

# UNITED STATES INTERNATIONAL TRADE COMMISSION

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In the Matter of:  
SACCHARIN FROM CHINA

) Investigation No.:  
) 731-TA-1013 (REVIEW)

## OPEN SESSIONS

Pages: 1 - 135 (with excerpts)  
Place: Washington, D.C.  
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4 ) 731-TA-1013

5 SACCHARIN FROM CHINA ) (REVIEW)

6 )

7 Tuesday, March 31, 2015

8 Main Hearing Room (Room 101)

9 U.S. International

10 Trade Commission

11 500 E Street, S.W.

12 Washington, D.C.

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

17

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 F. Scott Kieff

24 Commissioner Rhonda K. Schmidtlein

25

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4 Information Officer

5 Sharon Bellamy, Program Support

6 Mikayla Kelley, Intern

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8 Cynthia Trainor, Investigator

9 Brian Allen, International Trade Analyst

10 Andrew Knipe, Economist

11 Mary Klir, Accountant/Auditor

12 David Goldfine, Attorney

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16 In Support of the Continuation of the Antidumping Duty:

17 Dorsey & Whitney LLP Washington, DC

18 On behalf of:

19 Kinetic Industries, Inc.

20 Cheng Lu, President and Owner, Kinetic

21 Industries, Inc.

22 Marty Dansbury, Vice President of Business

23 Development American Custom Drying

24 Roger Hare, Controller, American Custom Drying

25 George Kin Chung Chan, President and Owner,

1 Shanghai Fortune Chemical Co., Ltd.

2 In Support of the Continuation of the Antidumping Duty

3 (continued):

4 Richard Boltuck, Economist, Charles River

5 Associates

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7 Of Counsel:

8 William E. Perry, T. Augustine Lo

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## I N D E X

|    |  |     |
|----|--|-----|
| 1  |  |     |
| 2  |  |     |
| 3  | OPENING REMARKS:   |     |
| 4  | In Support of Continuation:                                  |     |
| 5  | William E. Perry, Dorsey & Whitney LLP                       | 6   |
| 6  |  |     |
| 7  | Cheng Lu, President and Owner, Kinetic                       |     |
| 8  | Industries, Inc.   | 8   |
| 9  |  |     |
| 10 | George Kin Chung Chan, President and Owner, Shanghai Fortune |     |
| 11 | Chemical Co., Ltd.   | 11  |
| 12 |  |     |
| 13 | Marty Dansbury, Vice President of Business Development,      |     |
| 14 | American Custom Drying                                       | 14  |
| 15 |  |     |
| 16 | Richard Boltuck, Economist, Charles River Associates         | 16  |
| 17 |  |     |
| 18 | CLOSING REMARKS:   |     |
| 19 | In Support of Continuation of Orders: William E. Perry,      |     |
| 20 | Dorsey & Whitney LLP   | 132 |
| 21 |  |     |
| 22 |  |     |
| 23 | Confidential sessions: pages 79 - 131                        |     |
| 24 |  |     |
| 25 |  |     |

## P R O C E E D I N G S

(9:32 a.m.)

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

CHAIRMAN BROADBENT: On behalf of the U.S. International Trade Commission, I welcome you to this hearing on Investigation Nos. 731-1013, Saccharin From China.

The purpose of this five-year review investigation is to determine whether revocation of the anti-dumping order on Saccharin From China would likely lead to the continuation or occurrence of material injury within a foreseeable time frame.

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

I understand that parties are aware of time allocations, but if you have any questions about time, please ask the Secretary. Speakers are reminded not to refer to business proprietary information in their remarks or in answers to questions. Please speak clearly into the microphone and state your name for the record, so that the court reporter knows who is speaking.

Finally, if you will be submitting documents that

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

5 MR. BISHOP: Madam Chairman, I would note that  
6 the Panel in support of the continuation of the anti-dumping  
7 duty order have been seated. All witnesses have been sworn.

8 CHAIRMAN BROADBENT: Very well. Let's now  
9 proceed with opening remarks.

10 MR. BISHOP: Opening remarks from those in  
11 support of continuation of the Order will be by William E.  
12 Perry, Dorsey and Whitney.

13 CHAIRMAN BROADBENT: Welcome Mr. Perry. You can  
14 begin when ready.

15 OPENING REMARKS BY WILLIAM E. PERRY, ESQ.

16 MR. PERRY: Thank you very much. Good morning.  
17 My name is William Perry of the law firm of Dorsey and  
18 Whitney, and I represent Kinetic Industries, the domestic  
19 industry in this case. We will present testimony from  
20 Kinetic Industries, American Custom Drawing and Shanghai  
21 Fortune in this hearing.

22 Because of the substantial amount of confidential  
23 information in this case, especially with regard to the  
24 production process which includes trade secrets, we cannot  
25 say much in this public hearing. We welcome confidential

1 questions in camera from the Commission, in camera or in  
2 writing, which we will respond to in the confidential  
3 post-hearing brief. So we're very aware of the amount of  
4 confidential information here.

5 But let me make two brief points. First, because  
6 of potential misperception that the U.S. production process  
7 is simply a finishing, a conversion process of a  
8 semi-finished product, will the Commission erroneously apply  
9 its multi-factor test, on whether production is occurring in  
10 the United States, a test that only makes sense when  
11 production might actually be taking place in some other  
12 country.

13 This test does not apply here, because saccharin  
14 is produced from a separate chemical in the United States  
15 through a new technology. That's why we have so much  
16 confidential information. In other words, imports of that  
17 chemical are in no way unfinished saccharin.

18 Second, and I think this is a key issue, will the  
19 Commission reward transshipment. The evidence or  
20 transshipment throughout the administrative record of this  
21 sunset review is massive. Even though the transshipment  
22 itself is not the definitive issue in this case, if the  
23 Commission finds that revocation of the Order would not  
24 injure the U.S. industry and Order is lifted, I can  
25 guarantee a clear and strong signal will be sent to Chinese

1 companies.

2 Do not follow the legal procedures and  
3 participate in the Commerce Department review investigation.  
4 Simply transship illegally and eventually the transshipment  
5 will be rewarded, either by forcing the U.S. industry to  
6 give up, or causing the ITC to revoke the Order in a sunset  
7 review. This issue of transshipment in this case truly is  
8 massive. The integrity of the anti-dumping law is truly at  
9 stake.

10 The Order in this proceeding has provided  
11 important benefits to the domestic industry, which will see  
12 an expanded Kinetic in the near future. The U.S. saccharin  
13 industry, however, is in a highly vulnerable condition, and  
14 will cease to exist by reason of unfairly-traded subject  
15 imports if revocation occurs. Thank you very much.

16 MR. BISHOP: Madam Chairman, that concludes  
17 opening remarks.

18 CHAIRMAN BROADBENT: (off mic)

19 MR. PERRY: Okay. Let me first introduce Cheng  
20 Lu, the president and owner of Kinetic Industries.

21 STATEMENT OF CHENG LU

22 MR. LU: Good morning. My name's Cheng Lu. I'm  
23 the present owner of Kinetic Industries. I would like to  
24 describe briefly the saccharin production process, and why  
25 the anti-dumping order on saccharin from China should remain

1 in place. We whole produce saccharin using a new production  
2 process with American custom drying. We would like to  
3 inform the Commission that this is not a modified warming  
4 method. This is production from a different chemical.

5 Due to the substantial transformation that take  
6 place in the United States, this saccharin become a U.S.  
7 product. The Commission staff verified the production  
8 method, which they saw during their visit to ACD. Our  
9 relationship with ACD goes back to the 1990's, when we were  
10 producing spray-dried saccharin from insoluble saccharin.

11 Today, we are a U.S. producer. We learned how to  
12 use this new production process, because of our relationship  
13 with Shanghai Fortune. Shanghai Fortune supply a key raw  
14 material, and they transfer the technology for this process,  
15 which involves trade secrets.

16 Through an affiliated company, at times by  
17 customer's request, we also import crystal saccharin from  
18 Shanghai Fortune to complete our production line, to be a  
19 full-service provider of saccharin. With the Order in  
20 place, we plan to expand and diversify our U.S. production.

21 The anti-dumping order is critical to our  
22 industry. If the Order's lifted, the industry will cease to  
23 exist. If the Order's lifted, the price of saccharin will  
24 drop dramatically, and we will see a substantial increase in  
25 imports from large state-owned factory and regulated factory

1 in China, which lead to a substantial quantity of  
2 lower-priced saccharin coming into United States.

3 In fact, Kinetic Industry probably would have  
4 expanded further, but for the transshipment, which is  
5 importation of saccharin made in China into the United  
6 States, by shipping this subject merchandise through third  
7 countries, and falsely claim that the saccharin is not  
8 subject to anti-dumping order. We have asked the Commerce  
9 Department for review investigation of the transshipment  
10 from Taiwan. Commerce refused.

11 We appealed, but the Court of International Trade  
12 sustained this Commerce decision. U.S. Customs also has not  
13 told us what action it has taken against transshipment. We  
14 filed a false claim case, but the U.S. government said it  
15 could not prove that importer knew about transshipment. So  
16 in other words, no government agency or court has found that  
17 transshipment is not taking place.

18 Transshipped saccharin take about 20 percent of  
19 market share, which cause U.S. price to drop. So we still  
20 have unfairly-priced transshipped saccharin from this  
21 country into the U.S. market. If the Order remain, it will  
22 be contribute to U.S. production, with continued employment  
23 of American workers.

24 There are more things that we wish to say, but we  
25 cannot say in public. We invite the Commission to sent

1 written questions which we can address in confidential  
2 written responses. We request Commission to leave the  
3 anti-dumping order in place, so the industry can continue to  
4 exist and expand, and we can continue to produce saccharin  
5 in the United States. Thank you.

6 MR. PERRY: Now I would like to ask George Chan  
7 from Shanghai Fortune to speak.

8 STATEMENT OF GEORGE KIN CHUNG CHAN

9 MR. CHAN: Good morning everybody. My name is  
10 George Chan. I'm the general manager and one of the owners  
11 of the family-owned Shanghai Fortune Company Limited, a  
12 Chinese exporter and producers of saccharin in China. I  
13 would like to discuss the chemical production of saccharin  
14 produced for the U.S. market.

15 In response to PMC's prehearing brief, I wanted  
16 to make it absolutely clear that we have produced and we  
17 continue to produce our own saccharin. We do not export any  
18 Kaifeng produced saccharin to the United States. We only  
19 export saccharin that we produce despite our experience with  
20 saccharin production in China.

21 We have never heard of the company called  
22 Commercial Bridge, which is mentioned in connection with  
23 export of Kaifeng saccharin. With regard to the alleged  
24 certification from Kaifeng --

25 CHAIRMAN BROADBENT: Sir, I just didn't

1 understand what you said, the sentence right before that.  
2 You didn't -- hadn't heard of somebody. You just mentioned  
3 where.

4 MR. CHAN: We have never heard of the name  
5 Commercial Bridge.

6 CHAIRMAN BROADBENT: Okay.

7 MR. CHAN: This is the company that was in the  
8 filing.

9 MR. PERRY: The public filing by PMC. In the  
10 emails you'll notice a reference to a company called  
11 Commercial Bridge, they're saying, and Shanghai Fortune has  
12 never heard of them.

13 CHAIRMAN BROADBENT: Got it. Thank you very  
14 much. Sorry to interrupt, I apologize.

15 MR. CHAN: Okay. With regard to the alleged  
16 certification from Kaifeng, we note that there is no date or  
17 certification, destination of cargo and no description of  
18 what the product is, or even the date of such supposed  
19 shipments, or even if it's a shipment or not. The statement  
20 has no substance. This document does not itself accuse  
21 Shanghai Fortune of anything.

