

UNITED STATES  
INTERNATIONAL TRADE COMMISSION

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In the Matter of: )  
 )  
SODIUM HEXAMETAPHOSPHATE ) Investigation No.:  
FROM CHINA ) 731-TA-1110 (Final)

REVISED AND CORRECTED COPY

OPEN SESSION

Pages: 1 through 291 (with excerpts)

Place: Washington, D.C.

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In the Matter of:                                    )  
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 SODIUM HEXAMETAPHOSPHATE                    ) Investigation No.:  
 FROM CHINA                                        ) 731-TA-1110 (Final)

Tuesday,  
 January 24, 2008

Room 101  
 U.S. International  
 Trade Commission  
 500 E Street, SW  
 Washington, D.C.

The hearing commenced, pursuant to notice, at  
 9:30 a.m., before the Commissioners of the United States  
 International Trade Commission, the Honorable DANIEL R.  
 PEARSON, Chairman, presiding.

APPEARANCES:

On behalf of the International Trade Commission:

Commissioners:

DANIEL R. PEARSON, CHAIRMAN (presiding)  
 SHARA L. ARANOFF, VICE CHAIRMAN  
 DEANNA TANNER OKUN, COMMISSIONER  
 CHARLOTTE R. LANE, COMMISSIONER  
 IRVING A. WILLIAMSON, COMMISSIONER  
 DEAN A. PINKERT, COMMISSIONER

## APPEARANCES (continued):

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WILLIAM R. BISHOP, HEARINGS AND MEETINGS  
COORDINATOR

Staff:

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PHILIP STONE, INDUSTRY ANALYST  
CRAIG THOMSEN, ECONOMIST  
JOHN ASCIENZO, ACCOUNTANT/AUDITOR  
ROBIN TURNER, ATTORNEY  
GEORGE DEYMAN, SUPERVISORY INVESTIGATOR

APPEARANCES (continued):

SECTION 1: PETITIONERS' PUBLIC PRESENTATION  
(Open to Public)

In Support of the Imposition of Antidumping Duties:

On behalf of ICL Performance Products, LP, and  
Innophos, Inc.:

ANGIE SCHEWE, Business Director, Industrial  
Phosphates, ICL Performance Products, LP

NANCY STACHIW, Director, Technical Service  
and Applications, ICL Performance Products, LP

HEATHER K. LUTHER, Vice President and General  
Counsel, ICL Performance Products, LP

TIM J. TREINEN, Vice President, Performance  
Chemicals, Innophos, Inc.

WILLIAM FARRAN, Vice President and General  
Counsel, Innophos, Inc.

RUSSELL KEMP, Vice President, Research and  
Development, Innophos, Inc.

JAMES McDONNELL, Business Manager, Innophos, Inc.

Of Counsel:

JAMES R. CANNON, JR., Esquire  
FRANCISCO J. ORELLANA, Esquire  
DEAN BARCLAY, Esquire  
William Mullen  
Washington, D.C.

APPEARANCES (continued):

SECTION 2: RESPONDENTS' PUBLIC PRESENTATION  
(Open to Public)

In Opposition to the Imposition of Antidumping Duties:

On behalf of The Procter & Gamble Company (P&G):

A. MATTHEW SMITH, Senior Purchasing Manager, P&G

Of Counsel:

ARTHUR J. LAFAVE, III, Esquire  
Lafave Associates  
Washington, D.C.

On behalf of Hubei Xingfa Chemical Group Company, Ltd.  
("Xingfa")

Of Counsel:

JEFFREY S. NEELEY, Esquire  
ROBERT D. STANG, Esquire  
Greenberg Traurig, LLP  
Washington, D.C.

SECTION 3: RESPONDENT XINGA'S IN-CAMERA PRESENTATION  
(Closed to Public)

SECTION 4: PETITIONERS' IN-CAMERA PRESENTATION  
(Closed to Public)

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CLOSED SESSION: 211 - END

P R O C E E D I N G S

(9:30 a.m.)

CHAIRMAN PEARSON: Good morning. On behalf of the U.S. International Trade Commission, I welcome you to this hearing on Investigation No. 731-TA-1110 (Final) involving Sodium Hexametaphosphate from China.

The purpose of this investigation 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.

As an initial matter, I would note that the Commission has granted, in part, a request from Respondent Xingfa to hold a portion of this hearing in camera. We will begin with public presentations by Petitioners and Respondents, including questioning by Commissioners. We will then have a 10-minute, in-camera session by Respondent Xingfa followed by a 10-minute, in-camera rebuttal presentation by Petitioners, if so desired. Only signatories to the administrative protective order will be permitted in the hearing room during the in-camera sessions. Following the in-camera presentations, we will resume with public rebuttal and closing remarks. For anyone who isn't sure what this means, late in the afternoon,

1 we're going to go into closed session.

2 Notice of Investigation for this hearing,  
3 list of witnesses, and transcript order forms are  
4 available at the public distribution table.

5 I understand the parties are aware of the  
6 time allocations. Any questions regarding the time  
7 allocations should be directed to the secretary.

8 Parties are reminded to give prepared  
9 testimony to the secretary. Please do not put  
10 testimony directly on the public distribution table.

11 All witnesses must be sworn in by the  
12 secretary before presenting testimony.

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

17 Madam Secretary, are there any preliminary  
18 matters?

19 MS. ABBOTT: No, Mr. Chairman.

20 CHAIRMAN PEARSON: Very well. Let us  
21 proceed with opening remarks.

22 MS. ABBOTT: Opening remarks on behalf of  
23 Petitioners will be by James R. Cannon, Jr., of  
24 Williams Mullen.

25 CHAIRMAN PEARSON: Good morning, Mr. Cannon.



1 Welcome back.

2 MR. CANNON: Good morning. Thank you.

3 The evidence that you have has been  
4 carefully and thoughtfully put together in a staff  
5 report in this record establishes that dumped imports  
6 of SHMP from China are causing material injury.

7 First, look at the volume of imports. It is  
8 significant and increasing. It is significant, both  
9 absolutely and relative to the consumption and U.S.  
10 production. So in terms of the statute, the first  
11 statute criteria is satisfied. Indeed, imports are  
12 increasing over the period of investigation and in the  
13 interim period. They are present in every segment of  
14 the market. They are present at every customer  
15 account. The sheer size of the imports in this case  
16 tells you that imports have displaced domestic  
17 producers in the market.

18 The Chinese imports, secondly, are  
19 underselling domestic producers' prices. The margins  
20 of underselling go from four to 51 percent. The staff  
21 report indicates that, in the 60 quarters in which  
22 they collected data, imports undersold domestic  
23 producer prices in 57 out of 60 quarters. There is  
24 overwhelming evidence that imports are priced below  
25 domestic producer prices.

1           As a result, at specific accounts, domestic  
2 producers were forced to reduce their prices, and, in  
3 that instance, there was price depression.

4           In addition, overall, on average, domestic  
5 producers' prices are suppressed. They are unable to  
6 obtain needed price increases. In fact, the U.S.  
7 industry, over the last four years, has essentially  
8 closed two plants, one producer, NALCO, has left the  
9 industry. Another producer, ICL, has closed one of  
10 its two plants. The remaining two operations still  
11 suffer from persistently low prices. They are unable  
12 to earn adequate profits.

13           During this time, demand has been stable,  
14 and so the agent that has caused this situation that  
15 forces domestic producers persistently to lose money  
16 is the rising market penetration by the Chinese  
17 imports.

18           Now, since the preliminary decision by the  
19 Commerce Department in September, imports have  
20 dropped. Domestic producers already, at some  
21 accounts, have increased their prices. They have  
22 already contracted at other accounts to increase their  
23 volume for next year. Innophos has announced a 15-  
24 percent expansion of its capacity.

25           So, in this case, you can already see what's

1 going to happen with an antidumping duty order in  
2 place, and that tells you that the fact that the  
3 domestic industry has already improved so quickly  
4 after conditions of unfair trade are stopped, what  
5 that demonstrates is that the domestic industry, in  
6 fact, was affected significantly by imports throughout  
7 this period. In other words, there is causation, and  
8 that's basically the argument presented by the Chinese  
9 and their counsel.

10 Their essential argument is that there is no  
11 causation because prices are increasing. True, on  
12 average, prices are increasing, but they are not  
13 increasing fast enough.

14 Secondly, they argue, the market is  
15 segmented. True, the market is segmented, but the  
16 Chinese imports are in every segment at every account.

17 Thirdly, they argue, the U.S. producers  
18 tried different strategies. In fact, they did try  
19 different strategies. They tried to cut price and  
20 gain volume. It didn't work. They tried to hold  
21 their price so they could make money. It didn't work.  
22 No strategy worked.

23 Persistent inadequate returns. For these  
24 reasons, that the material injured suffered throughout  
25 the period of investigation is, in fact, by reason of

1 the dumped imports, and, therefore, we ask you to  
2 issue an affirmative determination. Thank you.

