 case?

9 MR. DORN: Commissioner, Mr. Vineyard does not
10 work in the plant. Maybe Mr. Warner would be a better
11 person to answer that.

12 COMMISSIONER JOHANSON: All right. Thank you.

13 MR. WARNER: Hi Eric Warner with ADM.

14 The fermentation process involves several stages,
15 and if you were to shut a fermenter down for say a few hours
16 then you could lose a week's production because it's a stage
17 process. It's not something you can shut off and start
18 tomorrow.

19 COMMISSIONER JOHANSON: How long would it take
20 you if you did have to shut it off to bring it back and to
21 resume?

22 MR. WARNER: Ten days to get back to where you
23 were, roughly.

24 COMMISSIONER JOHANSON: Okay. All right. Thank
25 you.

1 MR. WARNER: Sure.

2 COMMISSIONER JOHANSON: That concludes my
3 questions. I thank you all for appearing here today.

4 CHAIRMAN BROADBENT: Commissioner Schmidtlein.

5 COMMISSIONER SCHMIDTLEIN: I just had a couple
6 follow up, and this might have been answered earlier. Are
7 U.S. producers able to meet all of U.S. demand?

8 MR. HURT: Martin Hurt at Tate & Lyle.

9 The answer to that is no. I mean some imports
10 are needed to fully supply the U.S. demand and I mean we're
11 not arguing to ban imports. We're just arguing to continue
12 the order so they're priced fairly.

13 COMMISSIONER SCHMIDTLEIN: Okay. And then I
14 guess just to reiterate from the last round I think I was
15 clear, but my question about how is it that Canada has been
16 able to stay in the market at these volumes with higher AUVs
17 and whether that's because the AUV is not a meaningful
18 indicator of what the price has been? I mean I just looked
19 at the data on underselling and overselling and so forth,
20 but that question -- and I invite both sides to respond to
21 it.

22 MR. HURT: I think Mr. Anderson answered that
23 question. The AUV is not really a reliable source to drive
24 a conclusion like that. You should look at the individual
25 materials, the pricing report that was submitted in the

1 questionnaires, and I think that will give a clearer view in
2 answer to your question.

3 COMMISSIONER SCHMIDTLEIN: Okay. Maybe I missed
4 that. I'm sorry, Mr. Anderson, you made a comment on.

5 MR. ANDERSON: I explained it's not so much a
6 product mix, although there is a small product mix issue
7 involving -- which changes the AUVs between Canada and the
8 United States, but the real issue is the proportion of spot
9 versus contract sales. Because if you look at the spot
10 versus contract pricing you'll see that there's a very
11 consistent pattern. If you look at 1A versus 1B or 2A
12 versus 2B, there's a consistent pattern on spot versus
13 contract. So, if you have a different percentage in the
14 market, your AUVs will be -- could be different.

15 COMMISSIONER SCHMIDTLEIN: And Canada, in your
16 view, is consistently selling at less on the spot market
17 than U.S. producers -- I mean more.

18 MR. ANDERSON: Yes.

19 COMMISSIONER SCHMIDTLEIN: All right. Again, I'd
20 like you to elaborate on that in the post-hearing, both
21 sides. And that's all of my questions. Thank you very
22 much.

23 CHAIRMAN BROADBENT: Let's see, I just had two
24 more questions. This might be for Ms. Kotula or maybe Mr.
25 Hurt. Do you set your contracts with price adjustment

1 mechanisms built in to account for the changes in the raw
2 material costs?

3 MS. KOTULA: Typically, no.

4 MR. HURT: For Tate & Lyle, the answer is on some
5 contracts there are some input mechanisms included. We can
6 elaborate further on that in the post-hearing brief.

7 CHAIRMAN BROADBENT: Okay, and maybe information
8 on the index that you use for the adjustments?

9 MR. HURT: It's not an inflationary index. It's
10 just an input cost.

11 CHAIRMAN BROADBENT: Okay. And then how long
12 you've been doing those kinds of adjustments.

13 MR. HURT: In that fashion, just recently.

14 CHAIRMAN BROADBENT: Okay. Mr. O'Dwyer?

15 MR. O'DWYER: For Cargill, our contracts on an
16 annual basis are flat price contracts, so it's price for
17 volume for that year. We do have a longer term contract
18 that expired during the Point of Review that we can detail
19 further that it was a price mechanism for raw material, and
20 that was the only factor that was put into that.

21 CHAIRMAN BROADBENT: Okay. And then just for the
22 post-hearing, Mr. Dorn, in recent reviews that we've had on
23 lemon juice from Argentina and Mexico and most recently on
24 lightweight thermal paper from China and Germany, the
25 Commission considered a normal continuation of imports in

1 the U.S. market at no harm to the U.S. industry as part of
2 the rationale for a negative determination.

3 Please elaborate in your briefs then why you
4 think that this case is similar to or not similar to the
5 Commission's views on those two cases.

6 MR. DORN: We appreciate that opportunity. Thank
7 you.

8 CHAIRMAN BROADBENT: Good. Why don't you go and
9 then we'll go to David.

10 COMMISSIONER WILLIAMSON: Since you all have kind
11 of argued that JBL, in a sense is operating like other U.S.
12 companies, you know so close I was just curious -- this may
13 have to be done post-hearing. I'll also ask JBL this same
14 question -- to discuss is there anything relevant from the
15 composition of their spot to contract sales versus the
16 percentages for the U.S. producers? If there are
17 differences and does that tell us anything about how they're
18 competing in the U.S. market or their ability to act like a
19 U.S. producers?

20 MR. DORN: I think we're better dealing with that
21 post-hearing.

22 COMMISSIONER WILLIAMSON: Yes, I was thinking so.

23 MR. DORN: And we'll also point out the
24 difference between the POI and the POR, and give you our
25 thoughts on the reasons to the extent there's been any

1 change.

2 COMMISSIONER WLLIAMSON: Okay. Thank you.
3 That's what I wanted, and that would also be for the other
4 side, but I just wanted to commend the panel and their
5 lawyers for bringing us some written statements. I've been
6 wanting this for years, and this is one of the best sets
7 I've seen. So, thank you so very much for that.

8 MR. DORN: Thank you.

9 CHAIRMAN BROADBENT: Commissioner Johanson.

10 COMMISSIONER JOHANSON: Thank you Commissioner
11 Broadbent. And it turns out I do have one more question
12 even though I said I was done a minute ago.

13 I followed with interest what you all discussed
14 regarding the anti-dumping order in Brazil on China and how
15 that impacted sales from Canada into Brazil. Looking at the
16 materials, I did not see -- I saw the duties by ton, per ton
17 of product going into Brazil. I did not see a percentage.
18 In other words, I have no idea to see how high the margins
19 are on products going into Brazil and so it's hard for me to
20 compare or to thoroughly get my arms around what happened in
21 that market if I don't know how high the margins are or the
22 duties are for Brazilian product going into -- Chinese
23 product going into Brazil.

24 MR. HURT: For the Chinese producers importing
25 into Brazil, it's actually a minimum import price formula

1 based on the world price of sugar. It's a very complicated
2 formula. So, that formula is then used to determine the
3 import price. I don't know the number of the exhibit, but
4 we submitted information showing a graph of that minimum
5 import price of the Chinese and also demonstrating that the
6 price of the JBL material coming into that market was below
7 the Chinese minimum import price. So, in other words, below
8 the protected price.

9 MR. DORN: And of course, the price undertaking
10 was it in place for I can't remember for five or so of the
11 Chinese producers who agreed to. You may be referring to
12 the dollar amount of anti-dumping duty that applies to all
13 other producers who are not parties to the price
14 undertaking.

15 COMMISSIONER JOHANSON: I'm not sure what I
16 recall seeing, was it price per ton?

17 MR. DORN: Right. And that's the anti-dumping
18 duty for those who did not sign onto the undertaking.

19 COMMISSIONER JOHANSON: Okay.

20 MR. DORN: And I believe that's the way they
21 operate in Brazil in doing a specific amount, but we'll see
22 if we can translate into that -- into a dumping margin
23 percent if you'd like.

24 COMMISSIONER JOHANSON: If you can that would
25 help. I don't want you to spend a lot of time on it, but I

1 would like to get a better picture of what occurred after
2 the duties were put in place in Brazil. And if I don't have
3 the numbers it's kind of hard to do that.

4 MR. DORN: Sure. We'll take a shot at that.

5 COMMISSIONER JOHANSON: All right. Thank you.
6 And that concludes my questions.

7 CHAIRMAN BROADBENT: Okay, if Commissioners have
8 no further questions, does the staff have any questions for
9 this panel?

10 MS. HAINES: Elizabeth Haines. Staff has no
11 questions.

12 CHAIRMAN BROADBENT: Thank you. To those in
13 opposition to the continuation of the orders have any
14 questions for this panel?

15 MR. WAITE: Madam Chairman, Fred Waite, on behalf
16 of JBL Canada. We have no questions.

17 CHAIRMAN BROADBENT: Okay. Thank you.

18 In that case, I think it's time for a lunch
19 break. We'll resume at 1:45, in an hour. The hearing room
20 is not secure, so please do not leave confidential business
21 information out.

22 And with that, I want to thank all the witnesses
23 again for their very nice testimony. Thank you.

24 (Whereupon the meeting recessed for lunch until
25 1:45 p.m.)

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

2 CHAIRMAN BROADBENT: Are there any preliminary
3 matters for the afternoon session?

4 MR. BISHOP: No, Madam Chairman. The panel in
5 opposition to the continuation of antidumping and
6 countervailing duty orders have been seated and all
7 witnesses have been sworn.

8 CHAIRMAN BROADBENT: Thank you, Mr. Secretary.

9 I want to welcome the afternoon panel to the ITC.
10 And I would like to again remind all witnesses to speak
11 clearly into the microphone and state your name for the
12 record for the benefit of the court reporter.

13 You may begin when you're ready.

14 MR. WAITE: Thank you, Madam Chairman. Again,
15 this is Fred Waite on behalf of Jungbunzlauer Canada. Our
16 first witness this afternoon will be Sharon Grant from JBL
17 Canada.

18 STATEMENT OF SHARON GRANT

19 MS. GRANT: Thank you. Good afternoon. My name
20 is Sharon Grant and I am Vice President, Finance and
21 Administration for JBL Canada, Inc., the sole producer of
22 citric acid and citrate salts in Canada.

23 JBL Canada is part of the Jungbunzlauer Group
24 which is headquartered in Basel, Switzerland and has
25 production facilities in Austria, Germany, and France as

1 well as Canada.

2 JBL produces citric acid at its facilities in
3 Austria and Canada.

4 Jungbunzlauer built its Canadian facility on a
5 green field site in Port Colborne, Ontario. The plant is
6 located just across the U.S. border from Buffalo, New York
7 and has been in operation since 2002.

8 I was hired by JBL on January 15, 2001 while the
9 plant was still under construction. My job -- my first job
10 with the company was as director of finance and
11 administration. I was promoted to my current position in
12 September 2006.

13 As VP of finance and administration my
14 responsibilities include everything from managing the
15 financial operations of the company, budgeting, cash flow,
16 and receivables to human resources, legal, labor relations,
17 and union negotiations. I also oversee order processing and
18 the finished goods warehouse and I am responsible for all
19 raw material and natural gas purchases for the plant.

20 I report directly to the CEO of the group in
21 Switzerland. JBL Canada is one of the most modern and
22 efficient citric acid plants in the world. We have our own
23 cogen facility for the production of power for the plant and
24 we also operate our own wastewater facility on site.

25 Given our location on the Welland Canal which is

1 part of the Saint Lawrence Seaway, we are able to draw water
2 from the source for our production and the treated waste
3 water is returned to the canal cleaner than when it came
4 out.

5 Like our sister plants in Europe, JBL Canada's
6 core competency is in fermentation technology. We use the
7 deep-tank fermentation method whereby microbes are combined
8 with the substrate in a large fermenting tank. Like the
9 other North American producers, JBL Canada's substrate is
10 made from corn. After the fermentation stage, the fermented
11 mixture is purified and refined, the liquid is evaporated
12 and the citric acid is crystallized. The finished product
13 is a free-flowing, white, crystalline granule. All of the
14 citric acid produced by JBL Canada is food grade which is
15 the highest possible quality. We sell food grade product
16 for all our end-use applications, food and beverage,
17 industrial, pharmaceutical and cosmetics.

18 I should mention that because this process
19 involves a living organism, it is very sensitive to outside
20 contaminants and drastic environmental changes. This means
21 that every step of the production process has to be closely
22 monitored and the quality of the product must be tested at
23 multiple places along the production line. We have our own
24 laboratory that performs quality testing to make sure the
25 products are compliant with the food grade standards as well

1 as to ensure the proper granulation is achieved.

2 Besides an occasional complaint about damage in
3 transit or leaking bags, our customers are very satisfied
4 with the quality of our product.

5 The fact that the fermentation process involves
6 microorganisms also means the production has to be
7 maintained 24/7, 365 days a year. It is very costly to have
8 an unplanned production outage. A disruption slows down the
9 process resulting in lower yields and the equipment must be
10 thoroughly cleaned. JBL Canada had no disruptions to
11 production during the period being considered by the
12 Commission.

13 Like the other citric acid producers in North
14 America, JBL Canada can and does supply citric acid in
15 liquid form. Normally this product is shipped by tanker
16 truck or by rail to the customer. Many customers purchase
17 the dry product and dissolve it themselves as part of their
18 production process, but some customers prefer to receive the
19 citric acid slurry before evaporation and crystallization.
20 Because liquid citric acid can be as much as 50 percent
21 water, suppliers outside of North America don't ship liquid
22 product here.

23 In October 2011, JBL Canada began the production
24 of trisodium citrate or TSC which is a citrate salt being
25 produced using citric acid. After the purification stage,

1 we divert a stream of citric acid for the production of
2 TSC. The TSC also undergoes evaporation and crystallization
3 just like citric acid.

4 To the naked eye, TSC in its final forms looks
5 just like granular citric acid. One of the most common uses
6 for TSC is in the production of cheese.

7 The citric acid market in the United States is
8 one of the largest in the world. Prior to the construction
9 of JBL Canada, Jungbunzlauer supplied citric acid to its
10 customers in the United States from its production plant in
11 Austria.

12 However, consistent with our motto, better,
13 faster, closer, it was decided that JBL could better serve
14 its U.S. customers from a location in North America.

15 As we have shown in our recent submission to the
16 Commission, the volume of citric acid produced and sold by
17 JBL Canada essentially replaced the volumes previously
18 shipped from JBL Austria.

19 Likewise, when we started selling TSC the volumes
20 of this product being shipped from Austria dropped
21 significantly. To the extent that there continues to be any
22 citric acid or TSC being imported into the U.S. from
23 Austria, it is either GMO-free product or citric acid
24 monohydrate.

25 JBL Canada cannot supply GMO-free products

1 because our raw material comes from the North American corn
2 which is genetically modified. Citric acid monohydrate is a
3 different chemical form of the product that JBL produces in
4 Austria.

5 Over the period from 2009 to 2014, JBL Canada's
6 capacity increased marginally as a result of process
7 modifications that improved the overall efficiency and also
8 as a result of the start of the TSC production.

9 The most recent increase in capacity was due to
10 certain infrastructure investments as well as capital
11 investments and production-related equipment. If you look
12 at our capacity utilization rates in the three years in
13 which these process modifications and facility investments
14 occurred, you will see that JBL Canada has continued to
15 operate at a very high utilization rate. Moreover, we have
16 no current plans for any increase in capacity at the plant
17 in Canada.

18 Finally, I want to explain that JBL Canada sales
19 to both Canada and the U.S. have been handled by JBL, Inc.,
20 an affiliated sales office located outside of Boston,
21 Massachusetts. In fact, JBL, Inc. handles U.S. sales for
22 all of the products manufactured by the Jungbunzlauer Group.
23 When a new order for citric acid from Canada is received,
24 JBL, Inc. is able to submit the order to the order
25 processing department at JBL Canada using our interconnected

1 computer system. Our order processing can then determine
2 how much product is available in our inventory and whether
3 additional production volumes need to be scheduled.

4 We operate under the principle that production
5 follows sales. In other words, we carefully manage our
6 inventory levels in order to keep our production in line
7 with customer demand. In terms of demand, I would note that
8 JBL Canada has continued to supply its customers in the U.S.
9 even with the antidumping order in place against Canada.

10 We have participated fully in the annual reviews
11 by the U.S. Department of Commerce and the final dumping
12 margins have been in the range of 1 to 2 percent each year.
13 Our current deposit rate is half of 1 percent.

14 On behalf of JBL Canada, I want to thank the
15 Commission for conducting the sunset review of citric acid
16 from Canada. We think that you will see that revoking the
17 order on Canada will not alter in any way the way that we do
18 business and that the U.S. industry is not likely to be
19 injured or threatened by imports of citric acid from Canada.
20 I look forward to responding to any questions you may have.
21 Thank you.