22 I would like to file additional evidence if  
23 possible regarding points after the hearing on this issue.  
24 A similar allegation arose previously, when a customer  
25 approached Shanghai Fortune, because of the allegation that

1 certain product originated with Shanghai Fortune. We  
2 discovered that the documentation for the product indicated  
3 that. Shanghai Fortune did not manufacture the material.

4 We would be happy to further discuss the  
5 information in confidential response to written request,  
6 written request.

7 Regarding the allegation that Shanghai Fortune  
8 supposedly is circumventing the Order, we actively  
9 participate in the Commerce investigation. We raised our  
10 price to eliminate U.S. dumping margin. We received a zero  
11 rate, a zero percent rate as a result of our cooperation at  
12 the Commerce Department proceedings.

13 We want to make sure our product is fairly  
14 traded, at a quality that meets the requirement of the U.S.  
15 markets. All the other producers have refused to  
16 participate in the Commerce Department review  
17 investigations. All they want to do is to transship through  
18 the back door.

19 The only interest for the other producer is to  
20 ship into United States, using any method (unintelligible).  
21 We believe Kinetic's production process will spread to the  
22 rest of the world. Shanghai Fortune experiences  
23 environmental concern like companies in the United States.

24 As a private company, we are not given any  
25 leniency in the environmental regulation, unlike the

1 state-owned companies. We must take environmental cost into  
2 account and that is why the saccharin production process is  
3 changing. We can show the difference between our company  
4 and the state-owned companies in confidential post-hearing  
5 response.

6 The feedstock for the new production process has  
7 multiple industrial uses, and it is not dedicated to  
8 saccharin production. This feedstock is a distinct chemical  
9 product, and it is not partially produced saccharin. There  
10 are more things I would like to say, but I cannot -- well  
11 again, I would invite the Commission to send written  
12 question, which I can address in the confidential responses.  
13 Thank you.

14 MR. PERRY: Now I would like to ask Marty  
15 Dansbury of American Custom Drying to speak.

16 STATEMENT OF MARTY DANSBURY

17 MR. DANSBURY: My name is Marty Dansbury. I am  
18 vice president of --

19 MR. BISHOP: Is your mic on?

20 MR. DANSBURY: Oh, sorry about that. All right.  
21 My name is Marty Dansbury. I am vice president of Business  
22 Development for American Custom Drying, a third generation  
23 family-owned enterprise that dates back to 1969. ACD is  
24 itself an example of American ingenuity. ACD is a contract  
25 toll processing company. Our primary expertise is producing

1 powders from liquids using the spray-drying process.

2 We produce food products through a chemical or  
3 biological process. We process over 40 products for more  
4 than 30 companies. We are a manufacturing company that  
5 produces chemical or food compounds for companies that one,  
6 do not have their own facilities, or two, companies that do  
7 not produce the chemicals at their own facilities.

8 We provide services to companies for their R&D,  
9 and we have engineers that work with them from  
10 initialization to commercial stages. One of the powders  
11 produced at ACD is saccharin. We process a chemical  
12 feedstock for Kinetic Industries to produce saccharin at our  
13 facilities in New Jersey, one of the 30 companies that we  
14 work with.

15 Our engineers have worked together with Kinetic  
16 to perfect the process of producing saccharin from another  
17 chemical. Once we produce saccharin from another chemical,  
18 we further process it into a spray-dried powder. We started  
19 working with Kinetic Industries in the early 1990's.

20 At this point in time, Kinetics is a small part  
21 of our business, but we see an opportunity to expand and  
22 diversify our saccharin production in the United States. We  
23 invite further questions from the Commissioners, which we  
24 can address confidentially after the hearing.

25 MR. PERRY: Now I'd like to ask Richard Boltuck,

1 the economist, to speak.

2 STATEMENT OF RICHARD BOLTUCK

3 MR. BOLTUCK: Thank you, Bill. Madam Chairman  
4 and members of the Commission, I am Richard Boltuck, and I  
5 appreciate the opportunity to appear here this morning on  
6 behalf of Kinetic Industries, a U.S. saccharin producer that  
7 supports retention of the current anti-dumping order. I  
8 have been asked to analyze the effects of terminating the  
9 Order.

10 To do so, I have used straightforward mainstream  
11 microeconomic tools. As with others in our Panel, I am  
12 somewhat limited in what I can say in presenting my  
13 reasoning and conclusions by the severe reach of the APO in  
14 this case. But I think I can convey the essence of the  
15 analysis I performed.

16 As a preliminary matter, I should underscore that  
17 the market for saccharin in the United States and around the  
18 world is mature. Saccharin is a chemical molecule and  
19 broadly speaking, it is highly homogeneous commercially,  
20 regardless of where it originates, as the Commission found  
21 in both the original investigation and the first review.

22 China is by far the most significant producing  
23 nation, with capacity that far exceeds domestic demand,  
24 leading it to be export oriented. Table 4-4 in the staff  
25 report documents a major portion of Chinese capacity. To

1 appreciate China's export orientation, consider that from  
2 2009 to 2013, the last year for which full year data are  
3 available from U.N. COM data, China exported an average 27.4  
4 million pounds a year to countries other than the United  
5 States and India, countries that both have anti-dumping  
6 orders in place.

7           Please compare that to the volume of U.S.  
8 consumption set out under APO in Table 1-1 in the staff  
9 report. The injury to the U.S. industry of removing the  
10 Order consists of two parts. First, Chinese exporters to  
11 countries other than the United States receive a much lower  
12 price for saccharin than Chinese exports under the Order to  
13 the United States, most of which originate from Shanghai  
14 Fortune, which has earned a zero margin based on a history  
15 of trading at fair values.

16           Without the Order in place, Chinese exporters  
17 would shift exports to the U.S. market, until prices decline  
18 to those obtained in the much larger rest of the world  
19 market, excluding India, exploiting the arbitrage  
20 opportunity. U.S. saccharin prices would fall accordingly,  
21 resulting in less revenue per unit sold for the U.S.  
22 industry.

23           Specifically, Chinese export prices to the United  
24 States over the 2009 to '13 period were \$1.67 per pound  
25 higher than to other countries besides India. That

1 difference represents a very significant share of U.S.  
2 saccharin prices, which would fall by roughly that amount  
3 absent the Order.

4 Second, a significant volume of saccharin  
5 produced in China that ought to be subject to the Order,  
6 resulting in anti-dumping duties importers and higher prices  
7 in the U.S. market, is evading those duties through  
8 fraudulent third country transshipment, specifically through  
9 Taiwan, Indonesia and India.

10 The evidence that this practice is pervasive is  
11 set out in Kinetics' brief, and in the case files that were  
12 submitted to the staff. The bottom line is that it appears  
13 reasonable to conclude that 100 percent of the imports from  
14 Taiwan in the Customs data are transshipped, and at least a  
15 substantial share of imports from Indonesia and India are  
16 also transshipped.

17 A correct counter-factual analysis of the effects  
18 of removing the Order ought to assume that in the future,  
19 beginning now, transshipment ends. To assume otherwise is  
20 to reduce the estimated injury associated with terminating  
21 the Order, and thereby reward the Chinese companies that are  
22 engaging in this practice and penalize the U.S. industry.

23 In Kinetics' brief, I presented an estimate of  
24 proportionately how much higher U.S. market prices would be  
25 without transshipment, and further the impact of that price

1 effect on the volume of U.S. production from 2009 to 2014.  
2 This analysis is based in part on the staff estimated  
3 elasticity of U.S. market demand, and the elasticity of the  
4 U.S. industry's supply.

5 I urge you to review that analysis in the brief.  
6 Unfortunately, APO restrictions prevent me from further  
7 characterizing the magnitude of the effect, because it is  
8 derived in part from U.S. prices that are protected by the  
9 APO. Of course, this analysis subject to considerable  
10 uncertainty for all the usual reasons, and in addition  
11 because it is impossible to know exactly how many pounds are  
12 being transshipped.

13 Nonetheless, it is possible to undertake the  
14 analysis based on reasonable, indeed conservative  
15 assumptions. Since the inability to know exactly how  
16 extensive transshipment has been is not Kinetics' fault, it  
17 is only fair to accept a good faith effort to reach a  
18 reasonable conclusion about the harm that the U.S. industry  
19 has endured due to this practice.

20 Now while APO prevents me from fully describing  
21 quantitatively my conclusions with respect to the effects in  
22 this public statement, the magnitude of the two components  
23 are reviewed in Kinetics' brief, and they are very  
24 significant indeed. The most important thing to understand  
25 about the price effects of terminating the Order is that the

1 Order must remain in place for the U.S. industry to grow and  
2 be viable on a sustainable basis.

3 Again, I cannot get into the details of why that  
4 is true in this open hearing, but it is explained in much  
5 more detail in our brief, and Kinetic would be pleased to  
6 respond to any written questions about its ability to exist  
7 and thrive, both with and without the benefits afforded by  
8 the Order. Thank you.

9 MR. PERRY: Thank you, Madam Chairman. We are  
10 ready for any questions you may have.

11 CHAIRMAN BROADBENT: Thank you. I want to thank  
12 all the witnesses for coming today, and taking time away  
13 from your businesses to be with us. This morning, we'll  
14 begin our public questioning with Commissioner Schmidtlein.

15 COMMISSIONER SCHMIDTLEIN: Thank you, Madam  
16 Chairman, and I'd like to also thank the witnesses for  
17 taking time out to be with us today to answer questions. I  
18 guess we're having a confidential session after this round  
19 of questions, so I will try to, you know, frame my questions  
20 in a way that doesn't get into BPI in this round.

21 So I guess my first question is, just as part of  
22 the background for Mr. Lu, can you describe what role  
23 Kinetic played in the original investigation? Were you a --  
24 was Kinetic a producer or importer of saccharin, a purchaser  
25 back then.

1 MR. LU: We were producer.

2 MR. PERRY: Yeah, producer.

3 MR. LU: We were producer at original  
4 investigation.

5 COMMISSIONER SCHMIDTLEIN: You were a producer in  
6 the --

7 MR. LU: Yes ma'am.

8 COMMISSIONER SCHMIDTLEIN: Your microphone  
9 please.

10 MR. LU: I'm sorry. Is that better?

11 MR. PERRY: But you were producing saccharin from  
12 insoluble.

13 MR. LU: Correct, correct. At the time we were  
14 producers. I was producing from insoluble saccharin.

15 COMMISSIONER SCHMIDTLEIN: Okay. So you  
16 participated in that investigation?

17 MR. LU: Yes, yes.

18 COMMISSIONER SCHMIDTLEIN: And were the president  
19 and owner back then?

20 MR. LU: No. That was Neal Goldman. That was my  
21 partner.

22 COMMISSIONER SCHMIDTLEIN: Your partner was the  
23 owner of Kinetics back then.

24 MR. LU: He was, yes.

25 COMMISSIONER SCHMIDTLEIN: Okay, and is he still

1 your partner now or is ^^^^

2 MR. LU: He deceased.

3 COMMISSIONER SCHMIDTLEIN: Oh, I see, all right.

4 MR. PERRY: I would like to correct this.

5 Kinetic Industries is affiliated with Gibraltar. Gibraltar  
6 was an importer also during the initial investigation.

7 MR. LU: Correct.

8 MR. PERRY: And frankly this relationship goes  
9 back almost 20 years, because there were 20 saccharin  
10 investigations, and I've known these gentlemen for 20 years.  
11 And in the first investigation, the Commission went negative  
12 on China, and Gibraltar was then an importer of saccharin.

