UNITED STATES
INTERNATIONAL TRADE COMMISSION

In the Matter of:	)	
	)	Investigation Nos.:
CHLORINATED ISOCYANURATES	)	731-TA-1082 and 1083
	)	(Final)
FROM CHINA AND SPAIN	)	

REVISED AND CORRECTED TRANSCRIPT

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Thursday,
May 5, 2005

Room No. 101
U.S. International
Trade Commission
500 E Street, S.W.
Washington, D.C.

The hearing commenced, pursuant to notice, at 9:31 a.m., before the Commissioners of the United States International Trade Commission, the Honorable STEPHEN KOPLAN, Chairman, presiding.

APPEARANCES:

On behalf of the International Trade Commission:

Commissioners:

STEPHEN KOPLAN, CHAIRMAN
DEANNA TANNER OKUN, VICE CHAIRMAN
MARCIA E. MILLER, COMMISSIONER
JENNIFER A. HILLMAN, COMMISSIONER
CHARLOTTE R. LANE, COMMISSIONER
DANIEL R. PEARSON, COMMISSIONER

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Staff:

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GEORGE DEYMAN, SUPERVISORY INVESTIGATOR

Congressional Witness:

THE HONORABLE SHELLEY MOORE CAPITO, U.S. Congresswoman, 2nd District, State of West Virginia

In Support of the Imposition of Antidumping Duties:

On behalf of Clearon Corporation and Occidental Chemical Corporation:

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ANTONY HAND, Vice President, Sales and Marketing, Clearon Corporation
SCOTT JOHNSON, Vice President, Manufacturing, Clearon Corporation
JULIO NAPOLES, General Manager, ACL Isocyanurates Division, Occidental Chemical Corporation
DAVID STEPHENSON, Director, Sales and Marketing, ACL Isocyanurates, Occidental Chemical Corporation

JOSEPH H. PRICE, Esquire
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STEPHEN JOHNSON, Director, Strategic Sourcing, Arch
RANDALL HITCHENS, Vice President, Arch
SHERRY DUFF, Director, Research and Development, Arch
JOHN REILLY, Economist, Nathan Associates, Inc.

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On behalf of Wego Chemical and Minerals Corporation, Cadillac Chemical Corporation, N. Jonas & Company, Alden Leeds, Inc., U.S. Tableters of Isocyanurates, Nanning Chemical Industry Co., Ltd., and Changzhou Chemical Co.:

FRANK ABRAMSON, Product Manager, Wego Chemical and Mineral Corporation
PETER FERENTINOS, President, Cadillac Chemical Corporation
ANDY EPSTEIN, Vice President, Alden Leeds, Inc.
STEPHAN JONAS, President, N. Jonas & Company
EDWARD WEXLER, Executive Vice President, N. Jonas & Company
ED LAX, Director, Shipping, N. Jonas & Company

APPEARANCES: (Cont'd.)

On behalf of Wego Chemical and Minerals Corporation, Cadillac Chemical Corporation, N. Jonas & Company, Alden Leeds, Inc., U.S. Tableters of Isocyanurates, Nanning Chemical Industry Co., Ltd., and Changzhou Chemical Co.:

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Washington, D.C.

On behalf of Aragonesas Delsa, S.A. (Delsa):

PEDRO BALCELLS, Commercial Director, Delsa

DENNIS JAMES, JR., Esquire
Cameron & Hornbostel, LLP
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On behalf of Enviro Tech Chemical Services, Inc.:

JONATHAN HOWARTH, Senior Vice President, Technology, Enviro Tech Chemical Services, Inc.

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P R O C E E D I N G S

(9:31 a.m.)

CHAIRMAN KOPLAN: Good morning. On behalf of the United States International Trade Commission, I welcome you to this hearing on Investigation Nos. 731-TA-1082 and 1083 (Final) involving Chlorinated Isocyanurates From China and Spain.

The purpose of these investigations is to determine whether an industry in the United States is materially injured or threatened with material injury by reason of less than fair value imports of subject merchandise.

Schedules setting forth the presentation of this hearing, notice of investigation and transcript order forms are available at the Secretary's desk. All prepared testimony should be given to the Secretary. Do not place testimony directly on the public distribution table.

As all written material will be entered in full into the record, it need not be read to us at this time. All witnesses must be sworn in by the Secretary before presenting testimony. I understand the parties are aware of the time allocations. Any questions regarding the time allocations should be directed to the Secretary.

Finally, if you will be submitting documents that contain information you wish classified as business confidential, your requests should comply with Commission Rule 201.6.

Madam Secretary, are there any preliminary matters?

MS. ABBOTT: Yes, Mr. Chairman. With your permission we will add Gary Horlick of Wilmer Cutler Pickering Hale and Dorr to page 3 and Edward Wexler, Executive Vice President of N. Jonas & Company, to page 4 of the calendar.

CHAIRMAN KOPLAN: Without objection.

Will you please announce our congressional witness?

MS. ABBOTT: The Honorable Shelley Moore Capito, United States Congresswoman, 2nd District, State of West Virginia.

MS. CAPITO: Good morning.

CHAIRMAN KOPLAN: Welcome. Good morning.

MS. CAPITO: Thank you. I am pleased to be back.

CHAIRMAN KOPLAN: We are pleased to have you back.

MS. CAPITO: Thank you. I would like to thank you for the opportunity for appearing this morning to offer testimony on behalf of the domestic industry which produces chlorinated isos.

I'd like to urge you and the other members of the Commission, Mr. Chairman, to recognize the extraordinary harm that this industry has suffered because of the unfair trading practices of imports from China and Spain and to take the necessary actions to restore fair competition to this market.

This case is very important to me and to the other residents of central West Virginia, the part of West Virginia that I represent in particular, South Charleston. It is the home of the Clearon Corporation, which employs several hundred West Virginians in the production, tableting and packaging of chlorinated isos.

Clearon has committed itself to being a world class producer of chlorinated isos. Since starting operations in South Charleston in 1995, so fairly recently, the company has invested millions of dollars in upgrading and modernizing its facilities and has been an outstanding corporate citizen in West Virginia. Additionally, where they are manufacturing is actually an old site so they've rejuvenated an old manufacturing site in West Virginia.

Clearon has been a leader in terms of employing safe and environmentally responsible product technologies and is actively involved in the community through advisory panels and support of the local educational system in Kanawha County and in South Charleston.

I understand that several of you have had the opportunity to visit Clearon -- I thank you for that -- and observe its state-of-the-art manufacturing facilities. I know it is difficult on a short trip to meet many of the employees and families that depend on the good jobs provided by the plant, so I would just like to take a moment to speak about the contribution that Clearon and its employees make within our community.

Clearon workers are highly skilled and hard working West Virginians who are committed to producing top quality products. These workers are part of a long and proud tradition in the Kanawha Valley area, which in so many ways was the birthplace of America's chemical industry, and I'm sure you viewed that as you were touring the Kanawha Valley. We call it the Chemical Valley.

The jobs provided by Clearon and other chemical industry employers in the Charleston area are good paying, family supporting jobs that are critically important to our community. Clearon also helps numerous suppliers in the Charleston area that provide good jobs and contribute to the local economy.

I believe it's vitally important that we maintain this existing manufacturing base because once it is gone it cannot be recreated. I strongly believe that West Virginia workers are capable of competing with those anywhere in the world as long as there's a level playing field.

It troubles me to think that these jobs and others in the domestic industry are at risk due to unfair trading practices by some of our trading partners. I am a supporter of free trade and open competition, but those values are meaningful only when our foreign trading partners play by the same rules.

When there is significant unfair competition, as the Commerce Department has already found in this case, then it is important that we act quickly and decisively to remedy this situation. Our workers, our families and our communities deserve no less.

I believe that when you look in the face at the facts of this case you will conclude that the domestic chlorinated isos industry has been severely injured by imports from Spain and China. These imports have increased very, very rapidly in the last two years by undercutting domestic prices at every turn. The impact of these imports has been devastating to Clearon and I believe the rest of the domestic industry.

Mr. Chairman, members of the Commission, I know you'll give the evidence in this case the fair and serious consideration that it deserves. There's much at stake here for Clearon and for the economy of the Kanawha Valley in West Virginia that I represent.

I believe that as you listen to today's testimony and review the record developed in this proceeding you'll reach the conclusion that the dumping of chlorinated isos has injured the domestic industry and threatens to cause further harm if these practices are not curtailed.

Thank you very much for giving me the opportunity. I know you have a long day, and I appreciate you listening to my presentation. Thank you.

CHAIRMAN KOPLAN: Thank you very much for coming. Let me see if any of my colleagues have any -- I have a feeling one of them does.

COMMISSIONER LANE: I just wanted to welcome you back here and thank you for coming and giving us your viewpoint and thank you again. Now you get to go and vote on important issues up on the Hill. Thank you.

MS. CAPITO: Right. Thank you.

CHAIRMAN KOPLAN: Thanks again.

MS. CAPITO: Thanks.

CHAIRMAN KOPLAN: Madam Secretary?

MS. ABBOTT: Opening remarks on behalf of the Petitioners will be by Joseph E. Price, Gibson, Dunn & Crutcher.

CHAIRMAN KOPLAN: Good morning, Mr. Price.

MR. PRICE: Good morning. Since the preliminary determination, additional and more complete data have been collected by the Commission staff that reveal even more clearly the injury being suffered by the domestic chlorinated isos industry.

These data show that the imports have increased significantly during the POI, both in absolute terms and as a share of domestic consumption, and as a result of that the domestic producers have really obtained no benefit from the increased consumption of chlorinated isos that has occurred during the period.

The data further show that significant price erosion has occurred with domestic producers' prices generally falling throughout the POI. Given the underselling found for the Chinese and Spanish producers, there can be no doubt that they have led the prices downward. This price erosion I assure you couldn't have occurred at a worse time for the domestic industry with their energy costs and raw material expenses dramatically escalating.

Finally, the data reflect a domestic industry that is literally reeling from the negative impact of unfairly priced imports. This terrible state is perhaps best illustrated by operating profits or the lack thereof.

In 2002 at the beginning of the POI, the domestic industry consisting of the three large integrated producers, that is Petitioners plus BioLab, were profitable in their chlorinated isos operations. By 2004, however, with prices having been driven down by the subject imports, the industry was reporting operating losses.

Now, not surprisingly the Respondents have difficulty in dealing with these traditional indicia of injury; that is, increased imports, reduced prices and declining profitability. Thus they have attempted to construct a product and an industry where the need to address these indicia will be reduced or eliminated.

We will show you in the presentation and in our testimony this morning that Respondents' construct is artificial. It may serve their rhetorical purposes, but it does not comport with the realities of the marketplace.

As to like product, you will hear a variety of confusing descriptions. Respondents' efforts to distinguish between dichlor and trichlor, between granular and tablets or between so-called pure tablets and blended tablets will not withstand scrutiny. There is a clear continuum of products here which means that chlorinated isos have to be treated as a single domestic like product under the Commission's well-established practice.

Respondents make several unusual arguments with respect to causation. For example, they try to use the 2001 change in the registration process under FIFRA as a justification for dumped Chinese imports. Under that change there's no longer a need to contribute to the costs previously incurred in qualifying chlorinated isos as an effective sanitizer.

Respondents attempt to analogize that change in the FIFRA process to the expiration of a patent. There is, however, simply no comparison between the two. FIFRA granted no exclusive rights, and indeed companies in Japan, Spain, Italy and Mexico obtained registrations well before the change in the registration process.

It's not the expiration of the contribution requirement under FIFRA, but the magnitude of their dumping that made possible the tremendous increase in Chinese imports in the last several years.

Finally, you will hear today that all of the domestic industry's problems are the result of a business decision by a single producer, Clearon, to raise its prices; an action, by the way, that was taken to cover significant production costs. That attempted increase allegedly so angered Clearon's major customer, Arch, that Arch began purchasing from China.

As we will demonstrate today, the facts are very different from Respondents' assertions. Specifically, we will show that Arch was significantly expanding its Chinese purchases well before Clearon's attempted price increase, that Clearon's price increase was not limited to Arch, but applied to all customers, that the price increase did not hold up and that Clearon did not approach mass merchant markets until after it became clear that it had lost Arch as a customer.

Lastly and perhaps most importantly, even if Arch were angered over its treatment by Clearon that does not give Arch immunity to bring in dumped imports from China and Spain to the severe detriment of the other two producers, OxyChem and BioLab.

We look forward to discussing these matters with you today.

CHAIRMAN KOPLAN: Thank you.

MS. ABBOTT: Opening remarks on behalf of the Respondents will be by Peggy A. Clarke, Wilmer Cutler Pickering Hale and Dorr; William E. Perry, Garvey Schubert Barer; and Dennis James, Jr., Cameron & Hornbostel.

MS. CLARKE: Good morning, Chairman and Commissioners.

CHAIRMAN KOPLAN: Good morning.

MS. CLARKE: I'm Peggy Clarke with Wilmer Cutler Pickering Hale and Dorr on behalf of Arch Chemical, Inc.

Now, Petitioners claim that all the product is the same and that all the changes in the supply relationship are because of dumped imports. Neither of these claims are correct.

The multifunctional products that have recently come onto the market, especially in 2004, are a separate like product. They have a different chemistry than pure chlor isos, and they perform different functions. For these reasons, customers are willing to pay more than for the pure product. There is a clear dividing line between the blended multifunctional tablets and the chlor isos subject to the investigation.

In addition, while subject imports have increased, it's important to realize that they still account for a very small share of domestic consumption, less than 10 percent, too small a share to have much of an impact on pricing.

Moreover, we disagree with Petitioners as to why the imports have increased. Importantly, there have been several changes in the market that have led prices down. As to Arch, Arch reacted to a direct threat by its major supplier, Clearon. Consequently, Arch shifted from buying domestic product from Clearon to sourcing from a variety of options, none of them Clearon.

Arch brings in blended multifunctional tablets from China and purchases granular product from Spain, Japan and the United States to be manufactured into tablets in their U.S. through tolling arrangements. Arch dropped Clearon because Clearon sought to cut it out of the business, not because price is all important. If price were so important, Arch would source only from the cheapest supplier. It does not.

You'll hear this and more this afternoon, and we thank you for your time.

CHAIRMAN KOPLAN: Thank you.

Mr. Perry?

MR. PERRY: My name is William Perry of the law firm Garvey Schubert & Barer. I'm here representing Chinese exports and the U.S. tableters.

This case starts with cyanuric acid. Why do I say that? The Petitioners are using imported Chinese cyanuric acid at $900 a metric ton or lower, but when the Chinese producers use Chinese cyanuric acid the Commerce Department uses a value of $2,800.

Why does that matter to you? You don't look behind the margin. Because the Chinese companies with 130 to 225 percent are supplying the half of the domestic industry known as the tableters. The tableters, however, are not simply small repackagers. They are the ones that founded the pool industry. They are the small, family owned businesses that have been in business as early as the 1950s, long before Oxy and Clearon got into this industry.

Why is this important? Because if you go affirmative in this case and cut these companies off from their source of supply they will close and hundreds of jobs will be lost in the U.S. Many of these jobs are production jobs.

In fact, the majority of the jobs in the domestic isos industry are at the tableters, not Clearon, not Oxy. Oxy does not have the capacity to sell to the tableters. Clearon has very limited capacity and is competing with the tableters directly for the same customers in the downstream industry.

These small U.S. companies that I am

representing know they have no choice. The ITC goes affirmative and their companies close. You will hear from a production employee that will lose his job in Bucks County, Pennsylvania, if you go affirmative in this case. The case ends with the issue.

Is the domestic industry as a whole materially injured or threatened with material injury by reason of imports from China? The simple answer is no. In fact, if you go affirmative in this case and cut these U.S. companies off from their source of supply the ITC will be the cause of their injury.

Thank you very much.

CHAIRMAN KOPLAN: Good morning, Mr. James.

MR. JAMES: Good morning. My name is Dennis James with the law firm of Cameron & Hornbostel. I appear here today on behalf of the only exporter of chlorinated isos from Spain, Aragonesas Delsa.

Delsa's position in this investigation is simple. Spain is not the problem and has never been a problem. Spain, through Delsa, has been in this market for many years with no prior allegations from U.S. producers of dumping or of unfair trading practices.

Delsa, like the U.S. producers, has had to lower its prices in recent years in order to stay competitive in the face of new competition from China.

Delsa, as much as the U.S. producers, is a victim of the current situation.

Having said this, Delsa submits the Petitioners have not made out a case for material injury sufficient to warrant action by the Commission. If there is any evidence of injury here it is at most evidence of threat only.

We therefore urge the Commission to find only threat, and we ask you to remember that if only threat of injury is found you are not required to cumulate imports that are not contributing to that threat. As the data clearly show, Spain is not a threat.

Thank you very much.

CHAIRMAN KOPLAN: Thank you, sir.

Madam Secretary?

MS. ABBOTT: The panel in support of the imposition of antidumping duties, please come forward and be seated.

The witnesses have been sworn.

(Witnesses sworn.)

CHAIRMAN KOPLAN: Thank you.

You may proceed.

MR. WOOD: Good morning. My name is Chris Wood. I'm with the law firm of Gibson, Dunn & Crutcher, counsel to Petitioners OxyChem and Clearon

Corporation.

We have a very knowledgeable panel assembled for you this morning with representatives from all three of the domestic producers of chlorinated isos, as well as Advantis Technologies, a purchaser and marketer of trichlor and dichlor.

I hope our presentation will be informative and helpful to you, and with no further delay I'd like to turn things over to our first witness, Mr. Johnson.

MR. JOHNSON: Good morning. My name is Scott Johnson. I'm the Vice President of Manufacturing and the plant manager for Clearon.

As you know, Clearon is a domestic producer of trichlor and dichlor located in South Charleston, West Virginia. We also have our own tableting and packaging facility in South Charleston, which is located just across the street from our plant.

I very much appreciate this opportunity to appear before you this morning. I want you to know that the outcome of this case is absolutely critical to Clearon's long-term survival as a domestic manufacturer.

Over the last few years, we have been forced to take extraordinary steps just to remain in business, including workforce reductions, extended shutdowns in production and deferral of capital expenditures except those necessary for safe operation of our facilities.

I am here today to tell you that none of those measures have been enough. Acting on our own, there is simply nothing that we at Clearon can do to compensate for the harm that is being caused by the imports from China and Spain. This antidumping case is the only means available to restore fair, competitive conditions in the U.S. market.

Let me begin by talking a little bit about the products that we make at Clearon. We make both trichlor and dichlor, and I understand one of the issues in this case is whether these products should be analyzed together or separately. From a manufacturing perspective, it seems to me that you almost have to look at trichlor and dichlor together.

At Clearon we make both in the same plant and use the same or similar equipment for much of the production process. For both trichlor and dichlor we start by making cyanuric acid in a large continuous operation kiln. We heat urea in the kiln to make crude cyanuric acid.

We mix the cyanuric acid with sulfuric acid to produce purified cyanuric acid. We then mix the cyanuric acid with caustic soda to produce sodium cyanurate. The sodium cyanurate solution is a common feedstock for production of both trichlor and dichlor, so everything up to this point in the production process is identical for trichlor and dichlor.

As you know, the main difference between trichlor and dichlor is the amount of available chlorine. Adding three chlorine atoms to the isocyanurate molecule makes trichlor, which is about 90 percent available chlorine. Dichlor has two chlorine atoms, about 56 percent available chlorine. We also use additional caustic soda in producing dichlor because it's sold in a neutralized salt form.

At Clearon we have dedicated chlorination lines for making trichlor or dichlor. The production of trichlor and dichlor is done through essentially the same processing steps where the sodium cyanurate is chlorinated, separated from the liquor, dried and granulated. The same operators monitor trichlor and dichlor in the very same control room.

Visually, the output of the production process from trichlor and dichlor is exactly the same, small white granules that we load into large bulk containers, some of which include one metric ton bags for sale or for transfer to the tableting and packaging facility.

Our tableting and packaging operations are very simple in comparison to the manufacturing plant.

Most trichlor is fed into a mechanical press that stamps out tablets. The presses are readily available and are inexpensive relative to the chemical manufacturing equipment. The tablets from the press are conveyed down a packaging line where they are transferred by hand into pails.

We rely mostly on contract labor at the tableting and packaging facility since the work requires relatively little training and is very seasonal in nature.

With respect to tableting and packaging, let me make a brief comment on this blended tablet issue that has been raised by Arch. We have some knowledge of these blended tablets of Clearon or blended tablets at Clearon since we developed the original samples and blending specifications for these tablets for Arch.

That was before Arch decided to source all of their blended tablets from China, of course. We did that work free of charge and at the time didn't realize that we were just making it easier for Arch to replace Clearon with Chinese material.

Based on our experience, I can tell you that there is no substantive difference between manufacturing regular trichlor tablets and blended trichlor tablets. The only additional step is blending in a small amount of additional ingredients with granular trichlor before running it through a tableting press.

At Clearon we have a V-shaped blender where the ingredients are poured in and mixed together, then dumped back into the sack to be tableted. From the production side the whole process could not be simpler, and from the performance side the essential active ingredient is still just trichlor.

As I mentioned at the start of my testimony, we have had to make some very tough steps to cut costs as our sales have suffered from the increase in Chinese and Spanish imports. One of the most difficult aspects for me personally is that we have had to make significant reductions in force as our production volumes have declined.

We have had two reductions in force since 2002, which have reduced the number of full-time employees from 220 people down to around 120 people today. The people that we let go are highly skilled, highly trained technical persons -- engineers, plant operators, mechanics, lab analysts and others. The loss of these people is a real blow to Clearon's organization, as well as a severe hardship to those individuals who have had to seek new employment.

Just to put things in perspective, it usually requires about six months of training for a new hire to become a qualified operator at Clearon and more than a year before they're fully integrated into a production team. Most of our people have been with us a long time and have skills that cannot be easily replaced. For that reason, a reduction in force is not something that we take lightly.

The current business situation has left us no choice than to cut costs wherever possible. We also have cut our capital spending to the bone and basically eliminated research and development activities. Our head count is now at a level where I do not believe that Clearon can make any further reductions and still continue as a viable manufacturer. We have taken all of the steps that are open to us.

Last year we were forced to take an even more drastic step of shutting down our trichlor and dichlor production facility for part of the year. Ordinarily it would not make sense to shut down the plant for even a short period of time. The equipment we have from the kilns used to produce cyanuric acid to the chlorination facilities cannot be shut down and restarted in a cost efficient manner.

We usually run our plant at as close to full capacity as we can in order to maximize production and minimize cost. Given the nature of the products and the processes, we incur substantial cost in depreciation, labor expense, raw material efficiencies and utilities whether or not we are producing.

Because the pool business is seasonal, we normally build inventory of trichlor and dichlor in the summer and fall in order to meet demand for the coming season. Last year, however, our inventories were at twice their normal level at the beginning of the year. Our warehouse was literally bursting with unsold product.

The problem was the market prices had been driven so low because of Chinese and Spanish imports that we could not even recover our manufacturing cost through sales. In order to reduce our inventories, we finally decided to take our trichlor and dichlor production facilities off-line and stop production for a total of five months and two months respectively in 2004. We were eventually able to reduce our inventory, but our results for 2004 were by far the worst in Clearon's history.

Finally, let me just say that although I've been involved in the chemical industry for 28 years, I have never seen anything that compares with the damage that has been inflicted upon our industry by the Chinese and Spanish imports in just a few years.

Clearon has been a healthy and profitable business since it began in 1995, but all of that has changed completely in the last few years. The Chinese and Spanish imports have driven prices down to unsustainable levels. Even our raw materials and energy costs have increased during this period of time where prices have decreased.

Our production facilities at Clearon are well maintained and efficient. I believe that on a level playing field we are more than capable of competing effectively and maintaining a strong position in the market. What we cannot compete with though is unfairly priced imports that have taken customers away by undercutting our prices across the board.

Looking at our current situation, I am seriously concerned that the investments that we have made to improve the efficiency of our plants and the jobs of all of our employees are imperiled by the flood of imports that we have seen in the past two years. If something is not done to prevent unfair priced imports from claiming the market then our continued survival as a domestic producer is in real jeopardy.

The people in the community of South Charleston deserve better, and I hope this Commission can stop the unfair trade that is literally destroying the efficient and much needed production operation that we have established in West Virginia.

Thank you.

MR. HAND: Good morning. My name is Antony Hand, and I am the Vice President of Sales and Marketing for Clearon Corporation. I have been with Clearon for the last seven years, and my duties include developing and implementing Clearon's sales strategy for the U.S. market.

In my testimony today I would like to describe the commercial situation that Clearon has confronted in the last few years and discuss the circumstances that led to the break in the relationship between Clearon and Arch Chemicals.

As you probably know, Arch was once Clearon's largest customer. Clearon and Arch were once part of the same company, Olin Corporation, and we viewed that relationship with Arch as the foundation of Clearon's long-term competitive position in the market. It is a source of genuine regret at Clearon that we find ourselves opposed to Arch in this case, which is so critical to Clearon's future.

I understand that your focus in this case is on the period from 2002 to 2004, but it may be helpful to have some additional background on our relationship with Arch. Beginning in August 2000 and continuing through 2002, we attempted to negotiate a long-term supply agreement with Arch. We believed that such an agreement would benefit both companies by stabilizing supply relationships and creating opportunities for cost reduction and development of new products.

We offered Arch most favored nation's pricing, guaranteeing that Arch would receive Clearon's best price on trichlor and dichlor. Internally we designated Arch as one of our most valued customers and created a team to focus on adding value and providing the best possible services to Arch.

Although Arch seemed initially receptive to a long-term supply agreement with Clearon, we were never able to get Arch to make a final commitment. As we later came to recognize, Arch was already making plans to source chlorinated isos from the low-priced suppliers in China and to replace Clearon as a supplier.

We initially became aware of Arch's plans to move to Chinese sourcing during 2002. In March 2002 Arch asked us to repack some Chinese trichlor. In the fall of 2002 we were told by Arch that they planned to purchase eight million pounds of trichlor from China for the 2003 season. Other sources in the industry informed us of rumors that Arch planned to bring even greater quantities from China than we had been told.

In November 2002 I met with Randy Hitchens of Arch, who you will hear from this afternoon, and he explained to me that Arch felt it needed to go to Chinese imports in order to grow market share and profits. We were told that the shift to Chinese imports was not the result of dissatisfaction with Clearon's quality or the services provided to Arch, but that Clearon could not meet the prices offered by suppliers in China.

As you can imagine, the impending loss of a substantial portion of Arch's business was a matter of very serious concern at Clearon. Early in 2003 we learned that Arch had applied for and received two EPA registrations for Chinese trichlor. We also began seeing Chinese trichlor sold under Arch's brand name in Costco and other mass merchants.

As we entered the 2003 pool season we also experienced a sharp rise in raw material costs, particularly for the urea to make cyanuric acid. We decided that we had no choice other than to pass this increase on to our customers, including Arch, in April 2003.

I would like to emphasize that Clearon raised prices to all of our customers. The increase was not selectively applied. I would also like to point out that we had offered Arch the opportunity for fixed prices for the 2003 season as part of our attempt to negotiate a long-term supply agreement, but Arch chose not to commit.

Under these circumstances, with no long-term sales agreement Clearon was unable to absorb the rapid increases in raw material costs. We were already suffering from reduced sales because of Arch's shift to China and were in no position to take an additional hit on cost.

We negotiated to supply Arch for the 2004 pool season, but were not awarded any volume. Our understanding is that virtually all of that volume was replaced with imports from Chinese and Spanish suppliers.

I should also add that our April 2003 price increase ultimately was not successful in the market. We lost a substantial volume of sales and began rolling back the increase within a few months of the announcement. I think that if you review the pricing data we submitted in response to the questionnaire you will see that we did not experience any sustained improvement in pricing.

Although Arch was not pleased with our price increase, their decision to move to China was made long before our announcement. I've already described

Arch's 2002 registrations for Chinese material and the intent they expressed to us during our negotiations for the 2003 season.

Moreover, our analysis of PIERS import data indicates that Arch imported millions of pounds of trichlor from China in the first six months of 2003 representing more than 90 percent of their total imports in 2003. These commitments necessarily were made long before Clearon's announcement of a price increase for April 2003.

Consider for example that Arch's 2003 Chinese imports were packaged goods where the pails and labels are supplied from the United States. Considering the shipping times involved in sending materials to China to be filled and shipped back to the United States, at least three months, these imports in the first half of 2003 could not have resulted from an April 2003 price increase.

I would also like to address Clearon's current sales strategy for the United States, which has been commented upon by several parties. Clearon is now making efforts to sell to mass merchants and to develop additional downstream sales channels. The fact of the matter is that with the loss of millions of pounds of annual business we have to try anything and everything within our power to sell our products.

We plainly cannot continue as we were before.

Our success to date in developing these new channels has been limited. Our first sales to mass merchants have occurred this year in 2005 and are of relatively small volumes. We also began selling a dealer direct brand of chlorinated isos. Our first sales of these products were late in 2003 and still represent only a very small percentage of Clearon's business.

Our problems in implementing these strategies also relate to the presence of low-priced imports in the market. As Scott mentioned a moment ago, there are no means by which we can reduce cost to a level sufficient for us to compete on price with Chinese and Spanish imports.

I want to emphasize that our efforts to sell to mass merchants and develop a unique Clearon brand began only in the second half of 2003 after it was clear that Arch had set their direction with Chinese imports. From a business perspective, it would make no sense to go into direct competition with one's largest customer.

This was not a step that we took lightly and is one we would have preferred to avoid altogether, but the current condition of our business does not allow us to forego any possible alternative for selling our product.

I hope these remarks have been helpful to you in clarifying Clearon's sales and marketing activities. I would be pleased to take any questions that you may have following our presentation.

Thank you.

MR. NAPOLES: Good morning. Name is Julio Napoles. I'm the general manager of the ACL Isocyanurates Division of Occidental Chemical Corporation or OxyChem. I started with OxyChem in 1986, and I have worked in different divisions with the company before assuming my current position in 2003.

As the general manager of the isocyanurates business, I am responsible for its strategic direction, profitability and ultimately for justifying OxyChem's continued investment and participation in the market for chlorinated isocyanurates.

In the testimony you just heard, Mr. Hand of Clearon described his company's relationship with Arch and the significant impact that the loss of this customer has had on Clearon's operation. This afternoon I presume you will hear much more on that issue from Arch witnesses, and I presume that Arch will argue, as it did in its brief, that any apparent injury to the domestic injury is due solely to the collapse of that relationship.

Certainly the Clearon-Arch relationship is an important story, but it is far from the whole story of what is happening to the domestic industry. This morning I would like to describe for you OxyChem's experience with subject imports and the impact that such imports have had on our operations.

Simply put, the impact has been devastating. In order to meet the extremely low prices offered for subject imports, we have repeatedly been forced over the past three years to reduce our prices and even to sell at a loss. While these actions have allowed us to retain the business of our key customers, it has come at a significant cost to our profitability.

Although we have maintained volume, our profitability has deteriorated rapidly. As detailed in our questionnaire response, over the course of just three years OxyChem went from having a strong operating profit to experiencing a significant operating loss in 2004. This is unsustainable. This is a state of affairs that has been the direct result of the low prices being offered for subject imports.

In order to fully appreciate the impact that low-priced Chinese and Spanish imports have had on our operations, it is important to understand a few fundamental points in the market for chlorinated isos.

First and foremost, it is important to understand that chlorinated isos are a commodity product with very little product differentiation. As a result, even a small difference in price can drive sales, either at the distributor level or all the way to the retail level.

Trichlor tablets are a benchmark product that retailers use to compare their price competitiveness. Ultimately everyone is forced to respond to the lower prices being offered, which are now always the price of either Chinese or Spanish imports.

Another reason that our prices have been hit so hard by low-priced imports is that retail prices for chlorinated isos are virtually transparent. Today anyone can walk into a WalMart, a Home Depot or a Leslie's and see what the current retail prices are. It doesn't take much for the retailers to look at pricing at competing outlets and then pressure their suppliers for similar low prices.

Finally, it is important to understand that the rapid decline in pricing caused by subject imports has coincided with a rapid increase in pricing for the basic raw materials used to produce chlorinated isos. In fact, it is no exaggeration to say that the disruption in the market caused by these low-priced imports could not have come at a worse time for us.

As detailed in our prehearing brief and in our questionnaire response, our costs for chlorine, caustic soda and urea have increased steadily and significantly throughout the period of the investigation. Rather than raising our prices to recoup some of these increased costs, however, we have instead been forced to lower our prices to meet Chinese and Spanish competition.

In effect, we have been forced to choose between entering into money losing contracts to retain our market share or giving up sales volume and operating at unsustainable low levels of capacity utilization.

It is against this backdrop that I would like to describe our relationship with BioLab, our largest customer. As the Commission is aware, OxyChem has a longstanding contractual relationship as a supplier of granular trichlor and dichlor to BioLab, which itself is also a domestic producer of trichlor.

BioLab has traditionally resold the trichlor and dichlor products purchased from OxyChem to the pool and spa segment through channels not used by OxyChem. OxyChem's contractual arrangements with BioLab include a meet or release provision pursuant to which we must match any legitimate offer from another source made to BioLab or risk losing BioLab's business.

In November of 2003, BioLab presented us with an offer for granular trichlor from a Chinese source that was significantly below the price we were then charging. In order to retain BioLab's business, we were forced to reduce our price to BioLab by approximately 15 percent. Needless to say, such a large price reduction had a substantial effect on our profitability, particularly since our raw material input prices were increasing at the same time.