22 MR. WAITE: Thank you, Sharon.

23 Our next witness is Daniel Rainville of
24 Jungbunzlauer, Inc.

25 STATEMENT OF DANIEL RAINVILLE

1 MR. RAINVILLE: Good afternoon. My name is Dan
2 Rainville and I am President of Jungbunzlauer, Inc. which is
3 located in Newton Centre, Massachusetts. Jungbunzlauer,
4 Inc., or JBL, Inc. is the dedicated sales office of
5 Jungbunzlauer in North America. I became the president of
6 JBL, Inc., in 2006. Prior to that time I was director of
7 finance and before that I was a financial consultant to the
8 company.

9 In total, I have worked for Jungbunzlauer for
10 more than 25 years.

11 Jungbunzlauer is a privately held company, family
12 owned, which dates back to 1867. Today it has manufacturing
13 operations in Austria, France, Germany, and Canada.

14 Citric acid is produced only by the plants in
15 Austria and Canada. JBL has been selling citric acid to
16 customers in the United States since 1970s, but at first we
17 supplied the market from our plant in Austria.

18 In 1999 JBL decided to construct a plant in North
19 America in order to better serve customers throughout North
20 America and the rest of the western hemisphere. The company
21 saw increasing global demand for citric acid and decided it
22 was the right time to make such an investment. Since the
23 United States was the largest export market for our product
24 from Austria and since North America was the largest market
25 for citric acid, it only made sense for us to construct the

1 plant in North America.

2 As operations came on line in Port Colborne, JBL
3 Canada replaced our sister company in Austria as the primary
4 supplier to our customers in the United States. The citric
5 acid plant in Port Colborne, was built with the following
6 objectives in mind. One, supply security; two, supply
7 flexibility; three, shorter lead time; four, logistical
8 simplification; and five, nearby technical advice and
9 services.

10 These objectives are embodied in our company
11 motto, better, faster, closer.

12 As Sharon Grant has already mentioned, our plant
13 is one of the most modern and efficient facilities in the
14 world for the production of citric acid.

15 We have produced citric acid since the plant was
16 built and we recently added the trisodium citrate to our
17 product line. One hundred percent of JBL's citric acid in
18 Canada is food grade. And this is the product we sell to
19 customers in the United States and elsewhere.

20 As you have heard from a number of witnesses
21 today, the highest quality of citric acid is food grade
22 product which is required by the food and beverage segment
23 of the market. We ensure that our product has consistent
24 purity, color, and quality and our customers recognize that
25 we supply a premium product to the market.

1 Jungbunzlauer ships directly from our plant in
2 Canada to our customers in the United States. Given the
3 plant's close proximity to the border, we are able to make
4 truckload deliveries of citric acid in dry form, as well as
5 deliveries of citric acid in solution by railway tanker car
6 and tanker truck.

7 JBL, Inc., is the importer of all citric acid
8 which enters the United States from our sister company in
9 Canada. Historically we also handled sales of JBL Canada
10 shipments to Mexico. However, Jungbunzlauer established an
11 office in Mexico City which now serves the growing markets
12 of Latin America including Mexico.

13 The food and beverage segment of the market is
14 the most significant part of our business. This should not
15 be surprising since the largest U.S. purchasers are in this
16 segment of the market. However, we also supply key
17 customers in industrial, cleaners, detergents, and personal
18 care segments of the market. We sell citric acid on the
19 basis of annual and short-term contracts as well as spot
20 sales.

21 Like the other North American producers, we
22 negotiate most annual contracts at the end of the calendar
23 year to meet customer requirements for the following year.
24 Short-term contracts and spot sales are made throughout the
25 year.

1 The sources of imported citric acid in the U.S.
2 market have changed since the orders were issued on Canada
3 and China in 2009. Although JBL has continued to ship at
4 relatively steady volumes despite the order on Canada, other
5 countries have taken much of the market share that had been
6 held by China before 2009. In particular Thailand and
7 Colombia have replaced China with increasing volumes of
8 imports at very aggressive prices.

9 I understand that one or two of the Thai citric
10 producers are owned by Chinese interests.

11 Since 2009, U.S. demand for citric has steadily
12 increased and JBL projects that U.S. demand will continue to
13 increase in the future.

14 It has been our experience that citric acid
15 consumption in the United States generally tracks the
16 overall economy. As the U.S. economy continues to improve,
17 we expect that demand for citric acid will likewise
18 increase.

19 In addition, new applications and changes in
20 existing product formulations have increased demand for
21 citric acid and trisodium citrate. For example, over the
22 past few years we have seen a significant increase in demand
23 for non-carbonated beverages including energy drinks.
24 Another example was the result of the U.S. government ban on
25 phosphates in both the laundry detergent market as well as

1 the automatic dishwashing detergent market. Both bans
2 resulted in a significant increase in the use of citric acid
3 and trisodium citrate.

4 There are occasional disruptions in supply caused
5 by outages or other production problems at the U.S.
6 producers' plants. In 2014 several U.S. customers including
7 a large major customer purchased JBL material in order to
8 meet requirements when its U.S. supplier could not deliver
9 contracted quantities. Just before the U.S. industry filed
10 its antidumping petition Cargill came to us for help because
11 of production problems. Cargill shipped its bags to Port
12 Colborne and JBL filled them with material so Cargill could
13 meet its commitments. This example of cooperation should be
14 the model for North American producers and not targeting
15 Canada with an antidumping complaint just because we happen
16 to be in the market at the same time as the Chinese.

17 Finally, I want to emphasize that citric acid
18 from JBL Canada is a premium product that is sold at a
19 premium price. Our customers regularly tell us that our
20 prices are higher than other suppliers in the market,
21 including the U.S. producers' prices. This is fine for us.
22 We do not mind being the highest-priced product in the
23 market. And, in fact, we expect to be the highest priced
24 supplier in the U.S. market.

25 Why you may ask. Because we do offer a premium

1 product. But we also offer the shortest lead times to the
2 market, dependable delivery service, and the most reliable
3 customer service to the market.

4 In addition our focus is on citric acid because
5 this is our primary product that we offer to our customers.
6 We are not interested in lowering our prices in order to
7 beat the competition. Instead, we are focused on being a
8 sustainable, reliable supplier to our valued customers both
9 in the United States and in other markets.

10 Thank you very much, and I will be happy to
11 answer any questions you may have.

12 STATEMENT OF FREDERICK P. WAITE

13 MR. WAITE: Thank you, Dan.

14 Again, I'm Fred Waite from Vorys, Sater here on
15 behalf of JBL Canada.

16 Unlike original investigations, cumulation is
17 discretionary in five-year reviews. The statute states that
18 the Commission may cumulatively assess the volume and
19 effect of imports of the subject merchandise from all
20 subject countries if the reviews were initiated on the same
21 day, and if such imports would be likely to compete with
22 each other and with domestic like product in the U.S.
23 market. The Commission generally considers four factors in
24 its analysis of whether subject imports compete with each
25 other and with the domestic like product.

1 JBL acknowledges that these conditions are
2 present in this review. That is, the imported and domestic
3 products are fungible. They are present in the same
4 geographic markets. They are sold through common or similar
5 channels of distribution and they are simultaneously present
6 in the market.

7 In determining whether or not to cumulate subject
8 imports the Commission also analyzes whether imports from
9 the subject countries are likely to compete under different
10 conditions in the U.S. market. We submit that the
11 Commission should not cumulate imports from Canada with
12 subject imports from China in this review because imports
13 from Canada are likely to compete under different conditions
14 of competition.

15 Specifically, the volume and price trends of
16 imports from Canada differ significantly from those of
17 China. And the capacity projections for the foreseeable
18 future are also dramatically different for Canada versus
19 China.

20 Since the imposition of the orders in 2009,
21 imports from Canada and China have displayed very different
22 volume trends. Please see our confidential Exhibit 2 in
23 this regard.

24 During the period of review, imports from Canada
25 remained in the U.S. market at levels comparable to 2006 and

1 2007 prior to the imposition of the order. In fact, out of
2 13 firms that reported purchasing from Canada prior to 2009
3 only one reported that it had stopped purchasing from Canada
4 because of the order. And no firms reported decreased
5 purchases from Canada due to the order. Thus Canada was
6 able to maintain its presence in the U.S. market including a
7 steady market share despite the antidumping order against
8 it.

9 By contrast, according to the official import
10 statistics, imports from China plummeted from nearly 200
11 million pounds in 2008 to less than 30 million in four out
12 of five of the years of the POR. Moreover, four purchasers
13 reported reducing their purchases from China and three
14 reported discontinuing purchases from China altogether after
15 the orders were imposed.

16 China's market share also dropped during each
17 year of the POR except 2013. Thus, as a result of the
18 imposition of antidumping and countervailing duty orders
19 against citric acid from China, the volume of imports from
20 China during the POR was significantly smaller than during
21 the original investigation period.

22 There are additional differences between imports
23 from Canada and China that we believe are relevant to these
24 differing import trends.

25 First, Canada, JBL Canada, the sole producer in

1 Canada, has received minimal and declining margins from the
2 U.S. Department of Commerce as the result of annual
3 administrative reviews. Throughout the POR JBL Canada has
4 been assigned low, single-digit margins. The most recent is
5 only 0.55 percent. Thus, the antidumping order on Canada
6 has had very little impact on JBL.

7 The experience of China has been very different.
8 It appears from public sources that one Chinese producer,
9 RZBC has been the most significant importer of citric acid
10 to the United States during the POR. While RZBC's dumping
11 margin has fallen as a result of annual reviews, it's
12 subsidy margins increased substantially in two of the most
13 recent reviews of the countervailing duty against China.

14 The publication dates of these double-digit
15 margins were in January and December 2014 which likely
16 explains the decline in imports from China between the
17 interim periods of 2013 and 2014. Another relevant
18 difference between imports from Canada and China is the
19 existence of trade barriers in third-country markets. With
20 the exception of the antidumping order in the United States
21 Canada has no trade restrictions on its exports of citric
22 products in any other market.

23 By contrast China has, in addition to the U.S.
24 orders, antidumping orders against it in Brazil, the
25 European Union, India, Russia, Thailand, and Ukraine. There

1 are also ongoing investigations of citric acid from China by
2 Colombia and the Eurasian Economic Union.

3 It is noteworthy that in the initial
4 investigation the Commission observed that the European
5 Union was historically the primary export market for the
6 Chinese citric industry, but that the EU investigation had
7 limited access to this important market.

8 In addition to the dramatically different volume
9 trends there are also significant differences in the price
10 trends of imports from Canada and China. After an initial
11 decline in unit values of U.S. shipments between 2009 and
12 2010, Canada's unit values remained within a fairly narrow
13 band over the remaining four years of the POR. Notably,
14 Canada's unit values were higher than the unit values of
15 U.S. producers' U.S. shipments during every year of the POR
16 including interim 2014. Please see our confidential Exhibit
17 3.

18 By contrast the unit values of imports from China
19 dropped after the original investigation when the
20 antidumping and countervailing duty orders were imposed.
21 China's unit values continued to decline in 2010 and 2011.
22 Then in 2012, China's unit values jumped before dropping
23 again in interim 2014.

24 In comparison with the unit values of U.S.
25 producer shipments, China's unit values were lower during

1 every year of the POR, notwithstanding the antidumping and
2 countervailing duty orders.

3 I note that the pricing data collected by staff
4 during this review show citric acid imports from China
5 overselling domestic producers in 78 out of 95 quarterly
6 comparisons. However, we submit that these results have
7 little or no probative value because the volume of Chinese
8 imports covered by the pricing data represents a very small,
9 single-digit percentage of total Chinese imports over the
10 period.

11 Finally, there are clear distinctions between the
12 Canadian and Chinese industries in terms of capacity data.
13 In this regard, please see our confidential Exhibit No. 1.

14 Since no Chinese producers or exporters responded
15 to the Commission's questionnaires, information about the
16 Chinese industry and its capacity are based on industry
17 publications and news articles. According to the prehearing
18 report, China is the world's largest producer and exporter
19 of citric products with approximately 20 major producers at
20 a total annual capacity of 1.926 million metric tons.
21 That's over four billion pounds. This figure represents
22 more than two-thirds of global capacity.

23 The information in the prehearing report about
24 increases in Chinese capacity and the Chinese industry's
25 capacity utilization rates are confidential. But they show

1 very different patterns than JBL Canada. Based on publicly
2 available information on new capacity investments in China,
3 the record indicates that all major Chinese producers of
4 citric acid have either expanded capacity or announced plans
5 to do so by the end of 2015.

6 As you have heard repeatedly today, JBL Canada
7 is the sole producer of citric acid in Canada and it has no
8 current plans to increase capacity further whether or not
9 the order is revoked. Moreover, JBL Canada has operated at
10 a high capacity utilization rate during the POR.

11 In sum, the data from Canada show differing
12 volume and price trends over the period compared to China
13 and dramatically different capacity projections for the
14 foreseeable future. Accordingly, we respectfully submit
15 that imports from Canada have been competing and are likely
16 to continue to compete under different conditions in the
17 U.S. market than China. For these reasons we urge the
18 Commission not to cumulate imports from Canada with subject
19 imports from China.

20 Thank you.

21 And, Madam Chairman, our final witness this
22 afternoon is Mr. Kerwin from Georgetown Economic Services.

23 STATEMENT OF MICHAEL KERWIN

24 MR. KERWIN: Good afternoon, I'm Michael Kerwin
25 from Georgetown Economic Services. This afternoon I'd like

1 to discuss the likely volume and price effects of Canadian
2 imports in the event of revocation and the likely impact of
3 those imports on the domestic industry. It is our
4 contention that imports of citric acid and certain citrate
5 salts from Canada will not increase to any significant
6 extent if the current antidumping order is revoked.

7 In contrast to the behavior the Commission
8 typically sees after the imposition of an order, JBL has
9 continued to serve the U.S. market throughout the sunset
10 review period. JBL has a devoted customer base in the
11 United States and these customers have expressed their
12 appreciation for JBL's consistent supply of high-quality
13 product particularly as members of the domestic industry
14 have had issues providing material due to production
15 disruptions and shifting customer priorities.

16 As JBL has worked to maintain good relations with
17 its U.S. customers, imports from Canada have remained
18 buoyant. As shown in our confidential Exhibit 2 handed out
19 earlier, import volumes of citric acid and certain citrate
20 salts from Canada have not declined significantly since the
21 time of the original investigation. Nor has market share
22 changed notably, remaining at relatively modest levels
23 throughout.

24 These trends in imports from Canada stand in
25 notable contrast to those for imports from China again as

1 illustrated in Exhibit 2. Why have we not seen the pattern
2 in Canadian imports that is typically seen in a first sunset
3 review. Well, for one thing, as noted by Mr. Rainville, JBL
4 has made a point of maintaining relatively high prices for
5 its product in the U.S. market. The company has gone
6 through several administrative reviews at the Commerce
7 Department and its most recent margin was a one half of one
8 percent margin.

9 Imports from Canada have remained relatively
10 stable and they are not likely to increase to any meaningful
11 extent if the order on Canada is revoked. JBL Canada's
12 shipments in its home market expanded during the sunset
13 review period and exports to Latin America, Asia, and the
14 Middle East have expanded significantly since the time of
15 the original investigation. JBL has developed substantial
16 long-term relationships with customers in these countries as
17 indicated by its establishment of a separate sales office in
18 Mexico to handle sales to the Latin American market.

19 JBL Canada does not produce products other than
20 citric acid and trisodium citrate. So there is no potential
21 for product shifting. Further the company maintains minimal
22 inventories in the United States and those volumes have
23 declined during the review period.

24 JBL also does not have substantial excess
25 capacity to direct to the U.S. market. The current unused

1 capacity at JBL Canada is relatively minor in relation to
2 the volume of the product currently being exported to the
3 United States as you can see in confidential Exhibit 7.
4 This means that there could be no substantial increase in
5 exports to the United States in the event of revocation.
6 Nor does JBL have any current plans to increase its
7 production capacity.

8 In short, given its limited excess capacity,
9 inability to shift production from nonsubject products, and
10 healthy and growing third-country export markets JBL Canada
11 is unlikely to significantly increase exports to the U.S.
12 market in the event of revocation.

13 Imports of citric acid and citrate salts from
14 Canada are also not likely to have any meaningful impact on
15 prices in the U.S. market. JBL only produces food grade
16 citric acid, a higher quality product that costs more to
17 produce than the industrial graded product. Higher costs
18 and prices for food graded product mean that JBL is not --
19 will not be as aggressive on price as domestic producers at
20 industrial accounts.

21 Several forms of record evidence indicate that
22 imports from Canada generally sold at prices higher than
23 those for domestically produced product, as well as that
24 imported from China. The first form of evidence is the
25 average unit value data on shipments of citric acid and

1 citrate salts from Canada, China, and the United States as
2 summarized in our confidential Exhibit 3. This chart
3 demonstrates that imports from Canada were sold at
4 relatively high prices throughout the period.

5 This observation is further supported by pricing
6 data that the Commission was able to develop via its
7 questionnaire process. These data show that Canadian
8 imports were generally sold at prices that exceeded those of
9 the domestic industry during the period of review.
10 Information from purchasers further indicates that Canadian
11 imports were priced relatively high during the period of
12 review. As shown in our confidential Exhibit 6, most
13 purchasers reported that Canadian imports reflected
14 relatively high prices in the U.S. market. The various
15 forms of evidence indicate that imports from Canada have not
16 been sold on the basis of low prices during the period of
17 review. Indeed the vast majority of purchasers listed
18 domestic producers, not JBL, as the price leaders in the
19 U.S. market.