3 CHAIRMAN PEARSON: Thank you, Mr. Cannon.

4 MS. ABBOTT: Opening remarks on behalf of  
5 Respondents will be by Jeffrey S. Neeley, Greenberg  
6 Traurig.

7 CHAIRMAN PEARSON: Good morning, Mr. Neeley.  
8 Welcome back.

9 MR. NEELEY: Thank you very much. I'm glad  
10 to be here. I am Jeffrey Neeley of the law firm of  
11 Greenberg Traurig, and I'm joined here this morning by  
12 my colleague, Robert Stang from Greenberg Traurig. As  
13 part of our group, there is also testimony by the  
14 people from Procter & Gamble, represented by Arthur  
15 Lafave.

16 I am glad that Mr. Cannon has pointed out  
17 that the case here today needs to be about more than  
18 anecdotes because we agree with that. We believe that  
19 the data show that there is no causal connection  
20 between imports found to be sold at LTFE and the  
21 condition of the U.S. industry.

22 What we find, from the data that the staff  
23 has very ably collected, is that while the products  
24 may be fungible here on a physical level, plainly,  
25 there are very different market segments, and pricing

1 is not the crucial condition of sales in this market.

2 First of all, the staff report shows that  
3 there are other factors than pricing that are  
4 extremely important. I think the staff did a very  
5 good job of collecting data and has presented that in  
6 the report.

7 Number two, data on pricing from the  
8 domestic industry's own questionnaires responses show  
9 this. Specifically, they show that there are large  
10 and continuing price differences for the same product  
11 among U.S. producers, which would not be the case if  
12 price were the be-all and end-all of decision-making  
13 with regard to product selection.

14 Thirdly, there were very significant price  
15 rises of the Chinese product, price rises from the  
16 years 2004 to 2006. We chose those years because we  
17 thought that they gave the domestic industry its best  
18 shot. And they showed that the market shares are  
19 simply not going in the direction of these extreme,  
20 rising prices from the Chinese side.

21 Really, this whole story is not surprising  
22 when we realize that the sodium Hex is, in fact, a  
23 very small part of most of the end products. So  
24 pricing, really, in our view, is not the critical  
25 element. Other things, which the staff has found, are

1 much more important.

2           Once one realizes that prices are not  
3 driving everything, really, the rest of the data begin  
4 to make sense. It explains why the prices for the  
5 Chinese products can be rising much more sharply than  
6 the domestic prices, yet market shares are going in  
7 the opposite direction. It explains how financial  
8 conditions of U.S. producers could be declining in the  
9 face of sharply rising prices from China and that the  
10 U.S. producers have simply not been able to take  
11 advantage of these opportunities.

12           In short, what we see is that trends of  
13 pricing, market share, and financial performance are  
14 very disjointed in this case. They are not pointing  
15 in the direction that the Commission typically sees in  
16 injury cases. We believe the same is true with regard  
17 to threat, and we'll also address those issues during  
18 our main presentation.

19           Thank you for your time, and we'll go into  
20 more detail, and I expect we'll have a lot of  
21 questions from you. Thank you.

22           CHAIRMAN PEARSON: Thank you, Mr. Neeley.

23           MS. ABBOTT: Will witnesses in Petitioners'  
24 public presentation, Panel 1, please come forward and  
25 be seated? All witnesses have been sworn.

1 (Pause.)

2 CHAIRMAN PEARSON: Welcome again, Mr.  
3 Cannon. Are you running this show?

4 MR. CANNON: It appears. Actually, I think  
5 you're running the show.

6 CHAIRMAN PEARSON: We get to sit here and  
7 watch. Please proceed.

8 MR. CANNON: We'll commence with the  
9 testimony of Russell Kemp.

10 MR. KEMP: Good morning. My name is Russ  
11 Kemp. Since August 2007, I've been the vice president  
12 of research and development for Innophos, Inc. Prior  
13 to that time, I was business manager for several  
14 products in our phosphates business, most recently,  
15 SHMP and some other sodium phosphates.

16 I've been in the phosphates business with  
17 Innophos's predecessor company since 1998, and, prior  
18 to that, I held various manufacturing positions with  
19 Rhône-Poulenc, another predecessor to Innophos, in  
20 Wyoming and Texas.

21 This morning, I would like to address the  
22 product, the production process, and some of the  
23 factors our customers consider when deciding whether  
24 to purchase SHMP. So, first, let me describe the  
25 product.

1           Chemically speaking, SHMP, or, in our  
2 shorthand, "Hex," is a water-soluble, polyphosphate  
3 glass that consists of a distribution of polyphosphate  
4 chain links. It is usually sold as a white, powdery  
5 solid, and, unlike other sodium phosphates, is  
6 infinitely soluble in water.

7           This characteristic sets it apart from other  
8 phosphates and helps explain why it is a superior  
9 product in several applications.

10           Hex is produced by mixing phosphoric acid  
11 and a sodium source, either soda ash or caustic soda.  
12 That combination of ingredients produces a mixture, or  
13 slurry, that is mostly monosodium orthophosphate,  
14 which is then fed continuously into a high-temperature  
15 furnace, which is maintained between 800 and 1,100  
16 degrees Celsius.

17           Innophos's furnace is heated with natural  
18 gas, and I suspect this is true in general. In the  
19 furnace, the water is boiled off to form molten SHMP,  
20 which is cooled rapidly to produce thin plates similar  
21 to a sheet of glass. While these plates can be sold  
22 and used as is, most material is crushed, milled, and  
23 screened to specification.

24           After screening, the product will appear to  
25 be granules or a white powder, depending on the



1 particle size. The material is then packaged for  
2 shipment and sold directly, both to end users and  
3 through distributors.

4 You will see in front of you a table with  
5 several items on it. To your right are samples of  
6 sodium hexametaphosphate produced by both Innophos and  
7 by ICL. If you get a chance to look at these during a  
8 break, you'll be able to see how the particle size  
9 differs. These differences can be important to our  
10 customers who require a specific particle size,  
11 depending on their application and process.

12 After the Hex is produced and packaged, a  
13 chemical analysis is performed on each lot. This  
14 information is certified by our laboratory and  
15 accompanies the product when it is shipped.

16 We also have two copies of certificates of  
17 analysis, or "C of A," in industrial shorthand, for  
18 your examination. I recognize this is almost  
19 impossible to read, but on the left is a food-grade,  
20 or FCC, certificate of analysis. On the right is a  
21 technical grade.

22 In printed form, you'll notice that, among  
23 other things, we certify Hex to have a specific  $P_2O_5$   
24 content. Hex with a minimum of 65 percent  $P_2O_5$  is  
25 called "regular chain," and Hex with a minimum of 68

1 percent P<sub>2</sub>O<sub>5</sub> is called "long chain." These are both,  
2 by the way, regular chain.

3 In our process, regular chain Hex will tend  
4 to have an average chain length of about 11, and long  
5 chain will average out to a chain length of 19. In  
6 any particular lot of Hex, the average chain length  
7 may vary somewhat from these targets. In addition,  
8 there may be some variation in how narrow the chain  
9 length distribution is around the average.

10 To vary the average chain length, we adjust  
11 two aspects of the production process.

12 First, when the phosphoric acid and soda ash  
13 are mixed, we can change the ingredient ratio.  
14 Slightly more phosphoric acid relate to the soda ash  
15 will allow us to produce a longer chain length.

16 Second, we must also change how long the  
17 mixture remains in the furnace. In general, the  
18 material must remain in the furnace longer in order to  
19 produce a longer chain length.

20 So, by varying the ratio of raw materials  
21 and the furnace residence time, we could, in theory,  
22 produce any average chain length.

23 The main attribute of a longer chain length  
24 is that Hex will take longer to hydrolyze, or, in  
25 plain English, break down, once it is added to water.

1 So if the end user has an application in which the Hex  
2 must remain in solution for a long period of time,  
3 such as in a beverage, long chain SHMP is likely to be  
4 appropriate.

5 Long chain, however, costs more to make and  
6 sells for a higher price. Most customers, therefore,  
7 will use regular chain.

8 In addition to the  $P_2O_5$  content, or chain  
9 length, the food-grade C of A also shows contaminant  
10 levels. The food chemicals codex, or "FCC,"  
11 establishes maximum levels of impurities, such as  
12 insoluble substances: arsenic, fluoride, and lead.  
13 In the case of technical-grade SHMP, our certification  
14 does not specify levels for these parameters.

15 At Innophos, we operate our Waterway plant  
16 in South Chicago under identical conditions to produce  
17 both technical grade and food grade; that is, for the  
18 most part, SHMP produced from our plant is identical,  
19 whether the package ultimately says food grade or  
20 technical grade.

21 To produce either of these, we employ good  
22 manufacturing practices, or, more industry shorthand,  
23 "GMP." These practices ensure, for example, that no  
24 outside contaminants can get into the product during  
25 the production process. We also test the product for

1 quality and purity at various points in the process.

2           There are two main differences between the  
3 two grades, however.

4           First, we have a more rigorous GMP program  
5 for food production.

6           Second, we test every lot of food-grade Hex  
7 in our laboratory to ensure that the product meets the  
8 standards for contaminants, such as arsenic or lead.  
9 We do not need to perform these tests, though, for  
10 technical-grade Hex, which is sold into markets that  
11 do not require food grade.