Moreover, just four months later we were presented by BioLab with a further offer for a very large quantity of Chinese trichlor. The price of that Chinese offer was an additional 15 percent lower than the already low price that we had agreed back in November.

Ultimately in order to preserve our volume we had no choice but to meet that low price, although by doing so we were forced to sell at a loss. Indeed, because of the substantial quantities involved we incurred a reduction in profitability in many millions of dollars.

Our relationship with BioLab has not been the only relationship affected by the surge in low-priced subject imports. In fact, the prices for all our sales of chlorinated isos have been negatively impacted by the need to meet the low prices offered on Chinese and Spanish product.

At my firm, Occidental Chemical, we have taken a number of steps over the last few years to respond to the challenges we are facing from Chinese and Spanish imports. We have reduced our costs. We have limited capital spending. We have limited R&D efforts, and we have deferred expenditures wherever possible.

Effectively, we have done everything we can to make our operations as efficient as possible, but we cannot simply compete in a market where the prevailing market price is determined by the lowest quote offered by any producer in China or Spain.

If importers of Chinese and Spanish chlorinated isos are allowed to continue to aggressively price and to undersell our products and capture market share, our ability to invest in our business will be severely damaged. Serious questions will be raised as to whether it makes sense for us to continue as a domestic producer of chlorinated isos.

Within OxyChem, the ACL isocyanurates business has to compete with every other business unit for capital and demonstrate its continued value to ours shareholders. If we cannot show our senior management an ability to achieve a reasonable return on investment through our trichlor and dichlor operations, they will not support us indefinitely.

Since the Commerce Department imposed preliminary duties on Chinese and Spanish imports, prices for chlorinated isos have shown some improvement, although our ability to increase prices and pass along higher raw material costs have still been limited.

If significant antidumping duties are not imposed, however, there should be no doubt that the price freefall we experienced during the period of the investigation will continue unabated. Should this occur, it is highly questionable whether our business has a long-term future.

In short, we are more than willing to compete with producers anywhere in the world, and we have done so successfully in the United States and in export markets for many years, but we must have a level playing ground with our Chinese and Spanish competitors.

We are seeking a restoration of fair competitive conditions for the future. The bottom line is that these unfairly priced imports from China and Spain have caused serious damage to us, and we foresee increasing damage in the future unless some effective relief can be provided by this Commission.

Thank you for your attention and consideration.

MR. SCHOBEL: Good morning. My name is Charlie Schobel. I am currently Executive Vice President of BioLab, Inc.

During my 29 year career at BioLab, I have held several other positions, including President, Worldwide Recreational Water. As a result of my years of experience in this business, I am intimately familiar with the U.S. industry producing chlorinated isos and the U.S. market for these products.

Like OxyChem and Clearon, BioLab is a major producer of granular chlorinated isos, in our case trichlor. Unlike the other two U.S. Producers, BioLab predominantly sells tableted rather than granular chlorinated isos. We produce more than half of the bulk granular trichlor we use to produce tablets in the United States. We purchase the remainder, mainly from OxyChem, under a long-term supply agreement.

The vast majority of the granular trichlor that BioLab produces and purchases is consumed in our production of tablets. We also purchase dichlor and then repackage it for sale. Over three-quarters of our annual sales volume of chlorinated isos consists of tablets. For this reason, we know a great deal about the impact of the unfairly traded imports on the tablet segment in the U.S. chlorinated isos market.

BioLab sells chlorinated isos to three types of customers: mass merchant retailers, distributors and specialty retailers. In 2004, almost half of our commercial shipments of chlorinated isos went to mass merchant retailers. These shipments consisted mainly of trichlor tablets.

Our main competitor is Arch Chemicals, a reseller of imported and purchased trichlorinated isos. Arch imports very large quantities of blended trichlor tablets from China. Arch sells these blended tablets to our customers in direct competition with our pure trichlor and blended trichlor tablets.

Contrary to what the Commission has heard from the Respondents, all chlorinated isos are variations of the same product. All chlorinated isos are organic stabilized forms of chlorine. All chlorinated isos are produced from essentially the same inputs -- cyanuric acid, caustic soda and chlorine -- and virtually all chlorinated isos are used in the same applications in the same environment, swimming pools and spas. These chlorinated isos are all sold through the same channels of distribution to the same types of customers.

As I've explained, BioLab knows a great deal about tableted chlorinated isos, and based on our knowledge of that segment of the industry, I would like to address the claim that blended tablets are a separate like product.

First, the fact that a particular chlorinated iso product is in tableted form does not distinguish that product from other chlorinated isos. With respect to the physical characteristics, all chlorinated isos contain a high percentage of available chlorine.

Granular trichlor and tableted trichlor have the same chemical structure and the same chemical properties. The production process for granular trichlor and trichlor tablets is identical through the granulation stage. To produce tablets, granular trichlor is simply compressed into tablet form.

Chlorinated isos in granular and tablet form are used interchangeably in pools as sanitizers and algicides. For example, BioLab sells dichlor as a fast-acting granular algae killer. BioLab also sells the same granular dichlor as a pool sanitizer.

Similarly, we sell granular trichlor as a granular algae killer and sell trichlor tablets as a sanitizer. Finally, we sell blended tablets as a multifunctional sanitizer that kills bacteria and controls algae.

Thus, all of the chlorinated isos, whether in granular or tablet form, can be and are used both to sanitize the water and to kill or prevent the growth of algae. Our customers purchase and use both granular chlorinated isos and tablets primarily for these purposes.

Blended tablets are simply one form of tableted chlorinated isos. We have handed out samples of both our pure chlorinated tablets and our blended chlorinated tablets. The predominant component of both pure and blended trichlor tablets is trichlor.

In pure trichlor tablets, trichlor accounts for 99 percent of the active ingredients. In our most popular three-inch blended trichlor tablets, trichlor accounts for 94.05 percent of the active ingredients. For Arch's blended trichlor tablets that percentage is 93.5 percent.

There is no significant difference between the production of blended and pure trichlor tablets. We produce both types of tablets in the same facilities, using essentially the same production processes, the same equipment, and the same employees. The only difference is when we or Arch's supplier produce blended tablets, very small quantities of certain additives are mixed with granular trichlor during the tableting process.

In addition to trichlor, blended tablets normally include an algicide and a water clarifier. However, these additives do not perform any function that is not already performed by trichlor itself.

Trichlor is an algicide. In addition, trichlor used in accordance with its label instructions will prevent the clouding of water. Thus, adding an algicide and a water clarifier does not add any function that is not already performed by trichlor. In reality, the additives in blended tablets are included mainly for marketing purposes rather than to add functions.

A good analogy is the additives that gasoline companies mix with gasoline to produce cleaner burning fuel. These cleaner-burning fuels contain minuscule amounts of detergents, but consist predominantly of gasoline. Notwithstanding the additives, these gasolines are purchased and used predominantly as fuel, not as an engine cleaner.

For this reason, consumers typically treat cleaner-burning gasolines and other gasolines as interchangeable and choose one over the other almost solely based on price or on the convenience of the location of the retail outlet. The same is true for blended and pure trichlor tablets.

In the U.S. market blended trichlor tablets and pure trichlor tablets are treated as interchangeable, particularly by mass merchants, and the decision to buy one product over the other is based on price. Indeed, just recently Arch took substantial business away from us at one of our mass merchant customers by selling blended tablets at a lower price than the customer had committed to pay for our pure trichlor tablets.

For reasons explained in our prehearing brief, dichlor and trichlor are also not separate like products. As the Commission had noted, one difference between these two types of chlorinated isos is the higher dissolution rate of dichlor. Because of this difference, dichlor can be used as a shock treatment when the chlorine level in the pool has to be raised very quickly.

However, we also produce and sell a granular trichlor product, Chlorinating Granules Plus, for use as a shock treatment, as well as a sanitizer and an algicide. This fact further confirms that there is no clear dividing line between trichlor and dichlor.

BioLab's chlorinated isos business has suffered very serious injury due to the dumped imports from China and Spain. Over the past three years, our sales prices have declined, while our raw materials costs have increased. As a result of these price declines and cost increases, we have suffered significant declines in financial performance.

In addition, late last year, we lost sales for this pool season due to dumped imports at some of our customers. Because of these lost sales, we are currently experiencing significant reductions in sales volumes and as a result, have had to reduce our sales force.

The price impact of dumped imports has been particularly devastating. Virtually all of our sales are based on short-term contracts for the outdoor pool season. Price negotiations for these sales normally begin with list prices. These prices are then negotiated downward based on competing offers.

While the agreements are essentially requirements contracts, there are no take obligations. Thus, essentially all contracts have a meet or release character. As a result, we have been hurt by competition from the unfairly traded imports not only during the contract negotiations, but also during the contract period.

In 2004, prior to the Commission's preliminary determinations, the unfairly low pricing of the dumped imports forced us to lower our prices on a significant number of our contracts. Specific information regarding the extent of these price reductions is provided in our producer's questionnaire.

Finally, after the preliminary injury determinations, and particularly after preliminary duties were imposed, we began to seek price increases from our customers, to offset increases in raw material costs. However, these requests were met with significant resistance from our customers because Arch maintained the unfairly low prices at which it was selling the dumped imports.

When dumped imports from China and Spain began entering the U.S. market in increasing volumes, BioLab made a conscious effort not to lose sales based on price undercutting by the dumped imports. When confronted with competition from the dumped imports, we lowered our prices as necessary to avoid losing sales volume. However, particularly recently, we are experiencing increasing lost sales, in addition to large and increasing lost revenues.

We have faced intense competition from the dumped imports, particularly in our tablet sales to mass merchant retailers, where we are competing head-to-head with Arch. Arch has been very aggressive in its pricing strategy for sales of the dumped products. For example, we recently have encountered extreme aggressive price undercutting by Arch using imports of dumped products at one of our large mass merchant customers.

Because chlorinated isos are seasonal merchandise, we negotiate contracts for the outdoor pool season during the preceding fall. Traditionally once these agreements were made, customers did not switch suppliers during the pool season. As a result of Arch's aggressive marketing of dumped imports, this is no longer the case.

Last fall, we reached an agreement with one of our large mass merchant customers to supply pure trichlor tablets for this year. Due to the impact of the dumped imports, the agreed upon price did not reflect the price increase that we had announced.

As described at pages 41 through 43 of our prehearing brief, about a month ago, the customer called to inform us that Arch had offered to supply blended tablets for substantially less than the price the customer had agreed to pay for our pure trichlor tablets.

After some back and forth, the customer initially decided to stay with us. However, Arch then offered to lower its price even further and to hold the price for the year. The customer then decided to switch a significant volume of business from us to Arch and to replace our tablets with Arch's tablets.

As a result, we experienced multi-million dollar sales losses.

While dumped imports first inflicted injury in our sales to our mass merchant customer, now the imports are also affecting our distributor sales. For example, last year a distributor customer purchased chlorinated isos packed and ready for retail sale from China, thereby proving it would readily be able to replace BioLab merchandise with the dumped Chinese imports. The customer used this capability to negotiate lower prices on merchandise purchased from BioLab.

In sum, we need final relief from the harm the dumped Chinese and Spanish imports are inflicting on our domestic industry. BioLab is willing and able to compete with domestic and imported chlorinated isos sold on a fair basis.

However, if we are unable to get relief from the dumped imports, the Chinese and Spanish suppliers will continue to ship large volumes of chlorinated isos at very low dumped prices, depressing the prices for U.S. product and taking more and more sales from us. The likely result will be to destroy the viability of our chlorinated isos business.

Thank you.

MR. MOORE: Good morning, Mr. Chairman,

Commissioners. My name is Michael Moore, and I'm the Vice President of Marketing for Advantis Technologies. Thank you for giving me the opportunity to testify today.

This is a very important case for the pool and spa industry in the United States. The damage caused by rising imports from China and Spain have not been limited to manufacturers of chlorinated isos. In my time today I'd like to offer you a different perspective based on Advantis' position as a purchaser and as a reseller and competition with imports from China and Spain.

Let me begin by describing why Advantis has an interest in the outcome of this case. We are a repacker and marketer of pool and spa chemicals, including trichlor and dichlor. We sell not only trichlor and dichlor, but also a full range of ancillary products, things like clarifiers, algicides, pH balancers, sanitizers and the like.

We are a national marketer and mostly sell through our own brands such as the GLB brand of pool and spa chemicals. We're not a primary manufacturer of chemicals. We purchase chemicals in bulk and formulate, sell and package at our own facilities.

For trichlor and dichlor we mainly purchase finished products such as trichlor tablets from

Clearon. These products are purchased in final package form in an Advantis branded pail and palletized for delivery.

Our business is marketing Advantis' lines of pool and spa products to distributors who in turn sell to pool stores. We focus on demand creation at the dealer level. Distributors will not stock our GLB brand, for example, unless pool dealers are asking for it. We do a significant amount of marketing, promotions and educational activities that target these pool dealers.

Our market is highly competitive, and we face competition at several levels. Distributors often carry their own private label brand of pool chemicals if they market to dealers in competition with our GLB brand. We also face competition from dealer direct brands. These can either be national brands sold directly to dealers such as Arch's Poolife brand or from sellers that offer private label brands to dealers.

This all makes for a complex market, but there are two important points I want to emphasis. First, it's not unusual for us to compete with our customers. We sell our GLB products through distributors who are our customers, but those same distributors may also be competing with our GLB brand for sales of their own private label.

Second, although we sell a wide range of pool chemicals, trichlor and dichlor are our central products. You have to have them. To sell to distributors and pool dealers it's necessary to be able to offer a full line of products. Trichlor and dichlor especially are benchmark products. Everyone needs chlorine and everyone uses it to compare pricing across competing offerings, so access to trichlor and dichlor is necessary in order to be able to market our other ancillary pool chemical products.

At Advantis we began buying chlorinated isos directly from Clearon a few years ago. We previously had our packaging done by Sun Wholesale. They purchased trichlor from various sources including Clearon and then packaged it into our containers. As our business expanded, it made more sense for us to streamline our supply chain and buy direct from Clearon.

We approached Clearon and asked them if they would do our tableting and packaging for us. Basically our trichlor and dichlor business had grown enough to make it worth Clearon's while to sell us directly.

The biggest change that we've seen in our markets in the last few years has been increasing quantities of low-priced imports from China and Spain. I can't emphasize enough how the imports have affected market pricing.

At Advantis the imports have had an impact on our business in several ways. Tableters like Alden Leeds, Jonas or Qualco can bring in Chinese or Spanish product at very low prices and offer tablets as private label brands to dealers or regional distributors.

Arch has launched a new dealer direct line that competes directly with Advantis' brands. The marketing campaign for Arch is based on offering dealers the chance to buy direct at distributor prices. By using Chinese or Spanish imports for these lines they're able to undercut market prices elsewhere in the distribution chain by significant amounts. We cannot compete as Arch's price to the dealer is less than our cost.

Another example is Sun Wholesale, who is selling imported trichlor to various distributors and dealers for packaging in their own private label brand. We've heard of very low prices being offered. Customers then use this pricing as a new market benchmark to hold up to existing suppliers.

Obviously these actions create a huge problem for distributors that are carrying our brands.

The distributors come back to us and say that we have to reduce prices in order to stay competitive. Otherwise the distributor is going to lose dealers to import brands or the distributor may even incorporate Chinese or Spanish imports into his own private label brand to try to compete. Either way it doesn't take much in this market for prices to be driven down in a hurry.

It's not possible to isolate the effect of low import prices in any one segment of the market. If someone is using Chinese material to sell direct to dealers then all the distributors have to respond in order to keep their customers competitive.

It's the same thing with the mass merchant segment. Although we don't sell to Home Depot or Costco, if the big chains drop their prices because of the lower priced imports then that action flows through the entire market.

The specialty dealers and the distributors have to lower their prices to stay competitive, and that pressure works its way back up the chain to us. It's been extremely difficult to maintain market share with our GLB brand under these conditions. We've tried to hold our position by increasing our advertising, offering dealer incentives and of course pressuring our own suppliers for low prices.

Sometimes we just have to take a loss on our products in order to be able to keep our full line from being dropped. The margins on our GLB brand, which are most affected by the import competition, have been down significantly in the last couple of years.

For Advantis, our bottom line is we would prefer to buy trichlor and dichlor from domestic suppliers. The communication is better, the supply chain is certainly better, and Clearon has been a good supplier to us. I don't see how the domestic industry can remain viable with the type of import pricing we're seeing in the market today.

We think it is in our long-term interest to have a healthy and stable supply base for chlorinated isos in the United States. I hope that your decision in this case will restore a reasonable competitive balance to the pool and spa market.

Thank you.

MR. WOOD: May I have a time check, please?

MR. BISHOP: You have 11 minutes remaining.

MR. WOOD: Thank you. Good morning again. For the record, my name is Chris Wood of Gibson, Dunn & Crutcher, counsel to Petitioners OxyChem and Clearon Corporation.

In my testimony this morning I would like to briefly summarize the evidence that we believe strongly supports an affirmative finding of material injury in this case. Initially we believe that the Commission should again find a single like product in this investigation.

CHAIRMAN KOPLAN: If you could just move the microphone a little closer to you?

MR. WOOD: Yes. Thank you. We believe the Commission should again find -- is that better?

CHAIRMAN KOPLAN: Yes.

MR. WOOD: Okay. Great. Should again find a single like product in this investigation, including all forms of trichlor and dichlor. As you have heard today, trichlor and dichlor have very similar manufacturing processes. They share common channels of distribution. They are both used primarily to deliver chlorine for pool sanitization.

Even the attributes that distribute trichlor and dichlor are not absolute. Dichlor dissolves more rapidly than trichlor and so is often used to shock pool chlorine levels, but dichlor is also used for regular pool sanitization in some parts of the United States. Similarly, there are several trichlor products today that are marketed specifically as shock treatments for pools. Thus, there is no clear dividing line that can be drawn between trichlor and dichlor.

There is even less of a basis for treating regular trichlor and so-called blended trichlor tablets as separate like products. You've heard Mr. Schobel testify that BioLab, the main U.S. producer of blended tablets, views its blended products as basically the same as regular trichlor.

That testimony should carry great weight in your decision because the legal analysis for like product must focus on the domestic products at issue. If there is no clear dividing line between domestically produced blended tablets and other chlorinated isos there can be only one domestic like product.

As you hear arguments this afternoon concerning the alleged uniqueness of blended tablets imported from China, we would ask that you bear in mind that only domestic production is relevant in defining the domestic like product, and with respect to BioLab's product all of the evidence indicates that blended tablets are part of a continuum of trichlor and dichlor products used for pool sanitization.

Turning to volume, the increase in subject imports over the period of investigation has been significant by any conceivable measure. Imports from China and Spain have both grown rapidly. As a result, although domestic demand for chlorinated isos has grown since 2002, domestic producers have not enjoyed any benefit of that growth. The share of the U.S. market held by the domestic producers has actually fallen as subject imports have increased.

With respect to volume, we'd like to note two important points regarding the apparent U.S. consumption data compiled in the preliminary staff report. First, the U.S. shipments reported for imports from Spain are based on importers' questionnaire responses which provide only partial coverage of the actual shipments of Spanish imports into the United States. This significantly understates the U.S. market share actually held by imports from Spain.

Because the importers' questionnaire data are not adequate for Spain, we believe that the U.S. shipments shown in foreign producer questionnaire responses should be used to measure the penetration of Spanish imports into the U.S. market.

The second point I would like to emphasize is that the quantity and value of U.S. shipments by U.S. producers, which are used to estimate apparent U.S. consumption in the staff report, appear to be far too high. We believe this is a double counting problem where shipments of the same material are being counted once in the granular form and then again in tableted form.

This double counting issue can be eliminated by focusing strictly on domestic shipments of granular material by U.S. integrated producers in calculating apparent U.S. consumption. All of the tableted chlorinated isos are produced starting with granular material.

As a result, if you sum all the granular shipments from the U.S. producers, commercial and internal consumption, used in the production of tablets that will accurately reflect total U.S. shipments. We have provided this analysis in Exhibit 10 to our prehearing brief.

When U.S. shipments by domestic producers are adjusted to eliminate this double counting it is clear that the share of the U.S. market held by subject imports is significantly higher than that reflected in the preliminary staff report.

With respect to pricing, you have heard the testimony this morning as to the extremely low prices at which subject imports are being sold in the U.S. market. That testimony is corroborated by the pricing product data presented in the staff report. U.S. prices for chlorinated isos have declined across the board from 2002 to 2004. The reason for those price declines has been the substantial underselling of domestic product by both Chinese and Spanish imports.

In analyzing the pricing product data, we would stress that it's important to make sure that comparisons are being made at the same level of trade. For example, the price at which Clearon sells trichlor tablets to Advantis is likely to be very different than the price at which the same tablets are sold to a pool retailer or to a mass merchant like a WalMart or a Home Depot. As Mr. Moore testified, there are a whole range of services, including marketing support, distribution, supply chain management functions, that all go into that final price to the retailer.

We would suggest that in those few cases where the pricing product data shows substantial overselling by subject imports in contradiction to all the other record evidence that the real issue is actually comparisons being made at different levels of trade. We provide an extensive analysis of this issue in our prehearing brief as well.

On causation, we believe the evidence is simply overwhelming that the rapid increase in low-priced subject imports have harmed the domestic industry. Even as demand for chlorinated isos in the United States has risen and raw materials and energy prices have increased, domestic producers have been forced to lower their prices to respond to subject imports.

The result has been a substantial decline in the industry's operating performance from healthy profits in 2002 to a significant operating loss in 2004. As you've heard this morning, the domestic industry has repeatedly been faced with the option of lowering its prices in response to subject imports or losing business.

The very substantial dumping margins announced this week by the Commerce Department further underscore the magnitude of the unfair pricing that's confronted the domestic industry in recent years.

Some Respondents have argued that the business strategies of Petitioners are responsible for the injury suffered by the domestic industry, but that claim just doesn't withstand scrutiny. As you've heard this morning, OxyChem reduced its prices to keep customers in the face of threat from subject imports.

Clearon, on the other hand, attempted to raise its prices to maintain prices in line with rising costs at the expense of sales, so the two Petitioners responded to import competition with diametrically opposite strategies and yet both have suffered severe injury over the period of investigation.

The issue here is not the business strategies of Petitioners. It's the impossibility of competing with the surge in unfairly traded imports that's occurred over the last two years.

Finally, although we believe that the record demonstrates a clear case of material injury, let me also point to the evidence showing a serious threat of continued harm from Chinese and Spanish imports. Production capacity in both countries have increased significantly since 2001. The producers in China and Spain are highly export oriented, and the United States is of course the largest world market for these products.

As the events of the last three years have shown, producers in China and Spain are willing and able to ramp up exports of chlorinated isos to the United States in a very short time. In the absence of an order, all likelihood is that imports from China and Spain will continue to increase and will continue to harm the domestic industry.

Thank you for your attention this morning. Speaking for all our panel, we'd be very pleased to respond to any questions that you may have. Thank you.

CHAIRMAN KOPLAN: Thank you very much, Mr. Wood, and I want to thank the panel for its detailed presentation.

I'll begin the questioning, but before I do I would just like to welcome the delegation from Egypt that is attending our hearing today. We are very pleased to have you with us, and we hope you enjoy participating in this proceeding. I promise not to ask you any questions.

Also, in responding to our questions if you would reidentify yourselves each time because we have a number of witnesses at these tables, and it will be much easier for the reporter.

Having said that, my first question is for both Mr. Johnson and Mr. Schobel, and it deals with the issue of quality. I'll start with you, Mr. Johnson. I'll walk through it, and then I'll hear from him.

I'd like to ask you about any quality differences between the subject imports from China and the domestically produced product. I'm interested particularly in whether differences exist that are relevant to the original purchaser of the product from the manufacturer, but not necessarily to the ultimate consumer with the swimming pool.

The data submitted in response to Commission questionnaires indicates that purchasers rated quality as second only to price as an important factor in selecting a supplier. On page 36 of their prehearing brief the Chinese Respondents argue that, and I quote, "The administrative record establishes that there is substantial quality problems with respect to Chinese imports which also explains their lower price levels as compared to the domestic product."

I note that the Commission staff report suggests that there are quality differences between Chinese and U.S. produced chlorinated isocyanurates. I wonder if you could comment on that for me. I'm referring, for example, to quality differences such as perhaps health and safety concerns or failing to meet product specs.

MR. JOHNSON: Thank you, Mr. Chairman. I'm Scott Johnson with Clearon Corporation.

As far as the quality issue with imports, there's always an issue in the manufacturing of chlorinated isos where we try to maintain a specific standard. When we first saw imports being brought in from China we did see some lower quality, and from that perspective typically the quality issues that we would see were in the form of either a higher salt concentration, sodium chloride, in the compound itself or within the product or a lower quality of tablet that was being brought in.

CHAIRMAN KOPLAN: Can you put that in a

timeframe when you say when you first started?

MR. JOHNSON: 2002 kind of a timeframe.

CHAIRMAN KOPLAN: Okay. Thanks.

MR. JOHNSON: Okay. I certainly have not done any studies to document any of this. This is my perception of what we were seeing. Those quality issues that I just described are things that are usually very easily responded to and corrected.

Now let me go back to the quality issue on the tablet. That's more of a physical characteristic issue than it is a chemical composition issue. It's just a matter of the quality of the press and how the press is operated to produce a nicely formed with a smooth surface on the tablet type of an issue.

Certainly it's my feeling that those issues were looked at and responded to on a fairly short basis, and the quality of the material coming in may not be quite as good as what we produce, and I'd like to think that our material is of a slightly better nature, but it certainly has improved in quality over the past couple of years.

CHAIRMAN KOPLAN: Well, I'm asking because some purchasers have indicated that you have a superior quality.

MR. JOHNSON: Yes.

CHAIRMAN KOPLAN: Okay. Mr. Schobel, on

page 16 of your prehearing brief you state that all chlorinated isos are a commodity product. I'd like you to respond as well to the reported quality differences that are listed.

MR. SCHOBEL: Yes, Mr. Chairman. My name is Charlie Schobel from BioLab.

From the granular trichlor that we have brought in from China in 2004, we found no significant issues and were able to tablet that product and put it in through our product line to our customers.

Moreover, the tablet quality of the Chinese products that have come into the country have been fully accepted by customers in the ability to take the product on and sell it to the consumer, so it's a very acceptable product for the consumers.

CHAIRMAN KOPLAN: Thank you very much.

Mr. Napoles, on page 38 of their prehearing brief Chinese Respondents argue, and I quote, "In addition, a price premium for the U.S. product is justified because of superior attributes other than price or quality."

Table 2-4 of our staff report indicates that with the exception of price a significant number of purchasers rated the U.S. product as superior to the subject imports from China in the following categories:

Product availability, delivery terms, delivery time, extension of credit, minimum quantity requirements, packaging, product consistency, product range, reliability of supply, technical support and service and lower U.S. transportation costs.

I note that no purchasers rated the Chinese product as superior to the U.S. product in any of the categories. Why shouldn't those ratings have justified a domestic price premium when compared to the price of subject imports from China?

MR. NAPOLES: Mr. Chairman, I'm Julio Napoles with OxyChem.

Logic at face value would imply that a domestic producer who is able to respond very rapidly to a customer request for a product who has consistently provided a product with a very consistent level of quality, that that product should command a price, a premium, over an imported product that takes longer to reach the shores.

Sometimes the terms of sale of that imported product are not as beneficial. We extend terms, payment terms, to our customers. However, we have been unable to convince our customers that because those inherent advantages that we believe that we have that our product should command a premium.

Always the pricing discussions and

negotiations tend to gravitate towards the lowest common denominator, and the lowest common denominator in this case is the subject products from China and Spain.

CHAIRMAN KOPLAN: Thank you. Mr. Schobel, if I could come back to you for one?

Arch Chemicals' prehearing brief states at page 7, and I quote, "The different chemical composition of Arch's formulated multifunctional tablet also differentiates it from pure trichlor tablets for DOT purposes.

"Pure trichlor tablets fall within the DOT's 5.1 oxidizer hazardous material classification. Based on DOT regulations and guidance, Arch ascertained in 2003 that its formulated multifunctional tablet does not meet the DOT or the International Maritime Dangerous Goods Code criteria as a 5.1 oxidizer or hazardous material under any category.

"In contrast, pure trichlor is regulated as a hazardous material, a 5.1 oxidizer. Accordingly, Arch's proprietary tablet is regarded by federal and international transportation regulations as a safer, more stable product than pure trichlor and is not treated as a hazardous material for transportation purposes."

I note that in making its like product

determination the Commission must determine whether blended tablets constitute a separate domestic like product. Therefore, I wonder if you could tell me whether DOT regs distinguish between BioLab's blended and its pure tablets with respect to their hazardous material classification.

Do BioLab's blended tablets differ in any other significant respect from Arch's tablets as described by Arch in their prehearing brief?

MR. SCHOBEL: Mr. Chairman, I'm Charlie Schobel with BioLab. We have two types of products, pure trichlor tablets and blended trichlor tablets.

First, our blended. Our blended trichlor tablets do not need an oxidizer 5.1 and are not shipped with an oxidizer label 5.1. Our pure trichlor tablets also pass the test to not be a 5.1. We continue to put the 5.1 label on our pure tablets because we have significant international shipments, and we have not taken the cost nor the time to get that approved on the international shipments.

Trichlor, pure trichlor and our blended trichlor, both can be shipped without the 5.1 oxidizer label.

CHAIRMAN KOPLAN: Thank you very much.

I see my time has expired. I'll turn to Vice Chairman Okun.

VICE CHAIRMAN OKUN: Thank you, Mr. Chairman, and let me join the Chairman in welcoming all of you today. We appreciate your participation and your testimony this morning, and in particular I would like to thank the industry witnesses for taking the time from your jobs to be here and help us understand your business better.

I would also like to join in welcoming the delegation from Egypt here. I hope it is an informative process for you.

Let me just follow up briefly, Mr. Schobel, on the tablets, on the blended tablets. I would note I guess for the panel that as the Commission had identified two like product issues that we had asked for additional information, I very much appreciate both your testimony today and your prehearing brief. You've put a lot of information in there with regard to the information we look at for the six factor test and so I think I just have a few follow-ups on that.

One would be, Mr. Schobel, just in terms of on the blended tablets I guess I have kind of the question of why would a company decide to do a blended tablet? I mean, I was trying to think of it. Is it like if I'm a consumer and I have a fax machine and I have a copier you put them all in one and it's easier, or is it you're just trying to differentiate a product out there and if I go into a pool store and I don't know much about it I'm going to like the little blue specks or something?

I'm just trying to understand why you spend I would assume additional -- you're trying to get a price premium. Why you'd go to that effort if they just do the same things as a pure tablet would.

MR. SCHOBEL: Commissioner Okun, Charlie Schobel with BioLab.

The reason we have developed the blended tablets is to show some differentiation in a market that's very commoditized. The success of that has been very limited. When a product is on the shelf, a pure product, and a blended product is on the same shelf, our products, we may be able to get some margin difference.

However, we found that the purchasers of trichlor tablets tend to drop it down to the price per pound, and it doesn't matter whether it's blended or pure. It's what is your price per pound for your three inch tablet.

VICE CHAIRMAN OKUN: Okay. And just again --

MR. SCHOBEL: It's basically a marketing strategy.

VICE CHAIRMAN OKUN: Okay. So for these, the ones that are your samples up here, which reminds me that pool season is going to start because it smells like chlorine up here.

Would the marketing on the front of them, and I think you had some of this in your brief, but just help me out. I mean, the blended one would say?

MR. SCHOBEL: The blended would say that it provides clearer water. It has some clarifiers in it, things like this. Again, it doesn't do any functions that the trichlor doesn't do, but it's some added value hopefully to the consumer that there is some added ingredients in there.

The amount of ingredients in there of the additional products are not going to make a significant difference in the pool water unfortunately because the majority of the product is trichlor, and trichlor performs the functions of sanitizer, algicide and clarification.

VICE CHAIRMAN OKUN: Okay. Just for posthearing I know you had in your brief and in your discussion today talk about how similar you would compare your blended tablets with Arch's tablets.

I believe Arch had submitted their patent along with their brief, and I don't think you did. Just to help me make sure that I understand the chemical composition, is that something you could include for posthearing?

MR. SCHOBEL: In the posthearing brief we'll be glad to put in the chemical composition.

VICE CHAIRMAN OKUN: Okay. I appreciate that very much.

Let me then turn to the domestic industry and the issue of the tableters here. One thing that I'm not sure how much you all can help out on, but I'm hoping you can a little bit, which is the data we have collected, and most of it is confidential, but just again to just try to walk through this.

I see a lot of variation in what the tableters are responding to in terms of how much value added they bring to the process as we look at whether they're a sufficient production for the domestic industry. What else could you or would you ask us to look at when we're evaluating this?

I mean, in the prelim we didn't have too much data. We've collected more, and I'm sure we might get some more, but I don't know if this is, Mr. Wood, a legal question for you, but I'm also just wondering if the industry can say anything more about, you know, what we should really be focusing on in terms of how to evaluate the tableters.

MR. HAND: Antony Hand from Clearon. I think it's very important the level of trade issue that was discussed previously.

It very much depends on if the company is supplying direct to distributors, to a retailer, to a mass merchant retailer and even in terms of the mass merchant is very different, great differences in their requirements from a supplier that would influence the cost and the supply price.