20 While Canadian imports have generally maintained
21 their share of the U.S. market since the time of the
22 original investigation, this has not been accomplished on
23 the basis of price. Rather quality and reliability of
24 supply have been the keys to JBL's stable position in the
25 U.S. market. This behavior indicates that in the event of

1 revocation imports from Canada would not be sold at low
2 prices and would have no negative impact on domestic
3 producer pricing.

4 Given that significant increases in volume and
5 notable price effects are unlikely, Canadian imports are
6 likely to have no discernible adverse impact on the domestic
7 industry in the event of revocation.

8 As an initial matter, it is clear from the
9 evidence of record that the domestic industry is not in a
10 vulnerable condition. During the period of review the
11 domestic industry has shown a strong performance and
12 enviable financial returns. In fact, the domestic industry
13 showed such returns in every year of the 2009 to 2014 period
14 of review. The early years of which represented the low
15 point of the worst economic downturn in the United States
16 since the 1930s.

17 How healthy is the domestic industry producing
18 citric acid and citrate salts? Well, in the 2009 to 2013
19 period annual average U.S. shipment volumes were 11 percent
20 higher than those during 2006 to '08. Likewise the
21 industry's annual net sales value in 2009 to '13 was on
22 average 61 percent higher than that shown during the period
23 of investigation.

24 The domestic industry's pricing has also improved
25 dramatically. While the industry's average unit sales value

1 ranged from 44 to 53 cents per dry pound during the period
2 of investigation the comparable figures during the period of
3 review ranged from 70 to 84 cents per pound. Average sales
4 values in every year of the review period were at least 32
5 percent higher than those experienced during the period of
6 investigation.

7 Given these improvements, it is no surprise that
8 the financial performance of the domestic industry showed
9 dramatic improvement during the period of review as compared
10 to the investigation.

11 While the domestic industry showed an average
12 operating loss of 6 percent of sales value during the period
13 of investigation that figure improved to an average profit
14 of 20 percent during the review period. This is all the
15 more impressive given that as noted in the findings from the
16 original investigation the domestic industry had been
17 suffering falling prices and returns for at least a decade
18 before the period of investigation.

19 For an industry to maintain an average operating
20 return of 20 percent over the entirety of a sunset review is
21 really rather extraordinary particularly given the dismal
22 performance of most U.S. manufacturers during the early
23 years of this period.

24 In sum, this is not a vulnerable industry. While
25 the domestic industry and the Canadian respondents disagree

1 as to the vulnerability of the domestic industry, the
2 improvement in performance for the domestic industry is not
3 a matter of contention. The domestic industry has quoted
4 the same figures that we have to support the contention that
5 the orders have been effective in renewing their health.
6 But what they do not acknowledge is the conundrum that this
7 improvement has occurred despite the continued presence of
8 Canadian imports in the U.S. market.

9 As we have discussed import volumes from Canada
10 have not changed notably between the period of investigation
11 and the POR, but the domestic industry's performance has
12 improved radically. This indicates that imports from Canada
13 can coexist with the domestic product without an adverse
14 impact.

15 In contrast to Canadian import trends, imports
16 from China have fallen dramatically since the imposition of
17 the orders. So as Chinese imports contracted, domestic
18 industry performance improved. As Canadian imports remained
19 roughly comparable domestic industry performance also
20 improved.

21 In light of these trends, what the domestic
22 industry needs is continuation of the orders on imports from
23 China. Presence of imports from Canada appears to have
24 little impact on the domestic industry performance.

25 This stands to reason given that the Canadian

1 industry consists of a single responsible producer of citric
2 acid with a relatively minor amount of excess capacity and
3 no plans for expansion, while the Chinese industry, the
4 world's largest, by far, consists of numerous producers with
5 massive capacity overhangs and seemingly unending capacity
6 expansion plans.

7 Not only has the domestic industry's performance
8 improved radically, it is likely to continue to improve.
9 U.S. apparent consumption of citric acid and certain citrate
10 salts expanded regularly during the period of review as
11 shown in confidential Exhibit 4. And independent market
12 analysts have forecast moderate continued expansion for the
13 product.

14 Further, as shown in confidential Exhibit 5, a
15 significant portion of the shipments to the U.S. industry
16 are covered under long-term contracts which will limit
17 competition from Canadian imports at those accounts for the
18 reasonably foreseeable future in the event of revocation.

19 The fact of the matter is that U.S. purchasers
20 have continued to turn to JBL and imports from Canada
21 regardless of the order because they value an alternate
22 source of supply of high-quality citric acid and trisodium
23 citrate. Indeed, in their questionnaire responses most
24 purchasers rated quality and reliability of supply as more
25 important to them than price. The domestic industry does

1 not have sufficient capacity to meet U.S. demand for citric
2 as you heard this morning from the petitioners. And JBL is
3 the most responsible alternative North American source for
4 the product.

5 JBL has maintained its place in the U.S. market
6 not by being aggressive on price, but by meeting customer
7 needs. JBL's prices have generally been above those of the
8 domestic industry and further because JBL only produces food
9 grade citric acid and trisodium citrate it is less inclined
10 to sell to more price sensitive industrial accounts.

11 In summary, subject imports from Canada have been
12 sold not on the basis of price in the U.S. market and the
13 Canadian industry does not have the capacity or motivation
14 to significantly increase volumes to the United States
15 compared to where they stand now. The domestic industry has
16 had an extremely successful run over the last six years and
17 is not in a vulnerable condition. The U.S. market is
18 healthy and growing; the domestic industry's future
19 prospects are good. Imports of citric acid and trisodium
20 citrate from Canada have not had any meaningful impact on
21 the domestic industry during the review period and are
22 unlikely to have such an impact if the current order is
23 revoked.

24 Thank you for your attention this afternoon and
25 that concludes my remarks.

1 MR. WAITE: Thank you, Mike. Before completing
2 our presentation this afternoon, I'd like to take this
3 opportunity to introduce the remainder of our panel. In the
4 second tier behind me are William Hudgens of Georgetown
5 Economic Services and my colleagues, Kimberly Young and Will
6 Barrett from Vorys Sater.

7 Thank you, Madam Chairman. That completes our
8 testimony.

9 CHAIRMAN BROADBENT: Thank you. And I want to
10 thank the witnesses for coming today and taking time from
11 their businesses to be with us. We are beginning our
12 questioning this afternoon with Commissioner Schmidtlein.

13 COMMISSIONER SCHMIDTLEIN: Thank you, Madam
14 Chairman. I'd like to welcome all of the witnesses and
15 thank you all for traveling here today to answer our
16 questions.

17 I'm going to start with -- I'm not sure if Mr.
18 Kerwin or Mr. Waite, which one of you would be the better
19 one to answer this question, but you both mentioned that JBL
20 has made a point of keeping its prices high and therefore
21 the margins have been very low. And I think, Mr. Waite, you
22 specifically said that the order has had very little impact
23 on JBL. And so my question is is it you all's position that
24 the order has provided or imposed no discipline on the
25 volume or sales price coming from JBL?

1 MR. KERWIN: It's our position that the main
2 impact of the orders has been on imports from China, that
3 Chinese imports were driving the bus at the time of the
4 period of investigation, that Canadian imports have largely
5 followed the market demand and as conditions have improved
6 during the period of review that JBL has followed its same
7 strategy of selling a high end product, a quality product
8 that meets customers demands.

9 They do a lot of fill in when they're approached
10 by purchasers in the U.S. market who are unable to get the
11 supply that they need within a timeframe that's critical for
12 their business. So, JBL has not really changed its behavior
13 in the marketplace and it is certainly not the driver of
14 price in the U.S. market. It's more of a price taker in
15 relation to you know maintaining its price in relation to
16 the domestic producers.

17 COMMISSIONER SCHMIDTLEIN: But doesn't the fact
18 that JBL would be subject to an annual review over at
19 Commerce and therefore potentially have its margin increased
20 doesn't that impose some kind of discipline on the pricing?
21 I mean if you go too low you may have your margins
22 increased, right, I mean as a matter of economics isn't that
23 going to affect the behavior of the party doing the pricing?

24 MR. WAITE: Commissioner Schmidtlein, it's Fred
25 Waite.

1 If I may begin to respond to that. In the annual
2 reviews, what we find driving the pricing for JBL is JBL's
3 participation in the market. As you've noted in your
4 comments and questions earlier this morning, JBL has
5 remained in the market at significant volumes, certainly as
6 significant as the pre-petition period. It has remained in
7 the market at pricing that has resulted in relatively
8 minimal dumping margins.

9 We had a discussion this morning -- or you had a
10 discussion this morning concerning the differing pricing
11 data that the Petitioners put in one of their confidential
12 exhibits before the Commission today. Actually, it's a
13 table that JBL provided, which was pricing in various
14 markets. And I want to be very careful. It's our data, so
15 obviously I could put it on the first page of the Washington
16 Post if I chose to do that, but it is sensitive, competitive
17 information.

18 Let us just say that that table shows that JBL's
19 pricing to the United States and its pricing to Canada has a
20 difference that looking at it one might think, well, JBL
21 could actually be more aggressive in its pricing in the
22 United States and still remain compliant with the
23 anti-dumping order. And the reason that JBL's pricing is at
24 the level it is, is as explained primarily by Mr. Rainville,
25 but also by Ms. Grant, and that is for JBL production

1 follows sales and sales are driven by JBL's desire to
2 provide a quality product -- they won't say this, but I will
3 -- to quality clients at a fair price, which is often a
4 premium price.

5 And I think we'll probably get into further
6 discussion about price differences later this afternoon, but
7 it's our position that JBL consistently sells at the highest
8 price in the market.

9 Does the dumping order impose that discipline,
10 given the quantities, given the customers, given the nature
11 of the sales process I would say that the dumping margin
12 follows the sales rather than the dumping margin -- follows
13 the sales prices rather than the dumping margin drives the
14 sales prices.

15 COMMISSIONER SCHMIDTLEIN: Okay. Now, you
16 mentioned the customers, and earlier this morning -- not
17 earlier this morning, just a few minutes ago I think it was
18 you, Mr. Waite, in your comments said that purchasers have
19 reported that only one had dropped Canada as a result of the
20 order, that purchasers had reported that. And so I guess my
21 question is that you only lost one customer as a result of
22 the order.

23 MR. RAINVILLE: I'm Dan Rainville from
24 Jungbunzlauer.

25 I can't say whether the number is exactly one.

1 In my opinion, in the history of -- since the order was put
2 in place Jungbunzlauer hasn't lost any customers, in
3 general. We serve the same customer base year after year
4 providing the same quality and service. So, in this regard,
5 I don't have any memory of one definitive loss or one
6 definitive gain in this regard. We continue business as
7 usual at Jungbunzlauer.

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

10 Let me switch gears, I guess, just a little bit
11 on a couple other questions. One was related to -- and I
12 guess Mr. Waite you would be the best one to answer this.
13 In your brief, it didn't seem that you took -- you didn't
14 seem to take a very clear position on no discernible. So,
15 can you clarify whether it's your position that there is no
16 discernible adverse impact if the order were revoked on
17 Canada?

18 MR. WAITE: Again, it's Fred Waite, Madam
19 Commissioner.

20 Let me say it this way that given the
21 Commission's analysis when it looks at no discernible impact
22 we did not believe that it would be fruitful to make an
23 argument that there would be no discernible impact if the
24 order were revoked. And I say that because in most cases --
25 in fact, in all the cases with which I'm familiar where a

1 finding of no discernible impact has been made imports have
2 either completely disappeared from a subject country under
3 the order or that subject country is no longer making the
4 product or that subject country has found different, more
5 lucrative markets or the subject countries' industry has
6 reengineered and is making a substantially different
7 product.

8 Given the Commission's approach to no discernible
9 impact, as I said, we did not think it would be fruitful to
10 argue a new line of argument when we believe, based on the
11 way the Commission generally looks at impact in sunset
12 reviews that we would be able to demonstrate to you that
13 using your standards of cumulation and de-cumulation, your
14 standards of volume impact and price impact, your standard
15 of impact on the domestic industry that that would be more
16 useful, that that would be less speculative, if you will.
17 They're hard facts on the record that support arguments that
18 would lead to an analysis that would be both productive and
19 I believe in the long term correct.

20 COMMISSIONER SCHMIDTLEIN: So, it's your
21 position, well, maybe not, but there would be a discernible
22 impact but it doesn't rise to the level of material injury.

23 MR. WAITE: I think our position is we are not
24 arguing that there would be no discernible impact.

25 COMMISSIONER SCHMIDTLEIN: So, there would be a

1 discernible impact.

2 MR. WAITE: I feel like I'm before a
3 Congressional Subcommittee.

4 COMMISSIONER SCHMIDTLEIN: I do have the glasses.
5 All right, fair enough. We'll come back to the rest of my
6 questions in the second round.

7 CHAIRMAN BROADBENT: Ms. Grant, you stated that
8 JBL Canada has not had a disruption of production during the
9 period of review. What does this mean about your capacity
10 utilization?

11 MS. GRANT: It's Sharon Grant.

12 We have a number of things in place to ensure --
13 the main issue for us, as I mentioned, it's a living,
14 breathing organism, so the processes are similar to people.
15 You know it requires air. It requires a certain
16 temperature. And when you lose that over an extended period
17 of time your process does begin to die. We have a number of
18 things in place as far as backup. We have different power
19 sources just to ensure that -- you will have little blips
20 within the production, but nothing that has impacted us
21 meeting the requirements for the customer.

22 CHAIRMAN BROADBENT: Mr. Rainville, what explains
23 the shifts in apparent U.S. consumption between 2006 and
24 2013? Can you kind of walk us through that, the changes in
25 consumption in the U.S.? What caused it and what was going

1 on in the market?

2 MR. RAINVILLE: I'm sorry. Can you repeat the
3 question?

4 CHAIRMAN BROADBENT: What explains the shifts in
5 apparent U.S. consumption between 2006 and 2013?

6 MR. RAINVILLE: The shifts in consumption of the
7 U.S. consumers we see shifts in consumption due to different
8 applications. As I mentioned in my testimony, I used the
9 example of the phosphates being removed from the laundry
10 detergent as well as the automatic dishwashing detergent
11 markets as well as increases due to economic conditions, for
12 example. The beverage industry has grown over the years,
13 whether it's in a decline mode now or a temporary decline
14 and a future increase I'm not the expert in this regard, but
15 application, for sure, changes the change in consumption of
16 the product from year to year.

17 CHAIRMAN BROADBENT: So, the biggest drivers
18 there would be the fall off and use for dishwashing
19 detergent and then the increase -- I'm just trying to get
20 kind of an overall picture of what's going in your export
21 market?

22 MR. RAINVILLE: We have seen now that dishwashing
23 detergent phosphates were banned by the government back
24 four, five years ago, and as a result a replacement for the
25 phosphates in different applications is trisodium citrate,

1 for example. As a result, this was a new application that
2 resulted in additional volume sales for Jungbunzlauer and
3 other producers of citric acid.

4 CHAIRMAN BROADBENT: Okay. Anybody else help me
5 on demand trends, sort of what was happening during that
6 period?

7 MR. KERWIN: I'd be happy to weigh in from my
8 perspective. I have to say one of the things that surprised
9 me in this morning's panel was the characterization of
10 demand in the U.S. market over this period.

11 In response to your question specifically, if you
12 go back to 2006 at the beginning of the period of
13 investigation up until the current day, I think what you're
14 seeing really is a fairly consistent increase in U.S.
15 consumption of this product.

16 I think one of the anomalies that you see in the
17 data, without going into the specifics of the numbers, but
18 it was mentioned this morning that in 2008 in advance of the
19 imposition of the orders there was a little bit of what
20 might be called panic buying in the United States market
21 that customers were concerned that they would be able to get
22 enough volumes of the product, particularly, given that the
23 U.S. industry does not have enough capacity to meet demand
24 in the country.

25 And as two of the major suppliers of the product

1 from foreign countries who were potentially to be cut off,
2 there was a great deal of concern about supply within the
3 U.S. market, so those customers that could do it ramped up
4 their purchases and built inventories. And so, some of what
5 you're seeing I think a good deal of what you're seeing in
6 2008 as to the demand blip is that increase in inventories.
7 And as you see, in 2009, there's a resulting drop off in
8 demand.

9 But I think if you look at the period as a whole,
10 you see that demand has been almost consistently increasing
11 if you take out those two anomalous years. And I would
12 again come back to our confidential Exhibit 4, which shows
13 for the period of review the expansion of U.S. consumption
14 of this product and it just does not wash with the
15 characterization of the Petitioners this morning that
16 they're extremely concerned and extremely negative about
17 likely demand trends in the U.S. market. Those figures in
18 front of you do not jive with a great concern as to the
19 future of demand for this product.