12           Both drinking water and toothpaste, for  
13 example, could incorporate technical-grade Hex because  
14 the dosage is so low that any impurities, as consumed,  
15 would be vanishingly small. However, as the consumer  
16 of both water and toothpaste, I personally feel better  
17 that the Hex we sell into those markets does routinely  
18 meet that specification.

19           Hex is generally purchased by end users for  
20 one of two reasons. In some applications, such as  
21 municipal water treatment, it functions as a  
22 sequestering agent. This means that Hex will form a  
23 strong bond with troublesome metals and minerals found  
24 in water. As a result, Hex will hold iron, calcium,  
25 manganese, and other minerals in solution, reducing

1 off-color water and preventing solids from building up  
2 in municipal distribution networks.

3 In other applications, such as Kaolin and  
4 clay processing, Hex functions as a dispersant. This  
5 means that it will disperse the clay particles more  
6 uniformly throughout the slurry. Hex prevents the  
7 clay particles from clumping, and lowers the viscosity  
8 of the processing solution. Therefore, a Kaolin  
9 producer is able to pump the slurry more easily, using  
10 smaller-diameter piping and lower-horsepower pumps to  
11 move the slurry over longer distances.

12 In beverages, Hex has significant  
13 sequestering functionality. SHMP will bind with  
14 calcium, magnesium, and other minerals. As a result,  
15 any bacteria that could be introduced into the  
16 container would not be able to use those minerals and  
17 nutrients. In this manner, Hex can be thought of as  
18 an antimicrobial agent.

19 In other food applications, Hex is used to  
20 prolong shelf life, increase moisture retention, or  
21 improve the appearance of meat, seafood, and poultry.

22 SHMP is different from other sodium  
23 phosphates because of its high solubility and the two  
24 important functions of sequestration and dispersion.  
25 Other phosphates, such as sodium tripolyphosphate, or

1 "STPP," are less useful for those applications I've  
2 just described either because they are not as soluble  
3 or must be added at higher levels.

4 In fact, applications for SHMP and other  
5 phosphates generally do not overlap, and the  
6 substitution of Hex by other phosphates would not  
7 work.

8 Thank you for your attention. At this  
9 point, I would like to turn over the microphone to  
10 Nancy Stachiw.

11 MS. STACHIW: Good morning. My name is  
12 Nancy Stachiw. I'm the director of technical service  
13 and applications research for ICL Performance  
14 Products, LP. I've spent 20 years in the phosphate  
15 industry since I started with Monsanto in 1987.

16 Currently, I manage 15 food scientists,  
17 engineers, and chemists who staff are technical  
18 service department. We look for new uses for SHMP and  
19 assist our customers to use SHMP in their products.

20 We also obtain and analyze our competitors'  
21 SHMP.

22 I'm here today to talk about the  
23 applications and the end users of SHMP. I should  
24 emphasize, first, that SHMP is generally  
25 interchangeable, regardless of the manufacturer. It

1 is rare for us to avoid competition from Chinese SHMP  
2 as a result of a technical or quality issue. In fact,  
3 the major importers of Chinese SHMP have their own  
4 technical service staff. They will work with  
5 customers in the same way that we do to meet customer  
6 specifications or work with the customer to change the  
7 specifications to accommodate their product.

8 As Russ just explained, there are generally  
9 three different factors that are important to end  
10 users, although, for a large number of users, even  
11 these factors are not particularly important.

12 First, for a few users, chain length is an  
13 important issue. Generally speaking, a higher chain  
14 length translates into better sequestration and longer  
15 shelf life in the product. So, for example, users in  
16 the beverage industry that are seeking longer shelf  
17 life and antimicrobial effects may specify long-chain  
18 SHMP. Long chain will have a longer stability before  
19 it breaks down.

20 Some users of food-grade SHMP also have  
21 patents with respect to their products that may call  
22 for a particular chain length. Procter & Gamble, for  
23 example, has some patents that are based on using  
24 long-chain SHMP. It should be emphasized, however,  
25 that these applications only account for a tiny

1 percentage of the total SHMP market.

2 The largest markets for technical-grade SHMP  
3 are water treatment, the clay, or Kaolin market, and  
4 the industrial-cleaner market.

5 In the water-treatment market, most users  
6 purchase technical-grade, regular-chain SHMP for its  
7 properties as a water softener. In fact, I'm not  
8 aware of any customer in this market with a  
9 specification for chain length. Also, these users can  
10 usually accommodate various different particle sizes.

11 In the clay market, as Russ explained, SHMP  
12 is used to disperse the clay into a slurry. The  
13 finished product is typically used as a coating for  
14 paper or in paints. The clay added to paper prevents  
15 ink from running so that it does not smear. It also  
16 contributes to the brightness of the paper.

17 To produce certain very fine, coated papers,  
18 the end user may call for a long-chain SHMP. For  
19 these reasons, there is a segment of the Kaolin market  
20 that prefers the long-chain SHMP.

21 I should also point out that long-chain SHMP  
22 made by ICL is, on average, somewhat longer than the  
23 product made by Innophos or the Chinese producers.  
24 Russ stated that Innophos produces long chain with an  
25 average chain length of 19. Our long-chain SHMP



1 typically has an average chain length of 21. In the  
2 market, though, this is too close to be meaningful.  
3 I'm not aware of any user that would need to change  
4 its process to switch between the different long-chain  
5 products.

6 In fact, chain length is not a very precise  
7 measurement. We do not identify chain length on the  
8 certificate of analysis. Instead, we measure and  
9 certify the  $P_2O_5$  content. Based on the  $P_2O_5$  content, we  
10 calculate an average chain length, but because it is  
11 difficult to measure chain length, we do not routinely  
12 measure or certify chain length on individual batches.

13 The most important specification, from the  
14 customer's point of view, is generally particle size.  
15 SHMP powder is very fine, and, in some processes,  
16 without good agitation, it will tend to clump up or  
17 cake. Most users, therefore, prefer larger particles,  
18 crushed or granular SHMP, because it will flow better  
19 in their process.

20 In other cases, the end user may be blending  
21 SHMP with other materials. In that case, the user may  
22 want the particle size of the SHMP to be similar to  
23 the size of the other materials, or the user may have  
24 set up its process to use a particular particle size  
25 and achieve a specific rate of dissolution.

1           Changing the particle size will affect the  
2 rate that the SHMP dissolves. This means that if a  
3 customer has a very narrow specification for particle  
4 size, such as a custom specification that does not  
5 allow any fine particles, we may be forced to build up  
6 a large inventory of powder to supply that order. In  
7 that case, we would try to find a customer for the  
8 powder in a less-demanding market, such as water  
9 treatment; otherwise, we might need to work with the  
10 customer to change its process so that it will allow  
11 the use of more powder.

12           Our sales force will attempt to balance the  
13 orders for granular and powder SHMP so that we do not  
14 build up a large inventory of one or the other. This  
15 means that if we have too many customers buying  
16 granular, we might have to be more competitive to sell  
17 some powder and avoid building up inventory. In fact,  
18 if we lose a single customer for a particular particle  
19 size, that may affect the profitability of our sales  
20 to all of our remaining customers.

21           End users also specify whether they need a  
22 technical grade or a food grade. As Russ pointed out,  
23 this is really a matter of testing the product for  
24 traces of impurities. Like Russ indicated for  
25 Innophos, we also operate our plants at all times

1 under GMP.

2 Our technical-grade product is made under  
3 the same operating conditions as our food-grade  
4 product. We used to dedicate one furnace to making  
5 technical-grade SHMP because we were using some  
6 recycled phosphoric acid as a feedstock to that  
7 furnace, and we wanted to be certain that no  
8 contaminants entered the food-grade product.

9 However, we no longer use recycled  
10 phosphoric acid in any of our products. So either  
11 furnace can be used to make food-grade or technical-  
12 grade SHMP at this time. Thank you.

13 MS. SCHEWE: Good morning. I'm Angie  
14 Schewe, business director of industrial phosphates for  
15 ICL Performance Products, LP.

16 Since joining ICL in 2000, I have been  
17 responsible for the strategic direction and marketing  
18 of phosphate products, including pricing and sales  
19 strategies for SHMP in the industrial market.

20 I manage a sales staff that regularly calls  
21 on our customers, but, in fact, on occasion, I  
22 personally meet with some of our largest customers.

23 Today, I'm here to describe to you the  
24 impact that Chinese SHMP has had on our sales, our  
25 prices, and our profitability. Let me begin by

1 describing to you how sales take place in the market.

2 SHMP is sold by producers, such as ICL and  
3 Innophos, either directly to large end users or  
4 through distributors to sell to small end users. Some  
5 distributors are also importers. Univar, for example,  
6 is both the largest distributor and the largest  
7 importer of SHMP.

8 Some other distributors are also  
9 manufacturers of downstream products. For example,  
10 they will blend SHMP with other chemicals, including  
11 sodium phosphates. These blends are outside of the  
12 scope of this investigation.

13 Over the past several years, imports of  
14 Chinese SHMP have played a major role in the market.  
15 They set the standard for pricing, and customers tend  
16 to use Chinese pricing as a leverage against our  
17 price. Indeed, virtually all of our customers have  
18 already qualified the Chinese product.