MR. WOOD: Commissioner Okun, this is Chris Wood from Gibson Dunn. I guess I would suggest to you that from a legal perspective when you're trying to define the domestic industry ultimately you're looking to see if there is sufficient production related activities and so I think our suggestion would be that you focus on exactly what the tableting process consists of, what equipment is used, how difficult is it to obtain that equipment, how difficult is it to begin producing.

I think you can measure all that in comparison to what is required to produce the basic chemical. Actually, I would think that Scott may be able to help us on this a little bit because Clearon of course uniquely among -- well, actually uniquely among my clients does have their tableting and packaging in a separate facility, but located quite close to their manufacturing plant there in West Virginia.

Scott, may I ask?

VICE CHAIRMAN OKUN: Mr. Johnson?

MR. JOHNSON: Commissioner Okun, Scott Johnson with Clearon Corporation. I guess I look at that question in two ways.

One, we have always felt within Clearon that the quality is a significant issue, and if we can maintain control of the product to where it is ready to go out in final form for a customer, whether it's going out to a distributor or whether it's going out to a repacker that's going to put these tablets in a different container, at least we have taken it all the way through so we're able to control and maintain a quality standard there that we would like to be able to always effect to the positive.

Now, as far as the ability to make the chemical itself there are some hazardous materials obviously that I've talked about that have to be handled carefully. There are processing steps that are not easily performed by someone who's not knowledgeable of the chemistry, and the equipment that's necessary to handle these materials not only is expensive, but it's expensive to maintain.

As far as the tableting side of the picture, the entrance into that type of an operation is from a capital perspective much less capital intensive.

There are many presses that are available. There is a very low technical hurdle that has to be achieved to be able to understand how to make a tablet.

As I referred earlier, the quality of the tablet, if it starts out poorly, certainly can be adjusted and people can learn very quickly how to make a higher quality, nicely formed tablet.

The difference is the technical level that's required to produce tablets, much less, very easy, the price to get in there or the capital investment to get in, much, much less, but if you combine all of those together it allows you to have a uniformity within the operation as to what you're supplying to the market.

VICE CHAIRMAN OKUN: Okay. Just so that I'm clear on what you were saying in terms of when you were dealing with hazardous materials and the investment needed to do that are you saying that's more for the initial phase than it would be for a tableter, or it's the same as the cost of dealing with this issue?

Is it the same whether you're the producer of the granular, the tableter or a repackager?

MR. JOHNSON: It's only the chemical manufacturer that incurs those types of costs that are involved with the step of making the chemical.

VICE CHAIRMAN OKUN: Okay. That's what I

wanted to be sure.

Back for BioLab, I think your brief had focused heavily, part of it, on that we didn't have too much data. We now have some more data. Again, we'll look at the data, and it seems there's a lot of variation.

Is there anything else you wanted to add? I have a yellow light, but anything you wanted to add on this point?

MR. SCHOBEL: Charlie Schobel with BioLab. The tableting operation for BioLab does not have the type of significant investment, capital expenditure that you do on the manufacturing of trichloro. We use temporary labor in our tableting operation. We use permanent labor in our manufacturing of the trichloro.

The employment levels are more seasonal when you're doing the tableting where it's year round in the technical expertise. The hazard level to employees is much greater, you know, for the EH&S requirements for the trichlor manufacturing than for the packaging.

There's not significant capital that has to be put in to set up a line. We run our blended tablets and our pure tablets down the same line.

VICE CHAIRMAN OKUN: Okay. I appreciate that. My red light has come on, but I appreciate all those comments.

Just for posthearing for counsel, since you would be able to look at the data that we've collected if you could take a look at again the variation I see there and see if there's anything you would add in terms of our analysis of this issue?

Thank you very much, Mr. Chairman.

CHAIRMAN KOPLAN: Sure. Commissioner Miller?

COMMISSIONER MILLER: Thank you, Mr. Chairman, and let me join in welcoming the panel. We appreciate your being here and helping us understand what's a bit of a new industry. We see chemical industries here, but it's new to be talking about swimming pools.

I'm sorry. I don't have one in my backyard so I don't have any practical either experience or practical benefit out of learning about the product, but it's interesting nonetheless.

I think I want to start with a question to help me understand a little bit of the history of what's gone on in the industry in part because of a comment of Mr. Perry's in his opening statement. He referred to his clients, some of the tableters, as they're the ones who created this industry in the United States in talking about the tablets I guess.

It prompted some interest on my part. I'd like to hear your reaction to that statement and if you'll tell me a little bit about the structure and how I understand that comment in the context of the companies I'm looking at here.

MR. SCHOBEL: Thank you, Commissioner Miller. I'm Charlie Schobel with BioLab.

I'll give you a little history on our company. We started an operation in 1955. However, we didn't get involved into the pool chemical business until around 1965, and in 1965 we started as a small tableter and formulator of the liquid products and the powder products, introducing them to our customers.

It was not until in the 1990s, in the later 1990s -- I don't remember the exact year -- that we purchased a trichlor plant from Olin to get into the manufacturing of trichlor. Since we used so much trichlor in our own operations, we backward integrated into the trichlor.

Our value to the pool industry is mainly on the marketing side, the distribution channel. It's where the value is tremendously added to the product on the marketing side.

On the trichlor -- I guess that's it. I don't know what else you would like to know.

COMMISSIONER MILLER: Well, I'm just trying to still get some context. I might have a follow-up, but I see Mr. Johnson.

Mr. Johnson, were you going to help answer my question?

MR. JOHNSON: I don't know whether I'll help you answer the question. I'll certainly try. Scott Johnson with Clearon Corporation.

As I look at the historical perspective of the isocyanurates, the operation Clearon came into being in 1995, although the operation for making the chlorinated isocyanurates started back in the late 1960s.

The perspective has always been looking for a mechanism to safely or more safely transport chlorine in a solid form to the pool users who certainly have been expanding through this period of time from the 1960s forward.

Now, the statement, you know, who created this, certainly you need to have a market to sell the product in, but you need to have the product to be able to provide to the market.

I think as you noticed from what Mr. Schobel was talking about they got into the marketing side of it, created a need, but certainly without the product. There was nothing. As the demand they grew into the manufacturing side of that picture also.

COMMISSIONER MILLER: I'll go back to you, Mr. Schobel or Mr. Johnson. Maybe I take Mr. Perry's comment as more relating to the tableting. Is tableting and the form of adding these chemicals to the pool, is that what is relatively new here? Mr. Schobel?

MR. SCHOBEL: Yes. Charlie Schobel, BioLab. The tableting of trichloro tablets started in about the middle to late 1960s when trichloro first came into the marketplace. Prior to trichloro being invented and being produced, it was not being sold into the pool industry.

COMMISSIONER MILLER: Okay.

MR. SCHOBEL: It was really around the middle to late 1960s. I wasn't a part of it right then so I don't remember the exact date, but about then.

COMMISSIONER MILLER: Mr. Wood or Mr. Hand?

MR. HAND: Antony Hand from Clearon. It's also probably useful to understand that the tableted and trichlo-chlorinated isos products are just part of a range of products produced and sold and marketed by the other companies involved on the other side of this petition. They sell other pool chemicals and ancillaries alongside the chlorinated isos, and this is just a part of their overall range.

COMMISSIONER MILLER: Okay.

MR. HAND: This is not their overall business.

COMMISSIONER MILLER: You mean the general pool servicing chemicals and equipment?

MR. HAND: Yes. With a pool, the chlorine is the part that gives you that sanitization, but there's other products for stain and scale, for cleaning, the whole list --

COMMISSIONER MILLER: Right.

MR. HAND: -- of pH plus, pH minus to control most of the things and stabilize.

COMMISSIONER MILLER: And as I understood from our record while there are other chemicals, are there other chemicals that may be used to deliver the chlorine or just other chemicals that are needed for a swimming pool?

Mr. Moore?

MR. MOORE: Michael Moore with Advantis.

COMMISSIONER MILLER: This is more your business, isn't it?

MR. MOORE: It really is, the ancillary products. I just wanted to mention that the GLB brand I referenced in my testimony, a privately held company, introduced algicides, and that was their core product in 1956 so it's approaching 50 years in existence at this time.

COMMISSIONER MILLER: Okay.

MR. MOORE: Algicides and most of the products offered through that line would be stain preventive products, liquid clarifiers, filter cleaning aids. All these make up a big part of the industry.

COMMISSIONER MILLER: Okay. All right. Let me move to understanding the impact of a couple of other things that strike me as having changed in the not too distant past. One perhaps is the role of the mass merchandisers and what that has meant. We see this in many cases here at the Commission these days, so it's not a new phenomenon to us. Help me understand what it has meant in your business in terms of both volume, pricing, just the nature of competition.

Have the large merchandisers, the Wal-Marts, Costcos, and sometimes I heard you mention Wal-Mart, Costco and Leslie's together, although I don't put Leslie's in the -- they're a pool company, right?

Wal-Mart and Costco, we won't even begin to tell you how often their names come up in our cases, but tell me about the degree of which they have taken more of this business and what that means if that's the case for your companies. Nobody's jumping forward there.

Mr. Schobel, please go ahead.

MR. SCHOBEL: Okay. This is Charlie Schobel, BioLab. In this industry there hasn't been a significant, a large change from what we call the pro side or the pool dealer side of the business to the mass and it's uncharacteristically so in most industries.

The research the industry has done over the past 10 years has shown it's about a 60 percent on the pro side of the business and about 40 percent in the mass. Over a 20 year period of time that may have been 35 mass, 65 pro so it hasn't shifted a lot compared to, but there's been tremendous amount of shifting within the mass merchants from mass merchant to mass merchant.

Twenty years ago the mass merchants that were large are not large today, so you've got a big shift inside the marketplace of who's doing the business in the mass, but there hasn't been a huge shift.

That is changing I think pretty rapidly with the dumped imports. The information we're getting right now is because the dumped imports going into stores such as Costco are so low that it is taking significant business away from the normal channels that this product was sold to in the pro side.

Basically the prices at a Costco, a dealer can buy it there cheaper than he can buy from his supplier.

COMMISSIONER MILLER: Mr. Hand or Mr. Johnson, do either one of you want to comment on this before my yellow light turns red?

MR. HAND: Yeah. Antony Hand from Clearon. It's difficult for us to comment on that level since we have a very minimal presence and haven't got the history in the mass merchant and the impact to really say. We're supplying at a different level in the distribution channel than BioLab, so that impact is difficult for us to comment on.

COMMISSIONER MILLER: Right. Yet, you've recently had some experience with this as your story related. Just beginning, huh?

MR. HAND: That's correct.

COMMISSIONER MILLER: Well, I may come back a little bit for more, but I've got other issues as well.

Mr. Wood, did you want to say something? It looked like you were reaching for it. No. Light's red.

Thank you.

CHAIRMAN KOPLAN: Thank you.

Commissioner Hillman?

COMMISSIONER HILLMAN: Thank you. I too would join my colleagues in welcoming all of you to the Commission given that for many of you this is your first appearance before us, so we appreciate your taking the time to be with us and I would join my colleagues in welcoming the delegation from Egypt as well.

If perhaps I can follow up a little bit on the questions that Commissioner Miller was asking just to make sure I understand all of these various players because we are hearing all of these issues about whether the pricing data is at a proper level of trade and so I need to make sure I understand the difference between a dealer versus a distributor, versus a wholesaler, versus a packager, versus a tableter, so I do have some questions about the structure of the industry.

Maybe if I can start first with in terms of who is in the end doing this I guess it would be helpful for me to understand do most individual pool owners do their own applying of these chemicals or do most people hire a pool service that comes and does this?

I'm trying to understand at the end of the day how this product actually gets -- I mean who is actually putting it into the pool? Is it mostly pool owners? Is it mostly pool service companies? Does it matter whether the pool itself is a private pool as opposed to a community recreational large pool?

Mr. Schobel?

MR. SCHOBEL: Commissioner Hillman, this is Charlie Schobel with BioLab. The industry statistics have said there's about 15 percent nationwide that have their pool serviced by a service person, somebody who comes by every week and drops the chlorine in and vacuums the pool. The majority of pools are do it yourself.

COMMISSIONER HILLMAN: Okay. Does the pool service company use a different product in a different form than your average homeowner that is doing their own?

MR. SCHOBEL: They would generally use the same kind of products.

COMMISSIONER HILLMAN: Now, how about for a community pool or a university pool, a large olympic-size swimming pool? Different products? Different people doing it?

MR. SCHOBEL: Same products. It depends on the size of the facility and where the economics come in, but it would still be the same chemicals used in pools but may not always be Trichloro.

COMMISSIONER HILLMAN: Mr. Wood?

MR. WOOD: This is Chris Wood from Gibson, Dunn. Just to clarify that and I'm sure Charlie will correct me if I'm wrong on this, but the bottom line is that all the pools have to have the residual level of chlorine, right, in order to kill the bacteria, and get the algae out and stuff.

I think the economics are that for most people and certainly for most residential pools Trichlor is going to be the preferable choice for that, but for very large ones you could imagine somebody having a large enough facility to warrant the investment in a chlorine generator or something, right? So it's conceivable, but I would think not terribly --

COMMISSIONER HILLMAN: So it's the same product again whether it's a pool service company, a residential pool or a larger olympic-sized community pool. Then help me understand this issue of kind of who's a dealer as opposed to a distributor, as opposed to a wholesaler, as opposed to a repackager.

I just want to make sure I understand who exactly does what in this.

Mr. Moore?

MR. MOORE: Thank you, Commissioner. Mike Moore with Advantis. A lot of the words or terms are used interchangeably. A pool dealer is essentially a pool retailer, the pool stores that we talk about. A large percentage of them purchase from distributors.

COMMISSIONER HILLMAN: So a dealer is a retail outlet --

MR. MOORE: A retail outlet.

COMMISSIONER HILLMAN: -- selling to your average homeowner all kinds of things to service their pool?

MR. MOORE: Yes. Chemicals, loadables.

COMMISSIONER HILLMAN: The little things that you dive down and clean the pool, the filters, all that stuff?

MR. MOORE: Anything related. It's a specialty store.

COMMISSIONER HILLMAN: So when you say *dealer* you're really meaning a retail store operator?

MR. MOORE: Yes. A retail store.

COMMISSIONER HILLMAN: They would purchase their Tri and Di, whatever they're purchasing from a distributor?

MR. MOORE: Through our selling channel that's through a distributor. Now, there are other brands as I referenced in my testimony that buy direct from a manufacturer.

COMMISSIONER HILLMAN: There would be

dealers that purchase direct from --

MR. MOORE: They can buy from a distributor that carries a variety of products, they could buy direct from a manufacturer if there's a brand available and that may be a brand or they may even have a manufacturer private label, a custom label for their own retail store.

COMMISSIONER HILLMAN: Then repackagers. Where do they fit in the business?

MR. MOORE: Repackagers. Let me try to explain that. A repackager, there's a variety of definitions there as well. You could call Advantis a repackager as we formulate, blend and fill products. We don't have a true chemical process occurring within our facility.

COMMISSIONER HILLMAN: So you're not tableting?

MR. MOORE: We are not tableting.

COMMISSIONER HILLMAN: Again, I'm trying to understand the distinction between a repackager and a tableter. So you're saying a repackager is actually taking granulated product and mixing it in some way or what are you doing as a repackager?

MR. MOORE: Yes. Exactly that. We blend product whether it be chlorine or a different product, a liquid product, an algicide, a filter cleaner or such. A tableter would buy granular Trichlor in bulk form and tabletize it.

COMMISSIONER HILLMAN: Then would sell it to you or again would sell it direct to a dealer?

MR. MOORE: And a distributor. All those possibilities.

COMMISSIONER HILLMAN: That's very helpful. I'm sorry. I just want to make sure. Now, then help me understand the importance of brand. Again, I'm with Commissioner Miller in that I'm not in this world very often. How important are brands and to whom are they important?

MR. MOORE: Again, a multi-prong answer I think applies here. I can only speak from Advantis' position here. Brands are important to us because it allows us to better differentiate our products from others. Advantis offers many different brands, several brands that we sell through distributors.

Brands are particularly important to the retailer as you may have three pool stores in a very close proximity. They're going to want to offer different labels of product. So they're differentiating, they're offering to pool owners that may come in to buy.

If there was only one brand in the industry it would be very difficult.

COMMISSIONER HILLMAN: It's the pool owner that really cares about this brand? I mean they're looking for a particular --

MR. MOORE: Well, I think it goes all the way up the stream to the retailer, to the distributor as well. There are certain distributors that only offer certain brands, certain dealers that only offer certain brands.

COMMISSIONER HILLMAN: Then when you label as a brand are you putting on your labels *made in the U.S.A.*? Do the brands in any way reflect where the granular product came from?

MR. MOORE: We don't label ours as such, but there's several recognized and have been recognized for many years. It's very apparent with the distributors and the dealers.

COMMISSIONER HILLMAN: I think that's very helpful. Then if I can go to the issue -- again, I'm trying to make sure on this issue of looking at these levels of trade on the pricing data.

A lot of you have talked about this issue of price pressure from the mass market retailers and yet if I look at the reported pricing data that we have some of the mass market retailers' purchase prices were quite a bit higher than any of the other pricing data reported.

I'm trying to understand why that would be the case. Are they purchasing something different in a different form or why would we see mass merchant prices so much higher than the other reported pricing data?

Mr. Schobel?

MR. SCHOBEL: As it relates to the pricing it's proprietary information that we may not be able to talk about in this forum. We'd be glad to give you more information in the posthearing brief as far as our pricing and how it goes through the different channels.

COMMISSIONER HILLMAN: Well, if there is anything in the posthearing brief to help us understand. Again, I'm trying to square. The testimony that I've heard is that you're all feeling this tremendous price pressure from the mass merchants and yet like I said it's hard for me to imagine how they're doing that if what they're paying is so much more than all the other prices.

So I understand it may be confidential data and that's fine. Answer it in the posthearing.

MR. SCHOBEL: On the pricing I had something to add to your previous question if you would like?

COMMISSIONER HILLMAN: Sure. Yes.

MR. SCHOBEL: One of the issues in the mass market which you may have heard in other cases is that customers like Wal-Mart, Home Depot, Lowe's, those big firms look at their brand being the most important which means customers come to those stores to buy and whatever is in that store they will buy what's in that store because they're coming to the store because it's a Home Depot, or a Wal-Mart, or a Lowe's.

That has made it very easy for the buyers to look at chlorine tablets as commodity and the brands become less important because price per pound is what's important.

Their feeling is when a customer comes in they came into that store, they will buy the brand of chlorine that's in there and so when the buyer decides to change from our competitor to us or us to our competitor it's just a wholesale change. You're out and another one comes in.

COMMISSIONER HILLMAN: We had heard testimony before that dealers are now seeing that the prices at Wal-Mart, or Home Depot or wherever can be lower than what they're getting from their distributor?

MR. SCHOBEL: Yes. That's correct.

COMMISSIONER HILLMAN: Can they or do they -- dealers -- go in in essence to Home Depot and stock up on this stuff and then turn around and sell it in their stores or would the brand in essence preclude them from doing that?

MR. SCHOBEL: What we've seen significantly happen this year because of the extremely low prices that are on the market right now is that service companies have stopped buying at the locations they used to buy at which is pool distributors and going right to a Costco.

COMMISSIONER HILLMAN: I appreciate those answers.

MR. MOORE: Could I just add that we're finding that brand recognition has very little importance as it relates to the sanitizers, the Trichlor and Dichlor. It's much more important on the specialty, the ancillary products.

COMMISSIONER HILLMAN: Appreciate those answers. Thank you.

CHAIRMAN KOPLAN: Thank you.

Commissioner Lane?

COMMISSIONER LANE: Good morning. I would like to welcome my fellow West Virginians to this forum. It's nice to have you in Washington, although I'm sure you'd rather be here visiting the Capitol and the White House rather than the inside of this courtroom, but welcome anyway.

Let's start with Mr. Johnson. How much of your production at Clearon do you then tablet, and then how much of that that you tablet do you do for other people and then how much of it are you just selling on the open market or without being branded?

MR. JOHNSON: Very difficult question because the dynamics of the marketplace have been changing very rapidly in the last few years. As far as the amount of chemical -- Trichlor or Dichlor -- that is produced these are rough numbers right now, but I would say that somewhere in the 60 to 70 percent range of the Trichlor that is being produced is typically tableted.

Now, we have some customers that we will send granular Trichlor to and they will take it to other tableters and subsequently tablet it. So that percentage that I'm talking about is that which we would do internally, okay?

As far as the material that we're doing for others versus what do we sell for Clearon, and Antony could certainly add to this, but Clearon has very few markets that we have developed to the ultimate retail outlet.

We have just recently entered into the mass merchant business and you heard Antony talk a little bit about a recent development of a Clearon brand name. These were done in response in the last few years to try and address the issues that we've been talking about.

The amount of product that actually goes into those two outlets on a percentage basis is very, very small. A couple of percent at most.

COMMISSIONER LANE: Thank you. Now, I want to go to the issue of the lost sale to Arch. First of all when Arch was purchasing from Clearon did it buy tablet, or granular or both?

MR. JOHNSON: During various periods of our relationship with Arch those sales were handled in different ways. Originally we would sell Arch the granular material, we would store that granular material in our warehouse and then we would tablet it at their requirement into their packages.

During some of the more recent years at the end of our contractual agreements we were actually selling them a finished product. So we would take the material as granular material to the tableting facility, tablet it, put it into their pails and then sell them the final product.

COMMISSIONER LANE: Now I want to go to the lost sale. We have business proprietary information on your bid price. Did you have any negotiations or discussions with the customer which would give you any information regarding the price that the customer ended up paying to the Chinese or Spanish producers?

If that is business proprietary information maybe you could provide it in a posthearing submission.

MR. HAND: Antony Hand from Clearon. I think from memory it's difficult to pull that information anyway, the proprietary. We will provide it afterwards, but we know from rough numbers just on standard Chinese pricing for any purchaser where that number would be approximately.

COMMISSIONER LANE: Is that business proprietary or can you say it here?

MR. HAND: It comes out as roughly 45 cents a pound FOB, Chinese main port.

COMMISSIONER LANE: That's the price that the Chinese were offering the product for?

MR. HAND: For granular material that is.

COMMISSIONER LANE: Okay. Arch states that aluminum sulfate from its blended tablets will remain in the pool and build up to a saturation point; however, the stated purpose of the aluminum sulfate is to cause particles to coagulate and fall to the bottom. Now, it seems to me that if the aluminum sulfate is needed and it works it will not be building up in the pool.

Mr. Johnson, are you the proper person to comment on this?

MR. JOHNSON: I'll tell you my thoughts on this and I think we've heard from Mr. Schobel and he may want to add more, but their perspective of the different additives that can be included in different products.

Certainly I don't have any data that I have put together that can show performance of the different chemicals. The percentages of the different additives that are included in this blended tablet are percentages that really can add very little if any real measurable difference to the product.

The main ingredient, Trichlor, is capable of performing all of the attributes that are being claimed for the blended product.

COMMISSIONER LANE: Thank you.

Yes, sir?

MR. SCHOBEL: Yes. Commissioner Lane, this is Charlie Schobel with BioLab. The function that chlorine provides in a pool is sanitizing, and it's an algicide and it also in that process destroys organic waste and clarifies the water.

If the pool though has a significant problem with it -- cloudiness or heavy algae infestation -- putting a tablet, anybody's tablet in the skimmer and a chlorinator is not going to solve the problem.

That's why there are separate -- pardon? A blended tablet or regular Trichloro tablet, any tablet is not going to solve the problem.

You will then have to use a separate algicide or a separate clarifier which could be aluminum sulfate. That's one of the clarifiers that's used in the industry. So it depends on your problem. If you have a problem the small, minute amounts that are in a tablet are not going to correct the problem.

COMMISSIONER LANE: Mr. Johnson, I want to come to back to you. You stated that Clearon developed Arch's blended tablet and that you did it at no cost yet Arch states in its brief that it spent considerable time in fact years and millions of dollars in the development and ability to add the blended tablets to its line of pool products in pool year 2004.

Would you care to comment on that a little bit further?

MR. JOHNSON: Well, I can't comment on the expenses that were incurred by Arch. I have no knowledge of what they spent in 2004.

I know that as far back as 2001 -- in fact January of 2001 -- there were discussions between Arch and Clearon concerning the manufacture of blended tablets, their desire to have a blended tablet to put out on the market and those discussions proceeded from that point forward to look at different types or different percentages of blended materials, and the consistency of the blend and how to assure that the materials were consistent in the final tableted state.

Again, that was all work that Clearon was doing for Arch as they were indicating to us their desire to introduce this and we were certainly interested in assisting them with that and that's what was meant by Clearon performing that work at no cost.

It was at no cost to them, so it was part of the cost of our doing business.

COMMISSIONER LANE: Thank you. I'm not sure who to address this question to but are tablets made for specific or certain dispensers, and are the tablets made for different sizes or configurations and what are the sticks used for as opposed to tablets?

MR. SCHOBEL: Commissioner Lane, Charlie Schobel, BioLab.

COMMISSIONER LANE: Yes.

MR. SCHOBEL: Again, it gets back to the Trichloro is the Trichloro. They all do the same function whether it's a small tablet -- we make small tablets that are about an inch in diameter, we make the three inch tablets that you have up there, we also make sticks. It's just a different form of compressed chlorine.

It does the same function in the pool of killing the bacteria or preventing algae.

COMMISSIONER LANE: Thank you. It looks like my red light is on, so I will --

CHAIRMAN KOPLAN: Yes, it does.

COMMISSIONER LANE: -- pass it to the next Commissioner. Thank you.

CHAIRMAN KOPLAN: Commissioner Pearson?

COMMISSIONER PEARSON: Thank you, Mr. Chairman, and let me extend my greetings also to the panel. Have prices for chlorinated isocyanurates generally been higher in the United States than in other countries?

MR. SCHOBEL: Commissioner Pearson, this is Charlie Schobel with BioLab. There are different prices for Trichloro in the different markets. Some are higher, some are lower and it depends a lot on the economics of that particular country of what the prices of Trichloro are, but there's significant differences in different markets.

COMMISSIONER PEARSON: Yes?

MR. NAPOLES: Commissioner Pearson, if I may? This is Julio Napoles with OxyChem. I want to add onto that I agree with what explanation from Mr. Schobel. What we have been finding out is that within the last two, three years the Chinese imports have also began to make significant in roads into major areas for the consumption of chlorinated isos.

Major areas for the consumption of chlorinated isos outside the U.S., Europe is number one for the consumptions of chlorinated isos. Today Chinese imports command approximately 45 to 50 percent of the market in Europe.

As those Chinese imports began to arrive in those countries just like it's happened here in the states, although I will tell you that they began to arrive in Europe about a year sooner than they appear in the U.S., what we have begun to experience is this same rapid deterioration in pricing that today I can make a generalization in saying that prices in the U.S. are still perhaps a little bit higher than they are in Europe and in other countries because of the rapid increase, influx of those materials.

COMMISSIONER PEARSON: Go ahead, Mr. Hand.

MR. HAND: Antony Hand from Clearon. If I can because I am English and I was obviously working for the company in the U.K. prior to moving over here, so between 1995 and 1998 the actual prices in the U.K. market for the chlorinated isos were higher than the U.S. prices of the material on a direct comparative basis.

It was only subsequent really to the Chinese impact in the European market that situation changed in a very large way. Also, it's -- sorry, I've lost the train of thought there. Yes, it was actually higher prior to 1998.

COMMISSIONER PEARSON: I have the impression from the reading that I've done in this investigation that historically prior to when the Chinese products started to have an influence in markets outside of China that the U.S. price had been generally higher than prices in other countries. Is that a correct impression?

MR. HAND: Antony Hand from Clearon. As I said up until 1998 the European prices were actually higher than the U.S. prices. To correct a previous statement from Mr. Napoles, the Chinese have now reached just over 55 percent of the European market there, and started roughly two years earlier, and impacted that price and have a similar impact on the global market for chlorinated isos.

COMMISSIONER PEARSON: Let me just clarify. I think in your first comment you referenced a U.K. price and this time I think you've said a European price.

MR. HAND: Despite the U.K.'s attitude we are part of Europe. Yes. I'm mainly familiar with the U.K. pricing.

COMMISSIONER PEARSON: The Federal Insecticide, Fungicide and Rodenticide Act has created registration requirements for a wide variety of chemicals including the chemicals that are subject to this investigation.

What's been the role of this for registration requirements in affecting pricing in the United States relative to elsewhere in the world?

MR. HAND: Antony Hand from Clearon. The FIFRA requirements, there's an awful lot of generate data required to be generated to access the U.S. market with a pesticide independent of whether it's Trichloro or any other pesticide.

The data that was generated in response to the EPA's requirements had a value of over $4 million. That data was owned by a committee of manufacturers who shared the cost and that committee was open to membership by any other company that wanted to join by paying a proportional share of the overall cost of the data.

There was 12 members, but for sake of calculation if there's 10 members, $4 million, it's $400,000 to join. The next time it will be 11, so it's cheaper again. So it was set up that way and that data was available to anybody who cared to join the committee and enter the market.

COMMISSIONER PEARSON: Did the committee consist only of U.S. companies --

MR. HAND: No. Sorry. I didn't mean to interrupt. There were 12 members at that time including three Japanese manufacturers, Spanish, Italian, Mexican, U.S. manufacturers, and a French manufacturer and a distributor.

COMMISSIONER PEARSON: Do you have any idea of what percentage of global production of chlorinated isos would have been accounted for by members of that coalition, or group or whatever the proper term is?

MR. HAND: Difficult figure to sort of calculate off the top of your head. Excluding the Chinese capacity for this calculation at this stage it would probably be 95 percent plus of the capacity globally.

COMMISSIONER PEARSON: So there was quite broad participation across the global industry then in this whole registration effort in the United States?

MR. HAND: The reregistration occurred I think it was September 1992 and millions of dollars of data were generated for that reregistration and therefore all of the companies had to share that cost because it would have been prohibitive for any individual.

COMMISSIONER PEARSON: Is it proprietary information or could I inquire whether Delsa is one of the firms that --

MR. HAND: Delsa is one of the firms.

COMMISSIONER PEARSON: Okay. So that's how they obtained their registration, as part of the initial process?

MR. HAND: As part of -- yes -- that overall reregistration.

COMMISSIONER PEARSON: It's possible that Respondents will express the view that the FIFRA registration process has in effect created a nontariff barrier to entry into the United States of chlorinated isos. How would you respond to that?

MR. WOOD: This is Chris Wood from Gibson, Dunn and I'd obviously be happy to get responses for our industry participants as well, but I think if you take a step back and look at it as Antony just described the Ad Hoc coalition that generated all this data actually in some senses facilitated access into the market right because any individual producer that wanted to generate the same data would be looking at an expenditure of millions of dollars.

By virtue of having a coalition compile and organize all the data those costs go down considerably. Now, you're right the requirement that the data be generated in the first place is part of the legislation, is part of FIFRA and so at least that's a condition of participating in the U.S. market if that's responsive to the question.

COMMISSIONER PEARSON: Right, but you're saying there was no exclusion of any firm anywhere in the world that wanted to participate in that process and there's been no exclusion to any firm that might have come in later and said hey, I'm willing to pay my share of the registration process in order to buy in.

There was not a discriminatory element to that process. Is that correct?

MR. HAND: Antony Hand from Clearon. We were required under FIFRA regulations not to have any discriminatory policies because then there would be anti-trust issues. It is firmly set up so that we have to allow fair membership of anybody who wants to join the committee given certain governing principles of the memorandum of agreement.

COMMISSIONER PEARSON: So should we look at this as similar to the expiration of a patent then? When the data exclusivity is gone away is that similar to the expiration of a patent?

MR. PRICE: This is Joe Price with Gibson, Dunn & Crutcher, Commissioner. As I said in my opening comments we do not think this is any way analogous to a patent for some of the very reasons that you've brought out.

This was not an exclusive arrangement. There are no exclusive rights given to anybody here. There's no ownership of rights. Anybody could have participated in the committee or anyone could have said I won't participate in the committee and I'll supply my own data, but this is a federal health standard that simply has to be met.

Countries all over the world have health standards such as this and you meet them one way or another, so we don't think it's like a patent.

What has happened and where we think actually we're hurt now or we're more vulnerable now is that the requirement that you contribute for the data has expired so that anyone now can site the data that's already been put into the public forum, so we have incurred all those costs.

Now free riders -- if I may use that term -- can come in, make use of the data and don't have to pay anything. So in a sense the industry is more vulnerable now to these free riders than it would have been before. Indeed in terms of threat of injury we think that's an important factor.

COMMISSIONER PEARSON: My time has expired, so Mr. Hand do you have a quick comment?

MR. HAND: If I could just respond. Subsequent to -- well, in the last couple of months indeed the committee has gained a new member which is Hebei Jiheng, one of the Chinese manufacturers and they have acquired a seat so they paid to join on to the committee.

COMMISSIONER PEARSON: Thank you.

Mr. Chairman, thank you for your indulgence.

CHAIRMAN KOPLAN: Certainly.

Mr. Wood, I'm always searching for questions to ask of counsel that can be answered yes or no. I have great confidence in you. I'm going to put that to the test with you know, okay? Don't let me down.

On page 27 of the prehearing brief of Petitioners Clearon and Occidental Chemical it argues that "Petitioners believe that the domestic industry in this investigation should be defined to include integrated producers Clearon, OxyChem and BioLab all of which produce and sell both granular and tabulated chlorinated isos."