13 And then as a result over time, Gibraltar, then  
14 Kinetic got involved with Shanghai Fortune in the late  
15 1990's and early 2000's. They began to produce spray-dried  
16 saccharin that they imported. Now that's not considered  
17 specifically production, because it's not a substantial  
18 transformation. But they were doing that, and then that  
19 stopped as a result of this second case.

20 COMMISSIONER SCHMIDTLEIN: So there's an  
21 affiliation between Gibraltar and --

22 MR. PERRY: Kinetic, yes.

23 COMMISSIONER SCHMIDTLEIN: And Kinetic, and is  
24 that a corporate structure affiliation, a familial  
25 affiliation?

1 MR. LU: It's common ownership.

2 COMMISSIONER SCHMIDTLEIN: I'm sorry, common  
3 ownership?

4 MR. LU: Yes, common ownership.

5 COMMISSIONER SCHMIDTLEIN: Oh okay. So you own  
6 both?

7 MR. LU: Yes.

8 COMMISSIONER SCHMIDTLEIN: You own both, okay.  
9 Is there an affiliation between Kinetic and Shanghai  
10 Fortune?

11 MR. LU: No.

12 COMMISSIONER SCHMIDTLEIN: No.

13 MR. LU: No. We're purely business relationship.

14 COMMISSIONER SCHMIDTLEIN: Okay, okay. Now Mr.  
15 Dansbury just testified that he sees an opportunity to  
16 expand production of saccharin in the U.S., but Mr. Lu, do  
17 you agree with that?

18 MR. LU: Yes.

19 COMMISSIONER SCHMIDTLEIN: You see an opportunity  
20 to expand?

21 MR. LU: Yeah. We've actually been working on  
22 that for a few years. Just takes time to develop a business  
23 plan and a production plan. Yes, absolutely.

24 COMMISSIONER SCHMIDTLEIN: And can you talk about  
25 what is it? Is it demand that's driving that opportunity?

1       What is it that's driving that opportunity?

2                   MR. LU:  It's business opportunities.  These are  
3       market.  These are market opportunities that allowed us to  
4       look in that direction.

5                   COMMISSIONER SCHMIDTLEIN:  And is that -- do you  
6       see demand for saccharin increasing, or in other words, what  
7       is it that's presenting this opportunity now that didn't  
8       exist in the last five years?

9                   MR. BOLTUCK:  Ms. Schmidtlein, if I might, we've  
10      had extensive discussions about this issue, and also  
11      addressed it in our brief and in response to staff  
12      questions.  The main thing, it isn't demand.  Demand is  
13      pretty stable in the U.S.  There is an opportunity to take  
14      market share from foreign competitors in the U.S. market.

15                   But the main thing that's driving it is that at  
16      the moment, Kinetics' production levels are too small to be  
17      sustainable.  So they have to plan to expand, to drive down  
18      their costs, increase their yields, have longer production  
19      runs.  The confidence that they can do that and they can  
20      acquire customers is based on the fact that historically,  
21      when they were generating saccharin from their prior process  
22      using insoluble saccharin as the feedstock as opposed to the  
23      chemical that they are currently using, they had a much --  
24      they had in fact a much larger customer base, much larger  
25      production and lower production costs.

1           So they know that once they master the current  
2 process, which they are at that stage now, having worked on  
3 the process for the past five years or so, five or six  
4 years, and made all the mistakes they can make and learn  
5 from them and so on, they've made those investments in  
6 experience and the learning curve, that they are now primed  
7 and at the stage of expanding.

8           They know that ACD can accommodate them, and they  
9 have confidence based on their historical experience in the  
10 market, that they can acquire market share by being  
11 competitive with foreign competitors.

12           COMMISSIONER SCHMIDTLEIN: So this is the process  
13 that you put in place in '08 around; is that correct?

14           MR. BOLTUCK: Correct.

15           COMMISSIONER SCHMIDTLEIN: And again, this might  
16 be answered better in writing or in the second round, I  
17 guess, but maybe you can say now. Is this -- I guess my  
18 understanding was, correct me if I'm wrong, I thought this  
19 process is similar to a process that's been used in China  
20 for many years.

21           MR. PERRY: No.

22           COMMISSIONER SCHMIDTLEIN: No, okay.

23           MR. PERRY: And not even the process used by the  
24 former U.S. producer, and it is -- that's why we made clear  
25 in our brief, this is not a modified Maumee production

1 process. I can't go into real more detail about that.  
2 Maybe I can do that probably in the confidential session.  
3 But the whole point is this is truly a separate chemical,  
4 and there's a truly a substantial transformation. So one  
5 reason for the expansion of this industry is because of the  
6 new production process.

7 COMMISSIONER SCHMIDTLEIN: And PMC does not use  
8 this process?

9 MR. PERRY: Well, we're not sure.

10 COMMISSIONER SCHMIDTLEIN: You're not sure, okay.

11 MR. PERRY: And I think that you should look at  
12 their questionnaire responses for that.

13 COMMISSIONER SCHMIDTLEIN: Okay. But does any  
14 other company in China use this process?

15 MR. PERRY: I don't think so, not now. This may  
16 be changing somewhat, and we can explain a little bit more  
17 when we get into the confidential section. The key  
18 component, the reason for this, is environmental issues, and  
19 this was a huge problem in the prior Maumee production  
20 process. The largest explosion in Toledo's history was the  
21 explosion at the saccharin factory in Toledo. It took out  
22 three city blocks.

23 COMMISSIONER SCHMIDTLEIN: Not with this process  
24 but --

25 MR. PERRY: No, with the old Maumee process.

1 COMMISSIONER SCHMIDTLEIN: Maumee process, okay.

2 MR. PERRY: And so it is a very volatile  
3 chemicals, etcetera, and also there was a huge environmental  
4 issue, and this new production process has eliminated a lot  
5 of that.

6 COMMISSIONER SCHMIDTLEIN: So can I ask, who  
7 developed this new process? Was it a scientist in China,  
8 was it -- Mr. Chan.

9 MR. CHAN: George Chan.

10 MR. PERRY: Shanghai Fortune over time.

11 COMMISSIONER SCHMIDTLEIN: Shanghai Fortune over  
12 time.

13 MR. BOLTUCK: This is a transferred --

14 COMMISSIONER SCHMIDTLEIN: Do you have patents on  
15 this process?

16 MR. BOLTUCK: It's trade secrets, and it's  
17 transferred technology. In other words, the Chinese  
18 engineers taught the U.S. producer how to do this, using  
19 technology that was developed by Shanghai Fortune. So as  
20 indicated, there's a business relationship between Shanghai  
21 Fortune and Kinetic.

22 The relationship has very simple objectives.  
23 Kinetic wants to expand its production to sell saccharin in  
24 the U.S. market and make a profit, and Shanghai Fortune  
25 wants to sell this chemical as a feedstock in the long-term

1 at greater volumes to Kinetic, so they both make profits.  
2 It's good business for both companies. But they have to  
3 cooperate during this start-up period, so that that can ever  
4 happen.

5 COMMISSIONER SCHMIDTLEIN: And the start-up  
6 period you're referring to is the last five or six years?

7 MR. BOLTUCK: Yeah, it's taken a while, probably  
8 longer than anyone had hoped. It's not an easy thing and  
9 it's new. So, you know, but they've done it now.

10 COMMISSIONER SCHMIDTLEIN: Okay. Mr. Dansbury,  
11 you mentioned that ACD has -- you work with 30 different  
12 companies, I guess, on a range of products.

13 MR. DANSBURY: Right.

14 COMMISSIONER SCHMIDTLEIN: So can you talk about  
15 what happens to the equipment that's used in the saccharin  
16 production when it's not being used for saccharin  
17 production? Does it sit idle? Is it used for something  
18 else?

19 MR. DANSBURY: Some of it is common equipment,  
20 for instance the spray dryers are, but there's also some  
21 confidential accessories on the front side that we use in  
22 the process for developing the saccharin that I really can't  
23 say what it is right now.

24 COMMISSIONER SCHMIDTLEIN: Okay. It's  
25 confidential.

1           MR. DANSBURY: There is special equipment brought  
2     in.

3           COMMISSIONER SCHMIDTLEIN: For the saccharin?

4           MR. DANSBURY: Correct.

5           COMMISSIONER SCHMIDTLEIN: Okay. I'm going to  
6     stop there. I have more questions, but my time is almost  
7     up, so I'll stop for now. Thank you.

8           CHAIRMAN BROADBENT: Mr. Perry, if Gibraltar and  
9     Kinetic are affiliates and Gibraltar is an importer of the  
10    subject imports, does Kinetic qualify as a related party?

11          MR. PERRY: I think it's -- yes, I think they do.  
12    I mean, we argued about that in our pre-hearing brief. I've  
13    been in investigations where in many cases the domestic  
14    producer is responsible for the majority of imports in the  
15    U.S. Activated carbon is one, sulfuric acid is another.  
16    And in both cases the Commission said that even though they  
17    were related, their real emphasis was to be a domestic  
18    producer. And they said, therefore there was no reason to  
19    take their data out of the domestic industry. So there have  
20    been a number of cases in the past where the Commission has  
21    seen this.

22          And also I think that it's evolving more and more  
23    to domestic production and that's what's going to happen  
24    here.

25          MR. BOLTUCK: Well, I mean, I think their

1 interest in the case is evident from the fact that they  
2 support continuation of the order and their plans to expand  
3 and diversify U.S. production without getting into detail  
4 the diversification part is going to displace a lot of their  
5 imports because they're importing to fill out a product line  
6 for their customer base and marketing purposes. And that  
7 becomes a lot less necessary as they diversify their  
8 production across a product range.

9 CHAIRMAN BROADBENT: Okay. But so, Mr. Perry, if  
10 you were making a legal argument, you know, why should  
11 Kinetic not be excluded from the domestic industry as a  
12 related party?

13 MR. PERRY: Yeah, because number one, I don't  
14 think their data would distort the domestic industry.  
15 That's a standard the Commission has used in the past. And,  
16 also, they are committed to U.S. production which is also  
17 another important qualification.

18 So the Commission in many cases where there's  
19 been a lot of data where the domestic industry is involved  
20 in a lot of the imports, the Commission still has not  
21 excluded their data from the domestic industry.

22 CHAIRMAN BROADBENT: Okay. And how would you  
23 characterize how committed they are to domestic production?

24 MR. PERRY: Very committed. Yes.

25 CHAIRMAN BROADBENT: As evidenced by?

1           MR. PERRY: Well, as evidenced by what they've  
2           been doing in the past by the fact that this is, again, we  
3           have to understand again, it's a new technology and we have  
4           to understand this technology I truly believe is going to  
5           change saccharin production around the world. This is new  
6           technology and we can get into detail about that. So it is  
7           going to take a while to get through that. But they are  
8           committed to U.S. production.

9           MR. BOLTUCK: And I would just add that, you  
10          know, in addition you have the direct testimony today that  
11          both ACD and Kinetic are planning to expand production. So  
12          that is evidence.

13          CHAIRMAN BROADBENT: Mr. Perry, are you arguing  
14          that PMC should be excluded from the Commission's definition  
15          of domestic industry?

16          MR. PERRY: We are not arguing that they be  
17          excluded. Their data can be included. I think that the  
18          argument should be given a lot less weight, and that's  
19          evidenced from our prehearing brief, I think. And I don't  
20          want to get into too much more because so much of it is  
21          confidential.

22          CHAIRMAN BROADBENT: But their argument is the  
23          original petitioner should--I mean, their argument should be  
24          given less weight why?