19 Univar and other distributors will inventory  
20 domestic and imported SHMP and will try to sell the  
21 domestic SHMP at accounts where it can obtain higher  
22 prices. Over time, however, Univar has shifted to  
23 more and more Chinese SHMP and away from the U.S.-made  
24 product. Large end users will, in most cases, buy  
25 from more than one producer in order to protect their

1 supply chain.

2 As a result, most customers are purchasing  
3 some percentage of their requirements from an importer  
4 or distributor of Chinese SHMP. We are often only a  
5 secondary source of SHMP for these customers.

6 Because most customers have already  
7 qualified the Chinese SHMP and familiar with the  
8 Chinese products, we are not able to distinguish our  
9 products in terms of quality, technical service, or  
10 delivery time. In fact, we are only able to stay  
11 ahead of the Chinese in those few new product  
12 applications where a customer will seek our assistance  
13 to create a new product and/or a new process.  
14 However, after a year or two of using our SHMP in its  
15 process, most customers will typically shift to  
16 Chinese SHMP in order to get a lower price.

17 For example, ICL worked with a customer to  
18 develop a new application for SHMP in a dairy product.  
19 After the customer successfully launched this new  
20 product, they switched to Chinese SHMP, based on its  
21 lower price.

22 One advantage we historically held was our  
23 ability to offer a portfolio of phosphate products;  
24 that is, ICL can supply any number of phosphate  
25 products together in a single shipment. This allows

1 us to supply full truck-load quantities. However,  
2 distributors, such as Univar, maintain an even broader  
3 inventory of phosphate and other chemicals. Univar  
4 can offer a larger variety of products and ship mixed  
5 truckloads of phosphates and nonphosphates.

6 Russ and Nancy described the various  
7 applications of SHMP and the industries that use our  
8 products for their unique properties. ICL supplies  
9 SHMP to all segments of the market. Our customers  
10 represent dozens of different industries, including  
11 producers of industrial and institutional cleaners,  
12 water treatment, pet food, and dental products, and,  
13 until recently, the Kaolin and clay market.

14 The Kaolin market is a relatively large  
15 market and accounts for approximately 20 percent of  
16 the SHMP market. As Russ and Nancy explained, SHMP is  
17 blended with Kaolin or clay from the mine to produce a  
18 slurry. The finished product is used in the paper  
19 industry as a coating.

20 Historically, Kaolin processors bought SHMP  
21 purely on the basis of the lowest price. These  
22 companies did not have demanding specifications, and  
23 if the price was low, they would adjust their process  
24 to accommodate various chain lengths.

25 ICL supplied the Kaolin market with

1 technical-grade, regular-chain SHMP through 2003, when  
2 we closed our Trenton plant. At that point, we  
3 decided to exit the Kaolin market because the price  
4 levels of the Chinese imports were simply too low.  
5 Price levels in the clay fields were so low that we  
6 could not make money on those sales.

7 In fact, Chinese importers were offering  
8 longer-chain SHMP at prices below our regular-chain  
9 SHMP. Longer chain lengths are more expensive to  
10 produce. So the Chinese imports offered the Kaolin  
11 industry a higher-cost product at a lower price than  
12 our regular-chain SHMP.

13 In other markets, the importers of Chinese  
14 SHMP also used low prices to penetrate customer  
15 accounts.

16 We attempted to compete, in part, by looking  
17 for niche markets. We have sought to supply food  
18 products and beverage makers that might be  
19 apprehensive of using SHMP made in China. We have  
20 also sought to secure business from the specialty  
21 refractory market, where, historically, we enjoyed  
22 higher returns.

23 Over time, though, Chinese imports have  
24 spread throughout the market. Although there are a  
25 few customers in the food market that will only buy

1 domestic SHMP, these customers only account for a tiny  
2 part of our total volume sales.

3 Throughout this period, our costs were  
4 rising, particularly our cost of phosphoric acid and  
5 natural gas. We, therefore, tried repeatedly to raise  
6 prices to cover rising costs; however, we were only  
7 able to obtain higher prices when the Chinese  
8 importers raised their prices.

9 For example, when the Chinese producers  
10 experienced shortages in 2005, importers raised  
11 prices, and we were able to obtain price increases.  
12 Otherwise, we have been held captive by the price  
13 levels established by Chinese imports. Our prices  
14 simply cannot rise quickly enough to catch up to our  
15 rising costs.

16 For example, we are now seeing unprecedented  
17 prices for phosphoric acid. We must compete for  
18 phosphoric acid supply with the fertilizer industry,  
19 which uses acid as a raw material. Phosphoric acid  
20 prices are being driven by increasing global demand,  
21 particularly in India and China, and by rising demand  
22 of biofuels in the U.S. As a result, demand for  
23 phosphoric acid has intensified, and prices are at  
24 unprecedented levels.

25 Similarly, the supply of soda ash and



1 natural gas, major components in our manufacturing  
2 process, has been tightening. With respect to soda  
3 ash, we have been experiencing at least biannual, if  
4 not quarterly, price increases from major soda ash  
5 producers.

6 The same applies to natural gas. In the  
7 last four years, prices of natural gas have more than  
8 doubled, driving up the cost of production. As  
9 testified before, production of SHMP requires a  
10 substantial amount of energy and, in our case, natural  
11 gas.

12 As I noted before, we have repeatedly  
13 attempted to raise prices in order to cover these  
14 rising costs. We have only been successful, though,  
15 when the Chinese SHMP prices also increased.

16 For example, when China reduced its VAT  
17 rebate from 13 to 5 percent in 2007, import prices  
18 rose, and we were able to raise our prices, or, as I  
19 have already explained, when Chinese producers had  
20 technical problems interrupting production, price  
21 levels rose in the U.S.

22 Since the filing of the petition at the  
23 beginning of 2007, we have seen some improvement in  
24 the market. Initially, the volumes of imports of SHMP  
25 from China declined. Prices rose, and our

1     profitability improved during the first nine months of  
2     2007.

3                     Toward the end of the period, however,  
4     importers began to build large inventories to carry  
5     them into 2008 without having to pay antidumping  
6     duties. For example, a potential customer in the  
7     Kaolin industry recently informed us that it did not  
8     need to purchase ICL products for the first quarter,  
9     as they had purchased enough Chinese SHMP to last  
10    through March 2008.

11                    We hope, nonetheless, to recapture this and  
12    other sales upon an affirmative determination by the  
13    Commission. Now that antidumping duty deposits are  
14    required, we have seen some significant improvement in  
15    price levels, particularly in our water-treatment  
16    accounts. However, there is still an inventory of  
17    Chinese SHMP held by distributors and importers. The  
18    lingering effects of the Chinese dumped products and  
19    rising costs have not allowed us yet to return to an  
20    adequate profit level. For that to happen, we need  
21    your votes.

22                    Finally, I should say a word about another  
23    U.S. producer, NALCO. NALCO bought the Calgon  
24    business several years ago and has its own SHMP plant.  
25    To the best of my knowledge, NALCO has not operated

1 that plant since 2003. Instead, NALCO has purchased  
2 SHMP for its blended products from domestic producers  
3 and China.

4 Recently, though, I discussed that  
5 antidumping case with a senior executive at NALCO. My  
6 understanding is that NALCO is watching the outcome of  
7 this case very closely. If conditions of fair trade  
8 to this market return, I believe that NALCO will  
9 seriously consider reopening its SHMP plant. NALCO  
10 has sufficient capacity to supply its internal needs,  
11 as well as the merchant market. Relief from dumping  
12 could very well return NALCO to the industry.

13 In conclusion, with an affirmative vote, the  
14 Commission can resurrect the U.S. industry. Chinese  
15 imports have prevented us from earning reasonable  
16 profits for far too many years now. We urgently need  
17 your help to restore our industry. Thank you.

18 MR. TREINEN: Good morning. I'm Tim  
19 Treinen, vice president of the performance chemicals  
20 business for Innophos, Inc. The performance chemicals  
21 business includes various sodium phosphates, of which  
22 SHMP is one of the most important.

23 I'm here today because our business has been  
24 under attack for several years now. We need your  
25 affirmative vote to obtain relief from dumped Chinese

1 imports.

2 Over my 20-year career in phosphates, I've  
3 been with Albright & Wilson, a major producer of  
4 phosphates and phosphate chemicals, including SHMP;  
5 then, in 2000, with Rhodia, Inc., which acquired A&W;  
6 and now with Innophos, which spun off from Rhodia.  
7 I've progressed through the company and the phosphate  
8 business.

9 Before I was responsible for SHMP and other  
10 sodium phosphates, I was Rhodia's global asset  
11 director in charge of phosphoric acid. Now I'm  
12 responsible for managing the production and sale of  
13 most of the downstream products made from that  
14 phosphoric acid.

15 Let me begin by describing the sales process  
16 at Innophos. The vast majority of our customers  
17 negotiate supply contracts for a period of one year or  
18 less. Every week, I meet with our business managers  
19 and commercial team to review each contract that is  
20 coming due. We must consider several factors,  
21 including current prices, margins, and competitive  
22 activity.