For purposes of the posthearing briefs will both of your clients provide me with data regarding the percentage of value added to the tableted products they sell due to their company's tableting operations?

MR. WOOD: Yes.

CHAIRMAN KOPLAN: You're halfway there. In addition, will you have your clients provide data for the value added by the tableting operations of their companies or by any company that has a tolling arrangement with their company when tableting granular chlorinated isos?

MR. WOOD: Obviously to the extent we have that data we will supply it. Yes.

CHAIRMAN KOPLAN: That's acceptable.

MR. WOOD: Thank you.

CHAIRMAN KOPLAN: Thank you.

Mr. Schobel, Mr. Napoles indicated this morning that OxyChem sells chlorinated isos to BioLab. Do you purchase Trichlor and/or Dichlor subject to imports?

MR. SCHOBEL: Mr. Chairman, Charlie Schobel with BioLab. Yes, we do purchase Trichlor and Dichlor.

CHAIRMAN KOPLAN: Is that in significant quantities?

MR. SCHOBEL: I'm sorry?

CHAIRMAN KOPLAN: Are those significant --

MR. SCHOBEL: I didn't understand the question maybe. You're saying did we purchase Trichlor and Dichlor --

CHAIRMAN KOPLAN: Subject products.

MR. SCHOBEL: Yes. From China and Spain?

CHAIRMAN KOPLAN: Right.

MR. SCHOBEL: Yes, we have purchased Trichloro and Dichloro I believe from China and Spain.

CHAIRMAN KOPLAN: During the period here?

MR. SCHOBEL: I don't believe we purchased Dichlor. I'm pulling from memory here. We purchased Trichlor from China. I don't know if we purchased any Dichlor. I'm not aware of that.

CHAIRMAN KOPLAN: Was that during the period that we're looking at?

MR. SCHOBEL: Yes. 2004.

CHAIRMAN KOPLAN: All right.

MR. SCHAEFERMEIER: Mr. Chairman, this is Martin Schaefermeier, counsel for BioLab. Our importer's questionnaire provides the information relevant to your question. We'll be glad to point that out in our -- actually, we did address that in our prehearing brief and I can --

CHAIRMAN KOPLAN: Did you address nonsubject imports as well?

MR. SCHAEFERMEIER: Yeah. We reported --

CHAIRMAN KOPLAN: You have?

MR. SCHAEFERMEIER: To my knowledge we reported anything that was asked for in the importers. We submit three questionnaires: a producer's, a purchaser's and an importer's questionnaire and as I recall we reported everything that was requested by the Commission.

CHAIRMAN KOPLAN: I'll double check myself. The purpose of the question was to determine whether you're able to diversify your source as a supply and from what you're saying you can I take it?

MR. SCHOBEL: We purchase most of our requirements for Trichlor and Dichlor from OxyChem in an agreement. We do have some ability to buy from other sources.

CHAIRMAN KOPLAN: All right. I thank you for that. With that I have no further questions.

Vice Chairman Okun?

VICE CHAIRMAN OKUN: Thank you, Mr. Chairman.

Mr. Schobel, while we're talking about other sources would you be able to comment here a minute -- I know it's been addressed a little bit in prehearing briefs -- with regard to the differences you would have observed in pricing or other activities with regard to nonsubjects versus the subject imports when you look at the different products that are available?

Is there anything you could add here in the public session?

MR. SCHOBEL: Commissioner Okun, Charlie Schobel, BioLab. If you're asking for the differences in pricing that we purchased the different products -- Trichlor and Dichlor -- is that the question?

VICE CHAIRMAN OKUN: Well, I know you've submitted some information, but it would be just as a general without going into the proprietary information whether you could describe the pricing that you've seen from nonsubjects versus subjects and any other differences in terms of how it's marketed, where it's marketed, where you face competition?

MR. SCHOBEL: Well, the subject Trichlor from China was significantly below what we could purchase from any other source.

I don't recall right now what the pricing from Spain was from my memory, but the Chinese was significantly below what we could get from anywhere else and it affected us directly in the marketplace with the importers of the Chinese material directly with our customers and we've lost significant business because of that.

VICE CHAIRMAN OKUN: I don't know, Mr. Johnson or Mr. Napoles, whether you could comment on nonsubjects' role in this market and how you've perceived them over this period? Anything that you could add?

MR. NAPOLES: Vice Chairman Okun, Julio Napoles with OxyChem. Our industry is a very complex industry in that we have so many layers at which sales are transacted, so it's very difficult and by the same token it is critical to really examine when we are talking a pricing at what level is that pricing being transacted.

I talked earlier as to the transparency of our industry and the transparency of the industry really is at the retail level going back all the way to the basic producer because when the consumer goes to a dealer or to a retail outlet whether that professional dealer is a swimming pool store, or whether it is a Wal-Mart or a Home Depot he is looking for chlorine tablets.

He may know that they come under different brands, but what he's looking for is a chlorine tablet and what he's looking for is how many cents per pound or dollars per pound I am going to pay for that chlorine tablet.

So what transpires is if a consumer goes to that store and looks at that he is going to try to buy the cheapest tablet that he can find. A pool dealer who is three miles away from that Wal-Mart or Costco is also looking at what price level are those retailer stores pricing that product because he must be competitive because anyone that owns a pool needs chlorine, so chlorine is the price marker.

When that dealer looks at one of his competitors with a product that is available on the shelf at a lower price that he can afford to sell he is going to go the seller of that product and that could be a distributor, that could be a tableter, repacker or it could be a basic producer.

So what we have had is if I may a cascading or a domino effect where everyone is looking at these price markers, but it comes back to the ultimate supplier. In our case we're a basic producer and we have to price our product to be able to move it at the prevailing price.

I don't know if I have given you a little bit more insight.

VICE CHAIRMAN OKUN: No, no. That's helpful and I know that one of my other colleagues had asked you to comment for posthearing just in terms of helping us understand that, where in the pricing data what we see from mass merchandisers looks different, and to help us understand what those prices include and how to take that into account.

Mr. Johnson, did you have something to add?

MR. JOHNSON: I just wanted to respond from Clearon's perspective. We have not purchased material from China, or Spain or any other import material that we brought in. We are a basic manufacturer and seller of that.

VICE CHAIRMAN OKUN: Right. I guess it was from, and probably not even, it might be Mr. Hand who's out there who sees what you see in terms of your competition in selling it. I mean what you see, how you see nonsubjects for offering the product into the market vis-a-vis the subject imports.

Mr. Hand, I don't know if you can comment on that. I mean you talked about the experience in Europe.

MR. HAND: Antony Hand from Clearon. From our experience when we've seen the prices that have been offered that have been dramatically lower than the domestic pricing it's been related to the Chinese and Spanish materials and that's where we have seen those dramatic differences.

VICE CHAIRMAN OKUN: Then, Mr. Hand, let me just stay with you. I appreciate that both in the testimony today and in your brief you were able to add some additional details with regard to the relationship with Arch and the timing of the sells and that will help us in exploring what impact that has during the period of investigation.

One thing that I didn't hear you say and I'm not sure I saw it in the brief which is just with regard to the timing of the price increase in April would that be a normal time to raise prices? I know you talked about it being in relation to raw materials I believe, but I was trying to just understand would that have been a time when you would normally be offering price increases?

MR. HAND: Normality has been very difficult over the last few years, but in normal years, no. A price increase at that time would be very unusual, but we'd been faced with the impact of dumped materials which had a very dramatic impact on the overall pricing of our product and we were also faced with a very dramatic increase in raw material cost and very, very short notice.

The impact on our business would have been too massive not to do something to address that.

VICE CHAIRMAN OKUN: Then with regard again to the issue that Clearon made that same price increase to all its customers I understand the information has been submitted on that. I guess my question would be Arch was a very big customer. Would that be what you would have normally done as well?

In other words even in prior years would you have gone to your smaller ones, offered a price increase, but been very much interested in trying to keep Arch?

MR. HAND: It's difficult to answer that one without putting layers, but Arch was our biggest customer but following the chain down to all our next largest customers they received exactly the same price increase at the same time.

So no, it would have had to have been done given the market conditions and the impact of the raw materials independent of previous --

VICE CHAIRMAN OKUN: Okay. Then again, if I understand the testimony there was a price increase that was offered to all your customers and then it was rolled back did you say several months after that? It was accepted initially? Or am I confusing that with a different price increase?

MR. HAND: It was never really -- accepted is a word that -- it was definitely not the right word and I can't really identify an exact period other than confidentially, but through the end of that year the prices declined back to dramatically below the levels prior to the increase.

VICE CHAIRMAN OKUN: Then, Mr. Schobel, if I can go back to you. Delsa had argued in their prehearing brief that BioLab had introduced a price increase in December of 2004 and I wasn't sure in reading that whether you were able to keep that, whether that price increase stuck?

MR. SCHOBEL: Charlie Schobel with BioLab.

Yes, we did announce a price increase. A portion of that has stuck and a portion has not. Specifically in the mass market we have tried to hold the price and at the cost of losing millions and millions of dollars worth of business in the past 60 days.

VICE CHAIRMAN OKUN: There may have been additional information that was in the brief, but if not with regard to that if you could include that that would be helpful, Mr. Schaefermeier.

Then just, Mr. Wood, you've made a number of points and I had to step out. I'm not sure if you responded on you'd raised a number of data power points and there are a number of data issues in the staff report and my light's on so we probably can't go to them, but I guess the main point I would say is we have additional information.

The staff is working very hard to look at how we count some of this and so I think some of this is going to have to be done posthearing, but I appreciate and I have read through what you pointed out and I'm looking at the same data, so we'll just give that to all counsel.

MR. WOOD: Yeah. Chris Wood for Gibson, Dunn. Just on that point let me add that I recognize that the staff had an extraordinarily difficult task to deal with between all the different data breakouts that were done and I think they've done a really superb job in putting it all together as compactly and as quickly as they have.

There were just a couple of issues that we think are important and wanted to highlight --

VICE CHAIRMAN OKUN: Yes. I would agree.

Thank you, Mr. Chairman.

CHAIRMAN KOPLAN: Yes.

Commissioner Miller?

COMMISSIONER MILLER: Thank you, Mr. Chairman. I think I may have a couple of follow-ups to some of the questions that Vice Chairman Okun was just asking here.

I too appreciate, Mr. Hand, your statement about the exchanges with Arch and the history of that relationship because most of it in the brief obviously was business confidential and I understand the sensitivity of all of that because it is an important customer for you.

A couple of things that I would ask, maybe one or two that you may again want to address in the posthearing submission.

You've understood that Arch's impression is that the price increase was not across the board to all of your customers, you've said it was and I don't know if there's some element of you put forward the price increase, it doesn't always stick, maybe you've got customers coming back to you with different reactions.

I'm trying to understand. Oftentimes I find when two companies have these kinds of disagreements there's always an element, a kernel of truth in both stories so I just want to understand where the kernel of truth was in all instances, so I'm trying to figure that out.

Mr. Hand?

MR. HAND: Antony Hand from Clearon. I'm trying to answer. We signed two weeks prior to the price increase announcement a long-term agreement with a customer other than Arch and just as vitally important to our business as Arch for the long-term and we also went back to them despite a two year price agreement in that and changed price on them at the same time as it was implemented on all other customers.

So to give you some level of how big the impact of the arrear price at two weeks notice going up that dramatically forced us into the situation where we had to even go in and renegotiate contracts that had pricing fixed.

MR. WOOD: Also, Commissioner Miller?

COMMISSIONER MILLER: Yes, Mr. Wood?

MR. WOOD: I'm sorry. If you'll allow me to, we also if you would be willing to accept it in a posthearing submission we would be happy to submit some documentation detailing how the price increase was implemented contemporaneous to that time.

COMMISSIONER MILLER: Okay. I think that would be useful since it does seem to be a point in dispute here.

MR. WOOD: Okay. Thank you.

COMMISSIONER MILLER: Then if you'll help me understand the EPA registration issues and what I take as signals from that? I know Commissioner Pearson asked you some questions about that. I think I heard most of his answers. I might have missed some of them, so I apologize if I repeat any questions.

You have provided some information, one of your attachments to your brief that showed different companies being registered to import different products from -- the U.S. importers are listed with the product name and you've said these are Chinese origin products. Okay.

So I see this appendix. What I'm wanting to understand is sort of the significance of such registrations in the world after the payments required to the Ad Hoc coalition.

To register with the EPA you no longer have to pay the coalition the fee that was required I guess in that 1995 to 2001 period, but how much does it take to get this EPA registration of these different Chinese products?

I mean just how much work, and cost and what's involved with Archer, N. Jonas, and Cadillac, and Alden Leeds and the other ones listed to get these registrations and how long does that process take?

It looks like Mr. Stephenson wants to -- is it Mr. Stephenson who wants to comment?

MR. STEPHENSON: Yes. Dave Stephenson with OxyChem. In terms of EPA registration for all FIFRA products of which Dichlor and Trichlor both come under their auspices there is really two sets of registrations that one has to have.

There's both a federal EPA registration which is done with the federal government and then there are state registrations that one has to have in order to sell into the individual states. In terms of the cost and the timing let's address the cost.

There are fees that you pay to the federal government and it tends to be a blanket cost for a given number of registrations.

In other words I can't remember the exact numbers from memory, but if you have say between 20 and 80 registrations you pay so much and these numbers are in the kind of sub $100,000 kind of range -- $50,000 to $100,000 -- again depending upon how many registrations, how many labels you actually have.

Then when you go to register state by state you go to the states and you will take your federal registration and say I want to apply for a state registration and those registrations tend to be -- it's state by state again -- anywhere between $200 and $400 per state in which you sell the products.

In terms of timing, the federal registrations to go through the full process is somewhere around a five, six month process and for the states again it depends very much state by state. Some states once you have the federal registration all you need to do is send them a notification, and then it's just a notification process, and you pay the fee and you're done.

Then some actually go through a full approval process, like California, Texas. So again it's a state by state registration, but that's sort of the process for the products.

COMMISSIONER MILLER: Are these registrations publicly available when the application is made or on the back end? This document is not among the ones that are bracketed so it appears to be public information.

MR. STEPHENSON: Yes. The registrations once they're approved go into a database and basically you can look up who has what registrations, what the registration number is, what the establishment number is. So all of that is pretty much public information.

COMMISSIONER MILLER: Once approved, not at the application stage? Or can you follow this and know when a company applies for registration?

MR. STEPHENSON: I'm not sure I know the answer to that question.

COMMISSIONER MILLER: Mr. Hand?

MR. HAND: Antony Hand from Clearon. Yes. As far as I'm aware there is no visibility until an application is actually approved since there are so many applications to publish when one has applied for. It just is not something they can manage.

COMMISSIONER MILLER: Okay. All right. I just wanted to get some sense of that since you're pointing to that as one of your bases for understanding that Arch was already looking at sourcing from Chinese product and I wanted to make sure I understood what was involved with that.

Then in many of our cases we see a fairly significant drop off in imports and change in market conditions once the petition is filed. When I look at the record of this case the petition I think was filed in May of 2004, but 2004 imports don't appear to drop off much.

They in fact increase and the picture doesn't change a whole lot in the case. Why? Why hasn't the petition had more effect?

MR. PRICE: May I just start with that?

COMMISSIONER MILLER: Please, Mr. Price. You probably told them it would.

MR. PRICE: That's why I'm not letting any of them answer.

COMMISSIONER MILLER: Sorry.

MR. PRICE: I think you can't use the date of the petition first of all because no decisions had been made and I guess some of the information we heard is that the Respondents assumed that the petition wouldn't have any effect on them. So I think you really can't say that there are teeth in this until the Commerce Department issued its preliminary determination in November.

That's when it became very clear that there were dumping margins and that there were consequences to posting a bond. So we're looking at advanced import numbers on the PIERS data and frankly initially they looked pretty good for 2005 and we're hoping that there will be a decrease, but I think the petition date would be too early to see something.

Another reason there given the nature of contracts, shipments, the facts that arrangements that had been set up for the pool season --

COMMISSIONER MILLER: Now you're going to the reason I really wanted to hear about.

MR. PRICE: Frankly, I would still stick with what I said first of all that I think the key date is the date of the Commerce Department preliminary determination.

COMMISSIONER MILLER: Do any of the industry companies want to make a comment?

Mr. Hand?

MR. HAND: Antony Hand from Clearon. I think there was still a growth, but it limited the scale of that growth as new companies didn't actually go through the process with Chinese material ahead of the decision. So we actually saw benefits from limiting the growth rather than actually stopping the growth.

COMMISSIONER MILLER: I know the red light's on, but I just want to clarify. So part of what you're suggesting is that the increase that continued was probably because of contractual arrangements that preceded the date of the petition. Am I kind of hearing --

MR. HAND: I would say that the increase you saw is because of existing buyers and the occasional new buyer, but it was limited compared to where it would have gone if the case hadn't have been brought as a lot of other companies would have gone through the registration process.

COMMISSIONER MILLER: I appreciate your answers.

Thank you.

CHAIRMAN KOPLAN: Thank you.

Commissioner Hillman?

COMMISSIONER HILLMAN: Thank you. Let me go back on a couple of the issues that have been raised to just make sure I understand them.

First to you, Mr. Schobel, on BioLab. You responded to Vice Chairman Okun that you would indicate to us the ingredients that you're putting in your blended product just so I understand it, but you had also talked earlier about the price competition between the blended product as opposed to the pure Trichlor product.

Help me understand on a cost side. Is it more costly to produce the blended product? Are the ingredients that you're adding to them more expensive for you to acquire or less than the Trichlor itself?

MR. SCHOBEL: Yes. Charlie Schobel with BioLab. It does depend on what you're putting into a blended tablet. If the cost of the ingredients you're putting into the blended tablet are less there's some reduction in raw material.

There's also a slight increase in cost because you're blending it and that costs something to blend it together. So it depends on those two things: the cost of ingredient you're putting in and what the blending operation costs you to do.

What we have found in the market is that we are losing significant share of business due to blended tablets being sold below our pure tablets and there wouldn't be a significant change in cost there. We're talking a penny or two, not a significant change in cost not to be able to explain the rapid reduction in selling prices.

COMMISSIONER HILLMAN: If there is data on that you think is helpful for us to look at in terms of again the general cost difference -- cost as opposed to price -- to produce a blended product versus the pure product, again I would like whatever you can put --

MR. SCHOBEL: We can give that information to you.

COMMISSIONER HILLMAN: Okay. Thank you.

Then, Mr. Wood, perhaps for you on this issue of the definition of the domestic industry. I just want to make sure I understand it. Is it your position that the tableting operations of Clearon and BioLab and presumably the tolling operations of Stellar should be included within the definition of the domestic industry?

MR. WOOD: Yes, Commissioner Hillman. Our position is that the three integrated producers are the domestic industry and that therefore all of their production whether it be granular or tablets ought to be in.

COMMISSIONER HILLMAN: I'm just trying to then maybe ask you either here or in the posthearing to brief the issue of how it's logical for me to include these tableting operations as part of the domestic industry, but not to include the tableting operations of the pure tableters.

I mean there's a part of me that says if I'm looking at how the Commission normally describes a domestic industry we wouldn't normally include this part of it because it's integrated and somehow exclude all of the other tableters.

It's normally an issue of value added and et cetera, et cetera, all of the tests that you know. It just does not strike me as a -- and again I would ask you if there is precedent in which the Commission has included these kind of operations only for the integrated producers and yet said that they were not part of the domestic industry if they're not connected with the chemical producers.

Please get me that from BUZB.

MR. WOOD: Thank you.

COMMISSIONER HILLMAN: Thank you. I appreciate that.

The other one that I would ask on the post-hearing side, and because it involves confidential information I can't say a whole lot about it, but Delsa in their brief, and particularly page nine of their brief, they're talking about the anomalies in the financial data. Part of it is the difference in financial performance between some of the companies and in particular between financial information for one of the companies. Again, they're making their own argument about what they think it should say to us, but I wanted you to respond to the data issues that are raised their in terms of why we see these significant changes in specifically SG&A and other factors that are specifically laid out in their brief where they're saying, and these are way out of line with everybody else and the injuries caused by that factor as opposed to by price changes or imports or other things.

MR. WOOD: We'd be happy to address that in the brief, thank you.

COMMISSIONER HILLMAN: I would appreciate that.

I also wanted to get the industry, give the industry folks an opportunity to comment on the argument the Chinese respondents are making that the price declines were more of a function of the competition between BioLab and Arch rather than Chinese imports per se. That obviously there was this significant competition, and obviously in the end clear on adding into that in terms of the mass merchant market. This happened, this aggressive competition, domestic competition if you will, occurred before the Chinese product entered the market. I just wanted to give you an opportunity to comment on it.

MR. SCHOBEL: Yes, Commissioner Hillman. Charlie Schobel with BioLab.

Prior to the dumped trichlor and dichlor coming into the marketplace there was certainly competition between BioLab and Arch. There has been for 20 years, 25 years, so there's been competition there but it was a level playing field.

When the dumped products arrived in the market and Arch was importing them, that's when we noticed the significant reduction in selling prices to the point that we couldn't respond any more.

COMMISSIONER HILLMAN: If there's anything further you want to add in the post-hearing, that would be great.

If I can go to the issue of the EU antidumping order. The EU as I understand it issued at least a provisional antidumping order against both China and the U.S. for this product. I'm wondering if you can help me understand how you think the EU antidumping order is going to affect your exports as well as the market here in the U.S..

MR. HAND: Anthony Hand from Clearon.

The EU initially did antidumping against the Chinese imports because they'd reached 55 percent market share in Europe and it was having a severe impact on the European --

CHAIRMAN KOPLAN: Can you move the mike a little bit closer to you?

MR. HAND: Severe impact on the European manufacturers. Subsequent to the case being brought over here involving the Spanish, they added the U.S. manufacturers to the case, accused the U.S. manufacturers of dumping into Europe. The preliminary decision was very recently and did have a margin, and that decision was, by cumulation with the Chinese made it very short notice. They hadn't done the investigation on injury. They hadn't done the verification reports at our facility in Europe. So very very incomplete data. We expect -- We're waiting to see what the final brings.

COMMISSIONER HILLMAN: When is the final expected?

MR. HAND: I think it's July now.

COMMISSIONER HILLMAN: Again, Mr. Wood, if there's anything in the post-hearing you could add just to walk us through what this EU order is and the rates and all of that, I think that would be helpful.

MR. WOOD: We'd be pleased to do that.

Is it also part of your question that you'd like to know what we anticipate the effect of that case will be if any in the U.S. market and in Europe or no?

COMMISSIONER HILLMAN: Again, I'm wanting to make sure I understand what you think it's going to do on your exports, presumably you're exporting at least to some degree to Europe or you wouldn't be the subject of this action in Europe. Again, what implications does it have for you in terms of the loss of the EU as a potential export market. Then alternatively I need to make sure I understand what you think the implications are coming into our market if the Chinese are not able to sell into the EU market. And again, I don't know. Are the rates in Europe high enough that they are preclusive to Chinese product going into Europe? Or would you expect to continue to see Chinese product being sold in Europe paying the duty?

MR. WOOD: We'd be happy to deal with that in the post-hearing brief.

I think to just briefly address your first issue, as Anthony mentioned in his statement, the U.S. case we really think was just a tack on. We filed a dumping case here and they basically changed a few words in their petition over in Europe to add the U.S. manufacturers. We don't think there's any merit to that case at all, so we ultimately don't think it's going to have much impact on anybody's exports to Europe.

The issue of what impact it will have in Europe and how that may affect export incentives of the chinese and Spanish producers vis-a-vis the U.S. market is a very interesting question and probably one that we can set out most fully in the post-hearing submission.

COMMISSIONER HILLMAN: Obviously I would like both the issue of whether the duty is preclusive, whether we would continue to see China's product, and then again, what does it do for Spain? I mean if

China's product is not going into Europe, again, why should we assume that Spain will not basically try to fill all of that market niche itself as opposed to continuing to export product to the U.S..

MR. WOOD: Thank you. I understand the question.

COMMISSIONER HILLMAN: Finally for you, Mr. Hand, one little followup on this FIFRA issue. You mentioned in response to Commissioner Pearson that one of the Chinese producers has now joined this coalition which prompted me to say why? If they don't any longer need access to the data, don't need to pay for access to the data, why are they joining now in your coalition?

MR. HAND: The data still has a value. The European Union is doing a biocidal products directive which requires data to support that registration. But more importantly, it's going to require generation of millions of dollars of new data, and by being part of the committee they can be part of that registration process in Europe as part of a shared cost.

COMMISSIONER HILLMAN: So it's not necessarily a FIFRA thing. It's more for Europe or other markets.

MR. HAND: It will impact FIFRA as you go through the next re-registration in 2010 or whatever, but immediately it's for Europe.

COMMISSIONER HILLMAN: I appreciate that. Thank you.

CHAIRMAN KOPLAN: Thank you.

Commissioner Lane?

COMMISSIONER LANE: Thank you. I just have a few questions.

The first one is for Mr. Johnson or Mr. Hand.

In response to a question from the Chairman, Mr. Schobel indicated that OxyChem's pure trichlor was not classified as a 5.1 oxidizer hazardous material for DOT transportation purposes. Would you respond the same way for Clearon's pure trichlor tablets?

MR. HAND: Anthony Hand from Clearon.

We tested granular trichlor and granular trichlor is a DOT 5.1 oxidizer.

We tested the dual action tablets from Arch and BioLab's tablets. Granulated. They are both classified as oxidizers in the granular form.

When you tablet the straight trichlor or the blended trichlors as currently on the market, you do not in theory, based on interpretation of the DOT tests, need to carry the DOT oxidizer. Independent of whose trichlor material it is. However the test is subject to a lot of interpretation in terms of whether you can or cannot test a table. We have chosen as a responsible care company to continue to keep that oxidizer label on the material even though we can show under the test we don't need to.

COMMISSIONER LANE: So you do classify it then as a 5.1 even though maybe you don't have to.

MR. HAND: That's one we're in discussion with the DOT currently, to try and actually get that clarified. We actually have sent the information to the DOT asking for them to clarify the interpretation since based on the information we have at the moment we do not need to put an oxidizer label on it. On tablets, sorry. On tableted, straight trichlor material. However, in order to do that it is a major change in 30 years of operation at the plant, and the safety and handling of an oxidizer through the supply chain involves hazmat trained drivers, very different procedures.

We want to be clear on the interpretation from the DOT before we actually do that move.

COMMISSIONER LANE: What about other companies? Do you know about their product?

MR. HAND: Anthony Hand from Clearon.

All trichlor essentially will be the same results. As a granular material it will be a DOT 5.1 oxidizer. Using the existing DOT test methods it will not be classified in tableted form as an oxidizer, independent of source.

COMMISSIONER LANE: Thank you.

Do you anticipate that raw material costs will remain high in 2005?

MR. JOHNSON: Yes.

(Laughter).

MR. JOHNSON: Scott Johnson with Clearon.

We've talked about raw material costs and they've been categorized in caustic, chlorine and urea. I would throw into that database or price issue that we watch natural gas because we are also a natural gas intensive industry. I certainly don't see, caustic and chlorine are energy intensive products and I don't see anything that would cause that market to see any significant decreases coming in the near future.

COMMISSIONER LANE: One more question.

Do imports of chlorinated isos affect all market segments -- pool, spa, detergents, cleansers and industrial water treatment, or do they primarily affect the pool and spa market segment?

MR. HAND: Anthony Hand from Clearon. They affect all market segments.

COMMISSIONER LANE: Thank you.

Mr. Chairman, that is all the questions I have.

CHAIRMAN KOPLAN: Thank you, Commissioner.

Commissioner Pearson?

COMMISSIONER PEARSON: One of the reasons that I got the impression that U.S. prices were higher than prices overseas is that the staff report indicates that AUVs, average unit values, for U.S. sales by integrated producers are noticeably higher in the United States than they are for export. In other words, the same firms, the staff report indicates receiving higher average prices in the United States than on foreign sales. Can you explain that price difference?

MR. WOOD: Chris Wood from Gibson Dunn.

One point that I think would have to be addressed, and I don't know the composition. Perhaps our industry people can help. I think that it's probably difficult to look at the aggregate data that you have in the trade data and draw that conclusion because among other things you're going to have a different, or at least potentially a different distribution of granular versus tableted products being sold in both markets.

For example, if your sales in the United States are predominantly tablets but what you're exporting is granular for whatever reason, you would expect to see a large differential there, but I don't think it would imply anything about the pricing in the market itself. But perhaps our industry people could add something to that.

COMMISSIONER PEARSON: Mr. Hand?

MR. HAND: Anthony Hand from Clearon.

I'm trying to think how the average unit value was composed in the --

COMMISSIONER PEARSON: Let's set aside the average unit value. That's the information that was easily at my disposal, but let me ask the question this way. Looking at the same product, if you're selling some of it overseas are you able to achieve the same price that you can achieve for it in the United States, or do you often find yourself selling it of necessity for a somewhat lower price?

MR. HAND: I'd say the European market has been below U.S. prices over the last two, three years, mainly as a result of Chinese material into Europe. As a result, Clearon has virtually ceased selling in Europe over the last few years.

COMMISSIONER PEARSON: Is Europe the largest market for exported product?

MR. HAND: By far.

COMMISSIONER PEARSON: So there would be some going to other market but quite modest relative to --

MR. HAND: Relatively modest quantities. And similarly, South America, as you go down, was a reasonable market but we don't supply any more. It's all Chinese materia.

COMMISSIONER PEARSON: Mr. Johnson, did you have anything you wanted to add?

MR. JOHNSON: Mr. Chairman, I appreciate that.

COMMISSIONER PEARSON: HE's the Chairman.

MR. JOHNSON: I'm sorry.

COMMISSIONER PEARSON: I'm just an ordinary Commissioner.

MR. JOHNSON: Commissioner Pearson.

I was just thinking as you were asking the question about the different pricing impacts. We have tried to respond with the different market pressures that we supply into and certainly as you look at what some of our expert statistics look like you can see that volumes have certainly decreased significantly because of the pricing difference that has started to develop.

Those are the business decisions that one has to make. Are you going to address the current market prices being achieved or not? Our decision has been we'll try to keep some doors open but the volumes have significantly decreased.

COMMISSIONER PEARSON: Thank you.

Let me look at a different aspect of price. You've described the chlorinated isos as being commodity products that are sold largely on the basis of price and there's a seasonal demand/supply element to it.

That describes other commodities with which I'm actually quite familiar. I don't pretend to know much about chlorinated isos, but corn, soybeans, things like that, I can have that conversation with you.

Are pricing data for this investigation, and that's both the AUV data and for the pricing products, indicate what I would describe as a somewhat moderate price decline over the period of the POI yet the commodities with which I'm more familiar are subject to frequent and substantial price fluctuations. There's a lot of up and down in the market for many commodities.

Why should I see this price decline as unusual rather than as a normal fluctuation in the marketplace for this commodity? I say that particularly in light of what seems to be increasing pricing pressures that you're getting from mass marketers which in the absence of any import competition arguably could be bringing down the domestic price in this moderate way that I've described.

Sorry for the long lead-in.

Mr. Johnson?

MR. JOHNSON: I'm sure others will want to add to this, but my feeling is that, first of all, I'm not an expert in many of the markets that you're referring to so I can't address what you have seen there. You typically don't see price fluctuations over the period of the seasonality of our iso products. The price does not fluctuate with the volume of sales.

As far as the pressure of having new marketing avenues open up the sales into the mass marketers versus dealers, those are all issues that I think we can handle as a business and have handled, but when you start having new sources of products showing up into the marketplace that are being priced significantly below the cost of being able to manufacture these, then it creates a situation that we can no longer compete against.

MR. PRICE: Commissioner Pearson, Joe Price with Gibson, Dunn and Crutcher.

Since you're referring to sort of aggregate data I just wanted to step in and say what you describe as moderate one might argue as to definition. I think we see it as an unrelenting and not fluctuating price decline during the period.

But regardless of how one characterizes it, I think the important thing is to look at what, this is happening during a time when demand is increasing and raw material costs are escalating. Now those are two factors you would normally expect to see have an impact -- you would see a reaction to that and you would expect to see prices go up. Of course that's obviously the absolute, the nut of our injury here because what happens is, of course that hasn't happened. Prices have declined, and you see that reflected in the financials. So that's just an overall comment on the pricing picture at least as we see it.

COMMISSIONER PEARSON: And you would tend to discount the role that mass merchandisers might be playing in the market now in terms of exerting downward pressure.

MR. PRICE: Well --

COMMISSIONER PEARSON: The discounters, so to speak. Sorry.

MR. PRICE: Charlie?

MR. SCHOBEL: Charlie Schobel with BioLab.

We have been in the mass market channel for over 15 years. Arch has been in it much longer than that. There has never been this kind of price fluctuation ever. The mass merchants are not the ones that have pushed this. This has been driven by our competitor taking low priced dumped imports and going to our customers and saying we can sell it to you much much lower.

COMMISSIONER PEARSON: Okay, thank you.

Any other comments on that particular question?

Then I have one more and I think I'll direct it to Mr. Moore.

The Chinese respondents have indicated that using trichlor instead of dichlor can have some issues in the pool because evidently the trichlor is more acidic, so you drop the pH level of the water more if you use trichlor than dichlor, I think I have that correct.

Can you comment, is that an issue that's relevant? Do you have to add something else in to adjust the acidity? Is this a significant issue or one that we ought to not worry about too much?