25          MR. PERRY: Because first they're not committed

1 to U.S. production. They really want to be an importer, but  
2 I don't want to get into anything more. It really gets  
3 into, there is so much APL information, especially from PMC  
4 here, I would respond to that in the confidential or in the  
5 post-hearing brief.

6 CHAIRMAN BROADBENT: Okay. I mean, I guess we're  
7 still wrestling with this whole idea that the only  
8 petitioner in the domestic firm to participate in our first  
9 review no longer sees the utility of order in place. And  
10 I'm just wondering why this isn't a better case for a new  
11 investigation and looking at the new petitioner?

12 MR. PERRY: Because I think the domestic industry  
13 is evolve over time. Now we've seen this in a number of  
14 cases. Sorbasic acid went with two or three domestic  
15 producers in reviews and eventually the order was lifted  
16 because there was no production there. But the point is,  
17 this is not a private lawsuit brought by PMC. This is a  
18 lawsuit where it was a representative of the domestic  
19 industry. Remember, the whole purpose of the dumping law is  
20 to protect domestic production, domestic employment, the  
21 domestic industry. Well, the domestic industry can change  
22 over time and in many cases domestic companies or the  
23 domestic industry they'll change owners. That happens all  
24 the time. But they'll also cease to exist and new companies  
25 will come up. That's the way the domestic industry works.

1                   And we can address that more in response to  
2 confidential questions in camera or in the confidential  
3 post-hearing brief.

4                   CHAIRMAN BROADBENT: In addition to the factors  
5 such as value added, what other factors do you believe weigh  
6 in favor of finding domestic production?

7                   MR. BOLTUCK: I think, you know, the statement  
8 that Bill made, the introductory statement, and also  
9 arguments in our brief really argue that that six-factor  
10 test which is predicated on the idea that there is an  
11 integrated production process that is broken between two  
12 countries, and then you have to determine which country you  
13 attribute the production to and that that paradigm or that  
14 model doesn't apply here. And the reason is that the  
15 feedstock chemical is not in fact some kind of unfinished or  
16 semi-finished or saccharin or saccharin in process. It  
17 simply is not. It is a chemical that could go into other  
18 products and we identified those other products and included  
19 materials that show that it's used for production of those  
20 other products in appendices to our brief.

21                   So, you know, in a public session, because it  
22 might give away what that chemical is, specifying what those  
23 other products are, let's say it's other product A, it would  
24 lead to the absurdity that to make other product A from this  
25 chemical, you would have to start with unfinished saccharin.

1 Or alternatively that to make saccharin you would have to  
2 start with unfinished product A. Nobody talks that way and  
3 for a very good reason because this is actually the  
4 beginning of the production process of saccharin now. This  
5 is a different process. It is not the Maumee process which  
6 was an integrated process that's becoming increasingly rare.  
7 And this is the beginning of the process with that is other  
8 chemical.

9 Many production processes start with some  
10 chemical. Saccharin starts with this chemical now.

11 CHAIRMAN BROADBENT: Okay. Just tell me though,  
12 if we do apply the six-factor test, what helps you the most;  
13 which of the factors?

14 MR. PERRY: Well, I think that if you come back  
15 to the six-factor test, I mean, and you go back to where you  
16 were in the last review and you analyze the six factors and  
17 said, though it was a close call, you found that the U.S.  
18 industry did exist based on the same production process.

19 But I also believe and we will go more into this  
20 in confidence, we think that there wasn't a complete  
21 understanding of what was going on in the production  
22 process. That's why we tried to clarify this in our  
23 pre-hearing brief.

24 The other thing, the key point here is, is there  
25 a substantial transformation? And you can see the

1 substantial transformation determines whether this saccharin  
2 is a U.S.-made product or not. And as we showed from our  
3 brief, we truly believe this is substantial transformation.

4 CHAIRMAN BROADBENT: Okay. I have a consumer  
5 question on this product. Is there a different chemical  
6 process going on between Sweet 'N Low in the pink packet and  
7 Equal in the blue packet?

8 MR. PERRY: I mean, there are differences between  
9 aspartame and -- what is it, it's sucralose?

10 MR. LU: I don't know the detail of the process  
11 of the product making.

12 CHAIRMAN BROADBENT: Okay. And which product are  
13 you guys eventually producing if it's not --

14 (Simultaneous conversation.)

15 MR. PERRY: We're not producing sucralose and  
16 we're not producing aspartame, we're producing saccharin.

17 CHAIRMAN BROADBENT: Right.

18 MR. PERRY: And if you look at the entire market,  
19 this has gone through the past 20 years of this case,  
20 saccharin is at the bottom. It's the oldest production  
21 process for sweeteners. It was discovered I think in the  
22 late 1800's or early 1900's.

23 CHAIRMAN BROADBENT: Right.

24 MR. PERRY: But because it is lower priced, it  
25 basically is used when you have fountain drinks. For

1 instance, if you go to McDonald's and you have a Diet Coke,  
2 you're drinking saccharin.

3 Now, when you drink it from a can, you're  
4 drinking aspartame. And the problem was the warning that  
5 saccharin could create cancer in rats and stuff. And when I  
6 had the first case 7-11 had a big poster, saccharin causes  
7 cancer in rats. And as you may remember three or four years  
8 ago, President Obama, during his state of the union  
9 announced that the regulations on saccharin were terminated  
10 because they were no longer correct.

11 And so literally it was over time that these  
12 restrictions were done completely away with and then  
13 President Obama again reemphasized that point in the state  
14 of the union.

15 But, again, this is one of the oldest production  
16 processes. It's probably the cheapest sweetener around.  
17 And that's the other.

18 CHAIRMAN BROADBENT: Okay. But is it in the blue  
19 or the pink packet or another packet?

20 MR. PERRY: It's the pink packet.

21 MR. BOLTUCK: Sweet 'N Low?

22 MR. PERRY: Yes, Sweet 'N Low would be the pink  
23 packet, the blue packet would be aspartame, the yellow  
24 packet is succralose.

25 CHAIRMAN BROADBENT: And you all are producing

1       what?  Which of those?

2                   MR. PERRY:  The pink packet.

3                   CHAIRMAN BROADBENT:  The pink packet, okay.

4                   MR. PERRY:  Now, we don't produce the pink  
5       packet, but saccharin goes into the company that produces --  
6       well, we can't talk about that.  We'll do that in  
7       confidence.

8                   But it goes into the pink packet from a company  
9       called Cumberland which sells it.

10                  CHAIRMAN BROADBENT:  Cumberland?

11                  MR. PERRY:  Cumberland.  Yes.

12                  CHAIRMAN BROADBENT:  All right.  Excuse me.

13       Let's see.  I think it would be Vice Chairman Pinkert.

14                  VICE CHAIRMAN PINKERT:  Thank you, Madam  
15       Chairman.  And I join my colleagues in joining you for being  
16       here today.

17                  I'm going to get more into the value-added issue  
18       in the in-camera session.  But I just want to ask the  
19       business people on the panel, in regard to that chemical  
20       that is being used to produce the saccharin, is there a  
21       market price for that chemical?  I heard Mr. Boltuck talk  
22       about how that chemical is used to produce different  
23       finished products.  So I'm wondering, is there a market  
24       price for it?

25                  MR. CHAN:  There would be a market price -- .

1           Let me explain a little bit. There is a price, I  
2 would say market price on that is product which is -- well,  
3 I would put it in the confidential briefing because the  
4 company is a very major company using them in the United  
5 States.

6           VICE CHAIRMAN PINKERT: And is it your  
7 understanding that the market price for that chemical is  
8 comparable to the market price for the finished product  
9 saccharin? Or is it your understanding that the market  
10 price for saccharin exceeds the market price for the  
11 chemical that's used to make it?

12          MR. CHAN: From my understanding, it is somewhat  
13 comparable, but somewhat not comparable. Because the market  
14 price beside the cost factor, they also have the market  
15 demands. So if the product was being less produced because  
16 of -- the demand changes over year, the price is a little  
17 different. But in costing wise, maybe there will be some --  
18 some equalence here.

19          MR. BOLTUCK: Commissioner Pinkert, I would just  
20 add that it depends what market price for saccharin you're  
21 referring to. If you're referring to, for instance, the  
22 market price that Chinese producers are charging outside of  
23 the United States, then, yes, it would be pretty much  
24 impossible to use that is process and sell saccharin at  
25 those prices profitably. But if you're referring to fair

1 values established in the U.S. market with the antidumping  
2 order in place, then it's definitely the conviction of Mr.  
3 Lu and Kinetic who actually know this market and produce the  
4 product that they can get production at scale and with the  
5 yields that are necessary based on their historical  
6 experience to have total costs, not just for this chemical,  
7 but for the rest of the production process, the U.S. labor  
8 involved and everything else, below the price of saccharin  
9 supported by the antidumping order.

10 MR. PERRY: I think you have to take one other  
11 factor into account. Do we take into account pricing with  
12 or without environmental costs. That's the issue. Because  
13 if we're going to basically price saccharin as a number of  
14 Chinese companies have, without the environmental costs,  
15 then of course, you can probably sell it very cheap.

16 But the environmental costs are substantial and  
17 their environmental costs are not only, as we've said, in  
18 the United States, but also in China are rising. And that's  
19 why it's such an important part, and we can talk a little  
20 more about that in confidence. But it's the environmental  
21 issue you've got to look at. That's what is changing the  
22 production.

23 VICE CHAIRMAN PINKERT: Thank you. I can't much  
24 more about this in the public session, but I can say that  
25 Commissioner Aarnoff and Commissioner Pierson and I had a

1 footnote in the last review determination in saccharin that  
2 concerned this value-added calculation. And you may wish to  
3 look at that and then in the post-hearing comment on that.

4 MR. PERRY: We will definitely.

5 VICE CHAIRMAN PINKERT: Thank you.

6 MR. PERRY: Can I ask a question? Was that  
7 footnote in APO or was it public?

8 VICE CHAIRMAN PINKERT: The footnote is public,  
9 but there are some portions that are redacted. But you can  
10 get a good understanding of what we were getting at from the  
11 public.

12 MR. PERRY: Okay. All right.

13 VICE CHAIRMAN PINKERT: Thank you.

14 Now, why does Kinetic engage in total production  
15 rather than its own production operations?

16 MR. LU: It's really utilization of equipment.  
17 We don't have the volume to really utilize such production  
18 lines throughout the year. So without a major capital  
19 investment, we sit idle. So it's just not economical. You  
20 can look at the costs and you factor the costs into your  
21 products and you can't produce product to bear that kind of  
22 fixed cost.

23 MR. PERRY: I mean, one thing that Mr. Dansbury  
24 was mentioning, ACD is -- I used the analogy when the staff  
25 was there, it's almost like a supermarket of manufacture or

1 shopping mall. And many companies are working with ACD now  
2 for startup plants where they just don't have the facilities  
3 or the equipment and they want to produce a certain product.  
4 So they have -- and all of this is confidential. We have no  
5 knowledge of what's going on, but they have a number of  
6 customers that they work with in the same area.

7 And, Marty, you might want to add something to  
8 that.

9 MR. DANSBURY: Everything we do is strictly for  
10 as-is as the customer needs it. And there's different  
11 avenues how we get to the finished powders that we produce  
12 for them.

13 As Mr. Lu said, it wouldn't be economically  
14 feasible for them to build a complete facility all the way  
15 to the spray drying end and just produce what they do.  
16 There wouldn't be an economic value in it. Where we  
17 actually are a facility for producing companies' finished  
18 product that may go to market or wherever they go with it.