20 And essentially, what the Petitioners argued, I
21 think, was based on their own statements. If you look at
22 the rest of the record, just 3 of 22 purchasers said that
23 they thought demand would decline in the future. Just 2 of
24 15 importers said they thought demand would decline. As far
25 as the issue of soda consumption, that impact of consumption

1 of the product, this is a long-term trend. This is not a
2 new trend.

3 The Petitioners raised the subject as if it was
4 something that occurred very recently. It's not a recent
5 occurrence. So, if demand was healthy -- they characterize
6 it as very healthy in the period of investigation. Our
7 figures show that demand was healthy in the period of
8 review. If this has been a long-term trend, the declining
9 consumption of soda in the United States, then clearly that
10 has not had any major impact on consumption in the period of
11 investigation or review. And there's no evidence to
12 indicate that that will have an impact in the future.

13 It seems to me what's past is prologue. We can
14 see for the last nine years that there's been a consistently
15 growing demand for the product in the U.S. market. I think
16 it's a safe assumption, particularly, with where we are
17 economically that that growth will continue.

18 CHAIRMAN BROADBENT: Okay. Mr. Kerwin, can you
19 elaborate on the effects of corn prices on U.S. profits
20 between 2006 and 2013?

21 MR. KERWIN: I'm sorry. Could you repeat the
22 question, please?

23 CHAIRMAN BROADBENT: Sure. Can you discuss the
24 effects of corn prices on U.S. profits between 2006 and
25 2013?

1 MR. KERWIN: I'm glad you asked that question.
2 I'm frankly rather mystified. And I looked long and hard at
3 the trends in corn prices that were shown in the staff
4 report. I looked at the data of the domestic industry in
5 relation to their cost of production and specifically their
6 raw materials costs and there doesn't seem to be any direct
7 connection.

8 And even this morning, the Petitioners'
9 representatives almost said as much, that it is not a direct
10 connection between the price of corn and the price of citric
11 acid. There are a number of factors that come into play
12 there, and in fact, in periods in which I believe early in
13 the period of review as corn price began to take off in that
14 first year, I believe it was 2010, the raw materials costs
15 for the domestic industry actually declined.

16 So, as one of the members of the domestic
17 industry said this morning, if I could predict what future
18 prices will be for corn I wouldn't be sitting here today,
19 and I feel largely the same way. That's clearly one element
20 of it that's you know difficult to handicap as to the
21 future; but even the relationship between corn prices and
22 the domestic industry's raw materials costs is far less than
23 clear to me.

24 I'd be happy to go into more detail in the
25 post-hearing brief, but honestly from my study of it I don't

1 see that there's a direct connection, an immediate
2 connection. Perhaps, over time, perhaps as a lag, but you
3 know I think -- I'd be happy to go into more detail in the
4 brief.

5 CHAIRMAN BROADBENT: That'd be helpful. Thank
6 you.

7 Mr. Kerwin, do you agree that import prices from
8 JBL can be among the highest in the market, but still act as
9 a lid or a cap on U.S. prices?

10 MR. KERWIN: I didn't quite understand that
11 concept of a lid, but what the Petitioners seem to be saying
12 is that it's admitting the point that JBL is the highest
13 priced product in the U.S. market. So, obviously, in any
14 given competitive situation prices can be -- you know any
15 individual producer can meet a request for a quote in a
16 different way.

17 I honestly didn't quite grasp the idea. I don't
18 see why if JBL is consistently at the high end of the market
19 and the three companies are below that, if that's what
20 they're saying, I don't really understand how that acts to
21 keep them from moving their prices up if they are all under
22 that price. I'd be happy to look at the question more
23 within the brief, but frankly, I don't quite grasp the
24 concept.

25 CHAIRMAN BROADBENT: Okay. All right. Thank you

1 very much. Vice Chairman Pinkert.

2 VICE CHAIRMAN PINKERT: Thank you, Madam
3 Chairman. And I join my colleague in thanking you for being
4 here today.

5 I want to begin with a question with a question
6 for Mr. Waite. Are you or have you ever been of the view
7 that this is a commodity product that we're dealing with
8 here?

9 MR. WAITE: I refuse to answer that question on
10 the grounds that it may tend to incriminate me.

11 Seriously, Commissioner Pinkert, it's a good
12 question. In the original investigation, the Commission
13 found this was a commodity product. The evidence in this
14 review indicates that citric acid has the attributes of what
15 the Commission would consider a commodity product.

16 Our position is that a commodity product should
17 not be looked at solely from a point of view that only price
18 drives a customer's purchasing decision. Normally, for a
19 commodity product price is considered the most important
20 consideration. In this case, I think I'll defer to Mr.
21 Kerwin for the numbers because he has them.

22 Purchasers have indicated that other factors are
23 actually more important to them than price when it comes to
24 their purchases of citric acid, factors like availability,
25 reliability, quality.

1 Mr. Rainville has testified, and he'd be happy to
2 amplify on that, the importance of the better, faster,
3 closer, quality approach of JBL in supplying its customers
4 with product. It's not simply the customer is going to buy
5 from the lowest priced source in the market.

6 There are other considerations. I would say
7 among the North American producers from what's on the record
8 in this review that customers would look at those four
9 producers and say they are comparable in terms of their
10 quality. They're comparable in terms of their reputation
11 for availability for supply. Sure, some of the U.S.
12 producers have disruptions and we've talked about those and
13 how that influences some customers.

14 But generally, if I'm looking at those four North
15 American producers, they've met the threshold, perhaps --
16 and the report does not get into this. I'm not sure the
17 Commission needs to get into it either, but perhaps imports
18 from sources like Thailand and Colombia may have attributes
19 about them that would appeal to customers who only consider
20 price, not these other factors; but I'm going to stop there
21 before I get into too much trouble and ask Mr. Kerwin to
22 amplify on that.

23 MR. KERWIN: I don't have the specific numbers in
24 front of me as far as the precise purchase numbers, but we'd
25 be happy to get those to you, but I think it's clear that

1 certain --

2 VICE CHAIRMAN PINKERT: You'll get those in the
3 post-hearing?

4 MR. KERWIN: Yes.

5 VICE CHAIRMAN PINKERT: Okay.

6 MR. KERWIN: We'd be happy to do that. But
7 clearly, price is a concern, but it's not an overriding
8 concern. What JBL's been able to do in the U.S. market is
9 to take care of customer needs, to provide a very high
10 quality product, and to make its sales on the basis of
11 something other than the lowest price, and we'd be happy to
12 give you more details on that in the brief.

13 VICE CHAIRMAN PINKERT: Thank you.

14 Now, another issue that has been raised by the
15 Petitioners is the competition in the Brazilian market, and
16 in particular, the competition with the Chinese product. I
17 wanted to give you an opportunity to respond to what you
18 heard this morning on that issue.

19 MR. WAITE: Thank you, Mr. Vice Chairman. I
20 think Mr. Kerwin will initiate the response, and if I have
21 anything to add I will.

22 MR. KERWIN: First of all, we had some
23 discussions with JBL about just this subject, and some of
24 the details are proprietary and we'd be happy to provide
25 those to you as to how these sales took place and those

1 details are quite different from the characterizations of
2 the Petitioners this morning.

3 What we can say publicly to get at this issue is
4 that I think there's been some overall mischaracterization
5 of what's gone on here. If you look at the Brazilian import
6 figures, it's clear that imports from Canada have not
7 replaced the volumes of imports that were entering Brazil
8 from China. They have not even come close to the peak of
9 volume that was being shipped to Brazil from China.

10 In fact, they're about one-seventh in 2014 of
11 what the maximum volume was -- volume of Chinese product was
12 to Brazil. And even in 2014, the Canadian volumes were far
13 less going into Brazil than what is still entering Brazil
14 from China.

15 Another element of this is that the product
16 that's entering Brazil from Canada represents a relatively
17 minor element of the Brazilian market. It's not really
18 credible that an element of the market that's less than 10
19 percent is really driving all pricing in that market. And
20 again, we can give you the precise figures of the share of
21 the market that Canadian imports hold in Brazil.

22 Another thing that wasn't mentioned by the
23 Petitioners is that Cargill announced in 2014 that it is
24 making a major capital investment to expand its capacity in
25 Brazil to produce citric acid, among other products. These

1 are not the actions of a company that is running scared from
2 imports from Canada that represent less than 10 percent of
3 the market. This is clearly a large and growing market.
4 And in fact, the Brazilian producers cannot meet demand in
5 the Brazilian market. The capacity to produce citric acid
6 in Brazil is lower than consumption of the product and also
7 the Brazilian producers export a significant volume of
8 citric acid from Brazil, so they're not close to meeting
9 demand in this market.

10 Brazil is a market that requires imports. JBL
11 had an opportunity there. We'll go into more detail as to
12 how that opportunity came to pass, but the characterization
13 that somehow JBL is now driving pricing in the Brazilian
14 market is not tenable.

15 MR. KERWIN: One other thing I'd mention.
16 Apparently, there's also a 12 percent import tariff on
17 imports of citric acid into the Brazilian market, which
18 applies to imports from Canada and obviously does not apply
19 to domestically-produced products. So, even just the basic
20 import tariff itself is rather sizable.

21 VICE CHAIRMAN PINKERT: Can you respond
22 specifically to the suggestion that JBL may be underselling
23 the Chinese product in that market?

24 MR. KERWIN: Well, I think we heard this morning
25 that -- and we haven't digested all the facts as to how the

1 Brazilian dumping system works, but it sounds like what
2 they're saying is that the current price on imports from
3 China into Brazil is some kind of constructed price, which
4 frankly sounds, to my ears, since we don't do it -- you know
5 don't have a system that works this way in our country it
6 sounds like some kind of an artificially constructed price.

7 And to the extent that that's not a market price,
8 but an artificially constructed price that it's perhaps not
9 surprising that the prevailing market prices within Brazil
10 would be below that price that's being imposed by the
11 Brazilian government, but we can give you more detail on
12 that in the response in our post-hearing brief.

13 MR. WAITE: And we will do that Mr. Vice
14 Chairman.

15 VICE CHAIRMAN PINKERT: Thank you.

16 Finally, is the U.S. market more attractive to
17 JBL than JBL's other export markets?

18 MR. WAITE: It's Fred Waite. Let me take the
19 first stab at that even though I'm not in the marketing
20 department of JBL.

21 VICE CHAIRMAN PINKERT: We'll probably have to
22 stop after the first stab and then we can come back to it
23 later, but go ahead.

24 MR. WAITE: Thank you, sir. Perhaps the way to
25 answer that question is that as a North American producer,

1 JBL Canada obviously looks at the market to North America.
2 And if you'd like, Ms. Grant can explain more fully why, in
3 fact, JBL situated its plant in Port Colborne, Ontario when
4 it decided to construct a plant in North America.

5 And it did so, as you've heard from the industry
6 witnesses, because North America is one of the largest
7 markets for citric acid in the world. And of course, the
8 United States comprises the vast majority of that market.
9 There are other markets that JBL Canada has been selling to,
10 and I need to be very careful here because much of it is
11 proprietary. We've already given the Commission some
12 information on that. I think what you're asking for is
13 perhaps more specific information on quantities and values
14 so we can derive unit values of some of those other markets
15 that JBL Canada serves. And those other markets are
16 important.

17 There's no denying that the United States market
18 is the most important because we are the largest market here
19 in the United States, but perhaps in the post-hearing we
20 could get a more fully response to your question.

21 VICE CHAIRMAN PINKERT: That would be very
22 helpful. Thank you very much.

23 COMMISSIONER WILLIAMSON: Thank you much. And I
24 want to thank the witnesses for their testimony this
25 morning.

1 Since that was one of my questions, I don't know
2 if Ms. Grant or Mr. Rainville want to add something on this
3 because you're the ones that are selling to the U.S. market.
4 How do you view the U.S. market compared to other markets?

5 MR. RAINVILLE: This is Mr. Rainville.

6 I would reiterate what Mr. Waite said about
7 Jungbunzlauer and what I testified, Jungbunzlauer built our
8 plant in North America for the purpose of servicing North
9 America, including Canada, including Mexico. So, we look at
10 this entire market from this plant location.

11 COMMISSIONER WILLIAMSON: And NAFTA had something
12 to do with why you might want to do that.

13 MR. RAINVILLE: NAFTA at the time had something
14 to do with that.

15 COMMISSIOENR WILLIAMSON: I used to write
16 articles to that affect.

17 MR. RAINVILLE: With that being said, this
18 morning I also heard that if the order was dropped on Canada
19 then we would flood the market -- maybe that wasn't the
20 exact word used, but that's what came across to me to the
21 U.S. market. This approach simply would not be true. It's
22 not in the history of Jungbunzlauer, and now with the
23 changed order wouldn't be the new history of Jungbunzlauer.

24 We currently have significant volumes selling
25 into the U.S. market. If we were to bring volumes that

1 distorted the balance of demand and supply, we would
2 deteriorate the price ourselves, a price that we also
3 benefit from maintaining at the highest possible level so
4 that Jungbunzlauer is profitable. So, to ruin relationships
5 in other markets for the sake of bringing material into the
6 United States because today the price is higher when, in
7 fact, that would hurt our own business doesn't pass Business
8 101 to myself.

9 COMMISSIONER WILLIAMSON: But you would want your
10 fair share, whatever that is.

11 MR. RAINVILLE: We have our fair share today.
12 We've been in this market since the seventies. In fact, I
13 heard this morning that ADM started their plant in 1990 and
14 Tate & Lyle started in 1998. Jungbunzlauer has been in
15 this market before this, acting appropriately, depending on
16 the market size. And in this regard, I don't see how this
17 will change our attitude towards this market pre- or post
18 today, with or without the order.

19 We have a very structured approach. We are a
20 family-owned business that's in business to service our
21 customers, provide reliable service, quality material on
22 time, but we expect to make a profit so that we can sustain
23 our business and be there for our customers in the future.

24 COMMISSIONER WILLIAMSON: Okay. Thank you.

25 I have a question on the concept of the premium

1 product. And I note that JBL only provides ^^^^ you're
2 saying you only provide food grades. And I'm looking at the
3 staff Table 4-3. It looks like the product does go to other
4 -- it goes to other than food processing. Is the fact that
5 the difference between what it costs to make the food grade
6 over say industrial grade are the efficiency and the fact
7 that it doesn't really matter -- that you just make food
8 grade and you sell it to whoever wants it?

9 MS. GRANT: It's Sharon Grant.

10 We only know how to make one product and that's
11 food grade. What the cost would be to not make food grade I
12 don't know, but we know how to do one thing, and that's the
13 only way we're going to do it.

14 COMMISSIONER WILLIAMSON: Okay. But if a
15 customer is going to do it in an industrial use, you're not
16 going to complain.

17 MS. GRANT: That's their choice. I mean the
18 pricing -- what the price is it's up to the customer to
19 decide how they're going to use it, but the product is all
20 food grade.

21 COMMISSIONER WILLIAMSON: Does that mean that
22 basically the customers -- you say industrial use customers
23 would not be actually coming to the market looking for an
24 industrial-grade product or something like that? Is there
25 that much difference in the products?

1 MR. RAINVILLE: This is Dan Rainville.

2 I think the volumes themselves that are purchased
3 by the customers outweigh the industry that they're in. So,
4 a large customer in the industrial market will have more
5 buying power than a smaller customer in the food and
6 beverage market, for example. So, as a result, there is
7 some difference over the wide span of the various markets,
8 as well as price, but it's quite small and it can be
9 outweighed by the volumes the individual customer may be
10 contracting for.

11 COMMISSIONER WILLIAMSON: Okay. Let me come at
12 this way, and Mr. Waite, you may have something to say about
13 this. Mr. Waite, I think you've indicated that we should
14 disregard pricing comparisons involving China because these
15 prices represent such a small share of imports from China.
16 And our pre-hearing staff report on page V-7 and 8 states
17 that the pricing data accounts for 95.2 percent of the
18 shipments from China, and do you agree with this report --
19 the staff report?

20 MR. WAITE: Again, it's Fred Waite.

21 Commissioner Williamson, I agreed with the staff
22 report. I don't think that it disagrees with my earlier
23 comment. I don't think that refutes it. What the staff
24 report is saying that of the just over 6 percent of total
25 Chinese imports during the period of review that are

1 represented by the responses from importers that you
2 received of those responses 92 percent was it, sir?

3 COMMISSIONER WILLIAMSON: 95.2, yes.

4 MR. WAITE: 95.2 are in the pricing product, so
5 you multiple 95.2 percent by 6.7 percent, which is the
6 portion of the total universe of Chinese imports and you
7 wind up with the pricing products representing about 6
8 percent of total Chinese imports during the period of
9 review.

10 On the other hand, if you look at the data from
11 Canada, the percentage of total imports from Canada that are
12 represented by the pricing product is very, very different.
13 Again, that's confidential. The percentage of imports
14 represented -- I'm sorry -- the percentage of shipments
15 represented in the pricing product data of the U.S.
16 industry, which is also confidential, is a very different
17 number from the Chinese number.