MR. MOORE: Mike Moore with Advantis.

Forgive me for not being specific on my chemistry, but I believe, and someone else can confirm me, the trichlor does have a lower pH than dichlor.

Confirmed?

With either product you still have to add adjusting balancers, pH up, pH down, additional chemicals to compensate. So you can't just use one or the other.

Does one require more than the other? Is that really the question? I think it's nominal, minimal at best.

COMMISSIONER PEARSON: So it doesn't complicate the management of a pool in keeping the pool water happy --

MR. MOORE: No.

COMMISSIONER PEARSON: -- if you use dichlor relative to trichlor.

MR. MOORE: No. I think we've explained previously, the trichlor is a longer term feeding product and it slowly releases chlorine into the water, where the dichlor is more immediate.

COMMISSIONER PEARSON: Thank you very much for that clarification.

CHAIRMAN KOPLAN: Thank you, Commissioner Pearson.

Let me see if there are additional questions from the dias.

Seeing that there are none. Mr. Deyman, does the staff have questions of this panel before they're released?

MR. DEYMAN: George Deyman, Office of Investigations.

The staff has no questions but I have a comment on the data. As you know the staff has the responsibility to make sure that the data are as complete and correct and consistent as possible. In view of the many products involved here and the fact that there is buying and selling among producers and importers, not to mention the toll arrangements, we've had some difficulties with the data. I want to say that you and the respondents have been very cooperative so far. Our people will be contacting each of you though in the next week or so to go over your questionnaires and we would appreciate continued cooperation. You'll just have to bear with us until we get it all straight.

MR. WOOD: I think on behalf of all of us we're more than happy to continue to cooperate and we'll give you any help we can on finalizing it.

CHAIRMAN KOPLAN: I think you just got a yes, Mr. Deyman.

MR. DEYMAN: Thank you.

The staff has no further questions.

CHAIRMAN KOPLAN: Thanks.

Before the panel is released, Ms. Clarke, do any of the counsel for the respondents want to ask questions of this panel before I release them?

MS. CLARKE: No.

CHAIRMAN KOPLAN: No.

All right, with that this will conclude our morning and partial afternoon session.

I want to thank all of you for your testimony. It was extremely informative. As you can tell from the number of questions that were coming from the dias, we very much appreciate both your coming and your answers to out questions and look forward to your post-hearing submissions.

We will break for lunch for one hour, and I'll see you all back in an hour.

Let me just mention that the room is not secure so if you have any BPI information with you, either side, please make sure you take it with you during the break.

We'll see you back in an hour.

(Whereupon at 12:46 p.m. the hearing was recessed, to reconvene at 1:47 p.m. this same day, Thursday, May 5, 2005.)

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

(1:47 p.m.)

CHAIRMAN KOPLAN: Welcome back.

Thank you, Madame Secretary.

Counsel, when you're ready you can begin.

MS. CLARKE: Thank you, Mr. Chairman. Commissioners.

Again, I'm Peggy Clarke, counsel for Arch. We will be beginning the testimony this afternoon and we will start with John Reilly from Nathan Associates.

CHAIRMAN KOPLAN: Good afternoon.

MR. REILLY: Good afternoon, Mr. Chairman, and members of the Commission. I'm John Reilly of Nathan Associates and I'm appearing today on behalf of Arch Chemicals.

Since nearly all of the data in this case is confidential, most of my testimony will of necessity be conclusory. We will, however, provide the underlying analysis and documentation in our post-hearing brief.

My first and most important substantive point is that properly analyzed the subject import market share is simply too small to have had any significant effect on the performance of the domestic industry. And I emphasize properly analyzed.

While we agree with Gibson Dunn that the

Commission staff's analysis overstates domestic producers' shipment volume, the analysis in Exhibit 10 of the Gibson Dunn pre-hearing brief that was referred to this morning itself severely distorts any market share calculation by ignoring the substantial total value share accounted for by U.S. producers' shipments of tableted and packaged chlor isos.

Petitioners then compound the distortion by measuring U.S. producers' shipments valued as basic granular product against import values that include significant volumes of tableted and packaged chlor isos.

Since both the domestic production and import volumes include intermediate and final products sold to different levels of trade at sharply differing prices, relative volume in this case is an unacceptable indicator of market share. The only economically significant market share indicator in this particular case is value.

Now virtually all granular trichlor produced in the United States for pool use is tableted and packaged prior to shipment to retailers. Thus all domestic trichlor shipments are properly valued as shipped to the retail channels of trade.

Accordingly, we calculated the value of U.S. producers' domestic shipments of all trichlor for pool use based on the estimated unit values of domestic tableted trichlor and blended tablets sold to the retail channels of trade.

Producers' U.S. shipments of dichlor we valued as reported in the integrated producers questionnaires. to the extent that U.S. producers' dichlor shipments to distributers were repackaged prior to shipment to retailers this procedure would tend to understate the value of U.S. shipments.

Both subject and non-subject imports on the other hand should be valued to properly reflect the foreign value net of any U.S. processing. Shipments of imports from China and non-subject imports were valued as indicated in the staff report. Because shipment value data for product from Spain was not useable, we employed the applicable import values in the staff report. These procedures resulted in a subject import value based market share for 2004 that is well below ten percent, and we will provide complete detail in our post-hearing brief.

The data in the staff report make it clear that any adverse trends in U.S. producers operating in financial performance have been due to average price declines.

Accordingly, we sought to determine the price effect of the subject imports on U.S. producers' operations. To this end, we conducted simulations using the Commission's non-linear compass model to test the effect in 2004 of the subject imports on U.S. producers of all chlor isos.

For the initial simulation we employed the domestic demand and supply elasticity ranges in the staff report. The input data and remaining simulation parameters are described in an appendix at the end of my hearing exhibits. That's the handout that you have.

The simulation results indicate minimal price effects due to subject imports, ranting from one percent to a peak of only 1.8 percent. Volume effects were also quite small, ranging from less than five percent to 6.4 percent.

Nathan Associates believes that the staff report estimates understate domestic demand and supply elasticities in this particular case. We therefore conducted an additional simulation reflecting adjusted domestic demand and supply elasticity parameters.

We set the demand elasticity range in a still inelastic minus .5 to minus .7 to reflect the ready market availability of calcium hypochlorite substitutes for chlor isos that are usable in residential pools. In addition, we set the domestic supply elasticity in a range of 6 to 10 to reflect both the availability of domestic capacity and the ability of U.S. producers to divert significant export shipments to the more lucrative U.S. market.

The additional simulation results indicated price effects uniformly less than one percent and volume effects to less than five percent to just over six percent.

In short, quantitative analysis confirms that the subject import market share is simply too small for them to have significantly affected U.S. producers' chlor isos prices.

The finding that subject imports have had a minimal price effect is also consistent with the other evidence on the record concerning the relative importance of price in purchasing decisions. According to the public staff report, quality is equally as important as price in selecting a supplier. Moreover when asked if they had purchased from a particular source, even though a cheaper source was available, the staff report indicates that most responding producers, 16 in number, said yes.

Finally, in rating the importance of specified purchasing criteria, quality was most often cited as very important. Tied for second place were product availability, product consistency, reliability of supply and price.

If not subject imports, then what did cause chlor isos prices to decline during the POI? Several factors contributed to the decline including reduced consumption during the weather ravaged 2003 pool year, and resulting inventories overhanging negotiations for the 2004 pool year, and the growing economic influence of mass market retailers.

Most important, however, was the fallout from Clearon's attempts to sell direct to the retail level of trade at Arch's expense. Clearon's initial efforts to sell were premised on undercutting Arch's price. After losing Arch's business, Clearon was forced to employ low-priced offerings in an attempt to replace the business. As a result, prices declined throughout the market as incumbent suppliers were forced to respond to this aggressive pricing.

It is notable that domestic industry performance indicators other than those related to price were generally favorable during the period of investigation. U.S. chlor isos production and shipments actually increased, average wages were up, and productivity gains caused PRW employment to decline. Any financial difficulties encountered by U.S. producers reflect unfavorable price variances.

Nevertheless, the financial performance of the blended table sector was favorable and the financial performance of trichlor tablet sector actually improved over the POI.

My final topic is threat. As noted in our pre-hearing brief, Chinese capacity to produce U.S. quality chlor isos is limited. Moreover, the relevant Chinese producers are projecting a slight reduction in granular chlor isos capacity and reduced granular exports to the United States during 2005 and 2006. Chinese tableted chlor isos capacity and exports to the United States are projected to remain stable during 2005 and 2006. These data provide no basis for finding a threat of injury with respect to China.

Thank you. This concludes my testimony.

MR. JOHNSON: Good afternoon. My name is Steve Johnson and I'm Director of Strategic Sourcing for Arch Chemicals. I've been in my current position for 2.5 years and with Arch and its predecessor Olin for over 30 years. Thank you for the opportunity to testify today.

Today I will discuss two major points. First I will describe the unique patented pool product that Arch has developed and brought to market just recently, and secondly, I will discuss Arch's approach and strategy in the chlor isos market overall.

Arch is an American company based in Norwalk, Connecticut, and has facilities in several states including Georgia, Tennessee, Kentucky, Delaware, and New York. In fact we were spun off from Olin Corporation which also sold Clearon its chlor isos manufacturing facilities in West Virginia.

Arch's focus is specialty chemicals of which value added chlor isos pool treatment chemicals are one type of product. We did not produce or sell bulk granular chlor isos products. Instead we sell predominantly value-added, tableted trichlor products. We also manufacture and sell calcium hypochlorite and we sell a broad line of other pool maintenance products into the retail pool market.

Beginning in the 2004 pool season we have been selling a unique multi-functional trichlor tablet. We obtained a patent for this product in the 1990s when Arch was part of Olin. Since obtaining that patent we have spent years on research and development and have invested substantially in testing this product, then bringing it to market. In fact Clearon is familiar with this product and its attributes because we worked with them on it.

Initially they were producing the product for us. They even spent money on research and development because we intended for them to be our ongoing partner in the actual production of the product under our patent.

What is special about this product and why is it different from other chlor isos on the market? First and foremost, chlor isos are only one among three functional ingredients in the product. This patented product has one, trichlor, which sanitizes the water, in other words, kills organisms through the introduction of chlorine. Two, it has cooper sulfate which provides longer-lasting algae-killing protection. The algicidal effect lasts eight to ten days longer than pure trichlor products. And three, it also contains aluminum sulfate which acts to clarify the pool water as a flocculent which is a fancy industry term of saying it causes small debris in the water to drop to the bottom of the pool.

Trichlor and dichlor alone do not clarify. In contrast, pure tablets have only one functional ingredient, trichlor, and only one function, to sanitize the pool.

Also let us be clear, blended tablets are not 5.1 oxidizers. Pure trichlor tablets are. Every petitioner ships pure tablets as 5.1 oxidizers, just as we do.

We compete with BioLab in selling this multifunctional product. These products are different from the pure trichlor tablets as can be seen by the price premiums Arch and BioLab obtain from them.

I feel compelled to address claims that our patented product is really no different than other chlor isos products. If it's no different and not better, then I ask why are customers paying more for it in the stores? They're paying more because it's a different and better product than just pure chlor isos. You heard this this morning that when side by side in the store, the blended products get a price premium and they sell.

I will conclude by urging the Commission to consider that the market itself is the most credible source for concluding that our patented, multifunction product and a comparable product such as BioLab's is differentiated from other chlor isos on the market. Customers pay more for this product for its three functions because it makes pool water treatment easier and more low maintenance for the pool owner. In short, it delivers greater value to the customer and therefore commands a higher price in the marketplace.

Before moving on to the next topic I'd like to point out that my colleague Sherry Duff, behind me, Arch's Director of Research and Development, is here with me today. She has technical knowledge about our patented product and she is available to answer questions at the appropriate time.

Next I'll turn to Arch's overall approach in the Chlor isos market. As I said, Arch was part of Olin. We were its specialty chemicals products division. Then and now our focus has been on specialty, value-added products. We distribute value-added pool treatment products under our own brand names to retailers That's both large, mass merchant retailers -- Wal-Mart is an example -- and also specialty pool product dealers. We have invested in developing new products such as our unique patented three-in-one chlor isos product and we also focus on branding and distributing our value-added products to retailers. That is our focus -- putting consumer-ready products into the retail segment of the market.

How do we do this? We are not a chlor isos manufacturer but we partner with chlor isos manufacturers. Clearon was our close partner for years. We were sourcing almost all of our trichlor product from Clearon into pool year 2003, and we were their customer, paying them to tablet and package our trichlor products that we then sold into the retail market. It was basically a sole source approach which put us at some risk. for example, if Clearon encountered production problems and couldn't supply us. At that time our biggest competitor selling into the retail market was BioLab who had produced their own trichlor and had OxyChem supplying them with basic product. There were also a number of companies that tablet and distribute branded products into the retail market and essentially that was the market picture into 2003.

Right now I'd like to turn this over to my colleague Randy Hitchens. Arch hired Randy in June 2002 to develop a new business strategy for our water treatment business because we wanted our business to be the best in the industry. He was directly involved in the events in 2003 with Clearon and he'll be able to explain in more detail what happened there.

CHAIRMAN KOPLAN: Thank you, Mr. Johnson.

I just want to note for the record that the witnesses have been sworn.

You may go ahead, Mr. Hitchens.

MR. HITCHENS: Thank you, Steve, and thank you to the Commission for listening to my testimony.

My name is Randy Hitchens and I'm Vice President of Arch, responsible for the water treatment division. I joined the company in June of 2002 but I have been in the business for 35 years. In fact I worked at BioLab for many of those years and just before joining Arch I was President and CEO of ChemLab where I dealt directly in chlor isos and with some of the companies that are here today.

I will explain from what I saw exactly what happened between Clearon and Arch and the history of the business relationship before it broke down.

We had a five year supply agreement with Clearon when we were a part of Olin. That contract expired in 2000 but Arch and Clearon continued doing business, negotiating annual supply agreements. We were buying nearly 100 percent of our trichloral products from Clearon through 2002.

When I arrived in June of 2002 one of the things I did was ordered a review of all supply contracts, not just isos. I decided it was too risky in terms of security of supply to source all of our chlor isos from one company. Also I knew that Clearon was thinking of competing downstream for our biggest customers. I knew that because they told me so in February of 2002 when they tried to hire me to head up that division for them.

I was not comfortable sourcing almost all of our chlor isos from a company that would become a direct competitor so I did diversify our sourcing by purchasing some of our products from Chicoc and Hebei. However, most of my sourcing continued to be with Clearon, even though better prices were available in the market. If I were looking for the lowest price, I would not have been buying most of my supply from Clearon and Chicoco

The timeframe here I think is vital to understand. On March 18, 2003, Clearon provided notice that they were going to hit us with a price increase of ten percent in two weeks, April 1st. A price increase at this time of the year just isn't done. It hasn't been done in our industry. They knew we would have to eat the price increase, that we could not pass it along to our customers. This was happening at the peak of our season for our customers. We were committed to shipping large volumes in April and May so that our customers have an adequate supply heading into the summer months when pool owners need product. And we were already committed on price with our customers for the season. Clearon refused to budge.

Four months later, in July, they partially rolled back the price increase but the damage to us was already done.

We also got word in May and June of 2003 that Clearon did not apply this price increase to all their customers. This was hard for us to accept given all the business that we had given them over the past seven years.

We had heard rumors in May that Clearon was looking to sell directly to our customers or retailers. Then in June these rumors were confirmed.

When we made a sales call on our largest customer, Wal-Mart, our sales team while waiting in the waiting area ran into the Clearon sales force there.

Selling to large retail customers is difficult enough. They push back on price so that they can provide the best price and value to their customers and consumers. The mass market retailers are very valuable. They're high volume customers. But negotiating price with them is always challenging.

Thus having Clearon in there quoting below market prices was especially difficult for us business wise.

So at that point we were facing the worst possible situation. Clearon raises its prices to us, and we find them competing for business to sell directly to our customers, including Wal-Mart, Costco and BJ's, which only gave our customers more leverage on price.

We were literally in a vice because of Clearon. Higher cost and new competition for our customers. As you can imagine, this was a situation that Arch could not accept.

At that point I had a meeting with Jeff Smith of OxyChem who was running the iso business for OxyChem at that time. That was early in 2003. He informed me that OxyChem had no interest in selling to

Arch. At that point my question would be, what were we supposed to do as a company? Our 100 percent supplier has raised our price, gone direct to our customers at a lower price, and the only other domestic supplier that has product to sell doesn't want to sell Arch?

At that point we did bring some stuff in from Japan, Spain, and we started bringing product in to have it tableted through tolling operations here.

Clearon was not immediately successful in selling to our retail customers although we hear they landed some business at Sam's club, taken away from BioLab this year. Nonetheless, their efforts to sell to retailers have pushed down prices. They were driving down prices to retailers which put us in a position of having to match if we wanted to keep the business. Most importantly from my standpoint, their moves against us, price increase and going after our customers, meant they were not a long-term partner and to this day we will not buy from Clearon if product is available anywhere else in the world.

They wanted to get into the retail segment and tried to get their by taking away our business, by cutting out their customers. They failed, but the problems are of their own making.

We turned to imports because we no longer had a reliable supplier in the U.S. who could provide us the volume we needed. But let me be clear. We would not be here today if Clearon had not taken the action they did in March of 2003. Clearon would still be a major supplier to Arch.

Thank you very much for your time.

MR. PERRY: My name is William Perry of the law firm, Garvey Schubert and Barer. I'm here representing the tableters and some of the Chinese exporters in the case.

Just a quick comment. You were asking what the tableters do. The tableters are in effect the doctors of the pool industry. If your pool goes green you go to a professional pool companies, you don't go to Costco. The tableters are the ones that are supplying the professional pool companies.

Now I'd like to ask Frank Abramson of Wego to testify.

MR. ABRAMSON: I'd like to thank the Commission for hearing us today. My name is Frank Abramson and I'm the Global Product Manager at Wego Chemical which sells chlorinated isos in the global market. Wego has been selling chlorinated isos since 2001.

From 1986 to 2001 an artificial trade barrier existed in the form of the EPA registration requirements. In 1986 the three integrated producers and certain foreign producers formed an ad hoc coalition. Between 1985 and 2001 any new entrant into the U.S. market could cite to the previous studies and obtain a license but they had to pay a compensation fee to the ad hoc coalition. The ad hoc coalition set the compensation fee at about $400,000. This fee effectively prevented importers of foreign companies from obtaining registrations to sell isos in the United States and made prices much higher than world prices.

In 2001 these tests went into public domain. Consequently they could be cited without the $400,000 payment. At that time U.S. importers began to register Chinese product. Although Chines imports increased after the 2001 requirement was eliminated, imports increased from a base of absolute zero, this making the percentage comparisons meaningless.

Moreover, because of the EPA requirements, the importers controlled the volume in the U.S. market creating a significant barrier to export. The Chinese factories that are EPA-registered represent a very small percentage of the capacity cited by the petitioners. Even today the U.S. prices for isos remain above world levels. In the global market where no EPA regulation is required, prices are substantially lower than in the U.S..

Recently the EU has found that U.S. producers of isos have been dumping product in Europe at margins that were consistent with Chinese producers. U.S. producer prices in the United States therefore are substantially higher than they are in Europe.

Wego Chemical is also the largest importer of cyanuric acid in the United States. Cyanuric acid is a major raw material feed stock for the production of chlorinated isos. The average wholesale price is approximately $900 per metric ton.

The DOC ignored this value in their final results and used a surrogate value of cyanuric acid equal to $2800 a metric ton -- over three times its actual commercial value.

We note that the petition was based upon a surrogate value of approximately $1100 per metric ton, and the DOC's preliminary determination was based upon $1500 a metric ton. The escalating cyanuric acid values were the sole cause of the large dumping margin for my Chinese supplier.

The ironic part is that Clearon has been purchasing substantial quantities of cyanuric acid from China for its isos production. In other words, Clearon can use low priced Chinese cyanuric acid to produce trichlor and dichlor, but if the Chinese try to take advantage of the low price the Commerce Department finds that they are dumping. It seems unfair to me that Clearon can purchase cyanuric acid for under $900 a metric ton when the DOC values the raw material component for the Chinese competitors at $2800 a metric ton.

The antidumping statute is a remedial statute and should not be used as a protectionist tool.

MR. PERRY: Steph Jonas?

MR. JONAS: Good afternoon. My name is Steph Jonas and I am President of N. Jonas & Company, a family-owned business which has been producing swimming pool chemicals since the 1950s. We are not simply repackagers. We are members of the U.S. industry. In fact we are the ones, not Clearon or Oxy, that started up the pool chemical business and iso business early in the 1960s. We supply the professional pool market. We have chemists and other people on staff to help market and train the professional pool dealers.

On the production end we use granular trichlor which we blend, tabulize and package in various consumer sizes for over 400 private brands.

We are here today because if the ITC goes affirmative and the antidumping order is put in place, our segment of the U.S. industry could well be wiped out, resulting in the loss of hundreds of manufacturing jobs.

As stated before, this is a highly regulated market. As a result of this fact from the 1970s to the late 1990s our pricing was identical from all three sources where we purchased. When prices were increased, letters would be sent within days of each other and with the same increase.

Eighteen years ago chlorine was selling at a price of $1.65 per pound. The price in the following 15 years, without the Chinese, decreased by half. This price decrease had nothing to do with the Chinese whatsoever. What caused this decrease of 50 percent were the mass merchandisers and Leslie's which pushed prices down.

As retail prices fell, my suppliers felt obligated to reduce my purchase prices. We could live with this situation, but beginning in 2000 we got caught in a price squeeze. Again in 2001 my supplier raised my prices but my customers demanded lower prices to keep their business.

I approached my suppliers for relief and told them that if this trend continued I would be out of business in five years. No one seemed to care.

To stay competitive I replaced the Japanese product we were buying with a Chines product. The Chinese did not take one pound of business away from a U.S. source. Buying the Chinese product saved my company from disaster and kept these jobs in the United States.

The last year, however, has been hell. Between August and December of 2004, Oxy, Clearon and Chicoco raised their prices for the 2005 season by 35 cents a pound on trichlor. This change of 50 percent, the largest in isocyanurates history caused much discomfort among the mom and pop stores. What precipitated them to explode was Leslie's flyer sent to their customers selling oxy material at $1.65 per pound retail for a 20 pound pail of tablets. That was cheaper than my current wholesale price to my customers.

Without our advantage from China almost 100 employees would possibly be out of a job. What is possibly incomprehensible to this Commission is the possible demise of thousands of mom and pop stores which could no longer compete with Leslie's who is Oxy's customer and the mass merchants from BioLab.

The production crew at Clearon and Oxy is not much greater than mine. When you add the employees in this segment of the industry plus the thousands employed by the mom and pop stores not represented here, our employment easily exceeds that of the U.S. raw suppliers.

If this Commission finds injury and an antidumping order is imposed, thousands of workers in the United States will lose their jobs.

MR. PERRY: Ed Lax?

MR. LAX: My name is Ed Lax and I work for N. Jonas and Company as the warehouse manager. I've been there for six years.

I'm here at the Commission to ask you to save my job. If the ITC makes an affirmative determination, our company can no longer source competitive trichlor and the 100 workers at my company will lose their jobs. If I lose my job, my standard of living drops dramatically. I can no longer support my wife and kids. It's very difficult to get a job in the area that I live in, Monroe County in the Pocono Mountains. I literally live 110 miles from work. I leave for work Monday morning and I don't return home until Friday night. If I lose my job, in addition to losing my salary that supports my family, I will also lose my benefits and this would have a devastating effect on my family.

Thank you very much.

MR. PERRY: Peter Ferentinos?

MR. FERENTINOS: Good afternoon, Commissioners. My name is Peter A. Ferentinos and I'm the Chief Executive of Cadillac Chemical Corp and Qualco, Inc.

Like Steph Jonas' company, Qualco is a family-owned business which has its roots in the manufacture of swimming pool chemicals for over 50 years. We are one of the founding companies that has introduced trichlor tablets to the marketplace over 40 years ago. Qualco currently employs about 100 employees.

The issue before the Commission is not one of Chinese imports damaging the U.S. industry composed of Clearon, OxyChem and BioLab. The real issue is whether our segment of the domestic market can continue to exist and provide good production jobs to U.S. workers without a Chinese source. The answer is no. We cannot.

The American table manufacturers such as Qualco, Alden Leeds, Jonas, Florida Pool Products, et cetera, are all family owned businesses employing hundreds of workers each.

With regard to the three domestic iso suppliers, BioLab is vertically integrated with its trichlor being sold downstream to mass merchants such as Lowe's, Home Depot, Wal-Mart, Bioguard stores, et cetera. BioLab's production capacity is not enough to satisfy its needs, hence it must purchase isos mainly from OxyChem. BioLab has never been a supplier of granular trichlor to my company or to the other manufacturers of tablets in the pool industry. BioLAb competes against my company and the other tablet manufacturers and has not been hurt by Chinese imports.

Also, Occidental has not been a willing marketer of either trichlor or dichlor. It has no sales professionals calling on the pool industry and has never called on Qualco. It supplies very big users such as Leslie's and fulfills some of BioLab's shortfalls. And since it has no product to sell, it has not been hurt by Chinese imports.

If the Commission rules in the affirmative, then the only domestic source of trichlor and dichlor for Qualco and the other tablet manufacturers, is Clearon. An affirmative ruling by the Commission will in fact create a monopoly for Clearon which could be okay if Clearon was just a supplier of granular product and not a competitor.

Clearon has decided that it wants to put my company and the other table manufacturers out of the business that we created. It has offered finished tablet products as well as other ancillary chemicals to my customers. To force me to purchase trichlor and dichlor from the one company that wants to put me and the other table manufacturers out of business is simply unfair.

Please, do not vote in the affirmative so that my sons and the many employees that we have, that have been with us for over 30 years, can continue to keep their good manufacturing jobs in the U.S..

I thank you.

MR. PERRY: Andy Epstein.

MR. EPSTEIN: Good afternoon.

My name is Andy Epstein. I'm one of four owner brothers of Alden Leeds, a family owned and operated manufacturing company in New Jersey. We have manufactured chemical products for the pool and spa industry for 45 years and employ about 200 people.

Our manufacturing process includes the blending and compressing or tableting granular product into tablets and packaging them under several house labels for sale to the professional swimming pool dealers. We also private label for a good number of them as well.

We are a vital part of the domestic industry. Alden Leeds and the producers beside me and behind me founded and developed this industry. Alden Leeds produced the first slow-dissolving trichlor tablet and stick in 1960. This was before the EPA and before either of the petitioners entered our industry.

To exclude us from the very industry that we created would not only be factually incorrect but would be a personal insult.

Alden Leeds has two manufacturing facilities -- one in Carney, New Jersey and one in Enid, Oklahoma. These two factories have over 30,000 square feet of floor space dedicated to manufacturing alone, and another 300,000 square feet dedicated to office and warehouse.

We employ over 200 with more than half of them directly involved in manufacturing of iso tablets or support activities.

I also want to emphasize the quality differences between the Chinese and U.S. product. Even after we have qualified our Chinese supplier, the product we receive from them is not consistent. The raw material itself often has foreign objects, large clumps of product up to softball size, and tends to have an objectionable chlorine odor.

Finally, Alden Leeds, Incorporated has never been a significant customer of either of the petitioners, OxyChem and Clearon. Neither of the petitioners lost volume to us since they never enjoyed our volume in the first place.

Both petitioners, OxyChem and Clearon, made the decision to compete with the tablet manufacturers. In doing so they put us at a competitive disadvantage. Alden Leeds made a very simple decision long ago to align ourselves with those suppliers who do not compete against us. The petitioners aim to eliminate all foreign competition, however without access to alternate sources of supply from foreign producers, the table manufacturers would cease to exist.

Thank you.

MR. PERRY: Dennis?

MR. JAMES: Good afternoon. My name is Dennis James with the law firm of Cameron & Hornsbostel. I am accompanied today by Mr. Pedro Balcells, Commercial Director of Aragonesas Delsa of Spain.

Our presentation will be brief, in part, because much of the information relevant to our position is confidential, but mainly because we have a very short story to tell. Spain's position is that the U. S. Petitioners have not made a case on injury sufficient to warrant action by this Commission. At most, if there is any evidence here, it is evidence only of threat of injury.

In our pre-hearing brief, we have attempted to demonstrate this point. In that brief, we have also emphasized that it is obvious, from the available data, that there is no threat to the U. S. industry from Spanish imports. Spanish imports are minimal compared to U. S. shipments. Spain has minimal capacity, and Spanish imports are higher priced than Chinese imports.

Delsa had been in this market for many years prior to the filing of the petition; and never once, until now, after China's entry into this market, has it been accused of unfair trading or unreasonable pricing. Spain, in fact, appears to be an afterthought by Petitioners. Apparently, when they realized that they might have an action against China, they decided, thanks to mandatory cumulation, to go after Spain as well.

If only threat of injury is found, the Commission is not required to accumulate imports that are not a part of that threat. Thus, if the Commission finds only threat, and we believe that it should, based on the available data, then it should next determine whether Spain is in any way a cause of that threat.

Again, we believe the available data will demonstrate that Spain is not a threat; and if the Commission finds only threat of injury, and that Spain is not a threat, it is then not required to cumulate

Spain with China. Our witness, Mr. Balcells, prefers not to make a statement in English, and asked me to read his direct presentation. He will, of course, be pleased to answer the Commission's questions.

With your permission, then, I will present Mr. Balcells' testimony for him.

CHAIRMAN KOPLAN: Without objection.

MR. JAMES: Thank you.

This is the testimony of Mr. Pedro Balcells of Aragonesas Delsa.

Aragonesas Delsa produces chlorinated isos in Spain and sells them in various forms throughout the world. The company's total production capacity represents only a limited amount of the total available production capacity worldwide. Because Delsa is so small, and clearly not a price setter, it was very surprised to see itself named in this investigation. In Delsa's own market, Europe, it is suffering from the very same situation that the U. S. Petitioners here have complained about this morning: significantly low-priced competition from Chinese imports.

In fact, Delsa felt it first in its own backyard. In Europe, Chinese imports first entered in significant volumes about four or five years ago. As a result, we saw prices decline there. Here, in the

United States, it was only three or four years ago that Chinese imports first entered the market and here, too, Delsa saw prices go down. To remain in each market, Delsa has had no choice but to reduce its prices to some degree, just as the U. S. producers did to maintain their customers.

Delsa is as much a victim of the situation as the U. S. producers. In fact, Delsa should be sitting with the Petitioners in this case rather than being forced to defend itself before the Commission. We believe that the data available to the Commission will clearly show that, in the United States, Delsa is a price follower. It is not setting the price and has no ability to set the price. Where the prices go, Delsa must follow.

From conversations with our customers, however, Delsa believes that its prices are still consistently higher than the Chinese. I should also add that Delsa was quite pleased to see the 35-percent price increase announced by BioLab in December, and the very recent additional price increase of 15-percent announced by OxyChem. As a result of these increases, Delsa has also raised its prices, and Delsa would be more than pleased to follow the U. S. prices even higher.

Delsa was also surprised to see as one of the company's complaining about Delsa a U. S. company that was willing to sell Delsa a significant quantity of chlorinated isos when Delsa was short of material. Delsa had problems when transitioning from one factory to another, and was unable to meet its commitment to one of its U. S. customers. As a result, Delsa bought product from one of the U. S. producers. Delsa could have purchased that material outside the United States, but it did not.

Petitioners also suggest that Delsa is a threat because it recently increased capacity and will focus this capacity on the United States. Let me explain Delsa's current situation: In the last year or so, Aragonesas Delsa moved its production facilities in Spain to a new plant. This was, in large measure, necessitated by the fact that the old plant was in the metropolitan area of Barcelona. The old plant did not have chlorine-production facilities on site. That meant that all the chlorine required for production had to be trucked through populated areas.

Additionally, the old site could not easily guarantee proper treatment of effluents without a significant investment. Because of these concerns, the company decided to move the plant. The new plant has chlorine available on site. And the new plant does have some increased production capacity, as Delsa has explained in its questionnaire response, because it only made sense when building a new facility to increase capacity. The cost of the additional capacity is minimal if done at the initial stages.

However, the increase in production capacity is not significant when compared to the company's previous sales volume. Moreover, the capacity increase was not done with a view toward directing increased production to the United States. As noted, capacity was increased because it was reasonable to do so when building a new facility. Also, at the time Delsa's plant was under consideration, the only producer of chlorinated isos closed its facility.

The capacity of this plant in Toulouse, France was about the same as the new capacity Delsa added. Although Petitioners have emphasized Delsa's new plant as a threat, any increase in Delsa's production will not be directed to the United States. Its only intention is to serve its current U. S. customers at the same time the company is trying to increase its other export markets and its sales within Spain.

With the recent anti-dumping finding in the EU against China, more of Delsa's material will be sold in the European market. It is also important to put the size of Delsa's new plant in perspective. The worldwide market for chlorinated isos is about 200,000 metric tons per year, and it is estimated to grow at least five percent per year as swimming pool construction increases. Delsa's increase in production capacity is considerably less than one-year's growth in worldwide demand.

Arogonesas Delsa has been selling in the United States for over 12 years. In 1993, the company made a significant financial investment to obtain EPA registration and to enjoin the industry's ad hoc committee in which Delsa is an active member. In short, Delsa is not a free rider. Delsa's plan has always been to try to occupy a niche in the Untied States market, not to become a dominant factor.