19 VICE CHAIRMAN PINKERT: Thank you. Now, Mr. Lu,  
20 you testified that as you look to the future, you intend to  
21 ramp up the volumes of production for the company in sales.  
22 So as you look to the future would you be pulling that  
23 production into the company as opposed to using the toll  
24 arrangement to satisfy that demand?

25 MR. LU: And maybe I can address that in the

1 confidential discussion.

2 VICE CHAIRMAN PINKERT: Thank you. That would be  
3 helpful. Another question that I think we can discuss in  
4 this public session is whether or not thus far you consider  
5 the order to have been effective. We obviously have some  
6 testimony about what the future orientation of this industry  
7 is going be, and I understand that. But just looking at the  
8 current situation, is this order providing effective relief  
9 at this time?

10 MR. PERRY: Let me speak first, and then I'll  
11 have Richard speak.

12 Yes. And what I would say it's probably 70  
13 percent effective, maybe 80 percent effective; but you do  
14 have substantial transshipment in the U.S. market, but  
15 that's probably a problem in every case. But in this case  
16 it's endemic. There's so much of it. But on the other hand  
17 -- and that's what Richard will talk about. In the initial  
18 investigation, and this is the second saccharin review, I  
19 got it from the public staff report. It was as low as a  
20 \$1.54 a pound.

21 I was involved in that first case. I can tell  
22 you importers were so pissed off -- excuse my language --  
23 and so anger that price had been driven so low. And so,  
24 what happened as a result of that order was prices did go up  
25 substantially. So, if the order is done away with prices

1 will drop like a rock, but the other side of it again is  
2 it's not been completely effective because of the  
3 transshipment, which is enormous in this case.

4 MR. BOLTUCK: Yes. And I would just add you know  
5 so this is a nuance point in the sense that it's neither  
6 here nor there. It's not one -- it's not completely  
7 ineffective or completely as effective as it ought to be and  
8 that's why in the analysis I presented I suggested there  
9 were two components to the injury in constructing the right  
10 counterfactual but experiment going forward.

11 And the one component is the actual affect of the  
12 order and up to this point. And I suggested on the order of  
13 \$1.67 a pound. I mean you know we could discuss whether we  
14 should look at this year, that year, an average of a number  
15 of years or whatever based on the history; but that is,  
16 historically, the gap, on average, from 2009 through 2014  
17 based on the difference in price between Chinese exports to  
18 countries that don't have anti-dumping orders outside of the  
19 United States and from Chinese companies that are trading  
20 fairly either paying -- where the importers are paying an  
21 anti-dumping duty, or in the case of Shanghai Fortune,  
22 they've been determined to be trading fairly prices that  
23 have been sold to the United States.

24 That's a very -- \$1.67 a pound is a very large  
25 share of the price of saccharin delivered in the U.S.

1 market. So, that's how effective it has been. How  
2 effective you ought to assume it would be by not assuming  
3 transshipment continues has to do with looking at the  
4 volume, the types of volumes we're likely to be looking at  
5 with respect to transshipment and conducting the experiment,  
6 the analytical experiment of removing that volume from the  
7 U.S. market.

8 That's Chinese product that's being sold through  
9 third countries mislabeled as originating in those countries  
10 in order to evade the discipline of the anti-dumping order.  
11 It's being sold at prices comparable to what Chinese  
12 producers would be selling directly to the United States if  
13 they could.

14 VICE CHAIRMAN PINKERT: I'm going to have to stop  
15 you right there. Thank you, Madam Chairman.

16 CHAIRMAN BROADBENT: Commissioner Williamson.

17 COMMISSIONER WILLIAMSON: Thank you. And I want  
18 to express my appreciation to the witnesses for coming this  
19 morning.

20 Mr. Lu, what segment of the U.S. saccharin market  
21 does Kinetic participate in, and who are its main  
22 competitors in that segment?

23 MR. LU: Well, there's not many manufacturers for  
24 saccharin regardless. You can see there's from China for  
25 other part of the world, so it's not many competitors.

1 There's just handfuls of them.

2 COMMISSIONER WILLIAMSON: In the U.S. market?

3 MR. LU: In the U.S. market. You have products  
4 from Korea and obviously, you have products from India and  
5 Indonesia and some from Taiwan. How you look at it.

6 COMMISSIONER WILLIAMSON: Is their market in any  
7 way segmented? I mean you know sometimes you have  
8 competitors who are going after one segment of the market  
9 and other companies are going after different segments.

10 MR. LU: Well, there's different type of market.  
11 You have high --

12 CHAIRMAN BROADBENT: Mr. Lu, sorry, could you put  
13 your microphone on. I'm sorry.

14 MR. LU: Sorry. You have different market  
15 segment like feedstock you have for end of feed. You have  
16 for beverage industries; you have for electrical plating, so  
17 you have different type of market. You have  
18 pharmaceuticals. Yes, you have different segment of market  
19 use saccharin.

20 COMMISSIONER WILLIAMSON: And is Kinetic  
21 participating in all of those segments?

22 MR. LU: We do in feedstock and for beverages.  
23 We don't involve in pharmaceutical.

24 COMMISSIONER WILLIAMSON: Which I take it is that  
25 more of a premium or a higher price?

1           MR. LU: It takes a different form of saccharin,  
2           which we don't produce today. Also, it's a longer process  
3           and sometimes there's a preference by the end users where  
4           the source of the materials come from.

5           COMMISSIONER WILLIAMSON: Okay, so you mean they  
6           might prefer a U.S. source for the inputs as well as the end  
7           product?

8           MR. LU: That our assumption, yes.

9           COMMISSIONER WILLIAMSON: Okay.

10          MR. PERRY: Commissioner Williamson, I was just  
11          going to add that that one of the reasons why U.S.  
12          production is important in this case and it's the higher end  
13          markets where you have to do qualifications and stuff.

14          COMMISSIONER WILLIAMSON: And what are the  
15          purchaser's primary concern there about?

16          MR. BOLTUCK: I mean I would just like to point  
17          out that it's all linked. It's all this molecule, which is  
18          saccharin. And so, for instance, when Mr. Lu refers to the  
19          agricultural feed market, he's selling a product that's  
20          called spray dry saccharin and that mixes well with  
21          agricultural feed. However, there are some additional costs  
22          in preparing spray dry saccharin and it saves the end user  
23          some costs on his end when he uses it. So, he would like to  
24          be able to use it, but if the price of crystal saccharin  
25          declines in relation to the price of spray dry saccharin,

1 historically, agricultural feed users will switch to crystal  
2 saccharin and they will just engage in the additional,  
3 modest production step themselves in order to make it into a  
4 pulverized form that mixes well with their feed.

5 So, there is a very strong linkage within the  
6 market economically between the prices of all forms of  
7 saccharin because of the very high substitutability  
8 potential.

9 COMMISSIONER WILLIAMSON: Thank you for that  
10 answer. And in terms of competition with imports, Kinetic  
11 is in competition with the imports into these markets, the  
12 agriculture and --

13 MR. LU: I'm sorry. I didn't quite understand  
14 your question, sir.

15 COMMISSIONER WILLIAMSON: Is Kinetic in  
16 competition with imported saccharin in the agricultural, the  
17 corrosive market?

18 MR. LU: Yeah, we compete and we're competitive  
19 with our imports. Yes.

20 COMMISSIONER WILLIAMSON: Do the imports also  
21 compete in the pharmaceutical market?

22 MR. LU: We're not in that segment.

23 COMMISSIONER WILLIAMSON: Yes, I understand  
24 you're not, but I'm wondering if there are imports that are  
25 in that market.

1           MR. LU: Yes, I think they are, but we are not  
2 actually in the market, so I couldn't honestly tell you what  
3 it is.

4           COMMISSIONER WILLIAMSON: Now, do any of your  
5 customers express a preference for U.S.-made saccharin?

6           MR. LU: They obviously prefer, but there are  
7 certain customers I can't reveal the name, you probably  
8 would know, they will tell you that. So, yes, then we were  
9 not able to send the product. We are not really able to  
10 sell to them.

11          CHAIRMAN BROADBENT: Let me just interrupt here.  
12 If you all could say your name before you answer the  
13 question.

14          MR. LU: I'm sorry.

15          CHAIRMAN BROADBENT: For the court reporter.  
16 Thank you.

17          MR. LU: Cheng Lu here. I'm sorry.

18          COMMISSIONER WILLIAMSON: Now, is that they are  
19 saying they want U.S. feedstock and U.S.-made, or is it just  
20 that they want the finished product to be made in the U.S.

21          MR. LU: No, no, the saccharin is not considered  
22 as really the finished, finished product because it's used  
23 for as additive to other products.

24          COMMISSIONER WILLIAMSON: Okay, but that  
25 component, they want the saccharin component to be U.S.-made.

1           MR. LU: In the feedstock they don't. Nobody  
2 specify it have to be U.S.-made, no.

3           COMMISSIONER WILLIAMSON: Okay, but there are  
4 some customers that do?

5           MR. LU: There are some customers where -- yes.

6           COMMISSIONER WILLIAMSON: Okay.

7           MR. PERRY: There's always a preference for  
8 U.S.-made, but if prices drop so low the preference  
9 disappears and that's the point.

10          COMMISSIONER WILLIAMSON: Okay. Thank you.

11                 Could you explain what part of the production  
12 process with saccharin takes place at Kinetic and what part  
13 takes place at the tolee, ACD? Is that something you can  
14 discuss at this point in the public session?

15          MR. DANSBURY: Marty Dansbury.

16                 We can answer a lot of that in the confidential.

17          COMMISSIONER WILLIAMSON: Okay, I'll save the  
18 question. Thank you.

19                 There's already been discussion about the  
20 six-factor test. I was wondering in the post-hearing can  
21 you -- or now can you cite a single Commission determination  
22 where the Commission has refused to apply that test or a  
23 single court case endorsing your argument about not using  
24 the test?

25          MR. PERRY: Yes, in the sense that when I saw the

1 six-factor test I was back here in the eighties when it  
2 first started showing up with stuff like semiconductors  
3 where part of the production took place in the United States  
4 and part of the production took place in Taiwan or somewhere  
5 else, and the question was how much value added was added to  
6 the product to make this a U.S.-made product? And that's  
7 where the whole issue came in, and in confidence, but we've  
8 said in our pre-hearing our briefs. We'll say again in the  
9 confidential hearing. This is not a modified Maumee method.

10 The way you thought about it in the first review  
11 I think was incorrect because this is a separate chemical,  
12 which is being sold for other products and other uses. And  
13 so you have to start with the production from somewhere, and  
14 is there a substantial transformation? Is this a  
15 semi-finished operation? No, it is not a finishing. It is  
16 not a conversion operation, and that's the mistake that was  
17 made, I believe, in the first review.

18 MR. BOLTUCK: Yes, in most cases, the six-factor  
19 test doesn't even arise. And the reason is there's no  
20 ambiguity or perception of an ambiguity about the country of  
21 origin of a product that is coming out of a factory in the  
22 United States. And our point is, in fact, the kinds of  
23 facts that lead to that are exactly the same as here.

24 You know if you have -- you know the example I  
25 gave when we were having an internal discussion yesterday

1 you have a Toyota assembly plant in Alabama and they're  
2 importing a lot of parts, including like a door for a Toyota  
3 that's fabricated in Japan that's got no other use. So, you  
4 could say, well, you know where's this car really being  
5 made? Is it the assembly in Alabama or is it the company  
6 that fabricates the door? You know where is this care  
7 really being made?