18 So, what I would say is looking at the pricing
19 data, in my judgment, the Chinese data has virtually no
20 probative value because it is such a small sliver and the
21 data comes from, let me say, a limited number of
22 respondents. So, what that respondent was importing may
23 influence what the values were, whereas the U.S. and the
24 Canada data I believe are much more representative; but even
25 there there are differing trends -- I think that's the term

1 we're using -- among the U.S. industry, which are surprising
2 and I think warrant further investigation.

3 Again, we cannot talk about those in the public
4 session, but we will raise those in our post-conference,
5 pointing out exactly what we're talking about because when
6 you got the pricing data, as you know, it can either just be
7 a sliver of the industry, in which case it may have no
8 representative value at all or it may be a significant part
9 of an industry's shipments into the U.S. market during the
10 period of review. In which case, it would have far more
11 probative value. And what we think is you need to look at
12 the pricing data from that perspective.

13 I would also suggest that the pricing data be
14 looked at, not simply in comparing temporal quarters,
15 calendar quarters of overselling and underselling, but where
16 are the volumes of sales by the market participants. For
17 example, this morning I believe it was Mr. Anderson was
18 talking about one of the confidential exhibits that the
19 Petitioners presented at the hearing as representing this is
20 where the industry is, Pricing Product 1A and 1B.

21 We respectfully disagree. You need to look at
22 the volumes of Pricing Products 2A and 2B and 3A and 3B and
23 see where the bulk of the U.S. industry is, where the bulk
24 of Canadian imports are, and where the overselling is; what
25 do those overselling numbers look like? For example, on a

1 calendar basis, Canadian -- and again, it's all
2 confidential, so let me just use a theoretical.

3 Canada is overselling/underselling 50 percent of
4 the time. When you look at the volumes it may be that
5 Canada is overselling 80 percent of the time. Now, is that
6 more significant, that Canada is dealing with those volumes?
7 And I suppose underscoring all of this is the domestic
8 industry's acknowledgement that their business is in the
9 contract side of the market. They want to make contract
10 sales.

11 And actually, in the public staff report you can
12 see virtually all of the domestic industry sales are either
13 annual contracts or longer term, more than one year
14 contracts. That's where their meat and potatoes, bread and
15 butter are located.

16 One would think if you looked at that side of the
17 market, contract sales where the domestic industry is
18 present, that would give you the best indication of what
19 competition is looking like between Canada and the United
20 States. We will address this more fully in our post-hearing
21 brief.

22 COMMISSIONER WILLIAMSON: And I want to come back
23 to it because that gets to the question of -- there was
24 quite a bit of discussion this morning about how -- yes,
25 sort of increased sales might impact on contract price

1 sales. And I also wanted to link what you just said to what
2 the AUV data shows and do we bring that in somehow.

3 MR. WAITE: Thank you.

4 COMMISSIONER WILLIAMSON: But thank you.

5 CHAIRMAN BROADBENT: Mr. Johanson.

6 COMMISSIONER JOHANSON: Thank you, Chairman
7 Broadbent. And I would also like to thank the witnesses for
8 appearing here today. And I thank you Ms. Grant for coming
9 all the way down from Canada.

10 This first question is directed to counsel. Are
11 there any Commission investigations to which you can point
12 either today or in your post-hearing submission that you
13 think supports your argument that the Commission should
14 decline to cumulate subject imports from China and Canada.
15 Once again, you'd raise as factors we should consider
16 differing volume trends, differing capacity, and a few other
17 matters; but if you could discuss this I would appreciate
18 it.

19 MR. WAITE: We will address that in our
20 post-hearing brief, Commissioner. For the purpose of the
21 hearing, let me say that we'd be delighted to provide
22 examples even though we understand that when the Commission
23 looks at a review or an investigation it's on the facts of
24 that specific proceeding, but we do believe that there may
25 be some instructive examples from other cases and we'd be

1 happy to provide those. And I think that the most efficient
2 way of doing that is probably in our post-hearing.

3 COMMISSIONER JOHANSON: All right. I look
4 forward to seeing that.

5 The domestic industry this morning pointed out
6 that the U.S. market is highly attractive to JBL, given the
7 U.S. market's size and proximity to Canada, and that the
8 prevailing prices in the United States are higher than those
9 in other markets. Given the attractiveness of the U.S.
10 market, why wouldn't there be a significant increase in
11 imports from Canada in the event of revocation, especially,
12 when one takes into consideration what are projected by the
13 Department of Commerce as being relatively high margins. I
14 believe they're in the 20 percent range.

15 MR. WAITE: Commissioner Johanson, it's Fred
16 Waite again. Again, let me start. I don't know if Mr.
17 Kerwin would like to address some of the aspects of that.

18 We must, as a matter of law, accept the Commerce
19 Department's final results, even though we think they are
20 artificial and bear no relation to reality. I mean that was
21 the margin they found in the original investigation, and by
22 that methodology the Commerce Department would never find
23 that if an order were revoked there would not be a dumping
24 margin. And usually at the same margin as the original
25 investigation, but what we've shown, of course, in four

1 subsequent reviews and we expect in the fifth that the
2 actual margins are very small and perhaps even zero.

3 I would answer the question by posing one in
4 return, and that is, given that JBL Canada is selling
5 significant quantities into the U.S. market at prices higher
6 than the other market participants why isn't it selling
7 more? It's shown the ability to do that. Why is it selling
8 to other markets that may have lower prices? And I think
9 the answer to that is that suppliers want to have a diverse
10 customer base just like purchasers want to have multiple
11 suppliers. And to put all of one's eggs in one basket is
12 probably not the best business plan that one could adopt.

13 I think what you see here is a company that's
14 very nimble, very flexible, that has established customer
15 relationships that are very important to it, that have
16 survived the dumping order. It has stayed in the market in
17 a major way. It is competing successfully in the market and
18 selling at prices that enable it to maintain market share,
19 but at the same time not at dumped prices, or at least not
20 at prices that anyone with an economics degree would say
21 were at all meaningful.

22 I don't know, Mike, if you have anything further
23 on that?

24 MR. KERWIN: I'd like to add a couple points.
25 First of all, as we showed in our Exhibit 7, the current

1 volume of capacity overhang that JBL Canada is relatively
2 small compared to the volume of exports that they are
3 already shipping to the United States and that data's based
4 on the 2014 numbers that were submitted. So, as you can see
5 from those bars there, if the amount that's already coming
6 to the market exceeds what's available, capacity-wise, then
7 that volume of exports couldn't increase significantly. The
8 volume is already there, so in contrast, the capacity isn't
9 there to increase the shipments.

10 If JBL were to redirect exports from other
11 markets, on Commerce's assumption that you know that they
12 would do so on a 21 percent dumping basis, as Fred just
13 discussed, we think that's an artificial construct, but
14 hypothetically, if they did that they would ruin whatever
15 pricing advantage was here in the U.S. market anyway, so why
16 would they then want to pull the product back to the United
17 States if they had to sell it here at a lower price?

18 They don't want to do that. They're profit
19 oriented. They want to make a return on their investment.
20 They don't want to destroy pricing in the United States.
21 They would like to keep it high, just like the domestic
22 producers would; but in the meantime they'd like to make
23 sales to Latin America, to the Western Hemisphere, which was
24 the point of the Canadian facility when it was built.

25 And as we heard this morning and this afternoon,

1 many of these commitments to purchasers are ongoing
2 commitments. You don't make a commitment to a customer that
3 you want to pull back the volume on a short-term basis.
4 It's clear that JBL has made a major commitment to the Latin
5 American market, establishing a Mexican sales office, and
6 increasing its sales there. We've also got materials that
7 indicate that the growth in the Latin American market will
8 exceed that in the U.S. market. So, they want to build
9 those relationships, not destroy them and pull the product
10 back to the United States.

11 COMMISSIONER JOHANSON: Thank you for your
12 responses. And Mr. Waite, I know that we do not look behind
13 the numbers that Commerce gives to us, but do you happen to
14 know how often Commerce margins differ in original -- in
15 five-year review investigations as opposed to original
16 investigations?

17 MR. WAITE: Thank you, Commissioner Johanson. I
18 think the short answer is not often. We could look at that
19 representatively. I think perhaps an equally interesting
20 question might be how many times has Commerce made a
21 negative determination in a review where the domestic
22 industry did not either fail to participate or indicate that
23 it didn't have any further interest in the order.

24 I'm not criticizing your sisters and brethren at
25 the Commerce Department. They do a fine job. They work

1 very hard, but they have their methodologies and they follow
2 those methodologies. As Mr. Kerwin pointed out, even if you
3 accept that the margin would be 23 percent on JBL after an
4 order were revoked, and we don't accept that, but even if
5 one were to assume that, again, why would JBL come into the
6 U.S. market, damage the market where they're doing very well
7 at the moment as the highest price supplier to get perhaps a
8 couple more pounds at a lower price and have a lower return
9 and alienate long-term relationships and new opportunities
10 in other markets?

11 COMMISSIONER JOHANSON: All right. I'd
12 appreciate hearing on that. I don't want you to put a lot
13 of effort into it because I don't know if that's really
14 relevant to what we're doing here, but I do know the process
15 there is quite different in sunset reviews than what we have
16 here at the Commission.

17 MR. WAITE: We will do it because -- I won't do
18 it. One of my associates will.

19 COMMISSIONER JOHANSON: Okay, well, lucky
20 associate. He or she will get to learn something new.

21 I only have about 45 seconds left. I have a few
22 questions, so let me hold off until the next round, but
23 thank you for the responses you gave during this round.

24 CHAIRMAN BROADBENT: Commissioner Schmidtlein?

25 COMMISSIONER SCHMIDTLEIN: Oh thank you, all

1 right so I wanted to follow up on this line of questions
2 about isn't there an incentive to bring more product to the
3 United States since the United States prices are higher than
4 other export markets as least according to the data we have
5 on the record. And I have heard you say well that doesn't
6 make sense because if we bring more product that is going to
7 bring the price down here in the United States and I guess
8 the question that comes to my mind is wouldn't that be worth
9 it though if the price here in the U.S. is still higher than
10 the other export markets?

11 So yes more product more volume may lower the
12 price here but that's worth it to JBL if you are still
13 getting a higher price than you would in these other markets
14 and if you look at the data you know outside of the European
15 Union which I assume you know you have Austria supplying the
16 European Union anyway, those differences are not
17 insignificant in the export prices that JBL is getting here
18 in the U.S.

19 Even compared to what you are getting in Canada
20 if you look at the unit values so you know why wouldn't you
21 do that if the price was still higher than what you could
22 get elsewhere?

23 MR. RAINVILLE: Dan Rainville. First we wouldn't
24 look at it isolated and just the additional volumes but any
25 deterioration in market price would affect all of our

1 volumes so you multiple the result across our entire
2 imports and not just the additional -- the incremental
3 increase in imports, as well as we run at a high production
4 rate today and we are selling those volumes across North
5 America and South America so that means we would have to
6 pull those volumes away from the existing customer in a
7 different market, a market that we worked to grow with and
8 it's just not the philosophy or the approach of
9 Jungbunzlauer.

10 We grow with the size of the market based on
11 customer demand and based on market demand and we strive to
12 make a profit on everything we still being in the private
13 ownership that we are in.

14 COMMISSIONER SCHMIDTLEIN: So is it -- oh go
15 ahead.

16 MR. WAITE: I'm sorry Commissioner Schmidtlein.
17 Perhaps it would help if we provide you in our post-hearing
18 because it is confidential the current capacity utilization
19 rate of JBL Canada because that I think will give context to
20 what Mr. Rainville has just said and what Mr. Kerwin said
21 earlier in terms of where would that tonnage come from and
22 as well as what the impact on the market would be.

23 But more where would the tonnage come from and I
24 think if we provided you with that information and you could
25 see what is actually available that may go a long way to

1 answering your question and perhaps you know filling in any
2 gaps that exist in the Commission's knowledge of JBL's
3 operations.

4 COMMISSIONER SCHMIDTLEIN: Okay that would be
5 great thank you very much. So as a practical matter it
6 makes it sound like JBL you have these existing customers in
7 the United States, I know you sell some on the spot market,
8 some contract right that you want to maintain those
9 customers, increasing the volume here in the United States
10 from JBL would potentially hurt your price, bring it down so
11 it sort of leads you to -- it sounds like you are not
12 competing for new customers in the United States market as
13 of today?

14 You are not trying to increase your sales as of
15 now, is that right? Is that actually true? You don't go
16 out and compete for other customers that ADM, Cargill or --

17 MR. RAINVILLE: We do compete with ADM, Cargill
18 and Tate & Lyle.

19 COMMISSIONER SCHMIDTLEIN: Tate & Lyle.

20 MR. RAINVILLE: And we do pursue new customers
21 but overall our customer base is fairly stable, year over
22 year. I think on the competing on the long-term or full
23 year contracts industry-wide, we do compete with the U.S.
24 producers in this regard. I don't believe our urgency to
25 achieve those contracts is as great as the Petitioners and

1 we would walk away from those agreements if the price falls
2 below acceptable levels for us.

3 If we participate more in the spot market as a
4 result of that -- so as a result coming back to we do
5 maintain a steady customer base, we absolutely bid on new
6 business every year but the percentage of change in customer
7 base from year to year is quite small for us.

8 COMMISSIONER SCHMIDTLEIN: All right thank you.
9 Let me switch gears a little bit and ask Mr. Waite, I wanted
10 to talk a little bit about this notion of they are going to
11 compete under different conditions of competition so we have
12 done a few sunset reviews since I have gotten here but not
13 too many so I want to understand more in terms of your
14 argument that the price trends and the volume trends show a
15 different condition of competition and I guess you know --
16 and I understand the third country obstacles you know,
17 potential other barriers, the capacity that seems fairly
18 straightforward to me in terms of those elements actually
19 being conditions of competition.

20 But when it comes to just volume and just price I
21 mean I looked at that as well you look at that to
22 extrapolate from that the behavior of that actor in the
23 market to show that it's subject to some other different
24 condition and that's reflected in this trend. Do you see
25 what I'm saying? And when I read your brief it looked like

1 you were saying well the prices are different, you know the
2 trend is different, the volume trend is different and
3 therefore it is a different condition of competition.

4 I just wondered if maybe you could expand on that
5 a little more because I wouldn't consider just that to be a
6 condition of competition, I mean it might be evidence that
7 they are reacting to some other market dynamic or structure
8 that is but just those numbers in and of themselves isn't
9 really a condition of competition right?

10 MR. WAITE: Well we see Canada and China
11 competing differently in the market. I think that is a
12 given, reviewing the volume and price data in the record.
13 And the question is why are they competing differently and
14 that we believe is because Canada for the reasons that Mr.
15 Rainville has already articulated has a view of the market
16 and participation in the market, a philosophy if you will,
17 an appreciation and appraisal of the market that is very
18 different from China.

19 And I guess from a legal point of view that we
20 believe that the evidence shows the differences -- the
21 differences in competition. To explain what gave rise to
22 those differences is perhaps what you are inquiring about.
23 What are the conditions of competition that are different
24 and I believe that the differences are in large measure how
25 the market participants appreciate and react to the market.

1 COMMISSIONER SCHMIDTLEIN: I mean I think that's
2 probably what I'm getting at and I wonder does JBL, this
3 would also obviously be for post hearing on a confidential
4 basis but do you have business plans or something else like
5 that that reflects this well we want to be in U.S. market to
6 this extent and we want to maintain our price here, we are
7 trying to grow these other markets that you know -- I mean
8 this is harkening back with the case I mentioned this
9 morning it was a similar situation although as Mr. John has
10 pointed out there were some differences in the facts there
11 in terms of the relationship between that single producer in
12 Brazil and what they had here.

13 And I understand the cases are all decided on
14 their own facts but in that case we did as for okay you are
15 telling us you have a different focus, this is your focus,
16 this is why it wouldn't increase and we ask for you know
17 actual documents to back that up and not just to take your
18 word for it because this is how the price and the volume
19 trends are looking.

20 MR. WAITE: I see where you are going and I think
21 we would have to defer our response to post-hearing simply
22 because it's getting into obviously very confidential
23 information about the company. Being the sole producer and
24 supplier for a country does constrain all of us in what we
25 can say publicly.

1 COMMISSIONER SCHMIDTLEIN: Right, right.

2 MR. WAITE: Like --

3 COMMISSIONER SCHMIDTLEIN: If there is any of
4 that that would be helpful.

5 MR. WAITE: We will address that, yes we will.

6 MR. KERWIN: Commissioner if I can follow on to
7 what Fred said, I think one of the most significant
8 distinctions in the true conditions of competition between
9 the Canadian industry and the Chinese industry is the
10 structure of the two industries. The Canadian industry is a
11 single entity.

12 This Canadian industry because it is a single
13 entity can take actions and essentially speaks for the
14 entirety of shipments from Canada to the United States. In
15 the instance of China we have at least 20 producers and as
16 we often see in many cases, those producers are competing
17 with each other and then bring that competition in to the
18 United States, that's what happened at the time of the
19 investigation -- that's what we think would happen at the
20 time if the order was taken away on China.