In the United States, Delsa is not competing with its customers' repackaging business. Delsa sells only in bulk. Delsa has attempted to stay in the market by being customer oriented and providing services not necessarily supplied by the big U. S. producers. There is a clear feeling in the market that Petitioners are generally more interested in supplying large volume customers. Delsa has different interests.

In the United States, we never tried to supply one-hundred percent of our customers' demands. In the past, Delsa has actually limited its sales to buyers so as not to take sales from the U. S. producers. Delsa is interested in supplying part of its customers' demands and in being an alternative source of supply for its customers. Delsa's growth of imports into the United States over the last few years is very minimal when compared to the growth of imports from China. This is in large measure because Delsa has been in the market for much longer and has attempted to grow in this market only as fast as the market itself grew.

Based on Delsa's records, its exports to the U. S. actually declined in 2004 as compared to 2003. Delsa's records also show that the company has increased exports to other export markets every year during the period of investigation. Even after being in this market for over 12 years, Delsa has only six or seven customers. The company is not looking for new customers and has no intention to go down stream. It intends to sell granular only.

As noted, Delsa is also feeling the effects of Chinese imports, but it is not a cause of any injury or threat to the U. S. producers. The company's share of the market is simply too small. Delsa urges the Commission to find that imports of chlorinated isos from Spain are not injuring the U. S. industry, and that they are not threatening the U. S.

industry.

Delsa would also like to weigh in on the discussion of like product. The Commission has heard a great deal about what products should be considered as separate-like products. Delsa believes that whatever the Commission finds regarding tablets versus granular, it should definitely find that trichlor and dichlor are separate-like products.

The molecules of the two are different so there is different chemistry. One is an acid, the other a sodium salt. Likewise, their applications differ. One is for slow release and one is for shock treatment. Moreover, although it has been suggested that dichlor is only slightly higher priced than trichlor, this is not really the case. Dichlor is much more expensive. This is because both products are chlorine donors. They are desired solely for their ability to produce chlorine.

As the Commission knows, the chlorine content of trichlor is 90 percent, whereas the chlorine content of dichlor is only 56 to 63 percent. Thus, to obtain the same amount of chlorine, the purchaser must pay much more for dichlor than trichlor. With regard to dichlor, there clearly is no injury to the U. S. producers from Spanish dichlor. The Commerce Department actually excluded sales of dichlor from its analysis of dumping by Delsa.

Thus, Delsa submits that dichlor should be considered a separate-like product; and since vanished dichlor cannot be causing injury to the U. S. producers, the Commission should find no injury or threat for this separate-like product.

Thank you. This concludes our presentation. During the question period, Mr. Balcells will be pleased to answer your questions. Thank you.

CHAIRMAN KOPLAN: Yes.

MR. HOWARTH: Good afternoon. I am Jonathan Howarth of the Enviro Tech Chemical Company. My presentation should be used in conjunction with the handouts which Ms. Madeline Avad (ph) furnished the members of the Commission.

As I said, I am from Enviro Tech Chemical Company and I speak here on behalf of my company as an innocent bystander in this battle in the recreational water business. My company is not in the recreational water-treatment business. We use trichlor power, or we intend to use trichlor powder. And trichlor powder should be treated as a separate-like product.

I am now going to go over the criteria which the Commission used to test for a separate-like product: Physical Characteristics. Trichlor powder is different from trichlor granules and tablets in their physical characteristics. Powder is not compacted. It is virgin, fresh out of the reactor, and it is then dried to a product which is as fine as talcum powder. Granules and tablets then are compacted into forms ranging from particles the size of sand grains up to three-inch tablets.

Trichlor powder is different from those compacted trichlor forms in its uses. Enviro Tech, my company, can only use trichlor powder. We have a very specific need for trichlor powder to make a product, a yellow liquid. I think that an example of that yellow liquid is in the hands of the Commissioner as an example of the yellow liquid which my company produces.

Trichlor powder has not sought approval on this in the recreational water-treatment market. The reason: it's too dusty and it is unsuitable for use in the traditional chemical phases. Powder cannot, and this is an important one, you cannot put the tablet directly to powder. It has to be ground to granules first. This is a costly endeavor.

Thirdly: Interchangeability. Trichlor powder is different from compacted trichlor in its interchangeability. The EPA --

CHAIRMAN KOPLAN: Excuse me. If you move back just a little bit from that microphone, it might help you out.

MR. HOWARTH: Thank you. The EPA unregistered trichlor, and its products are not interchangeable. The Enviro Tech process to make bromax, that's the yellow liquid, must use unregistered trichlor. That's under FIFRA.

All domestic trichlor powder that we have been able to identify is registered trichlor powder. It is registered with USEPA as a swimming pool sanitizer. Unregistered trichlor powder is unavailable in the U.S.A., and instead of being imported into the U.S.A. prior to Enviro Tech's 2005 and 2006 requirements. Trichlor powder is different from compacted forms of trichlor in each channel of distribution.

As I have said before, trichlor powder is not traded in U. S. commerce. It must be purchased from overseas. Trichlor powder is clearly not sold into recreational water-treatment markets.

Bromax, the Enviro Tech product which is a yellow liquid, contains no trichlor. We use trichlor just to make Bromax. Bromax cannot be sold into the recreational water- treatment market and is, therefore, non-competitive to trichlor.

Next slide. Trichlor powder is different from compacted trichlor in its consumer and productionable perception. Trichlor producers know that trichlor powder is unusable until it is converted to either granules and then tablets. Consequently, trichlor powder is less valuable than the compacted forms due to these higher conversion costs.

On the other hand, trichlor powder is the same as compacted trichlor in having common manufacturing facilities. Trichlor granules and tablets may, not all the time, but may be produced at the same manufacturing facility as trichlor powder. Trichlor powder is different from compacted trichlor in its production process. Trichlor powder has to be converted to granules to be useful. This is capital equipment and manpower intensive. It requires real compaction of the powder to a thick sheet. This thick sheet is then broken up mechanically, and then it is shifted into various cuts. Those cuts are skimmed off from that which is useful to make the granules and the tablets. The undersized ovis and the oversized undis have to be recycled back into the front-end processing.

So I suggested to the Commission that the costs to granulate trichlor from powder is a far higher barrier to market entry than the $400,000 dated compensation for the EPA license that is necessary. Consequently, circumvention of the ITT decision to exempt trichlor powder from these stiff tariffs for the powder, the producers of the granules and the tablets are going to see that this is just simply not worthwhile.

Trichlor powder is different from compacted trichlor in that powder is significantly less expensive to produce than granules or tablets. As we have seen before, there is no mechanical granulation, tablet and equipment is necessary. Virgin powder comes out of the reactor and it is dried.

Also, on price, as everyone in this room knows, EPA-registered products command premium pricing. Unregistered trichlor powder should be the cheapest form of trichlor that is on the market for all the reasons that I have just elaborated on.

The conclusion is overwhelmingly clear. Trichlor powder is a separate-like product. Thank you.

CHAIRMAN KOPLAN: Thank you, sir.

Does that conclude the direct presentation?

MS. CLARKE: Yes, that concludes the direct presentation. How much time do we have left?

MR. BISHOP: There are four minutes remaining.

MS. CLARKE: Thank you.

CHAIRMAN KOPLAN: Thank you very much for your direct presentations. I would ask all of the witnesses, because we have so many folks at the table, the same thing that I asked this morning: If you would identify yourselves each time that you are called upon with a question. Thank you. And with that, we will begin by questioning with Vice Chairman Okun.

VICE CHAIRMAN OKUN: Thank you, Mr. Chairman, and let me thank this panel of witnesses for being here this afternoon. We appreciate your testimony and your willingness to answer our questions; and for those who are here representing your industries, in particular, I appreciate your willingness to take time away from your businesses to help us better understand both the products and the process, and the competitive environment.

Thank you.

Maybe I will start up here with Mr. Johnson and the folks from Arch, and Ms. Clark, you can certainly time it. One of the things that we obviously heard a lot about today and have seen in the briefs, is a lot of discussion of the relationship between Arch and Clearon and what did or did not happen. And while I am still kind of sorting through the different time lines that have been presented and making sure that I understand what is being argued; and then, Mr. Hitchens, you added a couple of things that I am not sure I had focused on but I want to go back through that.

But I guess my question is: If I were to look at that and say okay, based on the evidence here, I see that you were looking to other sources, including China, before the time when Clearon made this price increase. What, Ms. Clark, what would I drop from that then? If that is the case and Arch was already out there and knew that it needed another source, as Mr. Hitchens said, and the source is the Chinese, at least partially sourcing from the Chinese, and when I can look at the pricing data, I see and we can talk about the different parts of the pricing data.

But let's say that price is overall declining and I see volume. Are you really focused on the causation? I mean if I have to believe Arch, or I have to believe Clearon in order to find that there is injury in this case, or not injury, as you would have it argued, is it really all about them?

MS. CLARKE: There certainly is an issue as to why companies went to China. Was it price oriented? Was it for other reasons? And the extent they went to China, that, I think, is part of this.

The other side is: What is affecting Clearon financially? It is clear that part of what is affecting them is the breach of their relationship with Arch, regardless of the reasons for that breach. But that's the critical question: Did they lose Arch solely because of dumped product, or did they lose it because of their own actions? That is one factor.

There are obviously other factors weighing in in this whole equation. And I want to make sure that I understand what each side is saying here in terms of: Whether Clearon raised the prices to everyone at the same time? In other words, it was your impression, as I understand it, that that wasn't the case, and information from the other side indicating that it was. What do I make of that?

MR. HITCHENS: I don't have the answer for that one. You have to ask them, but we heard that directly from one of Clearon's customers that we happen to share.

We are the world's largest producer of calcium hypochlorite, and a lot of the tableters and repackagers buy isos from either Clearon, Oxy or somewhere in the world and they buy calcium hypochlorite from us. One of their customers told us outright that they were not affected by the price increase. Why? That I can't answer.

To go back just for a second on your question to Peggy. This morning you heard from Mr.

Hand that in March, we actually asked Clearon if there were tablets from Chinese material for us that we were testing? I think that is significant. And the fact that I had had conversations with Noah Erlich, who was president of Clearon at the time, that I wasn't comfortable single-sourcing something that was so important to our business, and that we were going to put some volume away from Clearon but I wanted them to be our primary supplier.

In fact, I bought them into the equation and asked them to actually test the product. There are many tableters that I could have gone to that are not fans of Clearon and have the product tested without them knowing up front. Instead, we went directly to them and told them what we were going to do and it wasn't anything in the range of eight million pounds. But, in trying to keep them as a primary supplier long term, I was trying to work with them and tell them what our plan was. I don't know if that clarifies or helps.

MS. OKUN: Well, obviously it is one of those cases where you have a competitive environment and a lot of interaction between all the parties here, so I am just trying to sort out the information and what it means and the analysis.

Maybe you can help me, Mr. Hitchens, and the other industry witnesses as well. In terms of the argument regarding what is going on with prices and what impact the mass marketers have on prices elsewhere, I want to make sure that I understand what Arch sees, what the other members of the industry see in terms of what pressure on prices comes from the mass marketers and how do you fill that?

In other words, a lot of what I have heard -- you know, part of your argument has been: Clearon was going to go to your customers, and I am just trying to understand a little bit more about what that means in this market and whether that was a really significant change in what was happening to prices?

MR. HITCHENS: Randy Hitchens with Arch. I am sorry I didn't clarify before. I think it was really significant in the type of mass merchant that Clearon went after.

The club store segment of the mass market: the Sam's Clubs, the Costcos, the BJ's, obviously, their claim to fame is that they take a very, very low mark-up on product, and most everyone in the industry knows that their mark-up on the product is very, very slim. Where you can go to a company like the other mass-merchant retailers like: Home Depot, Wal-Mart, Loew's, the others, they have a certain value added that they figure into their pricing.

Clearon went directly after the cut of the market which is the club stores that take virtually no mark-up. So when they went into that segment, at a price that was the cheapest in the industry, obviously, Sam's Club, Costco's, those companies, they are not going to mark their product up very much, just a tiny bit. And regardless of how much or how little they sell, it had an impact on the entire industry. And the fact that pool dealers could say: How can I buy at retail a product that it costs me more to put on my shelf?

So I think the impact wasn't so much the mass-merchant pressure, it was how they decided to go to market. Going after that segment was something that was a red flag to basically everybody in the market and had a much larger impact on pricing than the volume would dictate.

MS. OKUN: Okay.

MR. FERENTINOS: Could I?

MS. OKUN: Yes, please, Mr. Ferentinos.

MR. FERENTINOS: Pete Ferentinos from Cadillac and Kwalco. In 1986, when I first got involved in the purchase of isos, isos were selling for roughly $1.50 a pound. We were the first to bring in Chinese isos and we did that some time in the year 2002.

But prior to the year 2002, the price of trichlor had gotten down to approximately 80 cents, in the low 80s. So, therefore, it is not the Chinese that bought the price down from $1.50 in 1986 to 80 cents or thereabouts prior to -- and it had been steadily falling.

In other words, in every year since 1986, the price of trichlor had been falling. So it wasn't the Chinese. There was some other dynamic in the marketplace. That dynamic, I want to suggest, is the battle between Arch and BioLab. It's that battle that goes into the mass merchants; it's that battle in which our dealers, the people that we support, look at the mass-merchant price, the Costco price, the Leslie's price.

And when we talk about a mass merchant, you have got to remember that Leslie's is the largest pool dealer chain with 500 stores. So it is that battle that caused the price to deteriorate into the 80s.

MS. OKUN: Okay. Well, I am sure we will have some more questions on. Yes, did someone else want to --

MR. JONAS: As I said in my testimony, the prices in the 1980s were at $1.65 a pound. When it came down, it had nothing to do whatsoever with the Chinese. It was mainly BioLab who went out there with the discounters and cut the price every year. I mean going into the 70s, we were glad when we got an increase because that meant that everyone increased and everyone was happy because we all made a percent of profit.

But in the 1980s, for whatever reason, they decided to cut the price for the discounters, and I don't know if it was the competition between Arch and BioLab. But, at that time, it seemed to be pointed at BioLab that was the culprit and they were forcing the prices to go lower and lower and lower. I remember that some of my suppliers, like Clearon and Chicoco, were coming to me and trying to get the prices up.

Yet, BioLab kept the prices lower and it kept getting lower and lower; and they had no choice. If I wanted to stay in the business, they had no choice but to lower the cost to me, and that kept me competitive because, you know, it had nothing to do with the Chinese.

In my opinion, it was BioLab, through the discounters, that caused the problem.

MS. OKUN: Okay. I know you can't see up to the front. My red light has come on, but I will have an opportunity to talk more about prices.

Thank you very much. Thank you, Mr. Chairman.

CHAIRMAN KOPLAN: Thank you.

Commissioner Miller?

COMMISSIONER MILLER: Thank you, Mr. Chairman, and welcome as well to all of the members of the panel. We very much appreciate your being here to help us understand your business. I am going to continue on the same line. I might as well because that was an interesting line of questioning. Let me keep going.

Mr. Jonas, in your comment just now, you were saying with this competition, or the actions by BioLab that you saw as bringing the prices down, your suppliers were willing to lower your price, the price to you, so that you could stay competitive. Who were your suppliers?

MR. JONAS: My suppliers were Chicoco and Clearon.

COMMISSIONER MILLER: Chicoco and Clearon, okay.

MR. JONAS: Chicoco being the Japanese source.

COMMISSIONER MILLER: Right.

MR. JONAS: And Clearon for a little bit of dirocorbin (ph). My major supplier was Chicoco Chemical.

COMMISSIONER MILLER: Okay. Now, as I

recall, I think I know that in the mid-80s there had been a dumping case against Japan, and that order was in place until the mid-90s, but that didn't affect your ability to buy from that company?

MR. JONAS: No, because like I testified before, they were in line. I could give you a chart of statistics over the last 25 years where everyone was totally in line with each other, identical in price. You talk about price-fixing, but I can't say anything here. I am sure that something happened.

COMMISSIONER MILLER: No, we don't want to hear anything.

MR. JONAS: In my testimony, I say when Monsanto was selling the chlorine, I actually saw her one day at Olin's factory and I asked her what she was doing here and she said: Well, just to talk about certain things.

But, you know, she was also a manufacturer. Again, I don't want to get into why she was there or anything, but the prices were identical and I can show you statistics which I thought I did in the preliminary where everyone was at exactly the same price.

COMMISSIONER MILLER: Okay. Now, Mr. Epstein, I think in your testimony, you said at one point that you never bought from the U.S. companies.

You were buying from the Japanese suppliers.

Did you say that you were buying from the Japanese suppliers? I don't remember. I am trying to absorb a lot. If I get something wrong along the way, my apologies. But my question at the time was generally: Where were you sourcing your isos before the Chinese imports started coming into the U. S.?

So, to you, you have been in the business a long time, where were you --

MR. EPSTEIN: Well, we've been in business since 1960. But going back prior to the Chinese material coming in, a good portion from Spain, Japan and some domestic product.

COMMISSIONER MILLER: Okay. In part, I am asking you this question because: To the extent that the tableters have said that this is going to put you out of business, you have been in business a long time. You were buying from somebody else, so I am just trying to understand that whole history.

MR. FERENTINOS: This is Pete Ferentinos from Kwalco. At this time, the model has changed. The original suppliers of the molecules, the isos molecules, never went down stream. They always used repacking companies like ourselves.

We, in fact, were the ones who introduced it into the retail chains; we were the ones who went into the mass merchants directly; we were the ones that went into the pool professionals.

It is only later that Clearon, in 1995, gets into the act and it starts to tabletize. It is only after that, in the recent time frame, because of the Arch withdrawal from their business that Clearon comes after our customers now. But the reason why we have been able to buy product domestically is because we bought product from someone who was not our competitor.

But we also bought from Spain, and we also bought from Japan. And we never sole-sourced our product, our granular product. We always tabletized ourselves. I don't know if that helps you or not.

COMMISSIONER MILLER: No, it does.

MR. JONAS: Let me just add one more thing. In order to understand the business and why trichlor is such an important product for us is: when we go to a customer, a mass merchant, or a retailer, or at any level of the chain, the first thing that he asks us is: What is the price of your three-inch tab?

If you don't have a competitive price for that three-inch tab, you can't sell him anything. I have a full line. I must have several hundred SKUs that I sell of all different types from equipment to balancing chemicals to conditioning chemicals, a whole line of stuff. I can't sell one SKU unless I am right with trichlor. Unless the price is right, I can't sell him anything else.

So when a competitor like Clearon comes into the marketplace, and if you vote in the affirmative, and I am forced to buy product from him, then I can't be competitive in that three-inch tab. He can raise the price to whatever level because I have no other source of material. I can't buy from China; the Japanese follow suit with the Americans. They are in step together. If the price of trichlor is $1.13, the Japanese will be there at $1.13; and if the price gets to $1.60 or $2.00, it will be there.

But I can't control the price that Clearon is going to sell to the mass merchant and that is who my customer is.

MR. ABRAMSON: My name is Frank from Rego Chemical. We are one of the importers of Chinese chlorinated isos. Our strategic plan when we came was -- our primary focus was to bring into granular form. Our target market was the tableters. Basically, each of the tableters that are sitting in conjunction with me here today were already, at this point when we entered the market, in 2001, were primarily purchasing almost a hundred percent of their goods from foreign sources.

So when we were bringing in our chlorinated isos, we weren't targeting any U. S.-produced product. We were targeting Japanese and Delsa material that we were competing against here in the United States, and we did not take one ounce of domestic chlorinated isos business away from them. The tableters had already moved years before to those types of sources.

COMMISSIONER MILLER: But how did the price of the Chinese product that you were going to bring in compare to the prices of the Japanese and Spanish product?

MR. ABRAMSON: They were more competitive.

COMMISSIONER MILLER: Okay.

Mr. Jonas, you were raising your hand I think when Mr. Ferentinos was talking. Did you want to add something to that?

MR. JONAS: Yes. I just want to say that this kept me competitive in the industry, having a little bit of a slight advantage because I am selling the mom-and-pop stores who have to make more of a margin.

When I first got the prices from the Chinese three years ago, I didn't go out and undercut the market. I followed everyone else and put a little more money into everyone's pockets and that made everyone happy. I didn't go out and cut the market whatsoever and I guess this is what it is all about is the anti-dumping. We didn't dump material, and strictly whatever I purchased was from the Japanese source to the Chinese. It had nothing, you know -- we were still purchasing Clearon material with the ACL 63. So nothing changed there. We kept buying along the same pattern. As you can sese from the reports, nothing changed.

COMMISSIONER MILLER: Okay. Let me ask because you talk about selling to the mom-and-pop stores, but there is also this talk about competing with Clearon and the difficulty in doing that. Again, I am struggling to understand the whole structure of the industry.

Arch and BioLab, you are competing with them, aren't you, or do I have that wrong in the scheme?

Okay. Mr. Jonas says not because you -- tell me, make sure I understand why you don't.

MR. JONAS: No, I started in the professional pool market and this is where my niche seems to be. I want nothing to do with the discounters.

COMMISSIONER MILLER: Okay, that's why because you are selling to the smaller guys and Arch and BioLab was selling to bigger?

MR. JONAS: I cannot do things that BioLab can. If I went into the mass merchants, I would lose customers; or have personal relationships with all my customers and they believe me when I tell them that I am not going after their customers by meaning downstream.

COMMISSIONER MILLER: Right, right, okay. I, obviously probably -- I have some other questions. If my colleagues don't get to them, I will. So, thank you. I appreciate your answers.

CHAIRMAN KOPLAN: Thank you. Commissioner Hillman?

COMMISSIONER HILLMAN: Thank you and I will join my colleagues in welcoming all of you. A number of you are new faces to us and we want to welcome you here and thank you for taking the time to be with us.

Maybe if I could, Mr. Ferentinos, you were just going to respond to Commissioner Miller and I would be curious about your answer on this issue of competing in the mass, you know, retailer market.

MR. FERENTINOS: Well, the mass retail market is -- of course has several very large players. We, as a company, cannot supply into the Wal-Marts. We, as a company, cannot supply in Home Depot, because the volume, in order to supply into those stores, is huge. You need to be a multi-billion dollar company or close to it, in order to be able to supply product, because they have so many outlets. They're such a large user. But, that doesn't mean that there are no smaller regional mass merchants. And the regional mass merchants have stores that are maybe 200 in a chain, up to 500 in a chain. So, we can supply into that segment.

But, that doesn't mean that the Arches of the world or the BioLabs of the world don't want to come after those customers, as well. They're not satisfied with just selling into Wal-Mart or to Home Depot.

COMMISSIONER HILLMAN: Describe for me your sense of the role of the national mass merchants. I mean, has it always been the case or from when that the Home Depots and the Costcos and the whoever have been significant players in this sale of these particular isochlorates?

MR. FERENTINOS: This product had been sold in mass merchants, but the mass merchants were of a smaller level. In other words, in our region, the northeast, there were stores like Caldor, which had several stores; Bradleys; Ames. All of those stores have disappeared -- Richols. And because of the mass merchants like a Home Depot or Lowe's or Wal-Mart, those stores are gone. And in their -- now, those stores would have this category in their shelves, but they were smaller. And the difference is that you could sell regionally; but, today, you need to sell almost nationally.

COMMISSIONER HILLMAN: Okay. How about Mr. Johnson or Mr. Hitchens? From your perspective, when did Home Depot become a dominant role in the market?

MR. HITCHENS: I'd have to go a little back in time, but I believe it was probably in -- it would have to be the early 1980s when they started. I think -- as a matter of fact, I think Home Depot just celebrated, I think it was 25, 30 years in business. They started out as a small regional chain in Atlanta. They started out with four stores. And then over time, of course, they've just slowly gotten bigger and bigger, until they are a national player now.

Lowe's has been around for a much longer time than that. Lowe's goes back -- they started out as a regional hardware chain of hardware stores. And then as Home Depot developed the big box, that warehouse home center look, Lowe's followed Home Depot in that segment at a much slower pace. And at this point, I think Home Depot is still the largest there.

COMMISSIONER HILLMAN: But focusing clearly -- specifically on this issue of the sales of the chloro isos, because, obviously, we've heard this claim that it's the rise of the mass merchandisers that has been one of the major forces bringing prices down. I'm trying to understand whether the mass merchandisers have increased or changed their role over the POI that we're looking at. I mean, again --

MR. HITCHENS: Absolutely.

COMMISSIONER HILLMAN: Okay. So, help me understand, because -- again, from my perspective, Home Depot and Lowe's have been big ticket players since way before 2002.

MR. HITCHENS: True.

COMMISSIONER HILLMAN: If I'm supposed to believe that the prices of this product have come down between 2002 and 2004 because of the role that Home Depot and Lowe's have played, I'm having trouble understanding what they've done differently in 2002 to 2004 than they were doing in 2000 or 1998. I mean, I think of them as big players way before our POI. So, what is it about their sales of this product that have changed over the POI?

MS. CLARKE: We can answer this in more detail in the post-hearing brief. But one thing you will notice, prices were started to come down before the exact POI, so you have to sort of look at the role of them in a slightly longer term. Correct?

MR. HITCHENS: Yes.

COMMISSIONER HILLMAN: Okay; all right. Again, I'd be happy to look at it. But, like I say --

MS. CLARKE: We will answer it in more detail.

COMMISSIONER HILLMAN: -- just from my perspective, I'm having trouble imagining what it is that the mass merchandisers have done in the last couple of years that is materially different from what they would have done five or seven or eight years ago that would have had this affect on prices.

All right; okay. Maybe I can go to a couple of -- a little to maybe a legal issue. Ms. Clarke, I'm trying to take into account all of this testimony in terms of the relationship between Arch and Clearon, et cetera. Even if I assume it's entirely reasonable for Arch to want to seek other suppliers beyond Clearon -- we see that in many, many cases. You would certainly not be, you know, the first or the 50th or the 100th person that has come in and said, you know, I need to dual source at a minimum. I cannot rely for my main item on any given source. Fair enough.

I still am having trouble with why that fact, that you need to dual source, should exonerate imports from China from having a volume or a price effect. I mean, in other words, how important is the reason for the importing, as opposed to looking at the volume and the price data, in terms of figuring out how it impacts the U.S. industry.

I hear your testimony. You're saying, because I had a good reason for doing it, somehow it doesn't have a material injury on the U.S. industry. And, yet, I'm looking at the volume and price data and it's not clear to me that the intent of the import is something that can be translated into our injury analysis.

MS. CLARKE: Let me try to answer that. Part of it is, as Mr. Reilly has indicated, we do not believe with this volume of import, you have a significant price effect or volume effect. That's not what's driving the injury in the first place.

Secondly, I note back to -- look back at Commission precedent in other cases, understanding everything is sui generis, I note that in shrimp, you looked at the impact on the canned shrimp industry, because the desire not to purchase from competitor. There were no other U.S. sources available. In note in several other cases, you have also looked to this impact to whether there are non-price factors involved in the decision to go to imports. And that is what we're addressing, are non-price factors here.

COMMISSIONER HILLMAN: That's helpful just to hear it. I think I understand it.

Mr. Reilly, I have to say, I'm sitting here trying to understand your testimony and there's a part of me that says, it's a little difficult to be presented with this kind of analysis for the first time in a hearing is suggesting that we should be looking at value data. I mean, as far as I know, this argument was not raised in anyway in the prelim. So, we're focusing on our traditional way of looking at volume of imports by ton -- you know, again, by a measure, a unit measure. It wasn't raised in the pre-hearing brief. And, yet, all of a sudden, today, I'm supposed to completely shift my analysis to look at data on a value basis. And I'm just not sure -- you know, again, this is something the Commission rarely, if ever, does, goes to value data. It is only typically in these products where the volume -- you know, where you have these huge variances. Where you have ball bearings that can range from, you know, $10,000 a unit to the little teeny tiny ones that are less than 100th of a cent a unit, we might look at value data, because our volume data is not indicative. But, I'm not hearing anything about this product that would suggest to me that this is in any way appropriate for us to look at on a value basis. Why this change and why now?

MR. REILLY: Actually, I guess it would be -

- the simple answer is that we didn't have all our analysis advanced far enough in the pre-hearing brief to have the ideas gel. It was only after the pre-hearing brief went in and we started looking more closely at some of the data that this issue popped out. And when I talk about looking more closely at the data, I mean breaking down the value and price data that was in the questionnaires very, very finely.

The issue in this particular case, the substantive issue in this particular case is the fact that you have radically different pricing for products at different stages of production going into different channels of distribution. And to take the extreme, if you're selling bulk trichloro to, let's say, a tableter, you're selling that product at a much lower price than you would be selling packaged tableted chloro isos to a retail outlet. And the companies in this business do all of the above. Therefore, looking simply at volume, you're trying to measure different -- you're trying to weigh different things. And tons and pounds aren't a good measure, because a pound of packaged tablets is quite a different thing from a pound of bulk trichloro. And the only measure that you have available, which looks at the true value of the end product going into the -- or the end product, as it goes into the retail sector, all U.S.

manufactured is really a value measure.

COMMISSIONER HILLMAN: I'll need to come back to this. Thank you, Mr. Chairman.

CHAIRMAN KOPLAN: If you want to pursue that one, I'm interested in it, as well.

MS. CLARKE: If I could just say one thing on this, to clarify, I hope. When John says we hadn't gelled, et cetera, part of it was, we had relied on the staff report's analysis until petitioners pointed out that there was some double counting. And then we took a closer look at the double counting and realized there was some there, but the only way to adjust for it was on the value side.

COMMISSIONER HILLMAN: Well, I mean, obviously the staff is going to continue to work with the data, as we've all said and as Mr. Deyman has made very clear. It strikes me, to be perfectly honest, that we have never gone to this issue of using value data just to deal with this issue. I mean, we're going to have to think about it; but, clearly, you can look at granular products separately and apart from tableted product and/or figure out ways to subtract that data and not necessarily have to go to value. It is very unusual for us to go to value and this case does not feel to me as though it's anywhere close to any of the cases in which -- again, on those rare occasions where we've gone to value data, it does not at all feel like this kind of a case. So, if you really do mean it, that we're supposed to be looking at value data, I think you need to look at the cases, in which we've done that, and try to explain why it is that you think this case fits into that very small little box of where it is just not possible to use volume data. I mean, if you look at ball bearings and a few things like that, but it is a rare occurrence for us to go that route. So, thank you.

CHAIRMAN KOPLAN: Thank you, Commissioner. Commissioner Pearson. None of that came out of your time. So, now the green light starts, right, Mr. Secretary?

MR. BISHOP: That is correct.

COMMISSIONER PEARSON: Thank you, Mr. Chairman.

CHAIRMAN KOPLAN: Sure.

COMMISSIONER PEARSON: Let me extend also my welcome and appreciation to the afternoon panel. On my time, if there was more to be said about Commissioner Hillman's question regarding value, please go ahead and offer those comments now.

MR. REILLY: Thank you. I think it's probably best to start by talking about volume, because that's the measure that the Commission traditionally uses and why volume is an inappropriate measure in this particular case.

Volume say measured in tons presumes that there is some level of homogeneity and a significant level of homogeneity among the products that you're looking at. Otherwise, you're measuring tons of different things. And in this particular case, if you look only at volume in the aggregate, you're measuring tons of different things. As I said before, a ton of granular bulk trichloro, for example, is quite a different product and has a significantly different value than the end product, let's say, which is a ton of packaged tableted chloro isos ready to go to a retailer. One is a really an intermediate product -- or actually a raw material; the other is a finished product. So, basically, if you're looking at tons, you're actually mixing tons of, let's say, apples and oranges and calling them fruit.

COMMISSIONER PEARSON: Okay. Your point is well taken. But from a methodological standpoint, wouldn't it be preferable to recalculate volume on the basis of tons of available chlorine, rather than shifting to value?

MR. REILLY: Well, the problem with tons of available chlorine is, again, you have in the end product something that has a substantially different value than the initial product. It would be like taking, say, steel products and mixing flat-rolled -- let's say, cold-rolled, hot-rolled, galvanized and so forth, and bringing it back to tons of slabs or tons of iron ore. Basically, what you're missing is the fact that there is substantial value and the value is the best measure of the economic activity, relative economic activity associated with the production and processing, because the whole purpose of producing these products is to generate dollars of sales and dollars of product. So, what's of most concern is the dollars of economic activity that you're generating, the U.S. value versus the foreign value of the product.

Now, when you have a product that's homogenous, that's not an issue, because volume and value are very close to the same measure. You'll find very small differences between the measure of volume and the measure of value and the measure of relative domestic and foreign economic activity. But in this particular case, there are significant differences in the results you get when you look at value versus volume.

COMMISSIONER PEARSON: Okay. I believe that may be true, but when you explain this more thoroughly in the post-hearing, take into account the testimony that we heard earlier, which from my understanding was basically that consumers are buying free chlorine or available chlorine and they can -- you know, if they buy it in one form, they pay a higher price, because there's less chlorine in the product. And so, you may be suggesting the right way to do it, but it's not obvious to me that it's the only way one could do it that would be appropriate.

MR. REILLY: Let me raise one other point, and you -- basically your comment generates it, and that is that the consumers -- the pool users, the folks, who have swimming pools in their backyards, really can't make use of granular trichloro. The product that they buy and the product that was introduced into the marketplace is tableted trichloro. And for that reason, they can't simply go and buy available chlorine. They can't go and say, I want to use granular trichloro -- I'll buy bulk granular trichloro and use that instead. They have to -- they really, as a practical matter, have to buy the tablet.