8 That question does not arise in this case.  
9 There's a primary chemical that has multiple industrial uses  
10 that is being imported and it is not unfinished saccharin.  
11 It is not saccharin in process that could go into some other  
12 product and so it is just like any other case. It is not  
13 like the Toyota assembly plant case.

14 COMMISSIONER WILLIAMSON: Are there any cases --  
15 and it probably would be in the chemical area where you know  
16 potential confusion could arise, but you know it got sorted  
17 out correctly.

18 MR. BOLTUCK: I agree. I mean I understand why  
19 it's confusing. In fact, you know we looked back at as much  
20 of the record as we could from the first review and also  
21 from the citations to the first review and the staff report  
22 and so on, and what you were told. And you know if that's  
23 what we knew, not having independent sources of knowledge  
24 about how this market really operates, we probably would've  
25 concluded the same thing that the Commission did in the

1 first review because we understand how confusing this could  
2 be, but we think that confusion ought to be sorted out now.

3 COMMISSIONER WILLIAMSON: Okay, anything more you  
4 can do to help us would be good. Thank you.

5 MR. LU: Definitely, we will.

6 CHAIRMAN BROADBENT: Commissioner Kieff.

7 COMMISSIONER KIEFF: Thank you Madam Chairman;  
8 and I join my colleagues in thanking the panel. I also  
9 think we may have in the room representatives from PMC, and  
10 I hope that everybody with useful information to this case  
11 can provide more information after hearing, whether they're  
12 on this panel or not because I think that will help us  
13 provided in whatever form is appropriate, given the  
14 confidential or non-confidential nature of the information;  
15 but information is -- we're in the business of getting  
16 information and using it well. And we look forward -- what  
17 you provide is the grist for our mill, so please send it in.

18 And of course, questions directed you know to one  
19 side or another in most of our proceedings are really  
20 designed to show all sides and the public what's on our  
21 mind, what we're doing when we're trying to make our  
22 decision. That is an important part of the transparency  
23 obligation that we have so that you, collectively, can know  
24 what information to provide us. So, we will all enjoy making  
25 good use of that.

1           Can I just jump in on some of the conversations  
2           you were just having with my colleague, Commissioner  
3           Williamson, about feedstock? Was the feedstock in this new  
4           process being sold or used in the U.S. before you started  
5           using it for saccharin?

6           MR. PERRY: I truly believe, yes, it was.

7           COMMISSIONER KIEFF: And it's got a lot of  
8           different uses.

9           MR. PERRY: Yes, we've documented them.

10          COMMISSIONER KIEFF: Great. One of the things  
11          that I think might help both sides to educate us on is  
12          whether as a economic or a legal matter it is a fruitful  
13          endeavor to try to tease out, for the Commission to try to  
14          tease out whether the use of this feedstock in this new  
15          process to produce saccharin is in some way an artifice or a  
16          way to get around the order and whether even if it is would  
17          that matter legally to our analysis?

18          MR. PERRY: The order covers all forms of  
19          saccharin. So, if in fact, this feedstock was basically a  
20          way to get around the order it would have to be a saccharin  
21          product. It is not. It is imported under a different  
22          tariff item. There is a substantial transformation, a jump  
23          from one tariff category to another.

24          As you may know, under NAFTA, when you jump from  
25          one tariff category to another that's an indication that it

1 is now an NAFTA product. So, that we have an actual tariff  
2 shift going on here. So, this is not just some kind of  
3 saccharin product or some semi-finished saccharin coming in.  
4 If it was, it would be covered by the order itself.

5 COMMISSIONER KIEFF: I mean you have made here a  
6 moment ago a perfectly cogent explanation for the conclusion  
7 you are urging, and I only ask others to suggest whether  
8 there are countervailing ways of thinking about the matter.  
9 I'm not suggesting that your description of a category shift  
10 is inaccurate or that NAFTA's treatment of a category shift  
11 is inaccurate. I'm merely asking for a briefing on what  
12 consequence the things you've told me should have for me and  
13 my colleagues as we think, going forward.

14 MR. BOLTUCK: I think we should emphasize because  
15 your question was is this some way of getting around the  
16 order, and I think we should emphasize that this is U.S.  
17 production. The purpose of the operations are to make a  
18 profit, are to be a profitable firm. There's a plan as to  
19 how to achieve that. It is contingent on fairly traded  
20 saccharin prices in the U.S. market, but there is a  
21 conviction that U.S. workers and U.S. facilities are  
22 perfectly capable of competition competitively in the  
23 production of saccharin using this new technology, which has  
24 rationales that have nothing to do with getting around the  
25 order.

1           It's environmentally safer and it avoids putting  
2 primary toxic chemicals like chlorine in proximity with food  
3 products. I mean you know there are reasons why this is  
4 happening and why this is probably the way of the future in  
5 the production of saccharin, not just here but probably many  
6 places.

7           COMMISSIONER KIEFF: So, if I hear you correctly,  
8 you're, in effect, telling me that as long as there's a bona  
9 fide good faith business purpose even if in addition there's  
10 a benefit to the business plan that flows from the presence  
11 of the order on other business models as long as this  
12 business model has its own distinct, authentic business  
13 purpose we should give it this distinct business model  
14 weight. We should treat it on its own.

15           MR. BOLTUCK: Well, it's not entirely distinct,  
16 but I would say you know technologies evolve over time and  
17 there are new technologies that need to be recognized. You  
18 know we can't sort of lock our thinking into a historical  
19 technology. This technology has advantages that mean that  
20 if you're going to produce saccharin in the United States  
21 profitably you're going to use a method similar to this.  
22 And there's ample evidence from the first review and form  
23 that this is, in general, the direction that that would have  
24 to take.

25           COMMISSIONER KIEFF: Are there -- and this may be

1 one of these questions that have to just be followed up in a  
2 different setting, but it might help to explain in detail  
3 why, for example, this method is not already in more use  
4 here or in China. You, I think, have already hinted at it,  
5 which it's hard to pull off or it takes perfecting. And I  
6 think you said five years was longer than folks had  
7 originally hoped. And I take all of those as good faith  
8 statements, but if later you could backfill with some  
9 explanation as to what challenges have been encountered,  
10 what reasons for optimism exist that would help.

11 MR. BOLTUCK: Well, you know a lot of things do  
12 have to do with the regulatory environment and the  
13 sensitivity to environmental. So, for instance, George, in  
14 describing the situation in China distinguished between  
15 state-owned companies that have a lot more latitude in terms  
16 of polluting the environment.

17 You know I don't want to say why, but we can all  
18 read between the lines, perhaps. And private companies with  
19 private investors they're welcome in China, but they do get  
20 subject to very tough regulation and so where you would  
21 expect to see this happening creatively and you know  
22 innovatively in China is in one sector and probably not in  
23 the other. So, regulatory environments do matter.

24 COMMISSIONER KIEFF: So, another broad, legal  
25 question is if it turns out we determine that no firms

1       qualify as domestic producers and there's no domestic  
2       production of saccharin what should the Commission do? I  
3       understand that that's probably not -- the assumption of the  
4       question is not something you hope we reach, and I get that,  
5       but if it turns out we were to get there would that -- if  
6       you could explain to us what we do if we get there that's  
7       also helpful.

8                       MR. PERRY: We have two cases out there  
9       already, sebacic acid and indigo, and you went negative in  
10      both cases. By the way, both cases were my cases, so I know  
11      exactly what happened. And yes, in those cases, the  
12      domestic industry ceased to exist when the Commission lifted  
13      the Order. But in this case, obviously we believe that  
14      domestic production is taking place. Otherwise, we wouldn't  
15      be here.

16                      COMMISSIONER KIEFF: It makes sense. I  
17      appreciate it. I see that my time is up. Thank you very  
18      much, Madam Chairman. Thank you very much.

19                      CHAIRMAN BROADBENT: Commissioner Schmidtlein.

20                      COMMISSIONER SCHMIDTLEIN: Thank you. I  
21      wanted to follow up quickly on the equipment question that I  
22      asked Mr. Dansbury, and I'm not sure Mr. Dansbury if you're  
23      the best one to answer this question or Mr. Perry, maybe you  
24      are. Do you all have any disagreement with the staff  
25      report's allocation of assets for Kinetic/ACD?

1                   MR. DANSBURY: I don't understand the  
2 question.

3                   MR. PERRY: It may all be confidential.  
4 That's the question.

5                   COMMISSIONER SCHMIDTLEIN: Okay.

6                   MR. PERRY: Okay, and it --

7                   COMMISSIONER SCHMIDTLEIN: Well, yeah. It just  
8 goes to -- you know, we were discussing what portion of the  
9 equipment at ACD is used for saccharin production, and so I  
10 just wanted to confirm whether or not you agreed with how  
11 the staff has allocated the asset values with regard to that  
12 in the staff report?

13                   MR. DANSBURY: Yes.

14                   MR. PERRY: Well, we'll take a look at it,  
15 because we're both under APO, and try to respond to that in  
16 the post-hearing brief. But again, because it is under APO  
17 and especially the APO staff report, obviously they cannot  
18 see it.

19                   CHAIRMAN BROADBENT: Mr. Perry, can I just  
20 interrupt you? If you could get the witnesses to identify  
21 themselves when they answer questions, that would be  
22 helpful.

23                   MR. PERRY: Yeah. Oh, I'm sorry. Okay.  
24 William Perry, Dorsey and Whitney.

25                   COMMISSIONER SCHMIDTLEIN: Okay, and then I

1 guess just again, since obviously this is a critical issue  
2 in this case, this question about the value-added and the  
3 six factor test.

4 So I just wanted to see if maybe you could  
5 help me understand a little bit more about the legal  
6 framework that applies here, and I know that it's your  
7 position that the six factor test doesn't apply, because all  
8 of the production takes place in the United States.

9  
10 The question that comes to mind in response to  
11 that is well, but we have the added twist here, in that the  
12 production and all of the production is done by toll, right,  
13 as a toll producer. And typically in cases where we have  
14 toll production, and the question is whether those toll  
15 producers should be included as part of the domestic  
16 industry, the Commission looks at -- and sometimes it's done  
17 in a summary fashion, because it's not a controversial issue  
18 in the case.

19 But at least my experience has been we always  
20 look at the value-added by that toll producer. So I think  
21 that sort of complicates it here, but so shouldn't we be  
22 looking at the value added by the toll producer here.

23 MR. BOLTUCK: Well, I just want to separate  
24 two issues. One issue is who is the producer in the U.S.  
25 when there's no dispute that there is production in the U.S.

1 The product, something else is going in the front door, and  
2 the subject product is coming out the back door.

3 So it is being produced. Then you can ask the  
4 question, you know, does this party bring enough to the  
5 table to count as a U.S. producer, as among the U.S.  
6 producers. But you are going to have to decide that  
7 somebody is producing it, because indisputably it's being  
8 produced in the United States. That we can talk about. I  
9 understand that could be, you know, you need to think about  
10 that --

11 COMMISSIONER SCHMIDTLEIN: So who is the  
12 producer here?

13  
14 MR. BOLTUCK: Well, we think it's both. We  
15 think it's just the toll, the standard way the Commission  
16 looks at toll producers. They do count. They're bringing  
17 their equipment and -- to the table, the labor, the factory  
18 space. They handle logistics like getting the product out  
19 to the warehouse and things through their facility. So you  
20 know, they're a major player and toll producers aren't  
21 second class producers. They're just first class producers.

22 But Kinetic brings the technology and the  
23 entrepreneurship and other elements of the business, and  
24 it's this business, it's the saccharin business to the  
25 table. So we think that in collaboration, they're both

1 producers, as the Commission often determines.