21 And that's a fundamental distinction between the
22 two industries and what would occur in terms of competition
23 that JBL can make up its own mind as to how it wants to
24 price its product from Canada, whereas when you have 20
25 suppliers of the product from China, each in competition

1 with each other, you get into the not difficult to imagine
2 situation of having those multiple suppliers from China
3 driving down the price in the United States which would not
4 be the case with JBL.

5 COMMISSIONER SCHMIDTLEIN: Can I ask just one
6 quick follow-up. So in terms of JBL who makes those
7 decisions for -- in terms of how much comes to the U.S. how
8 much is going to the other markets, you said there is a
9 sales office going to open in Mexico, are you making those
10 decisions Mr. Rainville or is it Basel making those
11 decisions?

12 MR. RAINVILLE: Correct it is Basel it's not
13 myself.

14 COMMISSIONER SCHMIDTLEIN: Somebody in
15 Switzerland, okay.

16 MR. RAINVILLE: Someone in Switzerland decides.

17 COMMISSIONER SCHMIDTLEIN: All right thank you.

18 CHAIRMAN BROADBENT: Okay I had a couple of
19 questions about your export -- your other export markets.
20 Mr. Rainville what are market prices -- how do market prices
21 in Mexico compare to those in the United States?

22 MR. WAITE: Madam Chairman I think we would like
23 to defer that to the post-hearing not only is it
24 confidential but as Mr. Rainville I believe mentioned JBL
25 has established an office -- a sales office in Mexico

1 City --

2 CHAIRMAN BROADBENT: Right.

3 MR. WAITE: Which handles JBL Canada's and all
4 the JBL's products in Mexico as well as the rest of Latin
5 America so we will obtain that information but Mr. Rainville
6 would not necessarily be familiar with it here today.

7 MR. RAINVILLE: Which was going to be my comment,
8 as much as I wouldn't mind telling you, I know it's
9 confidential but I also am not privy to those exact numbers.

10 CHAIRMAN BROADBENT: Okay all right. What is the
11 effect of India's global safeguard on JBL Canada's ability
12 to export to India? Are you prohibited or not interested or
13 what is going on in your export sales to India?

14 MR. WAITE: My industry colleagues are
15 conferring. Sales operations in India are handled I believe
16 out of the Basel office. They also have an office in
17 Singapore for South and East Asia so again we would have to
18 inquire from Basel whether that would have any effect and if
19 you wish we can also provide you with any information on
20 JBL's shipments to India from either Canada or Pernhofen in
21 Austria if that would be of interest?

22 CHAIRMAN BROADBENT: I am sort of interested in
23 how it sets up its safeguards that would be interesting to
24 me. Mr. Waite you state on pages 28 and 29 of your
25 pre-hearing brief that your export relationships make

1 shifting sales from other export markets to the United
2 States difficult. To what extent are your exports in other
3 market contract -- in other markets are they contract or are
4 they spot sales and if these are contract sales how long are
5 these contracts?

6 MR. WAITE: I think that the best way to respond
7 to that is to provide in our post-hearing brief information
8 about you are asking about spot sales versus contract sales?

9 CHAIRMAN BROADBENT: How much is, yeah.

10 MR. WAITE: Percentages, quantities in various
11 markets. Are there any specific markets that you are
12 interested in or generally Mexico, Latin America, Asia?

13 CHAIRMAN BROADBENT: A general sense of how much
14 globally is contract --

15 MR. WAITE: How other markets purchase?

16 CHAIRMAN BROADBENT: Right.

17 MR. WAITE: Citric acid, whether it mirrors the
18 spot and contract sales pattern that we have here in the
19 United States, we can certainly find that out for you.

20 CHAIRMAN BROADBENT: And post-hearing is totally
21 fine.

22 MR. WAITE: And once again Mr. Rainville is
23 responsible for sales in the United States and Canada.

24 CHAIRMAN BROADBENT: Right.

25 MR. WAITE: But his knowledge of the rest of the

1 world is circumscribed because there are other JBL offices
2 that handle sales in those areas.

3 CHAIRMAN BROADBENT: Understood, thank you. I
4 think that concludes my questions. Vice Chairman Pinkert I
5 will put you on the spot a little bit.

6 VICE CHAIRMAN PINKERT: It's quite all right
7 thank you. You heard this morning the characterization of
8 the domestic industry and the domestic purchasers as both
9 highly concentrated, oligopoly would you agree with that
10 characterization and if so what does that tell you about the
11 impact of external shocks on this market?

12 MR. KERWIN: I'll take the first crack at it. I
13 guess a thought that occurred to me is that characterization
14 this morning was that the purchasers had all the power in
15 the market and yet there were more major purchasers of
16 citric acid in the United States than there are producers of
17 the product so I don't know that that's the case -- I think
18 it's a two-way street in any market such as this would be a
19 good deal of negotiation but I don't think that the
20 purchasers are calling the shots and I know for a fact that
21 JBL provided us a very interesting example which we could go
22 into in the post-hearing brief as to how it walked away from
23 a business with a specific customer when the demands of that
24 customer became overwhelming.

25 So we would be happy to provide that but I mean I

1 think that the structure of the industry as far as the
2 producers and the purchasers is not radically different and
3 there are certainly key players with a lot of -- you know
4 that account for a significant portion of both the supply
5 and the demand so I think they are largely comparable.

6 MR. WAITE: And Mr. Vice Chairman if I could just
7 add something. There is a concentration of purchasers
8 that's a given it was found in the original investigation
9 and again in the pre-hearing staff reporting in this review.
10 I don't recall whether the numbers were confidential but
11 let's just say a handful of customers represented a
12 significant percentage of purchases.

13 But there is a also a significant percentage of
14 purchases equivalent to those controlled by those handful of
15 customers that go to other customers in the market and I
16 believe in the original investigation the number of
17 customers was roughly quantified as about 200, about 200
18 significant purchasers in the United States.

19 So there is obviously a very large part of the
20 market that is not controlled by the 7 largest purchasers
21 and that's something that may ameliorate perhaps the impact
22 that you were discussing in your question.

23 VICE CHAIRMAN PINKERT: Thank you. What is your
24 take on the domestic industry's argument at pages 45 and 46
25 of its brief that increasing imports from China into Canada

1 increased the pressure on JBL to export to the United
2 States?

3 MR. WAITE: Mr. Vice Chairman it's Fred Waite
4 again. As we pointed out in our brief and we can provide
5 the actual statistics, JBL's shipments into Canada during
6 the POR increased I'll say it out loud, they actually
7 increased over the period of review.

8 So obviously JBL is not being pushed out of the
9 market and the pricing again I think we have if you want
10 information on the pricing we will have to defer that to the
11 post-hearing I apologize but I think that just gets into
12 areas that are too sensitive for the company.

13 But to respond to Petitioner's argument JBL is
14 still in the Canadian market, has been will be growing
15 market. The Canadian market I understand is a little bit
16 different in its structure than the U.S. market where the
17 oil field portion of the market is a larger segment
18 percentage-wise than in the United States which perhaps
19 makes sense when you look at the oil extraction in the
20 provinces, thank you.

21 So and as you heard both Ms. Grant and Mr.
22 Rainville testify JBL makes only food grade, that's the
23 focus of its sales into the food and beverage portion of the
24 market so the industrial portion is something that they do
25 sell into but that's not a focus for them either in the

1 United States or in Canada although as I said they do sell
2 into that portion of the market but their bread and butter
3 is food and beverage.

4 MR. RAINVILLE: This is Dan Rainville. To Mr.
5 Waite's comments I don't want to imply that we sell to the
6 oil sands industry in Canada because we do not mainly
7 because of the pricing that they demand and obtain from
8 Chinese imports.

9 VICE CHAIRMAN PINKERT: Thank you, now I don't
10 want you to get into proprietary information here. My
11 question is going to be more on a conceptual level. When we
12 were discussing price leadership in the U.S. market with the
13 earlier panel, the point was made that being a price leader
14 can mean different things in different context and that we
15 should not assume that any time a Respondent to a
16 questionnaire says the price leader is the U.S. industry
17 that that means the U.S. industry is leading the prices
18 down.

19 It could be that they are leading the prices up,
20 is that your understanding of the situation or do you think
21 that there is something more definitive that could be said
22 about price leadership in the U.S. market?

23 MR. WAITE: Mr. Vice Chairman it's Fred Waite.
24 Let me start off by answering your conceptual question and
25 maybe Mr. Rainville could talk about actual circumstances in

1 the market as he sees what participants may be leading the
2 prices in one direction or another if he is comfortable
3 doing that. I do agree with Petitioner's counsel that the
4 question on price leadership is somewhat ambiguous. It
5 simply asks purchasers who are the price leaders, you can
6 lead up and you can lead down.

7 My impression and it's only that would be that
8 most purchasers would be focused on who is leading the
9 prices down, you know who do I go to if I need to get a good
10 price but again that's an impression I think the question is
11 is somewhat ambiguous.

12 I think what is not ambiguous however are the other data on
13 the record that shows who is selling at a higher price and
14 who is selling at lower prices and again we have addressed
15 that in our pre-hearing brief, we will address it again in
16 our post-hearing to really refine that issue as to who is
17 leading the market in various directions and whether or not
18 there are different trends within the domestic industry in
19 that particular factor of price leadership.

20 MR. RAINVILLE: This is Dan Rainville. I did
21 hear this morning, at least I thought I heard, that in the
22 domestic producer's opinion Jungbunzlauer always sets the
23 price in the United States and then the domestics follow. I
24 find this hard to believe that less than 15% of the market
25 would be with an importer with an order against them and we

1 are the ones setting the price in the U.S. market.

2 I really believe in this case Jungbunzlauer
3 reacts to our own cost and we set our price and typically
4 this ends up as being one of the higher prices or the higher
5 price of the market but I see it much more as a follower to
6 this market than the leader of this market in the way of
7 pricing.

8 VICE CHAIRMAN PINKERT: Thank you as suggested by
9 your answer Mr. Waite I am hoping that in the post-hearing
10 you can get into some detail about the impact of
11 intra-industry competition in the United States on pricing.

12 MR. WAITE: We shall do that Vice Chairman.

13 VICE CHAIRMAN PINKERT: Thank you, thank you
14 Madam Chairman.

15 CHAIRMAN BROADBENT: Commissioner Williamson?

16 COMMISSIONER WILLIAMSON: Thank you and I am
17 looking for the same thing and let me just throw out some
18 things since the pricing data and all of this business is
19 proprietary I'm just going to raise some questions and want
20 you to take a look at it post-hearing and see what
21 explanation you can give us and this gets to this question
22 again JBL's role in the U.S. market is that a role of being
23 a premium supplier.

24 And also the question I raise that I want to go
25 back to the difference between spot and contract sales and

1 the pricing there, how they interact. And so I want you to
2 take a look at the pricing table, the difference -- the
3 tables on the spot and the contract price, what the actual
4 prices -- what do they show and what the differences in
5 those prices and who's underselling and overselling and see
6 if you can explain to me -- tell me what you think it says
7 about the role of JBL.

8 And I invite the Petitioners to do the same
9 thing. I have some theories but it is -- I mean I can't
10 really discuss it here but I would like to see what you all
11 think of that.

12 MR. WAITE: We shall do that Commissioner.

13 COMMISSIONER WILLIAMSON: Okay and then this and
14 does that say anything about -- the domestic industry this
15 morning made the argument that the spot price you know, if
16 orders were lifted because the immediate impact I guess
17 would be on the spot market prices and that would then
18 translate into an impact on the long-term contract prices
19 and I would be curious to hear what you think of those
20 arguments, do you share those or not?

21 And if you want to address that post-hearing in
22 line with the other question because some folks are more in
23 the spot market than others.

24 MR. WAITE: I think in order to fully answer your
25 question Commissioner Williamson it would probably be better

1 in the post-hearing. I'm struggling to see if we can say
2 anything generically in the public session that might help
3 in that and I'm --

4 COMMISSIONER WILLIAMSON: Post-hearing will be
5 fine.

6 MR. WAITE: Okay, thank you.

7 COMMISSIONER WILLIAMSON: Because it is -- I
8 think it's a fascinating dynamic and you know some people
9 might be making more money by selling only in the spot
10 market and some might make more money selling -- there are
11 differences in selling patterns, entirely different firms.

12 So I will look forward to that. This morning the
13 domestic industry testified there was a fair amount of
14 flexibility in long-term contracts that they offered and
15 that they offered it just to changing market conditions and
16 I was also wondering if you had any comments on that if your
17 experience of long term contracts has been similar.

18 MR. RAINVILLE: Our experience and my experience
19 at Jungbunzlauer we have had very few occasions when a
20 contract customer would come to us during mid-time of the
21 contract and request a price adjustment. The few that have
22 occurred we do not react to this and the immediate is our
23 standard approach. We have even walked away from existing
24 contracts because the customer insists along the change of
25 price due to market conditions and we are open for

1 negotiation and discussion as it leads to the following year
2 but never -- very rarely or never within the existing
3 contract period.

4 We believe a contract is a contract and both
5 parties should live by it.

6 COMMISSIONER WILLIAMSON: Okay, no matter how big
7 you are?

8 MR. RAINVILLE: No matter how big you are and we
9 do have experience of walking away from such contracts, no
10 matter how big you are because again dealing to sell our
11 product at a profit and under the current situations at hand
12 and we cannot nor do we choose to react to immediate or
13 short-term market condition changes and this is why we build
14 long-term relationships.

15 COMMISSIONER WILLIAMSON: Okay thank you.
16 Another question the Petitioners this morning pointed out
17 that all of you are multi-nationals, that and I guess
18 purchasers are often the same people around the world and
19 they know what is happening in other markets and how much
20 does that affect the prices that you might be able to offer
21 if at price negotiations?

22 MR. WAITE: Commissioner Williamson it's Fred
23 Waite, I think we would prefer to address that in our
24 post-hearing that's an extremely sensitive area for
25 Jungbunzlauer.

1 COMMISSIONER WILLIAMSON: Okay thank you. I was
2 looking at the pre-hearing staff report table 2-8 that shows
3 that the vast majority of these purchasers rate the U.S. and
4 Canadian product as comparable with respect to availability
5 and delivery times and almost every other factor.

6 And do you think this is a fair representation of
7 views of most of your customers? And I ask this because you
8 talk about being having to be a premium supplier?

9 MR. KERWIN: Ms. Grant do you think you would be
10 willing to discuss the example that we talked about
11 yesterday in relation to an account where you were asked to
12 step in in a short-time basis?

13 MS. GRANT: Sharon Grant. Last year we were
14 approached by a customer who was unable to secure product
15 from the U.S. domestics and there was concern that it was
16 going to impact their production. We got the call on
17 Wednesday. We didn't have the product in house to be able
18 to meet the commitment. We had to make the product, arrange
19 the logistics of it, we actually shipped it after hours so
20 that the customer could have it so we do emphasize
21 flexibility.

22 The reasons why they couldn't you know receive
23 this from the U.S. domestics I don't know but we tend to go
24 above and beyond to meet the desires of the customer.

25 COMMISSIONER WILLIAMSON: Okay.

1 MR. WAITE: Ms. Grant didn't also say they received
2 the inquiry on Wednesday where the company told them that
3 they might have to shut down production if they didn't get
4 this product and they shipped it out after hours on the
5 following Friday.

6 COMMISSIONER WILLIAMSON: Okay.

7 MR. RAINVILLE: This is Dan Rainville, I confirm
8 the comment with looking at the actual table but just my
9 experience and just talking to customers in the United
10 States, it was always lead times from the time of order to
11 the time of shipment is very often quite -- is very often
12 shorter than the domestics and in many cases quite shorter,
13 especially during high seasons, during the summer months Q2
14 and Q3 of any calendar year where lead times often increase
15 for all producers but at a much smaller lead coming from
16 Jungbunzlauer than the domestic producers.

17 I have heard lead times of anywhere from four to
18 eight weeks is common practice coming from customers from
19 U.S. producers where ours is typically in the five to ten
20 day range. And this flexibility allows a customer a great
21 benefit where they don't know when their spikes and demands
22 are really going to hit and how they control their own
23 internal inventory and production cycles.

24 COMMISSIONER WILLIAMSON: Okay is there something
25 that gives you this competitive advantage?

1 MR. RAINVILLE: Yes we are better, faster,
2 closer. We are a small company that focuses on citric acid
3 as our product. We have a very small team we have 28 people
4 in the United States. We have a factory that focuses on
5 making citric acid and only citric acid so even citrate is a
6 derivative of this.

7 COMMISSIONER WILLIAMSON: We could have had a
8 camera here, a movie camera, okay thank. I think those are
9 all the questions I have for right now, thank you.

10 CHAIRMAN BROADBENT: Commissioner Johanson?

11 COMMISSIONER JOHANSON: Thank you Chairman
12 Broadbent and Mr. Kerwin when my last round of questioning
13 ended I believe you had mentioned Mexico and I wanted to
14 turn to that and this is something I raised with the
15 Petitioners this morning and I wanted to get an idea as to
16 how large the Mexican market is as due to the fact of
17 geography the U.S., Canadian and Mexican economies are
18 somewhat integrated across the board and especially not only
19 due to geography but also due to math.