COMMISSIONER PEARSON: Okay. Well, you should have an interesting explanation, we'll look forward to in the post-hearing.

MR. PERRY: Could I add just one thing? I was thinking, as I listened to John, this almost sounds like level of trade and there's actually an adjustment for that at the Commerce Department.

COMMISSIONER PEARSON: Mr. Perry?

MR. PERRY: Mr. Perry, Garvey Schubert. That we're talking about the fact that we're selling at different levels of trade and there certainly is a different analysis there. Even the Commerce Department acknowledges it in its own calculations.

COMMISSIONER PEARSON: Okay. We have something to look forward to; plenty, I'm sure.

Mr. Jonas, I'm going to go back to some price questions and I may be a little bit redundant with some of the previous ones; but, bear with me here, because it may help me to understand better what's going on. I think in your testimony, you had mentioned that prices had declined 50 percent over a period of years. What was that period of years? I missed it. Mr. Jonas?

MR. JONAS: I have it. I believe it was 1986 when it was $1.65 and over the years through 2002, it was in the 80s.

COMMISSIONER PEARSON: Okay. And what do you see as the reasons for the price decline over that period of time?

MR. JONAS: Basically, competition between the discounters, Leslie's and -- well, Leslie's and all the discounters with BioLab competing with each other and lowering the prices.

COMMISSIONER PEARSON: No technological changes in terms of scale of production or --

MR. JONAS: Not at all; nothing. No, I haven't seen any -- no, no changes.

COMMISSIONER PEARSON: Okay. So, you weren't seeing efficiencies coming on the production side? I know you're not in the basic chemical product, but there weren't other things in the market that were helping to bring the price down. It was just a matter of more intense competition at the retail level.

MR. JONAS: Absolutely, yes.

COMMISSIONER PEARSON: Mr. Ferentinos?

MR. FERENTINOS: Ferentinos, thank you. We believe that in the early 1980s, the price was inflated artificially. And then as competition drove the price down, the price got to be where it was more indicative of what their cost and profit levels were. But in the early 1980s, as this was a new product and newly introduced with the ability to say to a consumer, the pool user, that if you use this tablet, you didn't have to chlorinate your pool everyday. This was a long-lasting way of providing chlorine to your pool. You could put a tablet in a cartridge or several tablets into a cartridge and, typically, it would last for a week. So from a maintenance point of view, it was easier to use. And there was a premium that was charged by us and there was a premium charged by the producers of the molecules. But as time went by, that premium disappeared.

COMMISSIONER PEARSON: Okay. The market worked to wring out the extra money that might have been there. Okay.

So how much of this price decline occurred prior to our period of investigation or prior to when Chinese imports entered the market?

MR. FERENTINOS: If you use my example, I remember in 1986, we were paying $1.50 a pound. By the year prior to the Chinese, we were paying in the low 80s, 81, 82, 83 cents. So, there was a significant drop in pricing that had occurred gradually.

Another problem about prices that drop cause us, as wholesalers, a problem. We would like to have prices that rise, because what occurs is as prices drop, our customers say to us, well, prices are dropping; how much are you going to drop it. And there, you get into this business of having to match dropping prices and you just lose margin and it becomes very difficult for us. In a rising market, we can raise prices and life is a little bit different.

The only difference today for us is that the only supplier with product in the U.S. that has it to sell is also our competitor. That's the big change in the market today.

COMMISSIONER PEARSON: I'm running out of time now and I may come back to this. But to the best of my understanding, we don't have information on the record that would give any documentation of price activity prior to our period of investigation. And if you are here in front of us making an argument that this industry is in a long-term structural price decline that has been going on for years and has simply extended a little bit into the period of investigation, that's a case that I don't think is made other than just anecdotally. So, we would need something more, if you were going to be seen to have a meaningful argument.

MR. PERRY: We submitted some of that information back in the preliminary investigation, but we'll put some more in the post-hearing brief.

COMMISSIONER PEARSON: Okay.

MR. JONAS: I was going to say --

COMMISSIONER PEARSON: Mr. Lax or --

MR. JONAS: Mr. Jonas.

COMMISSIONER PEARSON: Yes.

MR. JONAS: I did submit, I think, a lot of the price data. You know, I have summaries in front of me where the price did fluctuate up and down a little bit. But, you have the data showing what the increases were year-by-year, starting in, I think, in 1978.

COMMISSIONER PEARSON: Okay. Well, I may need to go back and check the record. All I'm saying is, so far in my preparation for this, the argument that you're making hasn't yet sunk in. So, you may need to wack me once again with it. Mr. Chairman, my light has changed. Thanks.

CHAIRMAN KOPLAN: Well, they need to wack me, too, actually, Commissioner. Let me come to a different -- come back to a different issue and that's the one of like product. At the time of our preliminary determination, we said, and I'm looking at it, that based on the Commission's traditional six-factor like product analysis, we found there was no clear dividing line between trichloro and dichloro that would warrant treating them as separate domestic like products. But, we did say that we would explore this issue further in any final phase investigations.

I note that at that time, we noted in our views, that the Spanish respondent Delsa did not make any domestic like product arguments at the time of our prelim. And unless I'm missing something, I don't think that there was a like product argument in the pre-hearing brief today, Mr. James. But, let me -- but, I heard the argument this afternoon in the oral presentation.

Now, my question is for both Mr. Abramson and Mr. Balcells, based on Mr. Balcells' testimony this afternoon. And it's as follows -- let me lay the groundwork. The pre-hearing brief for the Chinese respondents argues that the Commission should find that trichloro and dichloro are separate like products. Page seven of the brief states that, "the distinct differences in chemical and physical composition results in different product end users, which necessarily limit their interchangeability."

The pre-hearing brief, however, of Clearon Corporation states at pages six and seven, "the chemical structure of dichloro is more soluble in water than trichloro, so that dichloro is commonly used for shock treatment in pools; while trichloro is more commonly used to maintain consistent levels of chlorine over a longer period of time. This distinction, however, is not absolute. Dichloro is used for routine pool sanitization in some regions, particularly in the U.S. mid-west and northwest. Several companies, also, market granular trichloro products for shock treatment of pools. For example, BioLab sells a blended granular trichloro product, Chlorinating Granules Plus, for use in shock treatments. Another large pool retailer, Leslie's Pool Mart, similarly sells the Genesis shock product that is described as fast-dissolving trichloro shock for swimming pools. This product is produced from granular trichloro manufactured by OxyChem. ChemTech, another large pool retailer, sells a super shock quick product, in which the active ingredient is granular trichloro. Thus, there is considerable overlap in the actual use of trichloro and dichloro for swimming pool sanitization, including dichloro use for routine sanitization and trichloro use for shock treatment."

I, also, note that in a previous dumping case involving cyanuric acid and its chlorinated derivatives from Japan -- that was investigation number 731-TA-136, the final, U.S. ITC Pub 1530, that was published in April of 1984 -- the Commission found that "nevertheless, dichloro and trichloro are generally interchangeable as swimming pool disinfectants." That was at page five.

I'd like to hear from both Mr. Abramson and Mr. Balcells on the description given by Clearon and given that we ruled on this back in 1984 and we made the preliminary finding that we did. Tell me how you differ with how the Clearon Corporation has described this. I'll start with you, Mr. Abramson.

MR. ABRAMSON: I really can't really respond to that question on the fact that we go as only concentrated on importing trichloro products. So, my knowledge of dichloro is not sufficient to give you an answer.

CHAIRMAN KOPLAN: Okay. So, in other words, what I read, you don't have a quarrel with that? You don't have a basis to say that it's inaccurate? I'm asking you, Mr. Abramson. I think that's what I just heard.

MR. ABRAMSON: That is correct.

CHAIRMAN KOPLAN: Thank you. Now, Mr. Balcells. I understand that I can ask you questions directly. Is that right?

MR. BALCELLS: Yes.

CHAIRMAN KOPLAN: That's good, because I'm sure Mr. James would like to handle this for you. But, I'd like to hear from you on it. Is your response to me similar to the one I just got from Mr. Abramson?

MR. BALCELLS: In fact, we don't have information about what customers do with the product. This is why in our presentation, we speak -- we were a little bit theoretical.

CHAIRMAN KOPLAN: Theoretical, okay.

MR. BALCELLS: Okay.

CHAIRMAN KOPLAN: All right. Thank you, very much for that.

Mr. Perry, page 33 of the pre-hearing brief of Clearon and Occidental Chemical Corporation states that, "if the Commission does choose to include any tableters or repackers in the domestic industry, particular care should be taken to exclude those entities that are either importers of the subject merchandise or related to importers of the subject merchandise. The representatives of the tableters and repackers appearing at the preliminary staff conference fairly acknowledge their dependence on subject imports for which dumping margins of up to 179 percent for China and 12 percent for Spain were found in the Commerce Department's preliminary determination. To the extent the tableters and repackers are dependent on subject imports and, therefore, derive substantial benefits from those unfairly-traded imports, it would be inappropriate to include those entities within any definition of the domestic industry." And I note that the final dumping margins that just came out were up to 285 percent for China and 24.83 percent for Spain.

Could you respond?

MR. PERRY: Yes. I'd like to go through the legal issue more in the post-hearing brief.

CHAIRMAN KOPLAN: That's fine.

MR. PERRY: But, I do believe strongly that the tableters should be included. They started this industry. They should be here. But, I'll go into detail and address those issues in the post-hearing brief.

CHAIRMAN KOPLAN: I appreciate it. I look forward to that. Thank you.

Mr. Wisla, at pages 16 and 17 of the Chinese respondent's pre-hearing brief, it states that, "there is no dispute that imports of Chinese isos have increased since 2001. The cause of this increase and the percentage magnitude of the increase, however, is not dumping. Rather, the increase is the result of the elimination of an artificial trade barrier that effectively barred Chinese imports into the United States prior to 2001."

I note that the Commission's preliminary opinion at page 19, note 126, specifically states, "we do not find that the lifting of the FIFRA requirement detracts from the significance of the large increase in subject import volume in these investigations."

The first part of my questions is, aren't you simply making the same argument now that the Commission rejected in our preliminary views?

MR. WISLA: Well, if you look -- Ron Wisla from Garvey Schubert.

CHAIRMAN KOPLAN: Yes.

MR. WISLA: When you look at the numbers, although the increase -- percentage increases over 2002 to 2004 are quite large, but they were starting at a base of zero in 2001. So what we're saying is, you know, coming up and saying, oh, 900 percentage, it doesn't make any -- you know, it's meaningless. You should look at, in this case, is the absolute numbers and the absolute numbers have gone up, because, again, they started from zero in 2001. But when you look even in the year of greatest imports, in 2004, importation is not that high, compared to other cases that you guys are familiar with.

CHAIRMAN KOPLAN: Well, I'm just curious. If subject imports have increased solely due to the elimination of an artificial trade barrier, why have non-subject imports not similarly increased?

MR. WISLA: For a large part, and as testified by the tableters here, Chinese imports have largely replaced other foreign sources of imports, such as the Japanese imports and, to some extent, the Spanish imports, and I think that's reflected in the staff report.

MR. PERRY: Chairman Koplan, one thing I

would add is I think this also turns into the difference between the prices. You've heard testimony this morning, I believe, that the prices in Europe are lower than the United States. That's why the U.S. companies have been accused of dumping and found dumping. So, it's interesting to note that even though these FIFRA restrictions were limited, the prices in the United States still remain above the world market level. So, I would suggest to you that even though imports have come in from China in higher volumes, it hasn't had that much affect on price, because it's still not up to the world market level yet.

CHAIRMAN KOPLAN: If you could both expand on that somewhat in your post-hearing submissions, it would be helpful to me. I'd appreciate it.

MR. WISLA: We would be pleased to do so.

CHAIRMAN KOPLAN: Thank you, very much. I see my red light is about to come on. I'll turn to Vice Chairman Okun.

VICE CHAIRMAN OKUN: Thank you. And thank you, again, for all the responses I've heard thus far this afternoon. Mr. Perry, this may just be -- you can be probably responsive in terms of what you were doing for the Chairman with regard to the tableters, but just a couple of things I want to make sure, though, it covered in post-hearing.

One, I understand that -- I mean, we have small business here. We always very much appreciate your participation and if you could work -- continue to work with staff on making sure that the questionnaires are completed as fully as possible, so that we are able to evaluate the data on the tableters. Of course, that would make it very helpful.

MR. PERRY: We will do so. We've already been talking to George at the break on what we can do.

VICE CHAIRMAN OKUN: Okay.

MR. PERRY: And we'll do everything we can.

VICE CHAIRMAN OKUN: Great. And than just in terms of looking, including for Appendix E, as I raised with the Petitioners this morning, the thing that has struck me thus far, and, again, the data has not been complete, is just the wide variation in what's been reported. And so, if you could help put that into context and then if you could take a look at some -- there have been another of recent cases where the Commission has struggled with this issue of who is in the domestic industry, particularly when a portion, such as here, are importers of the subject product may be excluded as related parties. It's been very complicated and it seems to be to present similar issues to what we've seen in a few other cases. So, if you can take a look at what the precedence has been and how you see your case fitting into that, I'd appreciate that, as well.

MR. PERRY: Definitely.

VICE CHAIRMAN OKUN: Okay. Thank you, very much.

And Mr. Reilly, I heard the exchange you had with Commissioner Hillman and Commissioner Pearson with regard to the argument on value. So, I will look forward, as well, on the post-hearing brief to understanding that argument and why we would go that way, as opposed to the other options that would be available on the data that we have. So, I will -- I don't have any further questions on that, at this time.

I wanted to just return briefly -- again, I think, Mr. Hitchens, you had -- we talked a little bit about this. I mean, again, it's about how prices are set in this marketplace and whether it's changed. Because one of the things that has been central, I think, in what you've discussed today is Clearon going to the downstream mass marketers and what affect that's had on prices. Now, your company is a very big player and I'm just trying to, again, understanding, looking at the data that we've collected -- well, maybe I'll put it this way. I'm not sure how to get to that one, because so much information is proprietary here. This is for all of you. Okay, if I look at the conditions for this product and, again, recognizing that when you have a bad weather year, like 2003, that's going to affect it, but you have -- you know, a lot of people seem to be putting in pools. How would you, when you're looking at what demand conditions would be for your product -- let's look at 2004 and then 2005, what you're looking at going forward, and your raw material costs, would you expect in this market to be able to see some prices increases going on? I don't know who that's best put to for Arch, but then I'd like to hear from the tableters, as well.

MR. HITCHENS: Randy Hitchens with Arch. We do see prices rising in the market in the 2005 season. It's inevitable. I mean, when you look at the cost of energy, the cost of doing business, the cost of everything, I definitely anticipate price increasing in the 2005 year.

VICE CHAIRMAN OKUN: What would you have expected in 2004, again, looking at what would you normally look at -- demand conditions in the industry, raw material costs -- what would you --

MR. HITCHENS: Getting into pricing just

really makes me uncomfortable. I really would -- I would love to address any of your questions, but I would prefer to do it in a post-hearing brief.

VICE CHAIRMAN OKUN: Okay, that's fine.

MR. HITCHENS: There are so many variables that go into how you treat it and --

VICE CHAIRMAN OKUN: I understand that this case -- it's complicated asking the questions all day long.

MR. HITCHENS: It just makes me --

VICE CHAIRMAN OKUN: Okay.

MR. HITCHENS: It makes me nervous like I'm avoiding something and I'm not. I just don't feel comfortable with --

VICE CHAIRMAN OKUN: That's okay. Well, for post-hearing, do. But just in terms, again, what I'm asking is what are the fundamentals you would be looking at, what would you have expected in 2004, and how that would be different in 2005, if you didn't expect prices increases in 2004 or even when -- I think it relates a little bit to your argument of Clearon in the beginning of 2003 timetable, but why things were different and what's different in 2005. And, obviously, counsel is aware of those, also, the post-petition issue with regard to whatever is going on currently. So, if you could make sure that that's addressed, as well, I'd appreciate that.

How about from the tableters?

MR. ABRAMSON: Can I make a statement? My name is Frank Abramson.

VICE CHAIRMAN OKUN: Yes.

MR. ABRAMSON: Wego Chemical. From the Chinese side, we see that there are definitely going to be price increases coming down the pike. Economic conditions in China have changed rapidly since 2004. Many of the factories are facing severe energy shortages and are only operating three days a week, when they normally were operating seven days a week. Inland transportation regulations have changed within China, which have caused them to haul less raw materials, at a time increasing the transportation and increasing the cost of raw materials. China, as well, has been affected by the same increases of the cost of oil, as well as many others. And then you have to consider your ocean transportation that's been severely hit, that we keep getting incredible price increases for ocean transportation. And all of this will have a definite impact on the final Chinese cost, which will create it to rise most definitely in the very near future. It's already started to rise.

VICE CHAIRMAN OKUN: And Mr. Abramson, in terms of comparing that with the conditions in 2004, do you see distinctions between the 2004 and 2005, or the same factors?

MR. ABRAMSON: You know, it was a very interesting situation in China. It started just around January 2004. It was like they clicked on a switch and it was right after they came back from their holiday time and we saw Wego chemical imports products -- Chinese products from all across the gamut. We have about 300 different products. And we saw price increases on those products anywhere from 20 to 60 percent in the year 2004 that were related to these energy shortages, new regulations in Chinese, in transportation, increased ocean freight rates for hazardous chemicals. The increases on ocean freight for hazardous chemicals alone represent tremendous increases to our end use of the product. And the raw materials that the Chinese have to buy within China have increased, as well, and these have had a trickle-down effect to severe price increases for end use products in China.

VICE CHAIRMAN OKUN: Any further comments? Mr. Ferentinos or Mr. Jonas, any comments from --

MR. LAX: Price increase --

VICE CHAIRMAN OKUN: -- pricing in 2004 and 2005?

MR. JONAS: I have a comment.

MR. LAX: Well, let me just --

MR. JONAS: Okay.

MR. LAX: Certainly for 2005, we've had to raise prices. There's no question about that. The problem occurs for us in raising prices is that we have lost significant amount of business to our competitors, who are not tableters, but are the domestic sources here. That's the problem we face. I mean, we're having to raise prices and, yet, there are segments of our industry, for whatever strategic reasons they have, are not matching the prices increases that we're forced to raise, because of the new cost of raw materials and labor and all of the things that we're now facing.

VICE CHAIRMAN OKUN: And, again, 2004?

MR. LAX: 2004, we didn't have that same kind of pressure that we're having in 2005. You've got to remember, we start to sell for the 2004 season in November or October of 2003. So, by October, November, we've arranged to have annual pricing from our suppliers and we've offered annual pricing to our customers. So, we didn't see the differential in prices until after this hearing -- I mean, this process occurred, which is sometime in May of 2004.

VICE CHAIRMAN OKUN: Okay. Mr. Jonas, you had a comment?

MR. JONAS: Yes. I was going to say, everyone was expecting a raise, but a small raise. You know, I think everyone --

VICE CHAIRMAN OKUN: And just to make sure, what time table are you talking about now?

MR. JONAS: We're talking about --

VICE CHAIRMAN OKUN: Time period.

MR. JONAS: -- in September of 2004, everyone announced a 12 cent a pound trichloro and 12 cent a pound dichloro raise per pound -- price per pound cost; talking about Oxy, Clearon, Chicoco, where everyone raised that amount. Everyone expected it, because the price of oil is up. Everything is up, like plastics are up. Everyone expected a raise in price. It was passed along. Everyone accepted it. When we got a price of 50 percent, they all looked at me, what is going on; why 50 percent. And what happened is, you know, competition, everyone started positioning themselves and going into other customers. And before I knew it, I wasn't able to raise 50 -- you know, that much money. And it was from different competitors. It wasn't just from Clearon or Oxy. Everyone seemed to have taken advantage of it. Instead of raising a small amount every year and accepting that, there were hogs and decided to go 50 percent.

Well, as soon as the preliminary hearing was approved and my dumping duties were 1.79 percent, within two weeks, everyone raised another 25 cents per pound. Now, is that an immaculate conception or -- I mean, what happened? All of a sudden, they decided that this is what they could do and they did it.

VICE CHAIRMAN OKUN: Okay. Mr. Jonas, you can't see, my red light has come on. But, I appreciate those comments. Mr. Epstein, you didn't have a chance to comment. But perhaps for post-hearing, if you can again, since I'm trying to distinguish what was going on in 2004, I particular, from what I'm hearing about the pressures would be on 2005 and, again, taking into account the petition, I'd very much appreciate those comments. Thank you.

MR. JONAS: Sure.

CHAIRMAN KOPLAN: Commissioner Miller?

COMMISSIONER MILLER: Thank you, Mr. Chairman. Mr. Jonas, if you want to finish your comment -- the only thing I will reassure you is that in hearing after hearing these days, we are basically listening to stories about raw material price increases and what it's doing to companies. So, I understand what you're saying. We're hearing it a lot. It's obviously something affecting much of the U.S. economy.

MR. JONAS: Well, we appreciate a price increase. That's not the issue. The issue is how much.

COMMISSIONER MILLER: Right.

MR. JONAS: And April 15th, Oxy sent out another increase of 15 percent, which they withdrew. Now --

COMMISSIONER MILLER: April 15 of 2000 --

MR. JONAS: April 15, 2005.

COMMISSIONER MILLER: -- 2005.

MR. JONAS: Another 15 percent, okay. And I think the other respondents refused to go along with it. They're waiting for your response. I'm sure within two months, they'll all do the same thing and we'll be up 78 percent, not 50 percent over last year. Now, you know, either they'll regulate one thing or another. I don't care what you decide to do at this point. But, you can't allow these people -- you know, I say these people, Oxy, Clearon, and Chicoco -- to raise at will and expect us to be able to compete. We can't. If you want to control that and, you know, go back to where it was last year and give them the 15 percent increase per year, I accept that. But, what I can't accept is what -- is what's being allowed right now with them.

COMMISSIONER MILLER: Okay. I appreciate

that.

MR. WEXLER: My name --

COMMISSIONER MILLER: Just so you know, we're not -- we don't control any of it. We make our decision about whether imports from --

MR. JONAS: I understand. But, you can't --

COMMISSIONER MILLER: -- China and Spain have injured the U.S. industry. That's the only decision --

MR. JONAS: Well, we're part of the industry.

COMMISSIONER MILLER: -- and then the market goes -- Mr. Wexler, I think you need a microphone.

MR. WEXLER: Can you hear me now?

COMMISSIONER MILLER: Yes.

MR. WEXLER: I just want to add one thing to what Steve Jonas just said. Our increase right now is running around 50 percent this year. But, if you go into the Costcos of the world and the other big-box merchandisers, they're up anywhere from zero -- or some of them are actually less. Costco pricing is actually less this year than it was last year. These are the people and the suppliers to them are your BioLabs of the world. They're raising pricing -- you know, the industry pricing to the repackagers is way up, so they're, you now -- maybe they're entitled to, I don't know. You know, it can say it's a lot to swallow in one year. But, they have not raised their big customers, at least we don't think so, because the big customers haven't gone up.

COMMISSIONER MILLER: Right.

MR. WEXLER: So, I don't think -- I don't think a Wal-Mart is accepting a 35 percent increase.

COMMISSIONER MILLER: Okay.

MR. WEXLER: And if you go into Wal-Mart, they're up about five percent, not even that.

COMMISSIONER MILLER: Right.

MR. WEXLER: Thank you.

COMMISSIONER MILLER: All right. Let me -- I feel the need right now to go back for a few minutes to talk to probably Mr. Hitchens mostly about some of the testimony we heard this morning regarding the Arch, Clearon situation. You know, I've heard your comments this afternoon and I just -- I want to make sure that you either have the opportunity to respond to some things in the post-hearing submission, if you're not comfortable doing it in open session. Either one, I understand.

Let's see, it was the testimony of Mr. Hand this morning, who made the specific comment in his testimony, in the fall of 2002, we were told by Arch that they planned to purchase eight million pounds of trichloro from China for the 2003 season. In your initial testimony this afternoon, I think you said -- or maybe it was in response to a question something like, it wasn't anywhere near eight million. I believe I heard you say something like that. You've acknowledged you were looking to diversify supply. So, again, I'm always looking for that, where the agreement is and where the disagreement is.

MR. HITCHENS: It was nowhere near eight million pounds. I think that we have the numbers of import for that season.

MS. CLARKE: We can supply exact numbers in our post-hearing brief.

COMMISSIONER MILLER: Okay. Well, and to a certain extent, I guess what I'm asking is not what just your actual imports were for that period of time, but you -- you know, much of the disagreement appears to be about what the future held, how much business Arch intended to move away from Clearon, and Clearon's then response to its expectations of what was going to happen. That seems to be -- so, I'm just trying to make sure I understand what everybody thought was going to happen. You know, maybe there are lots of misunderstandings going on here, but whatever.

MR. HITCHENS: I had explained to Clearon all the time that they had to be competitive with what

I considered the normal producers or suppliers of isos, which would have been the Japanese, as well as the U.S. producers, as well as Spain. I'd never asked them to be competitive with the Chinese. I have not done that to any supplier. As proof goes, we went through the season, they were still our dominant supplier for the year. So, we told them we were going to bring in a percentage and it wasn't 50 percent, it was a smaller percentage; that we were never going to take all of our business offshore; that we wanted them to be a primary supplier. And that was very, very clear. I never had that conversation with -- I met with Mr. Hand in November, but all of my discussions on pricing, what our strategy was, what we were looking for was with Noah Erlich, who was president of Clearon. I met Mr. Hand a few times. He was involved in a couple of meetings with Noah. But most all the discussions I had was with the president of Clearon, which was Noah, and he fully understood what it was.

The awkward part of it was, is I knew that they were going -- they wanted to go downstream and that was part of the issue is, you know, what are you going to do. If you're going in competition with us, then it's going to affect my strategy. I mean, you can't forget what you know. I mean, they had tried to hire me to get them into the mass market. I figured, if this is where you're going, I need to know that, because I don't intend to help support somebody to be my next competitor. That's not where I'm going. So, this was all part of the discussion that was going on, at that time.

COMMISSIONER MILLER: Okay. Your comment about that and how you came to be aware of the fact that they were intending to do that, you said it related to some personal -- your own discussions with them about a possible position with them. I think a number of documents have been submitted by different parties here, contemporaneous kind of exchanges. I believe that was the first time that I had heard of anything that suggested, at that point, earlier point in time, Arch was -- I'm not sure if you were working for Arch at that point.

MR. HITCHENS: No, I was not.

COMMISSIONER MILLER: You were not.

MR. HITCHENS: At that time, I was still CEO of ChemLab.

COMMISSIONER MILLER: That you were aware of that move. And so if there's anything else you want to submit to just help substantiate sort of your view of this story and your knowledge of what they were planning and how that entered into your own planning, please do so.

MR. HITCHENS: Sure.

COMMISSIONER MILLER: One other question here. You know, they've pointed to the fact that they were aware that you had sought and received two EPA registrations for Chinese trichloro and I asked questions this morning about both the time line typically for getting that kind of registration. This, I take it, was part of Arch's effort to diversify its sources of supply? When would you have sought these registrations? And perhaps you can give me some understanding of how they fit in with your intentions to diversify.

MR. HITCHENS: In the post-hearing brief, we can supply all the dates.

COMMISSIONER MILLER: That will be fine.

MR. HITCHENS: I'd hate to give you dates that are wrong.

COMMISSIONER MILLER: Sure.

MR. HITCHENS: But, it normally takes nine months to a year to get registrations and I'm not sure exactly how the time line worked. I think we finally got the registrations in May of 2003, I believe, is when registrations came through.

COMMISSIONER MILLER: Okay.

MR. HITCHENS: I'm not positive, if that is correct.

COMMISSIONER MILLER: This information, which, again, I understand is public, shows one of them came in September of 2002 and the other in February of 2003. So, if you'll address that and the issue, in general, in the post-hearing submission, I'd appreciate it.

MS. CLARKE: We will follow up in our post-hearing submission with an exact time line of that.

COMMISSIONER MILLER: Okay. The yellow light is on. I wanted to ask some questions of Mr. Howarth. But, I'll come back to it, if no one else explores some of the issues you've raised regarding trichloro powder. Thank you.

CHAIRMAN KOPLAN: Commissioner Hillman?

COMMISSIONER HILLMAN: Thank you. If I could go just a little bit to this issue of the EPA certifications. There's been some argument made that the domestic prices have fallen because the U.S. market has become more open since 2001, when the EPA testing information could be used without paying the fee. I'm just curious, did the lack of exclusivity for the data result in new certifications from any domestic sources of supply or only imported sources?

MR. FERENTINOS: Only imported sources.

COMMISSIONER HILLMAN: Okay. Because, I'm just trying to understand it, because if it's only imports that get this additional access to the market, it's just not clear to me that this lack of exclusivity then is an alternate cause of injury unrelated to imports. I mean if the only ones that walk through that door are imports, to me, it's still the same issue from the Commission's analysis.

MR. PERRY: But, I think it doesn't -- it isn't because they got it because they were imports. It was because of the price tag. The price tag was so high and the Chinese companies are so small, along with the importers being so small, that they just couldn't afford the up front price. I mean, that was -- that's a barrier. I mean, when you have a very large up front price that you have to pay to become a member of a club -- it's just like if you pay a patent lawyer --

COMMISSIONER HILLMAN: I understand. I mean, the issue for me is this causation issue. I mean, you're arguing that this is an alternative cause of injury, if you will, or an alternative reason why the prices came down. But if the only increased access is for Chinese imports, again, it's hard for me to sort out why that isn't the same cause of injury, in terms of Chinese imports causing prices to go down. Again --

MR. PERRY: Well, remember, the point is

that, again, I would have to go back to the fact that we have testimony on the record that the U.S. price is still above the world market price. Why was it above the world market price? Well, it was even more above the world market price, because of the EPA registrations, which were not present in Europe and not required in other countries. So, this has the effect of inflating the price. So, the point is, I don't know if I would say it was as much -- it's an alternate cause or maybe a condition of competition. But, it certainly has a major impact on the market. And so, you have a huge amount of money you have to put up front to become a player in the market, which stops the smaller companies from getting in.

Now, if there had been a smaller trichloro producer here in the United States, yes, maybe he could have gotten in. These are all major companies. Clearon and Oxy are a hell of a lot bigger than Peter Ferentinos. They make a lot more money.

COMMISSIONER HILLMAN: Mr. Ferentinos, did you want to add something?

MR. FERENTINOS: The reason why no one else but the Chinese entered the market, because there were nobody else but the Chinese to enter the market. There were no other domestic sources for the product. There were no other European sources for the product.

And I don't know of anybody else but the Chinese that could have entered. So, the idea that the Chinese were the only ones was because they were the only ones who were there that have product that can enter the market.

COMMISSIONER HILLMAN: I appreciate that; I appreciate that. Thank you. Mr. Reilly, if I can come back to you on -- not on the same data issue, but I want to make sure I understand the other point that you're making in terms of, that import shipments, you say, should reflect the value of the foreign content; in other words, that we should -- they should be net of any U.S. processing that's occurring.

MR. REILLY: That's correct. For example, net of any tableting that isn't occurring.

COMMISSIONER HILLMAN: All right. I guess, then, I would ask in the post-hearing briefs for you to brief have we ever done that. I mean, obviously, this -- you know, listening to all of this and thinking about what you're describing, you know, this feels much more like a semi-finished product analysis than it does going down the road that you're suggesting, that we go all of a sudden to value data. So, I would ask you to tell me whether we've ever done this. I mean, I'm certainly not aware of our -- I can't think of a case in which we have looked at import shipments and then taken out U.S. production added to it.

But, it also raises the flip side of it. I mean, you all are arguing that you want us to include the tableters in the domestic industry, which, then, does raise the issue of how do we count domestic shipments, if a significant portion of the tableted product is made with imported, subjected imported raw materials. I mean, it, to some degree, raises the flip. I mean, you're telling me I'm supposed to lower down the value of import shipments by taking out the domestic content. And I'm troubled with whether I shouldn't be doing the opposite, as well, on product that is made with imported inputs. And, again, where is the precedent for going down this road?

MR. REILLY: Okay, two points. We will address it, of course, in the post-hearing brief. But, I think it would be incorrect to say that a substantial amount of tableted products sold in the United States is processed from imported granular. That's simply not the case. A vast majority of tableted product that's sold in the United States is produced from granular sold in the United States -- produced in the United States.

COMMISSIONER HILLMAN: All right. I would ask you to address this issue of --

MR. REILLY: Okay.

COMMISSIONER HILLMAN: -- again, both sides of this equation, in terms of your wanting us to make subtraction from import values and I would ask you to also look at whether -- if we're going to think about that, whether we don't need to make comparable adjustments on the domestic side, as well.

Then, if I can -- I guess, Dr. Howarth, if I can come back to you on this issue of the powdered product. I just want to make sure I understand it. Where are you getting the powdered product from now? You're saying there are no -- there are currently no imports into the market?

MR. HOWARTH: That's my understanding, yes.

COMMISSIONER MILLER: So where are you getting the product now?

MR. HOWARTH: I haven't made one pound and sold one pound of my product into commerce. When I was developing this product, I actually had to take tablets and ground them up manually. And I can tell you, it's a pretty touch job.

COMMISSIONER MILLER: Okay. So, there are no imports and there's no commercially-sold product? There's no commercially-sold powder and there are no imports of powder?