2 COMMISSIONER SCHMIDTLEIN: So would it --  
3 legally, would it matter if we found that ACD is a domestic  
4 producer and Kinetic isn't?

5 MR. PERRY: Well, I think that first, the  
6 problem is that I think you have to -- obviously, the raw  
7 materials are coming in from Kinetic and the production is  
8 being done -- but they're doing it jointly. I think that,  
9 you know, when I first heard about this I was talking to ACD  
10 about it, and Marty remember the conversation.

11 But when I said that some people at the  
12 Commission may believe that toll production is not U.S.  
13 production and his response is well, that would eliminate  
14 maybe 20 percent of the U.S. industry.

15  
16 COMMISSIONER SCHMIDTLEIN: Well, I don't think  
17 that's the issue --

18 MR. PERRY: I mean many U.S. companies are  
19 tolling, all over the place.

20 COMMISSIONER SCHMIDTLEIN: No, no, no, Mr.  
21 Perry. I only have a little amount of time, so I'm sorry to  
22 interrupt you. But obviously we include toll producers all  
23 the time in the domestic industry. But to do that we look  
24 at what value they're adding to the product and so forth.  
25 So your argument that we shouldn't look at that would sort

1 of contradict our usual practice in looking at toll  
2 producers, right?

3 MR. PERRY: Yeah. No, but the point is that  
4 that is a separate issue, and you can look at it using your  
5 standard methodology. So I appreciate that, and I think  
6 that's absolutely appropriate. Go ahead and look at that.

7 We think our conclusion will be that these two  
8 companies that both bring important things to the table, and  
9 not account together, and that's the way we've certainly  
10 framed our support for retention of the Order. So we don't  
11 think that's a close call.

12 But there's no reason not to look at it in  
13 your usual way. But that cannot be mixed up with the six  
14 factor test, which exists for the purpose of determining  
15 whether it's U.S. production versus foreign production.

16 COMMISSIONER SCHMIDTLEIN: Okay.

17

18 MR. PERRY: And that is a separate -- that's a  
19 separate -- that's a separate issue, and that -- it isn't a  
20 question of it being a close call at all. It isn't a close  
21 call. There's a new technology being used.

22 There's a generalized off the shelf chemical  
23 that's going in the front door as part of that technology,  
24 and this is like every other, you know, all but a small  
25 handful of cases, where the six factor test is used. It's

1       like the other class of cases, the big majority of cases,  
2       where that issue never even arises.

3                   COMMISSIONER SCHMIDTLEIN:   Okay, and so in  
4       this context, where you're talking about that there's been a  
5       substantial transformation, and it comes under -- in under a  
6       different HTS number.   Can you remind me?   So what happens?  
7       At Customs, do you have an opinion from Customs or that this  
8       is --

9                   MR. PERRY:   I mean I'm using the general  
10       reference of substantial, which is name, character and use  
11       which has to change, but also that it's coming in under a  
12       separate tariff item number.

13                   COMMISSIONER SCHMIDTLEIN:   Because that's what  
14       you've characterized at?   I mean just remind me of the  
15       Customs process here.   What happens?   So you bring it in,  
16       you classify it --

17  
18                   MR. PERRY:   Well, it's classified under a  
19       certain number, but we got that number not because we  
20       classified it.   It came from the 7501 form, for the  
21       importation of that chemical.

22                   COMMISSIONER SCHMIDTLEIN:   But somebody had to  
23       decide that was the appropriate number?

24                   MR. PERRY:   Yes, but it has to be submitted to  
25       Customs and they have to agree with it.

1                   COMMISSIONER SCHMIDTLEIN: This is my  
2 question, so because obviously there are many, many, many,  
3 many items coming through Customs, and they're not going  
4 through a process where they explicitly bless something  
5 every time. But sometimes I know that they can, right?  
6 There's a challenge to it, and then you might have to  
7 establish that it's been substantially transformed?

8                   MR. PERRY: Yeah. But because this is a total  
9 -- I mean you could check here with Tariff Affairs and  
10 they'll know. But this is a totally different chemical  
11 coming in, and so it's because it's going to be a totally  
12 different chemical coming in, it is not going to have the  
13 same tariff item number as saccharin, and that's the point.

14  
15                   MR. BOLTUCK: Yeah. I think the thing to  
16 realize is that saccharin comes in in a tariff category that  
17 is labeled something, you know I'm paraphrasing maybe a bit,  
18 because I'm doing it from memory, but it's like saccharin  
19 and its salts. Well, you know, chemically this is not  
20 saccharin or salts. It just isn't that product.

21                   So even if, you know, hypothetically there  
22 could be an argument about whether it's coming in in the  
23 correct tariff category or not, I think it's paying a duty.  
24 So they didn't put it in that tariff category, because they  
25 love paying an ordinary duty on it, that it certainly

1 doesn't belong in the saccharin and salts category, because  
2 that's not what it is.

3           You know, the people making these other toxic  
4 chemicals out of it are not importing saccharin and salts in  
5 order to make a toxic chemical, you know, for another  
6 industrial use.

7           COMMISSIONER SCHMIDTLEIN: Okay, all right,  
8 and just quickly, I guess, before my time runs out, I just  
9 wanted to understand your -- the point about transshipment,  
10 and legally what is it that you're asking the Commission to  
11 do with regard to that, because obviously that's not our  
12 bailiwick in making a determination about whether or not  
13 there's transshipment. If I understand you, nobody else has  
14 made an affirmative determination that there is  
15 transshipment.

16           MR. BOLTUCK: Well, we think you do have to  
17 look at that, and make a reasonable decision about whether  
18 that's a fact in the marketplace today, based on the  
19 evidence. The reason you do is because it is part of  
20 answering the question about what the effect of revoking the  
21 order would be.

22  
23           You can't get the right answer  
24 counterfactually, which is what Congress says should be done  
25 in the Statement of Administrative Action, unless you ask

1       yourself going forward not only is the Order as effective as  
2       it has been, and it has been effective, but it would be more  
3       effective and should be more effective and would be more  
4       effective going forward if illegal activities circumventing  
5       it, literally circumventing it fraudulently by putting the  
6       label of a different company on Chinese product, were not  
7       taking place.

8                        So you have to make an assumption.  Either  
9       fraud is acceptable as part of your analysis.  You assume  
10      well, that's just the way the world is, and if people ignore  
11      our Order, then that isn't part of the injury the industry's  
12      going to suffer if the Order is revoked.  So we're going to  
13      -- we're going to just give it the good housekeeping seal of  
14      approval, that's fine.

15                      Or you're going to say no, you know.  The  
16      integrity of this law mean that we have to assume the Orders  
17      are being respected going forward.

18                      COMMISSIONER SCHMIDTLEIN:  Great, and if I  
19      could just ask one follow-up.  And why hasn't -- I mean I  
20      think it's the Commerce Department you would go to about  
21      transshipment, right?  But why haven't you gone to the  
22      appropriate agency to get that?

23                      MR. PERRY:  We have.

24

25                      COMMISSIONER SCHMIDTLEIN:  And what happened

1 with regard to it?

2 MR. PERRY: First, the Commerce Department's  
3 position, which was affirmed by the Court of International  
4 Trade, is we do not look at transshipment. We have been  
5 trying for years, to try to at least have one government  
6 agency ask the companies in question in the third countries  
7 okay, prove you're producing it here, and Commerce refused  
8 to send the questionnaire and make that thing.

9 We made an e-allegation at Customs, and as you  
10 may know the allegation procedure, you just make a  
11 statement, and then you hear back nothing from Customs. We  
12 tried a False Claims Act case, and even though the  
13 government investigated for over two years, they alleged  
14 that there was clearly problems, but that there was no  
15 evidence the importer knew to win a False Claims Act case,  
16 you have to have evidence that the importer knew when it  
17 imported the product into the United States, that it was --  
18 transshipment was occurring.

19 And so the point is, it is very difficult. I  
20 mean as you may know, this is a big issue in front of the  
21 Senate Finance Committee, the Enforce Act.

22 COMMISSIONER SCHMIDTLEIN: Okay, thank you  
23 very much.

24

25 CHAIRMAN BROADBENT: Okay. I just had a

1 couple more questions for the open session. This is for Mr.  
2 Chan. Okay, excuse me. Just tell me again, given that  
3 you're a Chinese company, what interest do you have in  
4 making sure that this Order stays in place?

5 MR. CHAN: For my -- well, as a company, the  
6 most important is how well you can sell your products, and  
7 for me, the most important thing is that the feedstock can  
8 be easily available for the buyer. This is -- if I can sell  
9 more, that will be better.

10 MR. BOLTUCK: George's company supplies the  
11 feedstock chemical that Kinetic uses, and so he would like  
12 to see his customers survive in the U.S. market, and that  
13 requires the anti-dumping order.

14 CHAIRMAN BROADBENT: Okay. Has your ability  
15 to export been at all impacted by the Order?

16 MR. CHAN: Well, it will be -- I would say  
17 that it will be better, much better for us, for me, because  
18 I, you know -- I teach the Kinetic duties, this process, and  
19 to that, then we will have the agreement that they will be  
20 using my product. Well, as this is a feedstock that could  
21 be purchased from other Chinese company, then for me I can  
22 have more guarantee on myself on the sales.

23 And at the same time, we are now trying to  
24 upscale our -- upscale our production, so that it will have  
25 less cost, and then it will be more concentrated on

1 particular quality for this feedstock be used in Kinetic.

2

3 CHAIRMAN BROADBENT: Okay. Mr. Lu, does  
4 Kinetic take title to the import materials before sending  
5 them to the toller?

6 MR. LU: Yes.

7 CHAIRMAN BROADBENT: And then what do you do?  
8 What process are you responsible for in the production?

9 MR. LU: Well, we provide -- obviously we  
10 provide the technical support to the processing.

11 CHAIRMAN BROADBENT: To the toller?

12 MR. LU: Yes.

13 CHAIRMAN BROADBENT: Okay, and that involves  
14 what?

15 MR. LU: Involve technical personnel goes  
16 through the process, do a quality control check, you know.  
17 There's a whole section of thing you need to do, make sure  
18 product is USP standard.

19 CHAIRMAN BROADBENT: And that takes place a  
20 couple of times a year?

21 MR. LU: In initially, yes. We slow down  
22 somewhat later on, but yes, initially for the first few  
23 years we look at production record, yes. It's probably  
24 three or four times a year and the first or second year.

25

1                   MR. BOLTUCK: This process involves trade  
2 secrets, and without the technology, ACD certainly could not  
3 do it on its own. The process fails if you try to do in a  
4 naive way. I don't know how else to put it. You have to do  
5 it correctly, or it just does not work.

6                   CHAIRMAN BROADBENT: Okay. That's all the  
7 questions I have for the open session. Vice Chairman  
8 Pinkert?

9                   VICE CHAIRMAN PINKERT: Maybe just one or two  
10 follow-up questions. Mr. Lu, do you -- does your company  
11 intend to ramp up production of saccharin if the  
12 transshipment is permitted to continue?

13                  MR. LU: That's a loaded question. I think I  
14 can answer that question better in a different way, in the  
15 in camera session.

16                  VICE CHAIRMAN PINKERT: Okay, and also for the  
17 post-hearing, please supply us with any documents that may  
18 address your company's intention in that respect.

19                  MR. LU: Okay.

20                  VICE CHAIRMAN PINKERT: Thank you. That's all  
21 I have, Madam Chairman.

22                  CHAIRMAN BROADBENT: Commissioner Williamson?  
23 No questions? Okay. And then Commissioner Kieff.

24                  COMMISSIONER KIEFF: I recognize that there's  
25 a lot of confidential information, and so I want to try to

1 ask a question that will avoid that. But I will glance at  
2 our staff as I do it, so that if I wade near, shake no and I  
3 will stop. I think it's public information that there are  
4 differential margin rates for some of the -- some companies  
5 have high margin rates, some have low.