23 Next, we will look at the product mix and  
24 the volume purchased by the customer. If, for  
25 example, the customer is purchasing SHMP powder, and

1 that production will help balance out the product mix  
2 in the plant, we may be more aggressive in responding  
3 to competitive pressure.

4 In 2006, for example, we lost a major  
5 account to Chinese imports. This particular customer  
6 had purchased a large volume of powder SHMP and was  
7 very lenient with respect to particle size. As a  
8 result, over the course of 2006, after losing this  
9 customer, our inventory levels of powder grew.  
10 However, in 2007, we finally agreed to a lower price,  
11 in part, to sell the inventory that had accumulated  
12 and to balance our sales mix.

13 So our shipments increased in 2007, but we  
14 had to cut our price by eight percent to get that  
15 business.

16 Chinese competition and lower pricing  
17 pressure has been a frequent topic we have to deal  
18 with at our weekly pricing meetings. The Chinese  
19 price is often the reference price across the market.  
20 Most, if not all, of the large accounts will purchase  
21 from two or more suppliers. As a result, even when we  
22 win a contract, our prices are limited by reference to  
23 the Chinese price. If we insist on a higher price, we  
24 will almost certainly lose some or all of the volume  
25 at that account.

1           By the time I became responsible for the  
2 SHMP business in 2004, the Chinese were already a  
3 major factor in the market, and margins had eroded due  
4 to aggressive Chinese pricing at a time when costs  
5 were increasing.

6           Initially, Chinese SHMP penetrated large-  
7 volume markets for technical-grade, regular-chain  
8 SHMP. One of these markets was the Kaolin  
9 beneficiation industry. Imports of Chinese SHMP used  
10 extremely low prices to gain positions at virtually  
11 every Kaolin account.

12           First, the Kaolin industry consumes  
13 technical grade.

14           Second, they do not typically require that  
15 the producer be audited or qualified.

16           Third, the Kaolin requires large volumes of  
17 SHMP delivered to locations near the East Coast. So  
18 Chinese imports could be brought into Savannah by  
19 ocean freight and transported a relatively short  
20 distance inland to the Kaolin customers.

21           For these reasons, importers targeted the  
22 Kaolin industry and had a great deal of success  
23 pushing the domestic industry out of that part of the  
24 market. As you have heard, ICL abandoned the Kaolin  
25 market when it closed its Trenton plant. Innophos

1 also retreated from this segment of the market, but we  
2 only had a single SHMP production plant and did not  
3 have the option to shut down a plant or cut our  
4 capacity in half. To recover our fixed costs, we need  
5 to achieve a high level of capacity utilization, and  
6 we could not do so without the Kaolin business.

7 As a result, we have continued to sell to  
8 the Kaolin customers, in some cases, below our full  
9 cost of production, to balance our product mix and to  
10 gain some contribution towards fixed costs.

11 Outside the Kaolin market, we've watched the  
12 Chinese imports penetrate many segments of the market  
13 with similar results. Customers will readily accept  
14 Chinese product in all but a very few applications  
15 using food-grade Hex, where recent publicity regarding  
16 Chinese chemicals may have caused some fear regarding  
17 contamination.

18 Univar is one of the largest distributors of  
19 Chinese Hex, one of our largest customers, and the  
20 major distributor of U.S.-made Hex.

21 For many years, we did not generally compete  
22 directly with Univar for customers. Instead, Univar  
23 tended to sell our Hex in regional markets to supply  
24 relatively small customers. But as Univar began to  
25 offer Chinese Hex at our large-volume accounts, we

1 were forced to defend our positions.

2 In responding to the Chinese competition, we  
3 tried to maintain higher prices by emphasizing our  
4 ability to supply quickly without the long lead time  
5 needed for ocean freight from China. In response,  
6 distributors carried inventories of Chinese SHMP at  
7 dozens of locations across the country. These  
8 distributors simply eliminated any supply chain  
9 advantage enjoyed by domestic producers and offered an  
10 even lower price. At account after account, we were  
11 forced to compete at lower prices offered by Chinese  
12 imports.

13 As a manager responsible for this business,  
14 I face two untenable choices: I can cut our prices in  
15 order to increase output and improve unit cost, but  
16 the price levels are already so low that I cannot earn  
17 an adequate profit. In fact, when I cut our price  
18 down to near variable cost, in many cases, the  
19 importers responded by dropping the price even lower.  
20 In the end, I may be able to increase our volume, but  
21 at a price that does not cover our costs.

22 Alternatively, we have tried to increase  
23 price levels to cover our costs. In hindsight, this  
24 strategy was also doomed to fail. When we resisted  
25 customer demands to match the Chinese imports, we lost



1 so much volume that our inventories increased to a  
2 point where our plant had to shut down.

3 For example, in 2006, our plant was closed  
4 for nearly three months because we would not meet the  
5 Chinese price levels and lost sales to the Chinese.  
6 Our workers suffered, our capacity was idle, and our  
7 bottom line was miserable.

8 In my testimony at the preliminary staff  
9 conference, I mentioned that we have experienced  
10 rising costs throughout the period, which make the  
11 situation even worse. Since my testimony last March,  
12 soda ash prices have continued to rise. You can see,  
13 from our exhibits, Slide 3, the soda ash prices have  
14 risen 81 percent since 2003. The soda ash market  
15 continues to be tight, and we face rising costs for  
16 this material.

17 Most importantly, though, as mentioned by  
18 Angie, phosphoric acid prices have risen dramatically  
19 due to surging demand for fertilizer.

20 Slide 4 shows the trend in acid prices. The  
21 chart identifies the published price of "MGA," or  
22 merchant-grade acid. Merchant-grade acid is a  
23 feedstock that we use to make purified phosphoric  
24 acid, which is then used as a raw material to make  
25 Hex. As you can see, phosphoric acid prices have

1 increased 84 percent over the last five years and are  
2 continuing to rise.

3 As provided in Slide 5, natural gas costs  
4 are also increasing.

5 In these circumstances, our industry  
6 urgently needs your help to address Chinese imports.  
7 In fact, since the preliminary Commerce determination,  
8 imports from China have come to a standstill. We have  
9 already begun to see what might be accomplished by an  
10 antidumping order. After duties of 183 percent were  
11 imposed, our customers began shifting to domestic  
12 suppliers. As a result, Innophos has experienced a  
13 considerable increase in sales volume and business  
14 opportunities in 2008.

15 To meet our contract commitments for 2008,  
16 we've announced an investment to increase our  
17 capacity. We had planned this expansion for some time  
18 but could not justify the capital without any hope of  
19 a return on investment.

20 Now, following the preliminary Commerce  
21 determination, we have announced a 15-percent  
22 expansion of our capacity at Waterway. We have also  
23 obtained significant price increases across all  
24 segments of the market. Because many contracts were  
25 annual, we have only begun to obtain increased prices

1 on those contracts up for renewal. But as time goes  
2 on, more contract negotiations will result in higher  
3 prices.

4 This development is significant to the case.  
5 The recent round of price increases has been  
6 measurably different from the spotty pattern that we  
7 experienced in 2004, 2005, and 2007. Now that Chinese  
8 imports are not being quoted as a benchmark in the  
9 market, we are having real success at raising price  
10 levels across the market.

11 I believe that this change in the market  
12 tells you a lot about the impact of Chinese imports  
13 prior to September 2007. With dumped imports  
14 throughout the market, we were unable to obtain price  
15 increases that would cover rising costs.

16 Currently, even though there are still  
17 inventories of Chinese Hex in the U.S., importers are  
18 no longer quoting dumped prices. Our industry can see  
19 the real impact of fair trade.

20 In conclusion, with an affirmative vote, the  
21 Commission can resurrect the U.S. industry. The fact  
22 that we can already see the benefits of antidumping  
23 duties tells us that the Chinese imports, for too  
24 long, having injuring our industry.

25 By my own calculation, Chinese imports have

1 accounted for almost half of the market. They are  
2 being sold on a nationwide basis and in every market  
3 segment. My company, Innophos, has lost sales  
4 directly to Chinese imports and has otherwise been  
5 unable to adequately raise its prices. As a result,  
6 our profitability, return on investment, and overall  
7 performance have been seriously impaired.

8 For these reasons, you should conclude that  
9 dumped imports have materially injured our industry.  
10 Thank you.

11 MR. CANNON: I would like to just briefly  
12 walk through the slides that we passed out, so we'll  
13 begin with -- I think we're going in the wrong  
14 direction. Let's go the other way. There we go.

15 All right. What this chart shows you is the  
16 volume of imports from different sources, which are in  
17 the staff report.

18 The bar in 2003, I guess, the yellow bar in  
19 the graph; those are the Census data, unadjusted for  
20 the HTS number.

21 The blue bar is the Census data, having been  
22 adjusted by the staff to include some product that was  
23 classified in the wrong HTS number.

24 And then the red bar are public because they  
25 were in the preliminary phase, but they are shipments

1 of imports.

2 What I just want to point out here is that  
3 when you look at the volume of the imports coming into  
4 the country, what you see is a peak in 2005, but when  
5 you look at the shipments into the market by the  
6 importers, in fact, what you see is that shipments  
7 continued to rise between '05 and '06.