MR. HOWARTH: As far as I know. When we

inquired to buy trichloro from the Chinese, it comes in three forms. It comes -- do you want it in granular, do you want it in tablet, or do you want it in powder. We want ours in powder. We have yet to import one pound.

COMMISSIONER MILLER: Okay. And you've yet to import one pound, why?

MR. HOWARTH: The product hasn't gone commercial yet. It will go commercial 2005.

COMMISSIONER MILLER: Okay. Is powder used for other things? Are you -- I mean, again, you strike me as this is the new product, kind of a niche area.

MR. HOWARTH: Yes, it is.

COMMISSIONER MILLER: What else is powder used for, if it's not going into your bromax?

MR. HOWARTH: As far as I understand, Enviro Tech will be the only company, who has a use for trichloro powder in the United States.

COMMISSIONER MILLER: Have you had any discussions with either the Commerce Department or the Petitioners about whether the powdered product is more appropriately removed from the scope of this investigation, as opposed to making a separate like product finding?

MR. HOWARTH: Yes, I have.

COMMISSIONER MILLER: And what was the upshot of that?

MR. HOWARTH: One of the Petitioners refused to supply me powder. Another of the -- BioLab, who is not a petitioner, did supply me some quantities of registered powder for trial basis.

COMMISSIONER MILLER: Okay. But, did you ask them whether they would agree to remove powdered product from the scope of this investigation?

MR. HOWARTH: Yes, I did. I asked both BioLab and --

COMMISSIONER MILLER: Not whether they would supply you, whether they would take this out of the case.

MR. HOWARTH: Yes, I did.

COMMISSIONER MILLER: And what did they say?

MR. HOWARTH: The answer was a rejection and that it would complicate the decision of the Commission, if they were to exempt Enviro Tech from the thimble full of trichloro powder, which we wanted.

COMMISSIONER MILLER: Okay, all right. At least I understand the answer. So, all right, thank you.

Can we go to the issue of the Chinese industry? There is conflicting data in the record about how many Chinese producers are certified to supply the chlorine isos to the U.S. market. Does anybody have a definitive understanding of whether it's three producers, five producers, or how many Chinese producers are currently certified to come into the U.S. market? Mr. Abramson, did you have an answer? Ms. Clark?

MS. CLARKE: I have a very limited answer, unfortunately. The certifications currently are held by the importers rather than the exporters. We have only the one certification.

COMMISSIONER HILLMAN: Okay. Mr. Perry?

MR. PERRY: Peter can say, but I think it's four or five. Again, they are right. The certifications are held by the importers, not the Chinese exporters.

COMMISSIONER HILLMAN: Okay.

MR. PERRY: It's one reason why we argued that there is no threat, because the importers are the ones holding the regulations. The exporters can't just ship willy-nilly.

COMMISSIONER HILLMAN: Okay. Again, even the ones you know of, again, just a list of them to make sure that our understanding and yours are the same, I think, would be useful for --

MR. PERRY: We'll give you a list from our clients as to which registrations we have.

COMMISSIONER HILLMAN: All right. That would be much appreciated. Thank you very much.

THE COURT: Thank you, Commissioner.

Commissioner Pearson?

COMMISSIONER PEARSON: Thank you, Mr. Chairman.

Several of you have indicated that your firms may go out of the chlorinated isos business if an antidumping order goes into effect. Are you arguing that you expect the integrated producers to continue to price aggressively even if an antidumping order is keeping out the low-priced Chinese product? Why wouldn't they allow prices to rise in the U.S. market so that they could make a little more money, and that would have the effect of keeping your firms in business. Am I missing something here?

MR. FERENTINOS: Well, it's not that we would be forced out of the iso market; we would be forced out of the swimming pool market. The three-inch tab is the bellwether of your being able to sell your product line. If you're not price competitive in the three-inch tab, you can't sell to anybody else.

So let us take the case of a Clearon. Clearon can very well be able to sell three-inch tabs at prices that are lower than they will offer raw material to me and yet make it up on all of the ancillary products because they can then sell the ancillary products, which I can't sell. In other words, a buyer of a swimming pool product line is not just buying three-inch tabs; he is buying a whole product line. But the entree into that sale is the three-inch tabs.

So it's not that we would be out of business for the iso market; if we can't have a competitive price for three-inch tabs, you can't be in the swimming pool supply market. That's the way it is, and that's the reason why Clearon can't sell just three-inch tabs. It needs to sell a total product line. In other words, if it was to offer a mass merchant just a three-inch tab, it's very rare that the three-inch tab would be the only product that it would sell.

COMMISSIONER PEARSON: Mr. Jonas?

MR. JONAS: Yes. Again, if the market were to increase 80 percent, I'm okay with that as long as that is where the market is, but when you have BioLabs going downstream, you know, going into the masses and going into my retail outlets because they also supply to the mom-and-pop stores, okay, you have an advantage because now what they can do is -- suppose the price is $1.50 per pound. They can go in and offer something at a dollar and still make money. Going up

50 percent now and possibly 78 percent in the future is absolutely ridiculous because that gives them the advantage to come in under my price to my customers and quote a lower price.

COMMISSIONER PEARSON: Okay. So the argument is that the integrated producers would have sufficient market power that they could make life extraordinarily difficult --

MR. JONAS: Absolutely. Yes.

COMMISSIONER PEARSON: -- for the pelleting firms.

MR. FERENTINOS: And to be truthful, we probably are a detriment to them. They would love to get rid of us, yet we are the ones who created this market, you know. We're in there. If we're out of the marketplace, that's the equivalent of their getting bigger and bigger market share, and, for sure, that's what they want.

COMMISSIONER PEARSON: So you don't envision a situation in which there might be an order put in place on Chinese and Spanish product and that there would be sufficient availability from nonsubject imports such that firms like yours would be able to --

MR. JONAS: No. I'm sorry to interrupt, but 10 years ago, BioLab saw an opportunity, because they got aggressive, they started going into my accounts and offering lower pricing to my dealers to try and get them away from me. I was tied into a certain price, but, you know, my dealers, very fortunately, are very loyal and came back to me, and I had to discount my price, and I was able to get relief from the sources where I was purchasing, fortunately, to cover it, but I had no choice. My customers came to me, told me what they had to pay in order to be competitive, and I had no choice. So we're talking about in the 1990's, this happened. I think it was 1995-1996. BioLab went into my customers to try to get my accounts.

COMMISSIONER PEARSON: Mr. Hitchens?

MR. HITCHENS: Yes. I think part of the question was, if the Chinese were out of the market, is there enough supply? The answer is there is not. Currently, there is absolutely not. It would force people to go back to buying from a competitor like Clearon, but very quickly that tonnage would be sold out.

The only other two producers -- you've got Shikoku in Japan. They are at capacity right now. There is another company in Japan that has withdrawn from the U.S. That's Nissan Chemical. They don't supply anything here. That's basically it. There's no other suppliers to go to.

COMMISSIONER PEARSON: Okay. So you wouldn't expect to see adjustments of trade flows in the world market such that when Chinese product would be excluded from the United States that that would go to serve what's currently being served perhaps by Japanese producers, and the Japanese product would come here.

MR. HITCHENS: I don't see that shift happening.

COMMISSIONER PEARSON: The customer loyalties are too strong?

MR. HITCHENS: I think there's customer loyalties between the basic suppliers and the repackers. Right now, it's just the way the capacity is in the world. There's no new plants coming on. There's no expansions that I've seen other than in the Chinese market. I don't know that there's any more plants being built but what's there. But right now, the Japanese are not expanding. To the best of my knowledge, Oxy is not expanding. The only capacity left in the U.S. is basically Clearon tonnage that we used to take.

COMMISSIONER PEARSON: Let me just ask one more for clarification. Are you, in essence, suggesting that if the order goes into effect, that we would end up with a type of two-tiered market pricing in the United States where the integrated producers would sell finished product at a low price to your customers and sell you intermediate product at a high price so that you can't afford to make the finished product and sell it?

MR. HITCHENS: That's what Clearon has done right now.

MR. FERENTINOS: Exactly.

MR. HITCHENS: That's exactly what they have done. They have gone to our customers with a finished good, and, at the same time, they are raising our price, taking that price down. Absolutely.

COMMISSIONER PEARSON: To what extent is that two-priced reality in the record now? Do we have it documented?

MS. CLARKE: We have the documentation from April of 2003. We will, in our post-hearing brief, provide more documentation on current pricing, to the extent we can.

COMMISSIONER PEARSON: And, Mr. Reilly, you've been wanted to say something?

MR. REILLY: I think it was explained rather well, and I think you described exactly the situation which the tableters are concerned about, and that is the integrated producers having control over the tableters' raw material costs and competing with them in the retail sector with tableted product. It's classic price squeeze.

COMMISSIONER PEARSON: Okay. A specific question for Mr. Howarth. Are there any other countries, nonsubject countries, from which it might be possible to obtain trichlor powder? For instance, can the Japanese make that product?

MR. HOWARTH: I can buy trichlor powder from anyone, as long as it has two characteristics. It's got to be powder. My process won't work with granules, and it won't work with tablets. It's a surface area effect.

The other thing is that powder has go to be unregistered with the EPA. If it comes with a registered letter with the EPA, me and my company are breaking the law.

COMMISSIONER PEARSON: Okay. Have you had discussions with nonsubject producers to see whether such product might be found?

MR. HOWARTH: John Howarth, Enviro Tech. I have not had discussions with any of the nonsubject producers, just one of the Petitioners and one of the companies who support the petition. In both cases, I've been rejected.

COMMISSIONER PEARSON: Okay. Thank you.

As a final comment for the Petitioners, a little while ago, I invited the Respondents to provide longer-term information on price movement so that we might understand the period-of-investigation prices in the context of what had happened before. If you have any information on that that you think might be useful to us, by all means, go ahead and provide it. Given that we've had a different perspective presented this morning than this afternoon, perhaps the prices that you would present would look different, too. I don't know. But if you would like, go ahead and do that.

I have no further questions, Mr. Chairman.

CHAIRMAN KOPLAN: Thank you, Commissioner Pearson.

Mr. Perry, at page 31 of the Chinese Respondents' prehearing brief, it states: "The domestic industry is unable to produce sufficient isos products to meet the growing U.S. consumption for this product." I'm wondering how you reconcile this statement with the data collected by Commission staff regarding U.S. producers' levels of capacity utilization over the period examined.

Now, I'm looking at a couple of things, and, unfortunately, they are BPI. One is Table C-1, as you would imagine, and the other one is Table 3-2 at page 3-6 of the staff report. The contents of the table are BPI, but you would see, in looking at it, where

I'm coming from. The title of the table is "Granular Chlorinated Isos, U.S. Integrated Producers' Capacity, Production, and Capacity Utilization by Types, 2002 to 2004." I'm wondering if you would rather do this post-hearing rather than answer it now, but if there is anything you would like to say to shed some light on that for me now, that's okay, too.

MR. FERENTINOS: I'm going to ask Peter to answer, but, in my discussions with them, this is what I've been hearing. It's gone. I mean, they tried first in Japan. That's almost all bought up totally. Clearon is almost out. Mr. Hitchens just said "out."

Maybe what you're seeing is what they want to show you in their questionnaire responses, but the reality in the marketplace is they are having a heck of a time trying to find product.

MR. FERENTINOS: To give you an example, I have a customer that cannot get product. He has been told by one of the suppliers here that there is no availability of product for him because he is a new user. In other words, they are only selling to people that they have sold in the past. There is no product for anybody that they have sold that comes to them new.

Second to that is that the requirements for when you can get the product is a problem. In other words, product is available in July, August, and September. It does us no good. Product needs to be available today in order for us to tabletize that and put it into a package that is available to a consumer during the swimming buying season. Product that gets to us in July, August, and September is useless to us, so that's the problem.

CHAIRMAN KOPLAN: I hear what you're saying, sir, but, Mr. Perry, if you look at the pages that I cited to you, we do have sources for that data, and perhaps if you get together with staff and --

MR. WISLA: Could I address that?

CHAIRMAN KOPLAN: Excuse me?

MR. WISLA: Would I be able to address that? This is Ron Wisla from Garvey Schubert Barer.

CHAIRMAN KOPLAN: Of course. Absolutely.

MR. WISLA: Looking at the data, and it's also publicly stated, BioLab uses everything that it makes, plus it has to purchase from OxyChem, and it purchases huge amounts from OxyChem. OxyChem; the lion's share of its production is purchased by BioLab, and then it has another huge, long-term contract with one of the pool suppliers. And you can also just look at the capacity utilization on those tables, and you can see that those two companies, as was testified publicly, those two companies have nothing to sell.

The only U.S. producer that has something to sell is Clearon, the only one left, and that's because they (stricken) off their larger supplier.

CHAIRMAN KOPLAN: I think we'll strike a portion of that response from the record, if we could.

MR. WISLA: I'm very sorry.

CHAIRMAN KOPLAN: I'm sure I didn't hear you correctly on that.

Okay. I would still like you to take a look at the table appearing on pages 3-5 and 3-6, and you could join Mr. Perry in giving me a bit more for purposes of the post-hearing on that. Could you do that?

MR. WISLA: Definitely.

MR. FERENTINOS: Yes.

CHAIRMAN KOPLAN: Both of you, together? Thank you.

Mr. Ferentinos, Cadillac Chemical, or any other industry witnesses representing tableters, page 24 of the Chinese Respondents' prehearing brief, in which you joined, states that, and I quote: "Another condition of competition that the Commission must take into account is the impact of summer weather on the isos business. Since the main use of isos in the United States, accounting for over 90 percent of demand, is in pool sanitization, it is not surprising that the weather in the summer months has a dramatic effect on the isos business. It is important to note that 2003 was a poor year for the sale of isos in the United States largely because of a wet-and-cold summer season."

I note that data submitted in response to Commission questionnaires indicates that U.S. consumption by quantity of chlorinated isos was higher in 2004 than in 2003, and I assume that the increase was at least partially due to better weather, referring to a table in our staff report. The table itself is BPI, though. However, I note that the financial condition of the integrated domestic producers declined in 2004 at the same time that consumption increased. Given this trend, how does bad weather explain the poor performance of the integrated domestic industry over the period we are examining?

Mr. Ferentinos?

MR. FERENTINOS: I don't think I can talk about the integrated domestic industry, but I can say that even though --

CHAIRMAN KOPLAN: How about talking about the weather?

MR. FERENTINOS: But even though there is a weather change, there is also a product change. The use of isos has steadily replaced the use of calcium hypochlorite. So we can have, where you have bad weather, and you would normally think that isos would go down, but isos can go up because it's replacing calcium hypochlorite in the use in the pool.

CHAIRMAN KOPLAN: Let me try it this way. Given the trend that I've described, is it fair to say that bad weather does not explain the poor performance of the integrated domestic industry over the period we're examining? I understand you've given me other reasons, but I'm just trying to concentrate on this one facet of it, weather conditions.

MR. EPSTEIN: Andy Epstein, Alden Leeds. I think I can help you with this. You're asking us to provide answers to the poor performance, or alleged poor performance, of the Petitioners.

CHAIRMAN KOPLAN: No. I'm asking because the quote from the Chinese Respondents' brief that I read to you is using weather as a basis for what I've just said, and I'm saying that when I look at our data, it doesn't appear to be the case. So I started on this because of what's in your brief.

MR. EPSTEIN: I don't think that our information indicated that weather was the cause for poor performance or poor profits by the Petitioners. We merely said that weather had to do with how much trichlor or pool chemicals would be sold in the marketplace. You've heard today testimony by some of the Petitioners that, by their own choice, chose the lower prices to meet competition, and that, to me, would be more of the reason for poor performance, not the weather. But the weather does definitely determine the amount of chemical that is sold.

CHAIRMAN KOPLAN: All right. Thank you.

What I'm saying is it's described as a condition to competition in the brief and as a problem. So let me move on to another question. I don't think we're on the same page with this one.

This question is either for Mr. Johnson or Ms. Duff. Page 6-1 of the Commission's staff report states that, and I quote, "urea and natural gas are both inputs into cyanuric acid, which, with further processing, yields chlorinated isos. Prices of both urea and natural gas were higher at the end of 2004 than in 2002." And there are figures, 5-1 and 5-2, cited in that quote from the staff report, and all of that is public.

Petitioners assert, on page 71 of their prehearing brief that "these raw material pricing trends, along with increasing natural gas prices and strong demand for chlorinated isos in the United States, would ordinarily be expected to create conditions for U.S. producers to maintain or even increase prices in line with rising costs."

However, I note that, in fact, U.S. producers' prices have been falling. Could you please respond?

MS. CLARKE: If I could just clarify the question, you want Arch to comment on what is the connection between the input prices for the ingredients into chloro isos versus their final prices?

CHAIRMAN KOPLAN: Right.

MS. CLARKE: My client doesn't manufacture it. They are telling me right now, they don't feel competent to answer this. We can go back and investigate it and try to answer it in the post-hearing brief.

CHAIRMAN KOPLAN: My light is on so perhaps you could look at the transcript, as I posed the question, and see if you can help me out in the post-hearing. That might be the best way to do it.

Vice Chairman Okun?

VICE CHAIRMAN OKUN: Mr. Howarth, I think Commissioner Hillman raised a number of the questions that I was curious about with regard to your situation and why you're here and why you're asking for a separate like product because, again, when I read the brief, and I think about a separate like product, but there's no imports, I'm not sure it gets you where you need to be, but I can understand your frustration if you can't get the product.

So I'm not sure that I have any other questions for you, but I do understand, based on your responses, the difficulty that you feel and the need to be here. So I don't think I have any follow-up on that. I actually think that the other questions I had have been covered or will be covered in the post-hearing briefs, and I look forward to reading them. Thank you, Mr. Chairman.

CHAIRMAN KOPLAN: Commissioner Miller?

COMMISSIONER MILLER: Yes. Mr. Howarth, I guess my only other request won't be to you because I think my colleagues have been asking you some of the questions I might have, but I would pose to the counsel for the Petitioners, if they would respond to the brief and the position arguments that have been made by Mr. Howarth today.

I'll start with the simple question of asking you to brief why is powder in the scope if there are no imports and no commercial production in the United States, and then do the like product analysis, please, but just to brief sort of the commercial issue and why it's in the scope would be helpful, to begin with. And with that, I believe I have no further questions for the panel. I appreciate all of your testimony today. Thank you.

CHAIRMAN KOPLAN: Thank you.

Commissioner Hillman?

COMMISSIONER HILLMAN: Just one more question, if I could, for the post-hearing briefs. You heard a lot of discussion this morning, at least, my trying to understand the relationship between the distributors, the wholesalers, the dealers, the tableters, the repackagers, et cetera. I would only ask, for the post-hearing, if you have any advice as to how you think we should look at the pricing data for the products that we've collected. Should we be separating it in terms of these issues of the levels of trade or channels of distribution, and, if so, how are you suggesting that we should be looking at the price data, if you think we should be doing something different than was done in the prehearing staff report? Is that reasonably clear? All right. If that could be done for the post-hearing, it would be most appreciated. Thank you.

With that, I have no further questions but would join my colleagues in thanking you all very much for your answers. They have been extremely helpful. Thank you.

CHAIRMAN KOPLAN: I see there are no further questions from the dais.

Mr. Deyman, do you have questions of this panel before we release the panel?

MR. DEYMAN: I'm George Deyman, Office of Investigations. The staff has no questions, but I do want to comment, as I did this morning to the Petitioners, that the staff will be contacting each of you that filed a questionnaire response to go over the data and to make sure that the data are complete, consistent, and correct.

I can say that the tableters and other importers have done a good job of filling out their importers' questionnaires, but we need some work on the tableters'/producers' questionnaires, and we will be working with you on that. We beg your indulgence. I know the questionnaires are difficult, but we need your help.

Tableters, if you want to be part of the domestic industry, and the Commission found that you were or should be part of the domestic industry, we would need numbers to fold into the domestic industry, so we need the data from you.

One thing we will be needing from the tableters is the value added when you tablet from a domestically produced, granular product. We need the value added on that. We already asked you, and you gave us, your value added from the imported granular product, but now we need value added from the domestic granular product when you tablet. We'll be in touch with you.

And my last comment is, is there anybody here that imports powder or knows of someone that imports powder, and also, is there anybody here that produces powder?

MR. BALCELLS: Yes. This is Pedro Balcells from Delsa. Aragonesas Delta produces powder and can export it.

MR. NAPOLES: This is Julio Napoles with Occidental Chemical. I have not seen what the specifications are of the powder. We do believe that we are capable of producing the powder, but I reserve judgment or final opinion until we can obtain the specification for that product. Again, I want to emphasize, we believe that we are capable of producing -- we have produced powder. I don't know if it conforms to the gentleman's requirement.

MR. SCHOBEL: Charlie Schobel with --

CHAIRMAN KOPLAN: You need a microphone.

MR. SCHOBEL: Charlie Schobel with BioLab, and we also produce powder. Again, I don't know if the specifications meet what he is looking for, but we do produce powder.

MR. DEYMAN: Do you produce to sell commercially, or is it some sort of intermediate product?

MR. SCHOBEL: We have sold some commercially, not a lot, and we do use it in the production of some of our products.

MR. DEYMAN: Then we will need your volume of production of powder for each of the calendar years for which we requested data in the questionnaires. It may be minimal, but we need it, and we may need even more than that. We'll be in touch. The staff has no further questions.

CHAIRMAN KOPLAN: Thank you for those questions, Mr. Deyman.

Mr. Wood, you have two minutes remaining from your direct presentation. Do you have any questions of this panel before I release the panel?

MR. WOOD: No, we do not. Thank you, Mr. Chairman.

CHAIRMAN KOPLAN: Thank you.

Well, with that, I want to thank all of the witnesses for not only their direct presentation but their responses to all of our questions this afternoon, and I look forward to the post-hearing submissions that we'll be receiving from you all.

With that, this panel is released, and we'll turn to rebuttal and closing. As I said, Mr. Wood, you have two minutes remaining from direct plus five minutes for closing. Do you wish to use the two minutes for rebuttal?

MR. WOOD: If we could use them all together, that would be terrific.

CHAIRMAN KOPLAN: You'll go directly from rebuttal to closing? We need a timer.

MR. WOOD: Yes. That would be fine. Thank you.

CHAIRMAN KOPLAN: Okay. And Respondents? Do I have counsel for the Respondents listening? You've got four minutes remaining from direct plus five minutes for closing. You need it all.

All right. Why don't we start with you, Mr. Wood? You can either do it from the table or come up to the dias, podium, whatever you wish.

MR. WOOD: Thank you, Mr. Chairman. Again, for the record, I'm Chris Wood of Gibson, Dunn & Crutcher.

I know there has been a lot of information thrown at us all today. You've heard a number of varying perspectives offered on the issues that are facing this industry. I would like to just sort of recap for you, if I can, what we think are the key points in the case as we finish up here.

Let me turn, first, to the like product arguments that have been raised, particularly the blended tablet versus the regular or all other chlorinated isos. I will confess, I was very taken with Mr. Schobel's gasoline hypothetical this morning. I think that encapsulates it very well. If you were presented with a case on gasoline, would you actually find that regular unleaded, premium unleaded, and super premium unleaded are three separate like products? Of course, not, and it's the same thing here.

What we have is a blended tablet where you have arguments that small amounts of additives were put in, and that somehow transforms the nature of the product. I don't think that's the case. I don't think it's consistent with the Commission's precedent on like product.

As Mr. Schobel told you this morning, this is principally a marketing issue. If you look at what these tablets are advertised to do, pool sanitization, trichlor does that. Algicide? Trichlor does that, too. A number of companies in this room, including Arch Chemicals, have registrations on pure trichlor as an algicide. Their label for pure trichlor says that it kills algae. There is no substantial difference here.

And with respect to the clarifier, again, if you use the trichlor as it's intended, that's going to keep your pool perfectly clear, and if you have an extremely cloudy pool, conversely, that's not going to be cleared up simply because you put a blended tablet into your pool filter.

Now, the other issue that the Commission addresses in terms of separate like products is price, and, of course, I can't go into the BPI data, but I can give you one anecdote.

Last Sunday, in my local newspaper, I got a Wal-Mart circular, and it showed the HTH Pace, blended tablets on sale at my local Wal-Mart for $44.99, and I thought, that's interesting, and I went down to the Wal-Mart to see if I could find that product. They didn't actually have it. They didn't have it. They had an AquaChem pail instead. Mr. Schobel will be pleased to hear that. They had the AquaChem pail instead, which is a BioLab product, and it was regular trichlor, not blended, regular trichlor, $53.99. I know we've heard the arguments about a price premium today. I didn't see it in my local Wal-Mart. I don't think you're going to see it in the record.

Let me talk for a moment about the relationship between Arch and Clearon because, obviously, we've heard a lot about that as well. I want to start with what Arch said in their brief about this. I'm quoting from page 19 of Arch's brief where they say, in discussing the price increase that Clearon attempted to put through in April 2003: "Arch immediately began to develop alternative sources of supply when it determined that Clearon would not budge on the price increase."

There is a footnote there that says that Arch had generally supplied all, or nearly all, of its trichlor needs from Clearon. Arch had qualified or begun the process prior to April 2003 just in case.

How would you read that in the ordinary course? That sounds a lot like what Mr. Hitchens said this morning, that, boy, when your 100-percent supplier pushes through a price increase on you, what do you do? Well, a couple of points that I think are important to note on that.

One is that they were not a 100-percent supplier to Arch, by any means, when that price increase was put through. We have put the information in the record. There is PIERS data that shows that they were importing millions of pounds before any effect of the Clearon price increase could have come through to them. They had registrations in the works for months and months before Clearon ever put any kind of price increase through to them.

We have a number of contemporaneous documents on this. We've given you some. We'll give you more in the post-hearing brief.

And let's talk about that price increase for a second. Those are real costs that we're talking about. As Mr. Hand testified this morning, urea prices went up dramatically, suddenly. Those are real costs on Clearon and everyone else in the industry. They have got their largest customer that has already told them that they are going to shift very significant volumes to China.

What are they supposed to do, just eat that cost? Those are real costs. Someone is going to have to bear that loss. Arch, obviously, would prefer that Clearon bear the entirety of it, but that's not fair, and there is no obligation for them to do that.

With respect to the selectivity of that price increase, I know we heard that testimony this morning, but that's just wrong. That price increase was put through to every Clearon customer, and we will document that in the post-hearing brief as well.

The other point I want to make on the Clearon issue is when Clearon began approaching mass merchants. We heard a lot about that today, how it's intolerable that our supplier could go out there and compete for business with us.

Well, the time Clearon approached its first mass merchant it ever approached was in the second half of 2003 after, one, Arch was buying no product from them at all at that time; and, two, they had already told them they weren't interested in buying for the 2004 season, and Mr. Hitchens conceded that Clearon's approach to mass merchants had not cost them any sales at all at this point. The only thing I heard in the testimony was that Clearon had taken a small quantity away from BioLab, one customer, and we would be happy to give you as much documentation on those sales as you would like.

In the meantime, I will say that this shift to Chinese material seems to have worked out very nicely for Arch. They announced, just two days ago, I think, in their quarterly earnings call, that their sales are dramatically up for the pool business and that they are taking share, so that's where we are.

So there's definitely two different stories here, but I think, if you look to the record information, what the pricing data shows, and when these registrations came into effect, and when the imports began, that the kernel of truth that you mentioned, Commissioner Miller, is going to be on our side.

But there is a lot more to this case than the Arch-Clearon relationship. We have a totality of a record that shows significant injury to the domestic industry. This was a healthy industry just a few years ago. Now, there are very significant operating losses. There are reduced employment, lost sales and revenues. All of this has come at the same time that imports are increasing, that costs are rising for raw materials and energy inputs. This is unsustainable for the domestic industry.

The commercial strategies have not been the issue here. OxyChem reduced their prices to keep volume; they have lost money. Clearon, they tried to maintain prices; they lost their biggest customer. BioLab, you heard this morning, they are losing sales on price in their key mass-market accounts.

What this case is about is the unfairly traded imports and the impact on the domestic industry. That's the issue. I know I've just got a couple of minutes remaining.

CHAIRMAN KOPLAN: No. Actually, you've got a little less than that.

(Laughter.)

MR. WOOD: Okay. Well, just on the points -- oh, darn.

CHAIRMAN KOPLAN: See what I mean?

(Laughter.)

CHAIRMAN KOPLAN: Thank you very much.

MR. WOOD: Thank you.

CHAIRMAN KOPLAN: We'll now turn to Respondents.

REBUTTAL/CLOSING REMARKS BY RESPONDENTS

MS. CLARKE: Good afternoon one more time. This is Peggy Clarke for Arch.

One thing I want to address right now was just stated about Arch's sales up. Arch's sales in the pool business are up, but this is due to their purchase of the Avecia Pool and Spa business. They bought another company.

Now, I want to turn briefly to the statement -- the concerns about the price decline from 2003 to 2004. There are several points to answer here. One, there is no one cause. First, prices had been declining, as you heard, since 1986. Second, Clearon was trying to break into the market. That put price pressures, whether they were successful or not, we understand that, but they were, and it does put price pressures on.

Finally, to answer the chairman's question about the effect of weather, the poor weather in 2003 built up inventory at the exact same time they were negotiating the prices and the purchases for pool season 2004, which is done before you know what the weather is going to be for that year. That puts pressure on prices as well. You had an inventory that had to be sold.

Finally, we wanted to note that you still have the pursue from, as you said, the mass merchandisers. It was there before the POI, but it is there now as well, to push down prices. As you heard from Mr. Hitchens, Clearon, in particular, was going in and pushing at the most vulnerable point, the club -- stores.

These all combined to have an effect of driving down prices.

With that, I will rest our rebuttal and leave it for the others.

REBUTTAL/CLOSING REMARKS BY PETITIONERS

MR. JAMES: This is Dennis James on behalf of Delsa. Since Mr. Balcells got only one question from the Commission, he is feeling a bit left out, and that's exactly what we're asking you to do for your final determination.

CHAIRMAN KOPLAN: (Laughter.)

MR. JAMES: Spain doesn't belong here. All of the testimony was about China. Spain is an afterthought. Spain is here solely because of mandatory cumulation, and you can solve that problem by finding threat, which we believe there is, and by not cumulating Spain. Thank you.

MR. WISLA: Ron Wisla from Garvey Schubert Barer. I just want to review again the price issues.

The administrative record and the testimony today show that the prices for this product were declining by over 50 percent in the years before the Chinese ever entered the market. Since the Chinese have entered the market, prices have continued to go down, but, again, you cannot put it all at the foot of the Chinese because, as we heard testimony, the U.S. domestic industry has been competing against each other, especially at the mass market and the club stores.

We still note that U.S. prices are still higher than world prices. There is testimony of that in the administrative record, export prices, and also there is a European community finding that the U.S. has been dumping into Europe, which means that U.S. prices are higher than their export prices to Europe.

So we don't think that the pricing declines -- and also there is information in the administrative record that is very clear into this case as compared to other cases before you. It's nearly unanimous that there are significant and substantial, nonprice and nonquality attributes that are way in favor of the domestic industry. They are superior in nearly every aspect that the Commission measures. So I think that pricing should not be considered significant in this case.

Also, just to finish up, on behalf of the tableters, we think the administrative record shows that they are part of the domestic industry by the usual standards that you apply and also just by the history and the facts of this case. They are clearly part of the domestic industry.

And because of the nature of the competition in this industry, it cannot be expected that these tableters are supposed to buy product from the people that they are competing against. In fact, for the last 10 years, they have been purchasing mainly imports from nonsubject countries, and only in the last couple of years have they been shifting to Chinese exports and, to some extent, Spanish exports.

So the tableters have not been harming the domestic industry. I think the administrative record supports a negative determination in this case. Thank you.

CHAIRMAN KOPLAN: Thank you. I take it, that concludes the Respondents' rebuttal and closing.

Post-hearing briefs, statements responsive to questions and requests of the Commission, and corrections to the transcript must be filed by May 12,

2005. Closing of the record and final release of data to parties is May 26, 2005, and final comments by May 31, 2005.

I would like to thank everyone who participated in today's hearing. It's been extremely helpful. This hearing is adjourned.

(Whereupon, at 4:52 p.m., the hearing was adjourned.)

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CERTIFICATION OF TRANSCRIPTION

TITLE: Chlorinated Isocyanurates from China and Spain

INVESTIGATION NO.: 731-TA-1082 & 731-TA-1083 (Final)

HEARING DATE: May 5, 2005

LOCATION: Washington, D.C.

NATURE OF HEARING: Hearing

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

DATE: May 5, 2005

SIGNED: LaShonne Robinson
Signature of the Contractor or the Authorized Contractor's Representative
1220 L Street, N.W. - Suite 600
Washington, D.C. 20005

I hereby certify that I am not the Court Reporter and that I have proofread the above-referenced transcript of the proceeding(s) of the U.S. International Trade Commission, against the aforementioned Court Reporter's notes and recordings, for accuracy in transcription in the spelling, hyphenation, punctuation and speaker-identification, and did not make any changes of a substantive nature. The foregoing/attached transcript is a true, correct and complete transcription of the proceeding(s).

SIGNED: Carlos Gamez
Signature of Proofreader

I hereby certify that I reported the above-referenced proceeding(s) of the U.S. International Trade Commission and caused to be prepared from my tapes and notes of the proceedings a true, correct and complete verbatim recording of the proceeding(s).

SIGNED: Renee C.M. Katz
Signature of Court Reporter