6  
7 You have already discussed today on this Panel  
8 a relationship that some of the importers have with some of  
9 the parties on this panel. If it turns out that the  
10 relationship is one in which there is an importer with a  
11 particularly low margin, related to what you are saying is  
12 the domestic producer, should we consider the fact of that  
13 relationship in our analysis?

14 Okay, that's the question, for input from  
15 whoever would like to provide it, in whatever setting they  
16 would like to provide it, because it seems to me that that's  
17 an important undercurrent to what is in effect on a lot of  
18 people's minds.

19 MR. PERRY: Okay, first let me clarify, that  
20 the rate you're talking about is not importer-specific. So  
21 it is exporter-specific, and it's for the company that sells  
22 the product. Yes, so they're importing, right, from a lower  
23 margin company. That's right.

24 But at the same time, the entire production  
25 process is changing, and if you look at the prehearing

1 brief, you will see that.

2 COMMISSIONER KIEFF: As you pointed out  
3 though, the rate of change has been less than instant.

4 MR. PERRY: Uh-huh.

5  
6 COMMISSIONER KIEFF: I think you said five  
7 years was longer than anyone had hoped. With the best of  
8 hopes, five years is not instant and it's ongoing, which  
9 means it won't be tomorrow either. It will be some time  
10 after tomorrow. I guess what I'm trying to ask is what  
11 legal significance should we draw from that.

12 Put differently, how do we figure out -- if  
13 there are related parties, how do we figure out whether the  
14 motivation to petition here is to serve the interest of the  
15 party that's named here, or to serve the interest of the  
16 party with which it is affiliated?

17 MR. PERRY: No. First, it's not affiliated.

18 COMMISSIONER KIEFF: Sorry, with which it is  
19 congenially aligned.

20 MR. PERRY: Okay. Aligned would be a better  
21 one, but they are not affiliated.

22 COMMISSIONER KIEFF: I don't mean to  
23 overstate. This is not a gotcha. I'm just trying to  
24 understand. Yes, understand what significance, if any. It  
25 may be the case that the could be best buddies and would it

1 matter legally.

2 MR. PERRY: Well keep in mind also that what  
3 Kinetic is doing and what a specific product is producing  
4 now in the United States, it is not importing. So it is  
5 importing to fill out its saccharin line, and then the whole  
6 idea here is if the Order stays in place, this industry will  
7 expand to take over that second product. That's the idea.

8 COMMISSIONER KIEFF: Okay.

9

10 MR. BOLTUCK: And I would just like to offer  
11 possibly a helpful metaphor in terms of the rate of change  
12 that you were referring to. This is kind of like an  
13 airplane taking off, you know. It's on the ground, on the  
14 runway. Right up the point where it shoots up, and there is  
15 this inflection point that is implied for this industry,  
16 because it all has to do with adequately mastering a new  
17 technology, and they don't want to expand before they've got  
18 it mastered.

19 They would much prefer to suffer with somewhat  
20 small production, doing that a smaller scale while they're  
21 perfecting it, than to be suffering at a larger scale. But  
22 having perfected it, having invested these years, they are  
23 now at that point. They're really at that point.

24 COMMISSIONER KIEFF: Do we need to be mindful  
25 -- let's assume we agree with what you're saying. Do we

1 need to be mindful of doing too far in that direction as a  
2 legal matter? In other words if we -- you can imagine a  
3 precedential effect, leaving the door open to someone who --  
4 let's in very stylized terms call them not good people, not  
5 you and not good people.

6  
7 Tomorrow, if we decide your way for the  
8 reasons you've described, coming into a market and saying  
9 look, as long as we can congenially align our interests with  
10 a favored exporter from a high tariff country, where most of  
11 the exporters have a high tariff, we can have a congenially  
12 aligned relationship, where we strategically bring a  
13 petition of the ITC that really is a proxy.

14 It is a locus for a proxy war between or among  
15 foreign national corporations interested in fighting their  
16 own parochial interests, and has very little to do with a  
17 significant impact on domestic production in the United  
18 States. And I'm not saying that's this case. I'm saying  
19 how do -- should we be mindful of deciding this case your  
20 way, to avoid creating that problem? Or is that not even a  
21 problem?

22 MR. PERRY: Well, okay. I'll let Richard  
23 answer.

24 MR. BOLTUCK: Yeah, I don't think it is a  
25 problem. I mean it -- to suggest, you know. The background

1 to think about is that anti-dumping orders are intended  
2 exclusively to focus on the benefit of the U.S. industry.  
3 There is U.S. production here; it is committed; you've got  
4 testimony about its future. So there's the evidence. Now  
5 --

6 COMMISSIONER KIEFF: But we also have a Spruce  
7 Goose problem.

8 MR. BOLTUCK: You know I understand --

9 COMMISSIONER KIEFF: We're hoping, as you  
10 said, that we take flight soon, but we haven't.

11

12 MR. BOLTUCK: No, no, no. Not yet, and we're  
13 at that point, and that's the testimony that you're  
14 receiving. Now what I want to point out is that  
15 anti-dumping orders have collateral effects. They have  
16 collateral beneficiaries and others. That always happens.  
17 There's nothing good or bad about it. The beneficiaries are  
18 companies in other countries that are trading fairly in the  
19 U.S., and that the U.S. has no interest whatever, whether  
20 they succeed or don't succeed or expand, because they're a  
21 good healthy part of the market.

22 COMMISSIONER KIEFF: So you're saying there's  
23 no theoretical limit to this line?

24 MR. PERRY: Let me say something first.  
25 Obviously, if it was truly a fake production situation,

1 where it wasn't real production, you might have something  
2 there. But also think that I worked in the Commission from  
3 '80 to '85, and if you look at it, there were huge changes  
4 in the market.

5 Now for instance your televisions order  
6 against Japan. What does it result in? Japanese television  
7 producers coming to the United States and now producing  
8 televisions here in the United States. Are they no longer  
9 petitioners? Can they no longer be part of the domestic  
10 industry?

11 I think the past, the Commission has taken the  
12 position that we take the industry as we find it. Also, you  
13 never disqualify producers based on -- and this where there  
14 were true subsidiaries of Japanese companies here producing  
15 televisions. You didn't say well because they're Japanese  
16 companies and they're producing television sets in the  
17 United States, we are not going to include them in the  
18 domestic industry.

19  
20 So the foreign ownership of the company didn't  
21 matter, and this is a much further way. But for instance,  
22 that would be a good line. I mean here you have a foreign  
23 company setting up production here. This is not the  
24 situation. They're affiliated. If they're producing in the  
25 United States, well they're foreign-owned, so we're not

1 going to include them in.

2 And remember, we've had this. You've had a  
3 case like this. I believe if you take a look at the  
4 Activated Carbon case, you will see that. The petitioner  
5 was involved in the vast amount of producing. It was a  
6 subsidiary in China that was producing, and they brought the  
7 activated carbon and they were chosen as the mandatory  
8 company to respond to the Commerce Department.

9 COMMISSIONER KIEFF: So you're saying even if  
10 these concerns are appropriate concerns, they're especially  
11 low in this case, and the settings in which they've been  
12 present in other cases, we've nonetheless decided to keep  
13 the order on?

14 MR. PERRY: Yes.

15 COMMISSIONER KIEFF: Okay. I mean we'll go  
16 and look. This is very helpful, and we look forward to  
17 input from all sides on whether we have to draw those lines  
18 and where to draw those lines, and this is very helpful.  
19 Thank you.

20

21 CHAIRMAN BROADBENT: Okay. If Commissioners have  
22 no further public questions, does the staff have any public  
23 questions for the panel?

24 MS. TRAINOR: Thank you, Madam Chairman, this is  
25 Cynthia Trainor from the Office of Investigations. Staff

1 has no questions.

2 CHAIRMAN BROADBENT: Thank you. The Commission,  
3 I guess I've actually determined that it will conduct an  
4 additional round of Commissioner questions in-camera in this  
5 hearing. During this session the members of the panel that  
6 are included in the Commission's APO service list in this  
7 investigation will be permitted to remain in the hearing  
8 room. All other persons not under the APO including  
9 domestic industry witnesses must leave the hearing room.

10 All persons planning to attend the in-camera  
11 portion of the hearing should be prepared to present proper  
12 identification.

13 After the in-camera round of questions, we will  
14 reopen the main hearing room to the public for the closing  
15 statements of those in support of continuation of the order.

16 At this time I would like to ask all persons not  
17 under the APO to exit the hearing room. Thank you.

18 (Pause.)

19 (Confidential Session Follows)

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25

1 OPEN SESSION CONTINUED

2 CHAIRMAN BROADBENT: And with that, we'll come  
3 to closing statements. Those in support of continuation  
4 have five minutes for closing. You may begin when you're  
5 ready.

6 CLOSING REMARKS BY WILLIAM E. PERRY, ESQ.

7 MR. PERRY: This will be a very short closing  
8 statement. I think most has been said here. Thank you for  
9 the in-camera session. We appreciated the ability to get to  
10 the Commissioner's concerns, was what we really wanted to be  
11 able to do, and we will do everything in our post-hearing  
12 brief to try to address your concerns and give you a more  
13 comfortable feeling. We understand why this is going on.

14 But again, I think the key issue we still see  
15 in this is what I said the beginning. This is not a  
16 finishing or conversion process. This is production from a  
17 separate chemical product, which we've gone into detail  
18 in-camera. It's incredibly important, I think if you go  
19 forward, if you're applying your six factor case to this,  
20 what happens when another domestic industry comes in, and  
21 they're importing a raw material from somewhere else, and  
22 they're actually producing in the United States?

23 Are you going to start to basically let's look  
24 at how much value you add here as compared to there? I  
25 don't think the Commission's ever done that, when there's

1 actual production going on, and that means substantial  
2 transformation of a separate chemical product into  
3 saccharin. And you know again, what we said at the  
4 beginning applies here, which is the Order has provided  
5 important benefits.

6 It would have provided more benefits if there  
7 wasn't transshipment. But I can tell you it has provided  
8 benefits to the domestic industry, and if the Order remains  
9 in place, Kinetic will expand, and I think that this is the  
10 way of the future. The U.S. saccharin industry, however, is  
11 very vulnerable, and as we know, if the Order is lifted, it  
12 will cease to exist, and thank you for your time today. I  
13 really appreciate it.

14 CHAIRMAN BROADBENT: Thank you again. I want  
15 to express the Commission's appreciation to everyone who  
16 participated in today's hearing.

17 Your closing statement, post-hearing briefs,  
18 statements responsive to questions at the request of  
19 Commission and corrections to the transcript must be filed  
20 by April 9th, 2015. Closing of the record and final release  
21 of data to the parties will be on April 28th, 2015. Final  
22 comments are due on April 30th, 2015.

23 And with that, thank you very much. This  
24 hearing is adjourned.

25 (Whereupon, at 12:35 p.m., the hearing was

1 adjourned.)

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## CERTIFICATE OF REPORTER

TITLE: In The Matter Of: Saccharin from China

INVESTIGATION NOS.: 731-TA-1013

HEARING DATE: 3-31-2015

LOCATION: Washington, D.C.

NATURE OF HEARING: Review

I hereby certify that the foregoing/attached transcript is a true, correct and complete record of the above-referenced proceeding(s) of the U.S. International Trade Commission.

DATE: 3-31-2015

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