8 And if we go to the next slide, what we see,  
9 on a quarterly basis, is that a large volume of this  
10 product came in in the third and fourth quarter,  
11 really the largest volume in the fourth quarter of  
12 2005. So it didn't really hit the market until 2006.

13 So when you look at the actual trend in  
14 product as it comes into the market and hits the  
15 market, it's upward every year. It doesn't peak in  
16 '05 and decline in '06. In fact, in terms of the  
17 market, what's happening -- go back to the previous  
18 slide -- is more characterized by the red line. You  
19 get an upward trend in imports and, consequently,  
20 given a stable demand, you essentially have an upward  
21 trend in import penetration.

22 Now, another feature of this chart and all  
23 the charts, or several of the charts, are that we've  
24 included 2003, and, as you know, the Commission  
25 usually looks at three years. It's in your

1 discretion, however, to look at as many years as you  
2 would like to.

3 I note, in the Orange Juice case, you  
4 indicated that you could examine a longer time period,  
5 one that would give you some perspective on the  
6 market, and, in the Magnesium case, you looked at an  
7 additional year, particularly or specifically because  
8 there was a sharp drop in capacity.

9 So we offer these data, starting with 2003,  
10 because, as you've heard, there was here a very large  
11 drop in capacity between '03 and '04. In fact, in  
12 '03, ICL closed one of their plants. So what you see  
13 is, in '04, when that plant closed, imports from China  
14 surged.

15 Let's move to quarterly. Another feature of  
16 the quarterly chart is that you heard testimony that  
17 the domestic price is captive to the Chinese price,  
18 and it only moves when the Chinese price changes, and  
19 we've referenced a shortage in imports from China.  
20 You see that, in the second quarter of 2005, you see  
21 the Chinese -- the volume is the red line and value is  
22 the blue line -- you see the plunge in the second  
23 quarter. They had a supply problem. I believe they  
24 had a problem with electricity in China, so they  
25 shipped a smaller quantity to the U.S.

1           What you'll see in the pricing charts is,  
2           about a quarter or so later, everybody's price went up  
3           because it's linked to supply.

4           Then what you see at the far end of the  
5           chart is the Commerce preliminary, which was announced  
6           in the third quarter of 2007, and then, in the fourth  
7           quarter of 2007, the imports stop. They are not  
8           shipping at 183 percent dumping margin.

9           Okay. Let's go to the next one. This shows  
10          the trend in U.S. producers' shipments. What we've  
11          done here is an index, an index to 100 of the  
12          aggregate data of both producers, so there is no  
13          confidential data in this table. But here you see,  
14          starting in 2003, when the Trenton plant was still  
15          operating, the U.S. output was a lot higher. The  
16          shipments in tons are in red; the sales in dollars are  
17          in blue.

18          What you see from this is that, in 2003,  
19          when we were operating Trenton, our output was a lot  
20          higher.

21          In 2004, the domestic output, in terms of  
22          tons, the red line, dropped substantially, and, as we  
23          saw from the import chart, the difference was taken up  
24          by Chinese imports.

25          Now, overall, the trend in quantity goes

1 steadily downward each year. They are selling a lower  
2 and lower volume. They cannot load their capacity to  
3 an adequate level. You can see from the confidential  
4 data that their capacity is underutilized. In fact,  
5 because of high fixed costs, this is a very  
6 significant factor in this case, this loss of volume.

7 What you also see from this chart is that  
8 they have tried their best to keep prices up so they  
9 do not experience quite as sharp of a decline in  
10 revenue. The revenue line is actually fairly flat.

11 So the problem is really, in this case,  
12 more, in a sense, the loss of volume, which doesn't  
13 allow them to load their plant, and, from the  
14 testimony, it's also a problem of price. Prices are  
15 too low persistently. When you look at this overall,  
16 you really are, I think, going to come to the  
17 conclusion that you've really got a supply side  
18 problem here: the quantity, a loss of output.

19 Okay. Let's move on. These are also  
20 indexes. They don't show actual prices. They are  
21 indexed to 100, and these are averages. So the blue  
22 line on the top is the average U.S. price; the red  
23 line is the average import price. Here you see the  
24 pricing for the four different products on this chart  
25 and the next chart.



1           Going back, the first product, Product 1,  
2           is, by far, the largest part of the market. You can  
3           see from the confidential data, but it's, far and  
4           away, the largest segment. This is the tech-grade,  
5           regular chain. This is what's sold in the Kaolin  
6           fields. This is what's sold for water treatment.

7           In fact, there is actually a pretty  
8           remarkable correlation between the import price and  
9           the domestic price. The domestic is able to earn  
10          somewhat of a higher price, a margin above the  
11          imports, but they track right with the import price.

12          You also see, in the second quarter in 2005,  
13          when the supply of imports contracted, when they had a  
14          problem in China, there is a significant increase in  
15          the import price, and, about a quarter or so later,  
16          there is a significant increase in the domestic price.

17          Okay. Let's move on. All right. This  
18          chart is to address one of the two Bratsk factors,  
19          being replacement and benefit, and this is the  
20          replacement factor, and here what we see are that the  
21          Chinese imports, which are the tall, blue bar, tower  
22          over imports from all other sources, and, indeed, none  
23          of the other import sources would be adequate, either  
24          in terms of their volume of supply historically or in  
25          terms of their capacity or interest in the U.S.

1 market.

2           What the staff report shows you is that the  
3 Mexicans, who are the next largest bar, simply don't  
4 have capacity to supply anything like the volume from  
5 China.

6           The Europeans, who are the very small bars,  
7 use their SHMP internally to make other products.  
8 They captively consume, so they really don't have an  
9 interest in coming to the U.S. market and having to  
10 compete with low prices from China.

11           The second factor, that is, the benefit  
12 factor; one way to think about that factor, or look at  
13 it, is whether the price of the nonsubject imports is  
14 sufficiently above the subject imports such that  
15 elimination of the subject imports would have  
16 benefitted the domestic industry. So why are the  
17 nonsubject imports higher than the Chinese imports?  
18 Here what you see is the lowest line, the dark line at  
19 the bottom there, are the imports from China. In  
20 other words, China is underselling all of the other  
21 imports.

22           That's what we have for you, and we are  
23 happy to take any questions. Thank you.

24           CHAIRMAN PEARSON: That concludes your  
25 testimony.

1 MR. CANNON: Yes.

2 CHAIRMAN PEARSON: Thank you very much. My  
3 thanks to all members of the panel. I'm well aware  
4 that you probably have other things that you could do  
5 than spend two days in Washington helping to educate  
6 Mr. Cannon and us regarding the phosphate business, so  
7 we appreciate that you are here and that you've put  
8 the time and energy into explaining these issues to  
9 us.

10 I had intended to mention at the outset that  
11 Commissioner Pinkert is recused from this  
12 investigation. Don't think he doesn't care about it.  
13 He just isn't involved in this one. Okay?

14 Before I wander into something I shouldn't,  
15 let me shift to the questioning, which we would begin  
16 today with Commissioner Okun, who has temporarily  
17 stepped out. So we will begin the questioning this  
18 morning with Commissioner Lane.

19 COMMISSIONER LANE: Good morning. We have  
20 to remain versatile and flexible. I don't think  
21 that's ever happened before, but I'll take care of it.

22 Let me start, first, with Mr. Kemp. In your  
23 testimony, you stated that "we test every lot of food-  
24 grade Hex in our laboratory to ensure that the product  
25 meets the standards for contaminants, such as arsenic

1 or lead." And then you state that both drinking water  
2 and toothpaste, for instance, use technical grade, but  
3 you're still sure that those products are safe also.

4 My question is, do you know what standards  
5 the Chinese use in the production of their SHMP that  
6 go into these food products, and can we be assured  
7 that the Chinese product meets, at least, the same  
8 standards that the U.S. product does?

9 MR. KEMP: I can take a stab at it.

10 COMMISSIONER LANE: Sir, you have to get  
11 closer to your microphone.

12 MR. KEMP: Okay. Sorry. I don't know for  
13 sure, of course, exactly what standards are in their  
14 production processes across China. I do know there is  
15 a regulatory infrastructure inside the U.S. that  
16 products sold into the U.S. market, any source, must  
17 meet the food chemicals codex. They would, so arsenic  
18 and lead shouldn't be a problem.

19 On the drinking water, toothpaste, other  
20 technical side, there is a National Sanitation  
21 Foundation standard that exists as well, and any  
22 suppliers that sell into that must certify their  
23 source to be on that list as well.

24 COMMISSIONER LANE: Does the industry itself  
25 -- does your company or the other company do on their

1 own any spot-checking of the Chinese product to just  
2 see if perhaps there is a problem?

3 MS. STACHIW: We do routinely test  
4 competitive products and found that they are meeting  
5 specification and virtually, you know, identical in  
6 quality to ours for the different grades.

7 COMMISSIONER LANE: Okay. Thank you.  
8 That's a big help.

9 In the financial information that you were  
10 asked to provide, one of the line items is for raw  
11 materials. Could you tell me what you would consider  
12 to be the primary raw materials that go into the  
13 production of SHMP? And I would like an answer from  
14 both companies.