20 I had mentioned this morning that it was my
21 understanding that Mexico had the highest per capita
22 consumption of sodas in the world and it turns out that I
23 looked it up on the internet and according to FOX news
24 Latino there's an article from 2011 that states that that is
25 indeed the case, Mexico leads the world.

1 However according to the next article online, an
2 article from the Wall
3 Street Journal from October 13, 2014 just a few months ago
4 is titled Survey Shows Mexicans Drinking Less Soda After
5 Tax. And it turns out there has been a soda tax imposed in
6 Mexico so I was wondering what is -- do you know what the
7 situation is right now in Mexico?

8 Because if Mexico was indeed the largest per
9 capita consumer of sodas, now there is this new tax and
10 there is a concerted effort on the government there to
11 reduce consumption what does that mean for the U.S. market
12 and for Canadian producers, thank you?

13 MR. KERWIN: I would have to admit I don't know
14 at this point but we have a very valuable source in Mexico
15 who speaks excellent English and we would be happy to
16 discuss this with him and get you the answers that you
17 require for the post-hearing brief.

18 COMMISSIONER JOHANSON: All right thanks, I look
19 forward to reading that. I might as that former President
20 Fox from what I recall was head of Coca-Cola Mexico and I
21 guess he is no longer in office obviously with this tax
22 going in place so I guess it's a different party now as
23 well, that's what happens, I guess elections matter.

24 You all might have addressed this and if you have
25 my apology but to what extent do you attribute the

1 improvement in the U.S. industry since the original period
2 of investigation? Especially the improvement from 2008 to
3 2009 when apparent consumption declined markedly -- does
4 that question make sense to you? Okay thank you.

5 MR. KERWIN: It does make sense. At the time and
6 I think I touched on this earlier at the time that the cases
7 were under consideration before the orders were put into
8 place there was clearly a fair amount of panic in the U.S.
9 market and as I mentioned previously the domestic industry
10 doesn't have the capacity to meet demand so this was an
11 important change in the marketplace. You have purchasers
12 such as those mentioned by Ms. Grant that you know if a
13 product isn't there in a matter of a couple days it means a
14 matter of shutting down their production process so the
15 consistency of supply is critical.

16 So many companies did build up inventories in
17 2008 in advance of the imposition of the orders. Of course
18 there was concern about price as well and at the time that
19 the negotiations, the negotiations for long-term contracts
20 take place in the fall or early winter of the year
21 proceeding so in 2008 for the pricing in 2009 those
22 contractual negotiations were taking place late in 2008
23 right around the time that this market was in a state of
24 flux.

25 And so I think that the industry was able to take

1 advantage of that and to -- and of course purchasers wanted
2 to get as much of a commitment as they could from suppliers
3 and they were willing to pay more so that entered to the
4 domestic industry's benefit in terms of its operating
5 returns in 2009 despite the fact that when you look at
6 consumption, the consumption figure was down.

7 But I think you know I think if you balance out
8 the two years, the 2008 and 2009 in terms of consumption I
9 don't think they're -- I think you see pretty much the same
10 trend that you see from 2006 to 2015 in terms of generally
11 increasing demand for the product but you had this unusual
12 situation in the market in that 2008-2009 period.

13 COMMISSIONER JOHANSON: Right I think almost all
14 investigations most of the 5 year reviews we conducted the
15 years 2008-2009 popped up pretty prominently just due to
16 what was happening during that period of time overall.

17 I would like to get back to the whole consumption
18 issue again. I just spoke about Mexico and now I think I
19 would like to turn it back more to the United States. There
20 is disagreement between the Petitioners and Respondents as
21 to what the direction is for consumption in the United
22 States. You all mentioned the IHS handbook which provides
23 an increase -- projected increase in consumption in coming
24 years albeit not necessarily significant yet a growing
25 market.

1 The Petitioners in their Brief and also this
2 morning mentioned that the numbers are going down, they
3 projected that they will go down and I must admit as one who
4 reads the newspaper there are many articles projecting
5 declines not necessarily declines in consumption but
6 declines in employment in that area.

7 Could you speak a bit more on that and also are
8 you aware of other sources besides the IHS handbook which
9 would discuss this, thank you.

10 MR. WAITE: Thank you Commissioner Johanson. Let
11 me start by saying that we do have other sources and we will
12 provide those with our post-hearing, other consulting firms
13 like IHS who predict future consumption, in fact we found
14 one very interesting one that actually breaks out the
15 beverage industry by a number of sub-parts and breaks out
16 consumption and projected consumption by geographic region
17 which I think you may find edifying.

18 I would say initially that during the period of
19 review there is no question that consumption has increased
20 despite one I think misspoken word this morning, the
21 Petitioners agree with that too. They say that although
22 consumption has been increasing for some reason starting at
23 some point I don't know when it is going to decline and it
24 is going to decline because soft drink consumption will go
25 down and oil field operations will diminish requiring or

1 demanding less citric acid for their operations.

2 As I believe Mr. Kerwin pointed out soft drink
3 consumption has been declining for at least 8 years in this
4 country so that is nothing new and it doesn't mean that it
5 is going to go off the cliff. In fact soft drink
6 consumption had probably gone off the cliff already and what
7 you are seeing is just a continuation of that trend.

8 As Mr. Rainville pointed out other varieties of
9 beverages that use citric acid have been introduced in the
10 market and are in fact increasing and Commissioner Johanson
11 you referred to some as well although the domestic industry
12 downplayed those as not being significant but I think what
13 one needs to do is look at those other products and see if
14 they are significant and also that soft drink, while it is
15 an important segment or sub-segment of an important segment
16 of the market, it is not the entire market.

17 And I thought that Commissioner Kieff had an
18 interesting comment this morning that if the Middle East
19 collapses what is that going to do for oil production in the
20 United States and might we not see the need to build new
21 citric acid plants throughout Oklahoma and North Dakota in
22 order to meet the demand.

23 I mean that gets into speculation and with all
24 due respect to the U.S. industry I think what they are doing
25 is speculation not based necessarily on hard evidence. The

1 hard evidence is consumption has been increasing. There is
2 nothing to indicate why that increase would not continue or
3 at least remain stable and that JBL's explanation borne out
4 by the data in the POR that consumption of citric acid
5 generally tracks the growth of the economy or the decline of
6 the economy in a general way is certainly evidence in the
7 record in this review.

8 So I think although there is a disputation as to
9 where demand is going in the future I think there is much
10 more evidence on our side showing that it is likely to
11 continue to increase slightly. I mean nobody is saying it
12 is going to explode but continue to increase at these rates
13 and indeed this other report that I mention to you predicts
14 that.

15 It predicts that even more robustly than the IHS
16 report that is on the record in this review. I don't know
17 if Mr. Kerwin has anything further he wanted to add.

18 MR. KERWIN: TO make this quick I would just
19 point out that the Petitioners' own exhibit 6, the baseline
20 year for that graph on the right is 2004 so this contraction
21 in U.S. consumption of carbonated sodas has been a long-term
22 trend all through the POI, all through the POR it has not
23 impacted demand for citric acid during either of those
24 periods.

25 Based on that I don't see any rational reason to

1 believe that there is something that is going on right now
2 that is going to change demand in years to come when this is
3 a long-term trend. One other point which is that the oil
4 field applications, the fracking applications of citric acid
5 to my understanding is a very minor part of the U.S.
6 consumption of citric acid.

7 So what goes on there whether the price of oil
8 goes up or down again that's something none of us know what
9 is going to happen with that but that's a very small element
10 of the market.

11 COMMISSIONER JOHANSON: Thanks for your responses
12 and I look forward to reading that because once again this
13 is a factual issue and both sides are saying something
14 different so any support you can provide would be
15 appreciated. With that I have concluded my questions, thank
16 you all for appearing here today.

17 CHAIRMAN BROADBENT: Commissioner Schmidtlein?

18 COMMISSIONER SCHMIDTLEIN: Thank you I have just
19 a couple of questions about some of the Petitioners'
20 arguments. One is I wondered how do you respond to the
21 domestic producer's contention that the presence of
22 non-subject imports in the U.S. market exacerbates price
23 competition and therefore increases the likelihood of
24 underselling by imports from Canada, if the order was
25 revoked -- in the event the order was revoked.

1 MR. WAITE: Commissioner Schmidtlein Fred Waite
2 again, I would say that non-subject imports have been in the
3 market and they have not had that impact that JBL's behavior
4 has in fact continued in a very steady, predictable way over
5 the period of review and the presence of the non-subject
6 imports or I believe Petitioners' also characterized some of
7 those imports as transshipped or Chinese imports that are
8 evading the dumping duties.

9 It's not affected JBL's presence in the market
10 its pricing and we don't believe that if the order came off
11 JBL's behavior would change in any way, it would continue to
12 sell in the same way to the same kinds of customers under
13 the same circumstances. It would have to deal with all of
14 the competitive forces in the market of course but we don't
15 see that as something that would immediately compel JBL to
16 change its marketing practices in any meaningful way.

17 COMMISSIONER SCHMIDTLEIN: I guess that is
18 premised on the fact that you -- in your view the order
19 doesn't have any affect whatsoever on JBL's behavior?

20 MR. WAITE: I would say for your purposes of
21 analysis the order has no or very little affect. For JBL
22 obviously there is an administrative effect because every
23 year we go through an administrative review at the Commerce
24 Department which requires a great deal of effort to collect
25 the data and present it to the Commerce Department to

1 respond to questions, that's almost a cost of doing business
2 now for the company.

3 It has had no effect on its ability to sell into
4 the market and as I said earlier they are at a dumping duty
5 deposit margin or rate today of about one-half of 1% and we
6 are confident it is going to go even lower in the future.
7 But except for that no, we think for your purposes of
8 analysis the order has not had in fact certainly not a
9 significant effect either on JBL or on the U.S. market.

10 And if I could offer a tangential comment if I
11 may. Our concern has always been China and I believe a
12 question was asked this morning of the Petitioners that I
13 have said that the problem is China not Canada and the
14 Petitioners of course disagree. Well I think if you look at
15 the record of this review, China was a lot of the market but
16 almost disappears from the market, Canada stays in the
17 market in a meaningful way and the U.S. industry has a
18 renaissance.

19 We are very concerned about China and you noticed
20 we have not made the alternative argument that Respondents
21 often make after arguing decumulation before the Commission
22 that even if you don't decumulate you should nevertheless
23 reach a negative determination on cumulated imports and you
24 may be curious why we haven't done that and if I may indulge
25 you -- you would indulge me I would like to tell you why.

1 And I would preface it by saying that we have
2 explained to you why we believe based on the record evidence
3 that imports from Canada should not be cumulated with China
4 and we will get into that more in the post-hearing
5 obviously.

6 Nevertheless if the Commission were to cumulate
7 Canada and China we believe that it is likely, given China's
8 enormous capacity, its inability to sell into many other
9 significant markets and its history of aggressive and unfair
10 pricing in the U.S. market that cumulated imports would be
11 likely to cause a recurrence of injury to the U.S. industry.

12 The cumulated imports of course that are causing
13 the injury are the Chinese portion -- now we know that
14 response may appear to you to sound to you that we are
15 arguing against our client's interest, we are not. We
16 firmly believe we should be decumulated and let out of the
17 order however JBL recognizes that an unrestrained China in
18 the U.S. market would be disastrous for all of the North
19 American producers of citric acid, thank you.

20 COMMISSIONER SCHMIDTLEIN: Thank you I sort of
21 thought that is what you were going to say. The last
22 question I had was another contention by the Petitioners
23 which is that the nature of this industry there are quick
24 swings in profitability and a small number of large
25 purchasers makes it vulnerable to material injury, can you

1 respond to that, the nature of the domestic industry?

2 MR. WAITE: Your question is dramatic swings in
3 profitability of purchasers?

4 COMMISSIONER SCHMIDTLEIN: No that there are a
5 small number of large purchasers and that there can be quick
6 swings in profitability and therefore that makes the
7 domestic industry vulnerable to material injury?

8 MR. WAITE: Again it's Fred Waite and allow me to
9 start and Mr. Kerwin again may want to supplement. As I
10 pointed out earlier there are a relatively few purchasers
11 who represent a significant percentage of the domestic
12 citric acid market and the domestic industry has said both
13 in the original investigation and during this review that
14 its focus is engaging in contractual sales to that segment
15 of the market, that that is their highest priority and
16 indeed they have been extremely successful.

17 Virtually 100% of their sales as you can see in
18 our confidential exhibit 5 are either contract sales of one
19 year or contract sales for multiple years so they have been
20 successful in doing that so the premise that customers
21 shifting their purchases may make the domestic industry
22 particularly vulnerable to injury it hasn't happened because
23 the domestic industry has been in that market, that's where
24 their sales have been.

25 Secondly as I pointed out earlier that group of

1 customers while they represent a significant part of the
2 market there is another equally if not more significant part
3 of the market in terms of volume that is not within that
4 orbit of those 7 customers, that's the other 200 odd
5 customers in the United States who offer the opportunity to
6 the domestic industry to a domestic producer who loses a
7 contract to another domestic producer can move into those
8 markets.

9 Thirdly you also have customers telling you that
10 multiple sourcing is very important to them, especially the
11 largest ones and in our pre-hearing brief we had an exhibit
12 on that to show you that among the largest producers,
13 customers rather, as well as other purchasers who responded
14 to your questionnaire the reliance on multiple sources for
15 their supply so I would think given those factors that they
16 would ameliorate any risk that a U.S. producer would have,
17 that losing a contract with a particular customer would make
18 it especially vulnerable to material injury because the
19 fourth point is if it loses that contract to another U.S.
20 producer, is that material injury to the U.S. industry?

21 You look at the industry as a whole not as
22 individual participants so if Tate & Lyle loses a contract
23 to ADM is that material injury to the domestic injury, I
24 would argue not. If ADM loses a contract to Cargill the
25 same thing so I think that argument is perhaps a little more

1 overbroad than warranted by the facts of this record.

2 COMMISSIONER SCHMIDTLEIN: Okay.

3 MR. KERWIN: Commissioner if I could just add a
4 couple of points and first of all I don't think the
5 structure of this market is highly unusual and from my
6 experience and however many years that I have been at this I
7 don't think the structure of the industry or the marketplace
8 here is unusual, I don't believe that.

9 It's a pretty commonplace structure. Second of
10 all I think that the purchasers of citric acid in this
11 country would be rather amazed to hear that the domestic
12 industry claims that it is the purchasers of the product
13 that set the price in the United States market and hold all
14 the cards here given that this is a domestic industry that
15 has been averaging operating return of 20% of sales value
16 for the last 6 years, that does not seem like an indication
17 of an industry where purchasers are setting price in the
18 marketplace and the producers have no option but to accept
19 those prices.

20 COMMISSIONER SCHMIDTLEIN: Okay well I think the
21 point was more that the fact that these purchases are
22 concentrated that the loss of one of them to let's say not a
23 U.S. producer, another U.S. producer, but a subject producer
24 or even non-subject is a bigger problem than if it was --
25 the purchasing was spread out over multiple customers and I

1 take your point, okay they can go out and try to round up 25
2 small customers, replace that one large one, that's harder
3 to do or maybe they really don't lose it because these
4 people want multiple sources.

5 But at the end of the day you can't dispute you
6 know, this is a highly concentrated purchasing segment at
7 least large purchasers and a loss of even one of them even
8 to JBL is problematic, no? I mean I take your point but
9 really like if you lose one of your large -- of the largest
10 7 customers you are telling me that's not a problem?

11 MR. WAITE: Well Commissioner Schmidtlein there
12 are a lot of problems in life and companies who are in
13 business have to be prepared that they are not going to make
14 every sale that they want to make.

15 COMMISSIONER SCHMIDTLEIN: So is it a problem or
16 not a problem if you lose one of those 7?

17 MR. WAITE: It's a problem, is it material
18 injury? No.

19 COMMISSIONER SCHMIDTLEIN: Okay I don't have any
20 further questions thank you very much.

21 CHAIRMAN BROADBENT: Okay I just had one which I
22 had asked the other panel about the lemon juice and the
23 paper case and I will just read it again and you can provide
24 it for the record if you don't mind.

25 In recent reviews on lemon juice from Argentina

1 and Mexico and most recently in lightweight thermal paper
2 from China and Germany, the Commission has considered a
3 normal continuation of imports in the U.S. markets at no
4 harm to the U.S. industry as part of the rationale for a
5 negative determination, please elaborate in your
6 post-hearing briefs why you think this case is similar to or
7 not similar to the Commission's views in those two cases.

8 And that was the last question that I had.

9 Commissioner Williamson?

10 Vice Chairman Pinkert?

11 VICE CHAIRMAN PINKERT: Just a couple of follow
12 up questions. You may recall from the earlier panel that we
13 talked a little bit about a counterfactual analysis and
14 they focused very much on the behavior during the period of
15 investigation of JBL and JBL's pricing and JBL's shipping
16 quantities and argued that that is the best evidence going
17 forward if we were to revoke the order.

18 Now you focused more on the behavior during the
19 period of review which is behavior subject to the discipline
20 of the Order so my question to you is why isn't that period
21 of investigation a better indication, let's start with
22 pricing of the pricing going forward in the event of
23 revocation of JBL?