15 MR. KEMP: In our case, there's two main  
16 ones.

17 COMMISSIONER LANE: I'm sorry. You'll have  
18 to identify yourself and which company.

19 MR. KEMP: I'm sorry. Russ Kemp with  
20 Innophos.

21 COMMISSIONER LANE: Okay. Go ahead.

22 MR. KEMP: In our case, I touched on it  
23 briefly, but the primary two raw materials in our  
24 process are phosphoric acid and soda ash, sodium  
25 carbonate.

1 COMMISSIONER LANE: Okay.

2 MS. SCHEWE: I'm Angie Schewe from ICL  
3 Performance Products, and, similarly to Innophos, we  
4 also have, as the primary raw materials within the  
5 production of SHMP, phosphoric acid and soda ash.

6 COMMISSIONER LANE: Okay. I would like for  
7 each of you to provide for the record a breakout of  
8 the component parts of the raw materials line item  
9 listed in your cost of goods sold. In other words, I  
10 would like the value of the phosphoric acid, the  
11 sodium compounds, and any other inputs that you  
12 classify as raw materials separated for the financial  
13 information which you included in your questionnaire  
14 responses. Are those "yesses"?

15 MR. TREINEN: This is Tim Treinen with  
16 Innophos. That information, we could provide you  
17 after the hearing, but it's confidential. I can't  
18 disclosed our costs by components in public.

19 COMMISSIONER LANE: Okay. But you can  
20 provide it post-hearing.

21 MR. TREINEN: Sure. Yes.

22 COMMISSIONER LANE: Okay. Thank you.

23 MS. SCHEWE: This is Angie Schewe from ICL  
24 Performance Products. We would also like to provide  
25 that information post-hearing.

1 I apologize. I'm having some technical  
2 difficulties. Angie Schewe with ICL Performance  
3 Products. We would also be very happy to provide, in  
4 our post-hearing brief, that information.

5 COMMISSIONER LANE: Okay. Let me just stick  
6 with the two of you for a moment. I would like to  
7 know, looking at your employment data, do the wages,  
8 which you both report on your questionnaire responses,  
9 reflect only salaries and wages paid directly to  
10 employees, or do you include benefits and other wage-  
11 related costs in that item?

12 MS. SCHEWE: With regard to ICL Performance  
13 Products, we also include the cost of benefits,  
14 medical care, and vacation, and things of that nature.

15 MR. TREINEN: Tim Treinen with Innophos.  
16 Yes. Our situation is similar. We report the labor  
17 cost of both the hourly labor and staff employees, as  
18 well as the benefits to employ those individuals.

19 COMMISSIONER LANE: Okay. I have a question  
20 about that that perhaps I'll ask in the in-camera  
21 portion of the hearing today, if I can remember to ask  
22 you.

23 Page 2-5 of the prehearing staff report  
24 discusses blends of SHMP and indicates that both ICL  
25 and Innophos produce blends containing relatively

1 small amounts of the product. Could you describe  
2 those blends and their uses and the importance of each  
3 blend in your business?

4 MR. KEMP: Sure. This is Russ Kemp with  
5 Innophos. I'll start by describing briefly our  
6 product line.

7 We have, for meat-processing industries, a  
8 full complement of prices, some straight ingredients  
9 and some blends. Some of our blends include between  
10 10- and 25-percent sodium hexametaphosphate with other  
11 ingredients, and the purpose there is the  
12 functionality very similar to water treatment, where  
13 they would tend to soften the water that's used  
14 further on in meat processing, but they have no  
15 particular functionality in the meat application  
16 itself.

17 MS. STACHIW: We also have blends of  
18 products with SHMP similar to what Russ describes.  
19 Our Nutriphos line of products from meat, poultry, and  
20 seafood, and, again, the blends will contain between  
21 five and 25 to 30 percent SHMP blended with other  
22 sodium phosphates for these applications.

23 COMMISSIONER LANE: Would the SHMP that is  
24 used in those blends be reported as internal  
25 consumption in Question 2-9 of the producer



1 questionnaire?

2 MS. STACHIW: Yes. Yes, it would.

3 MR. KEMP: Innophos's situation is a little  
4 different. That internal consumption is exported to  
5 Canada, so I think we reported it as sales to,  
6 transfers to, affiliated companies, if I've got the  
7 lingo right.

8 COMMISSIONER LANE: So is that SHMP that's  
9 blended reported elsewhere in your questionnaire?

10 MR. KEMP: Yes. The volume and value are  
11 included elsewhere in that questionnaire, yes.

12 COMMISSIONER LANE: Okay. Thank you.

13 Now, natural gas is a significant portion of  
14 your operating costs. Is it possible to hedge natural  
15 gas costs through long-term fiscal contracts or  
16 through the futures market, and, if so, could you  
17 describe your practices with regard to the use of  
18 long-term fiscal contracts or future contracts to lock  
19 in natural gas prices?

20 Mr. Bishop, am I out of time? Okay.

21 MR. TREINEN: This is Tim Treinen with  
22 Innophos. Our company policy is not to hedge. We do,  
23 in some cases, commit forward several months or a  
24 portion of the year, but, otherwise, we do not. In  
25 certain locations, in a small portion of our gas

1 requirements, but, otherwise, our policy is not to  
2 hedge.

3 MS. SCHEWE: At ICL, we do perform some  
4 hedging activities. We would prefer to respond in the  
5 post-hearing brief to the particulars associated with  
6 that.

7 COMMISSIONER LANE: That will be acceptable.  
8 Thank you.

9 Mr. Chairman, I hand back the mike to  
10 someone.

11 CHAIRMAN PEARSON: Thank you. Permit me to  
12 shift away from the normal questioning order, and we  
13 will now recognize Commissioner Okun, in deference to  
14 her very experienced wisdom and the fact that this,  
15 potentially, could be her last hearing.

16 COMMISSIONER OKUN: Thank you, Mr. Chairman.  
17 I apologize to Commissioner Lane that I walked out  
18 there and put you up first, but you did a great job.

19 I join my colleagues in welcoming all of you  
20 here today. I really think that both your written  
21 testimony that you've provided and the other  
22 information are very detailed and helpful.

23 I'm going to direct my question to Mr.  
24 Treinen and Ms. Schewe with regard to pricing and just  
25 to follow up on some of the information that you spoke

1 about in your testimony.

2 When Mr. Cannon made his opening remarks, he  
3 noted that there is both price suppression going on in  
4 the market as well as price depression, both things  
5 that the Commission looks at.

6 So, Ms. Schewe, I wanted to ask you a  
7 question. In your testimony, you had referenced  
8 specific accounts where you would have lost volume to  
9 Chinese imports, and the one that you had in there --  
10 of course, you don't have to reveal anything  
11 confidential -- this was the one you referenced about  
12 a new application where then it shifted to the  
13 Chinese. Did that happen during the period of  
14 investigation, and would it be reflected in the staff  
15 report?

16 MS. SCHEWE: It should be reflected in the  
17 staff report.

18 COMMISSIONER OKUN: Okay. Then, I think,  
19 from both of you, if you could help me understand  
20 little bit better with respect to pricing. We've  
21 talked about pricing here where there is a spread.  
22 There is underselling, as the staff report indicates,  
23 by large margins, but price is going up, both for the  
24 Chinese and for the U.S. product.

25 So I guess my first question would be: Does

1 that mean, in this market, there is still a price  
2 premium for the domestic product? While there is  
3 underselling, their prices have both gone up, and the  
4 underselling margins have remained large. Is there a  
5 price premium for domestic product because of their  
6 ability to get it there quicker or anything else that  
7 we should take into account in looking at the pricing  
8 data?

9 MR. TREINEN: This is Tim Treinen with  
10 Innophos. Yes, generally speaking, our average prices  
11 are higher than the Chinese imports. It's due to  
12 several reasons. One is, in some cases, because we're  
13 a domestic supplier, and customers would require some  
14 reliability, we may back up, for instance, the portion  
15 of the Chinese supply that they choose to buy, but  
16 they would pay us a premium. Some accounts do, and  
17 some don't.

18 Another reason why our average price would  
19 be higher is because we typically sell to smaller  
20 accounts than the Chinese may because of the logistics  
21 differences and the distribution channels. As Angie  
22 mentioned earlier, and we have a similar situation, we  
23 often sell mixed truckloads of products to customers,  
24 and, in those small quantities, that would take the  
25 average up a bit.

1           So, by comparison to what I would imagine  
2           the Chinese average is, we would probably be skewed  
3           more towards smaller customers and, therefore, get an  
4           average higher price for those kinds of reasons.

5           COMMISSIONER OKUN: Ms. Schewe?

6           MS. SCHEWE: Just as Tim mentioned, we also  
7           have slightly smaller-volume customers than the  
8           typical import from the Chinese producers. So part of  
9           the increase that you're seeing, over the course of  
10          the years in question here, are related to economies  
11          of scale or volume related.

12          In addition, as we mentioned earlier, we  
13          have slightly different strategies, as far as our  
14          marketing approach, and you can see some changes in  
15          product mix moving away from some of the technical-  
16          grade materials that are a little bit more subject to  
17          import pressures and moving more towards our food-  
18          grade product, which does provide a little bit of a  
19          premium versus the technical material, again, related  
20          to what Russ and Nancy said, because of the additional  
21          certifications that are required for that particular  
22          product.