24 MR. WAITE: Fred Waite from Vorys, Sater. I
25 guess Mr. Vice Chairman that our view is that you have 5

1 years plus of the POR where JBL Canada is operating under an
2 Order but that Order is apparently having no effect
3 objectively on its behavior because it is able to sell into
4 the U.S. market quantities comparable to what it was selling
5 during the pre-petition period when there was no Order in
6 place and at prices that are essentially not dumping for any
7 practical purpose.

8 And we think that that represents a far better
9 picture of what will happen going forward than what happened
10 in 2006 to 2008. Another factor is that all of the North
11 American producers from 2006 and 2008 were dealing with the
12 800 pound gorilla who is not in the room and that is China
13 and they were all being impacted. We have seen the impact
14 on the domestic industry very dramatically in the
15 pre-hearing staff report, I'm just looking to make sure that
16 its public yes, and the red ink that was on the floor of all
17 of the domestic producers during that period.

18 I think with China out of the market as it has
19 been what you see is a North American or in the case of
20 your analysis a U.S. market that is operating under
21 principles that would be in place if the Order on Canada
22 were revoked. I know how difficult it is to try to predict
23 the future even if it is only two years.

24 But given the five years and 3/4s that we have
25 had under the Order and all of the facts that I have just

1 rehearsed, I believe that that is a much better indicator of
2 what will happen going forward than what happened in 2006,
3 2007 and 2008 when China was in the market devastating the
4 market, causing great harm to the 4 producers in North
5 America who were trying to react as best they could to an
6 onslaught of material that was unprecedented and at prices
7 that were disastrous for anyone who is involved in a profit
8 oriented business in a market economy country.

9 MR. RAINVILLE: Dan Rainville, may I comment and
10 Mr. Waite can grab me if I say something I shouldn't say in
11 public?

12 MR. WAITE: We might see it if he does that.

13 MR. RAINVILLE: My take on the question and the
14 point especially regarding the POI is that Jungbunzlauer
15 acted in that period similar to the POR and the fact that we
16 were the highest priced product, and we were the ones trying
17 to keep the price as high as possible at the same time
18 maintaining our volumes and we are not the leader in that
19 market as well, we were the follower and we did what we
20 needed to do at the time to maintain volumes to keep our
21 plant running at the capacities necessary in the service to
22 customers we had.

23 As soon as the market changed, we immediately
24 reacted, we were one of the first if not the first to react
25 to the situation based on current market conditions and

1 those market conditions are what exist today in the POR.

2 VICE CHAIRMAN PINKERT: Thank you now the other
3 question which is related is what about shipment volumes?
4 In other words should we be looking to that period of
5 investigation to best analyze the shipment volumes for JBL
6 Canada in the event of revocation?

7 MR. WAITE: Again it's Fred Waite. As we have
8 pointed out and indeed I believe as the Petitioners'
9 industry witnesses conceded this morning the 2008 volume for
10 Canada was essentially an artificial number abberational
11 number it wasn't artificial it was a real number. An
12 abberational number driven by I believe that Mr. Kerwin
13 characterized it as market panic by purchasers.

14 Trade actions had been filed against Canada and
15 China. The U.S. industry reacted to those, particularly I
16 believe the trade actions against China because of the
17 enormous presence that China had established in the U.S.
18 market with what for purchasers would have been very
19 attractive prices.

20 As a result you see a bump up in consumption
21 during 2008 and you see a bump up of JBL's shipments in 2008
22 following that demand or consumption increase. If you
23 compare JBL's shipments during the POR with its shipments in
24 2006 and 2007 before those abberational conditions caused by
25 the filing of the case and the reaction of the customer base

1 you will see that JBL was very much at the same level.

2 We have that in our exhibit confidential exhibit
3 2 and if you look at the Blue Line which is the Canadian
4 line you will see that for the post-petition period it is in
5 the same ballpark, often at the same levels as the two years
6 in the Petition period before that abberational occurrence
7 in 2008.

8 VICE CHAIRMAN PINKERT: Thank you very much that
9 concludes my questions. I just want to point out that it
10 might be appropriate if the Blue Line is the Canadian line
11 given the national sport in Canada but in any event thank
12 you very much Madam Chairman and I thank the panel.

13 CHAIRMAN BROADBENT: Commissioner Williamson?

14 COMMISSIONER WILLIAMSON: Just in response to my
15 earlier question about Ms. Grant -- both instances where
16 customers are approaching for citric acid because you could
17 get the product to them faster than anyone else, any
18 documentation to produce evidence of those requests would be
19 very useful to us, just to document that this is what
20 happened.

21 MR. WAITE: We will provide that.

22 COMMISSIONER WILLIAMSON: Thank you very much.

23 CHAIRMAN BROADBENT: If Commissioners have no
24 further questions, does the staff have any questions for
25 this panel?

1 MS. HAINES: Elizabeth Haines, staff has no
2 questions.

3 CHAIRMAN BROADBENT: Thank you, did those in
4 support of continuation of the orders have any questions for
5 this panel?

6 MR. JONES: No questions Madam Chairman.

7 CHAIRMAN BROADBENT: Thank you in that case I
8 want to thank the panel for their testimony and I will
9 dismiss you now. With that we will come to closing
10 statements. Those in support of continuation of the orders
11 have one minute from direct and five for closing for a total
12 of six minutes and those in opposition have twenty minutes
13 from direct and five for closing for a total of twenty-five
14 minutes.

15 As is our custom we will combine those and you
16 don't need to take all the time.

17 We will start with those in support of
18 continuation of the orders.

19 CLOSING REMARKS OF STEPHEN A. JONES

20 MR. JONES: Madam Chairman, members of the
21 Commission Steve Jones from King & Spalding for the domestic
22 producers. Thank you for giving us an additional 26 seconds
23 Madam Chairman we appreciate that.

24 Starting with some points of agreement I think
25 there are a few and they are important. Mr. Waite said

1 there is no denying that the U.S. market is the most
2 important market for JBL and that certainly supports our
3 view and what our position is. JBL's plant was built in
4 Canada primarily to serve the U.S. market. I think from the
5 testimony there is no question about that.

6 The importance of 24/7 continuous operation that
7 production follows sales I think that's true throughout the
8 industry and it's therefore imperative that JBL sell out its
9 plant every year, it's important for every producer in this
10 market and it makes it more likely that JBL will export more
11 volume to the United States if the Order is revoked.

12 The products are highly fungible. JBL concedes
13 significant overlap in competition for purposes of
14 cumulation and in our view that is certainly inconsistent
15 with the concept of a premium product and we encourage you
16 to look at the questionnaire responses on that because it is
17 certainly not supported by the responses that you receive
18 from purchasers and importers and on that point citric in
19 solution is not a difference between Canada and China
20 because converters can readily liquify citric acid imported
21 from China so that's not a material distinction in product
22 availability in the U.S.

23 We also agree that there would be a discernible
24 adverse impact and I know Mr. Waite bobbed and weaved a
25 little bit on that in response to questioning but it made no

1 argument on that and we have to assume that that's been
2 conceded.

3 And finally we agree that the industry's
4 performance has improved dramatically and it is crystal
5 clear from our testimony this morning from the evidence on
6 the record that the improvement in the condition of the
7 industry is the result of the orders.

8 Some points of disagreement quickly on demand
9 please look at our hearing Exhibit 5 we considered 2009 to
10 be an anomaly year because of recession and we would
11 characterize demand as sluggish at best during the POR and
12 as you heard this morning from witnesses likely to decline.

13 It's noteworthy that only 4 of 22 purchasers and
14 only 3 to 15 importers reported that they anticipate that
15 demand will increase and we will also look for some industry
16 reports on this. We have I think a couple already for our
17 post-hearing.

18 On the cumulation issue Commissioner Schmidtlein
19 was getting at this in her questioning and several of you
20 were that JBL really has not explained how the differences
21 in volume and price trends show that there are differences
22 constitute differences in the conditions of competition in
23 this case.

24 There haven't been any structural changes, any
25 changes in product mix or the way products are sold. JBL

1 characterized its post order approach as business as usual.
2 There's no change and there has been nothing alleged here
3 that would suggest any differences in conditions of
4 competition that would lessen the extent to which the
5 products from the three sources compete with each other in
6 the market.

7 And I will just note on Pet Film Commissioner
8 Schmidtlein that the Respondent in that case submitted reams
9 of evidence showing that the conditions of competition were
10 different and we don't have that here. You have asked for
11 it and we will see what comes in but the case certainly
12 hasn't been made on that.

13 With respect to volume it is certainly critical
14 that the Commission keep in mind the counter factual
15 analysis. The significant difference between the POI and
16 the POR with respect to volumes here in Exhibit 11 the
17 quantities are not comparable. With respect to capacity
18 utilization I would point you to page 46 footnote 232 of our
19 Brief. We would encourage you to look at the full year 2013
20 data with respect to capacity utilization.

21 Available capacity please also consider the
22 export volume that JBL has to third country markets and we
23 think it's clear that the U.S. is the most attractive market
24 and there is going to be a very strong incentive to shift
25 product from other markets to U.S. please see our hearing

1 Exhibits 14 and 15.

2 So will JBL flood the market? Well they claim no
3 because contrary to their business practices but again look
4 what happened during the period of investigation.

5 With respect to price again please keep in mind the
6 counterfactual analysis the difference between POI and the
7 POR, look at our hearing exhibit 17 for data on that point.

8 As Mr. Anderson testified the AUV data don't
9 really tell the whole story here. There is a difference of
10 mix and contract and spot that will affect this analysis.
11 This is a question that Commissioner Williamson was getting
12 at. There will be more competition for key customers if the
13 order is revoked, particularly large contract customers and
14 import prices as a cap that's something that the Commission
15 looked at and talked about on page 28 of the public report.

16 Finally just one point on Brazil. We think
17 Brazil is highly indicative of JBL's likely behavior in the
18 market if the Order is revoked. The Respondent panel ducked
19 this question and we think that you should look at our
20 Affidavits that we put in one from Tate & Lyle and one from
21 Cargill, Exhibits 25 and 26 of our Pre-Hearing Brief. I
22 think I'm about out of time I want to thank the Commission
23 for its attention today and thank the staff for its hard
24 work on the case and that concludes our presentation, thank
25 you.

1 CHAIRMAN BROADBENT: Thank you.

2 CLOSING REMARKS OF FREDERICK P. WAITE

3 MR. WAITE: Madam Chairman, members of the
4 Commission. I know I have 25 minutes but I can assure you I
5 will not be using all of it. I would just like to highlight
6 some of the points that we made during our presentation
7 today as well as in our responses to your questions which we
8 hope will assist you as you analyze this case.

9 I will not repeat statistics I will only hit
10 concepts because I think we are all aware of the numbers.
11 As we have pointed out imports from Canada have remained in
12 the U.S. market at roughly pre-Petition levels, whatever the
13 Petitioners may say.

14 Again look at our confidential Exhibit 2 and tell
15 me how the pre-Petition levels in 2006-2007 are not
16 virtually identical to the POR levels for 2009 through 2013.
17 At the same time imports from China plummeted, that also
18 appears on this same exhibit. China's unit values remained
19 lower and that is in one of our confidential exhibits as
20 well while Canada's unit values were higher than both the
21 U.S. industry and China throughout the POR.

22 Again we will get into the relationships of unit
23 values and pricing in our post-hearing in a more detailed
24 way since virtually all of this information is confidential
25 but I think you will see that there are a number of

1 indicators that you have from data on the record, unit
2 values, pricing products, data that will lead you to the
3 same conclusion and that is that JBL Canada is pricing the
4 products they cannot conceivably be seen to be harming the
5 domestic industry.

6 JBL Canada will continue that practice with or
7 without an order in the future. We have also pointed out
8 the dramatic differences in capacity projections for Canada
9 and China. Our Exhibit Number 1 which we like to call the
10 Princess and the Pea shows you the difference between
11 Canada's capacity and China's and why that should be a
12 driving factor in deciding whether or not if the orders are
13 revoked what Canada will do and what China will do and Mr.
14 Kerwin pointed out during our testimony and again in
15 response to your questions the available unused capacity
16 that JBL Canada has is not sufficient to pose any kind of a
17 threat to the U.S. industry going forward.

18 Again JBL has maintained a stable market position
19 and share throughout the period of review. Again this is
20 something you may not often see in trade cases and you
21 usually do not see in trade cases where a foreign producer
22 argues that there is no discernable impact -- there will be
23 no discernable impact as a result of revocation of an Order.

24 In those cases you don't see the foreign producer
25 at all. He disappears from the market. He finds other

1 markets. He finds other products. He goes out of business.
2 He does something else. Here pre-Petition, pre-Order,
3 post-Order into the foreseeable future and beyond JBL Canada
4 will be in the U.S. market selling at fair prices usually
5 overselling others in the market to customers who rely on
6 its quality, on its availability, on its willingness to go
7 the extra mile to meet those customers' needs.

8 Mr. Kerwin talked at some length about the fact
9 that the presence of Canadian imports in the market during
10 the POR has had no effect and certainly no adverse effect on
11 the U.S. industry, indeed the U.S. industry's overall
12 performance has blossomed during the POR. It has had rates
13 of return operating profits on net sales that average over
14 20%.

15 It's hard to believe that an industry believes it
16 is vulnerable or believes it is being hard-done by if it is
17 realizing those kinds of profits and even during the end of
18 the period when the domestic industry complains that its
19 profitability level has declined, it has declined to a level
20 that most industries would give their right arm to achieve
21 and during the interim period see what happened again to the
22 domestic industry's profitability.

23 There's been a lot of discussion today about
24 projections for domestic consumption and the domestic
25 industry has been long on speculation and very short on

1 facts. During the period of review it cannot be gainsaid
2 that consumption did not increase, it did whether you start
3 at 2009 or whether you start at 2010 or 2011 or 2012 it
4 increased each year of the POR and there is no reason why it
5 would not continue to increase at worst remain stable as the
6 U.S. economy continues to increase as new applications of
7 citric acid are found and as those segments of the market,
8 the domestic industry complains are eroding, have been
9 eroding since 2004.

10 Indeed if the domestic market considers demand to
11 be so paltry, if it is so concerned about demand projections
12 in the future why did it increase capacity during the POR?
13 Why would they do that if they expected demand to decline?

14 A final few thoughts. JBL is not a price leader
15 however defined as the purchasers responded to your
16 questionnaire. It is certainly not leading prices down when
17 it is at the top of the market. JBL has no incentive to
18 shift volumes to the United States for the reasons that Mr.
19 Rainville explained and that we discussed previously in our
20 pre-hearing Brief.

21 It has customer relationships in markets around
22 the world, these relationships are very important, it is
23 looking at the long-term because as Mr. Rainville and Ms.
24 Grant emphasized JBL Canada makes citric and now citric salt
25 and only citric. That is the product that keeps them awake

1 24 hours a day in terms of what the market is doing, where
2 it is going, who the customers are, where the production
3 plan is going, is there going to be enough corn, is the
4 Welland canal going to dry up, they are very focused on
5 citric and that's perhaps why they are so nimble and so
6 responsive to customers and you heard the examples today of
7 how JBL responded within 48 hours to a customer who had been
8 short shifted by one of its U.S. suppliers and was unable to
9 get that material from the U.S. supplier told JBL we need
10 the material immediately or we have got to shut down our
11 production.

12 JBL essentially moved heaven and earth to get the
13 production out the door to the customer within two days.
14 And then my final comment is a nod to Commissioner
15 Williamson who asked during the morning session about
16 unionization in the U.S. industry and then inquired of the
17 U.S. industry if they knew about JBL and I think the
18 response was they are not represented by the Steelworkers.

19 No they are not, they are shift engineers who are
20 represented by Unifor and their production workers are
21 represented by the United Food Commercial Workers
22 International which is headquartered in Ohio. It is a fully
23 unionized operation and with that I entreat you to consider
24 the arguments that we have made, the evidence that we have
25 presented and reach the conclusion that revocation of the

1 Order on Canada will not be likely to result in the
2 recurrence of injury to the domestic industry within a
3 reasonably foreseeable time.

4 I would also like to thank you for your
5 indulgence today and your patience and your excellent
6 questions and I would like to thank the staff for their
7 cooperation in putting together an excellent report given
8 that the other Respondent in this proceeding has chosen to
9 be completely uncooperative and non-responsive, thank you
10 very much.

11 CHAIRMAN BROADBENT: Thank you and again I want
12 to express the Commission's appreciation to everyone who
13 participated today. Your closing statement, post-hearing
14 Briefs, statements responsive to the questions and requests
15 of the Commission and corrections to the transcript must be
16 filed by April 3, 2015.

17 Closing of the record and final release of data
18 to the parties will be on May 7, 2015. Final comments are
19 due on May 11, 2015 and with that this hearing is adjourned,
20 thank you.

21 (Whereupon the meeting adjourned at 4:44 p.m.)
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23
24
25

CERTIFICATE OF REPORTER

TITLE: In The Matter Of: Citric Acid and Certain Citrate Salts from Canada and China

INVESTIGATION NOS.: 701-TA-456 and 731-TA-1151-1152

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