23          COMMISSIONER OKUN: Okay. I'm not sure if  
24          you're in a position to be able to comment on this,  
25          but if you're looking at the price -- during the

1 period of investigation, when you're looking at what's  
2 gone on with your prices, and you both talked about, I  
3 think, instances where a customer might be now using  
4 both Chinese product and domestic product in their  
5 product mix.

6           Would those still show a price premium, that  
7 that company is choosing to source X amount from the  
8 Chinese at a particular price and then X amount from  
9 the domestics, recognizing they are going to pay a  
10 price premium for domestic? Is that the state of play  
11 in pricing in this market now?

12           MR. TREINEN: There's examples of both.  
13 First of all, in some cases, we do get a premium over  
14 the Chinese in certain accounts. They are willing to  
15 pay a higher price. They may realize that they are  
16 buying imported product to average their costs down,  
17 but because we've had a longstanding relationship or  
18 other reasons -- maybe differences in technical  
19 support, broader product line -- for those kinds of  
20 reasons, we may get a premium.

21           In other accounts where they may only buy  
22 one product, we have to meet the Chinese price and get  
23 no premium. So there's examples of both.

24           COMMISSIONER OKUN: Okay. Without naming  
25 particular customers, is that food grade versus

1 technical that you're able to do that, or can you  
2 comment on that in a public session?

3 MR. TREINEN: Well, not necessarily. I  
4 think it's more related to the volume of the account.

5 COMMISSIONER OKUN: Okay. That's what I was  
6 trying to understand.

7 MS. SCHEWE: I would say that, generally  
8 speaking, our customer base is in the same situation  
9 that Tim is identifying here. I wouldn't say that,  
10 generally speaking, as far as either our technical  
11 application or our food application, that we're able  
12 to gain any additional premium for that particular  
13 grade differential.

14 COMMISSIONER OKUN: Okay. I was curious. I  
15 think it was you, Mr. Treinen, who had mentioned  
16 prices in '08, and, of course, our record doesn't  
17 include that information; it closes in '07. But I did  
18 just want to get from you whether you think that the  
19 prices in '08 are significantly different than what  
20 you were getting at the end of '07.

21 MR. TREINEN: Yes. They are significantly  
22 different.

23 COMMISSIONER OKUN: And in that, you had  
24 mentioned that's because you think that there is no  
25 Chinese product being offered. Have you seen any

1 increase in offers from nonsubject, or are you aware  
2 of nonsubject being increasing in the market?

3 MR. TREINEN: I'm not sure that I would say  
4 they are increasing. I know there is product  
5 available from other countries into the market.

6 COMMISSIONER OKUN: Okay. Ms. Schewe, would  
7 you comment on that, please?

8 MS. SCHEWE: Yes. When the duties were put  
9 in place in the September timeframe, we noticed a  
10 significant increase in our overall pricing for the  
11 SHMP product for those particular customers that we  
12 may characterize as either spot or having a quarterly  
13 price protection or quarterly contracts.

14 COMMISSIONER OKUN: Okay. I appreciate  
15 that.

16 Then, just so I'm clear, Mr. Cannon, your  
17 charts may have references -- is there any time, post-  
18 2004, when there were capacity constraints on the U.S.  
19 side that were preventing sales from the domestics?

20 MR. CANNON: No, Commissioner Okun. The  
21 capacity was consistently underused through the entire  
22 period.

23 COMMISSIONER OKUN: Okay. I'll have a  
24 chance to talk to Respondents about that afterwards.

25 Another question, just in terms of the



1 Chinese pricing, and, again, I think, Mr. Treinen, you  
2 had referenced this in your testimony, which is, as we  
3 understand it, on July 1, 2007, China reportedly  
4 rescinded a major part of its export tax rebate. I  
5 think you had commented that you believed it has  
6 affected pricing in the U.S. market of Chinese  
7 product. Is that an accurate statement?

8 MR. TREINEN: Yes. The VAT tax on exports  
9 from China; there was a rebate of 13 percent, which  
10 was reduced to five percent on July 1, 2007. So that  
11 amounted to essentially an eight-percent increase in  
12 the Chinese cost to export product.

13 COMMISSIONER OKUN: Okay. I wondered if you  
14 could also comment. The record reflects that there  
15 was an increase in apparent consumption in the U.S.  
16 market -- am I out of time? -- during the interim  
17 period that we were looking at, and I wondered if  
18 there was anything going on in the market in  
19 particular that you could comment on that would have  
20 resulted again in increased demand from your  
21 customers. Again, particularly I'm interested in the  
22 January through September '07 timeframe.

23 MR. CANNON: The apparent domestic  
24 consumption number is generated in the interim period  
25 using census data, not shipments by importers. So to

1 the extent that the importers are building inventory  
2 anticipating an order, there's a lot of extra product  
3 here. It's not necessarily out in the domestic market  
4 being consumed. So I think it's somewhat artificial  
5 and that actual consumption is stable.

6 COMMISSIONER OKUN: Okay. I might have some  
7 follow-up questions just in terms of how we should  
8 look at that in terms of the final staff report.

9 But with that, thank you, Mr. Chairman.

10 CHAIRMAN PEARSON: Commissioner Williamson?

11 COMMISSIONER WILLIAMSON: Thank you, Mr.  
12 Chairman.

13 I too want to thank the witnesses for their  
14 testimony and the time that went into preparing it.

15 Kind of a general question. We've talked  
16 about your rising costs of raw materials and energy.  
17 I just wanted to know whether or not there are any  
18 differences in terms of the cost for Chinese firms.  
19 These are products that are traded worldwide, I  
20 assume.

21 MR. TREINEN: Yes. This is Tim Treinen with  
22 Innophos.

23 There are some differences certainly in the  
24 cost of producing product in the U.S. versus in China.  
25 In the U.S. we use, I think we already indicated that

1 both domestic producers use phosphoric acid and soda  
2 ash.

3 In China typically the original source of  
4  $P_2O_5$  is from phosphorous, and phosphorous is made with  
5 a very high portion of electric power to reduce the  
6 rock to make phosphoric acid, or to produce  
7 phosphorous which is then used to make thermal  
8 phosphoric acid.

9 In China, however, the costs are difficult  
10 to get your hands around. For instance one of the  
11 major producers has electric power source from the  
12 Three Gorges Dam. The dam is funded by the government  
13 and a private company can put their generator in the  
14 dam for the source of hydro power and they therefore  
15 get a very cheap source of electricity because it's  
16 funded by the government.

17 I think that kind of subsidy is reflected in  
18 many of the raw materials throughout China. That's  
19 probably the biggest difference between Chinese  
20 production and U.S.. We do not use phosphorous as a  
21 raw material, which does not require the high degree  
22 of electric power where the Chinese do, and their  
23 source is subsidized.

24 COMMISSIONER WILLIAMSON: Is that an extra  
25 step? If they start with phosphorous, is that an

1 extra production step they have to go through?

2 MR. TREINEN: It's a different step.

3 In the case of using thermal acid of  
4 phosphorous you start with rock and you combine that  
5 with a couple of other raw materials and apply the  
6 electric energy reduction form to make phosphorous.  
7 Then the phosphorous is burned to make phosphoric  
8 acid.

9 In the U.S., however, and also mostly in  
10 Europe what we do is we take the same kind of  
11 phosphate rock. We use sulfur to make sulfuric acid.  
12 We combine the sulfuric acid with the rock to make  
13 merchant grade acid which is the figure that we  
14 referenced here, and then that is purified to make  
15 phosphoric acid which ends up being similar to the  
16 thermal acid the Chinese make from phosphorous.

17 So we end up with basically the same  
18 phosphoric acid but two different routes.

19 COMMISSIONER WILLIAMSON: Other than the  
20 cost of energy to them are there other significant  
21 differences in terms of cost of the other raw  
22 materials?

23 MR. TREINEN: I'm sure there are, but mostly  
24 related to logistics. Depending on where they get  
25 their soda ash, or they may use caustic as an

1 alternative source for sodium, but I don't know the  
2 details of their cost structure in that way.

3 COMMISSIONER WILLIAMSON: Does anyone else  
4 have anything on this?

5 MS. SCHEWE: No, we have nothing further.

6 COMMISSIONER WILLIAMSON: Ms. Schewe, on I  
7 think page eight of your oral testimony you did talk  
8 about in our case natural gas. I was wondering how is  
9 that different from the Chinese suppliers, why you  
10 sort of used that phraseology.

11 MS. SCHEWE: As I think Russ mentioned in  
12 his testimony, in order to produce the SHMP you have  
13 to heat a furnace to a significant degree, 800 to 1100  
14 degrees celsius. And in order to do that, obviously  
15 that requires energy. The form of energy that we use  
16 in our manufacturing processes is natural gas for that  
17 particular step of the process.

18 COMMISSIONER WILLIAMSON: Do you all use  
19 something different? Is it electric power, or --

20 MR. KEMP: This is Russ Kemp.

21 Technically it might be possible to use  
22 electrically heated indirect air to fire the furnace.  
23 It wouldn't be feasible certainly in our case in the  
24 U.S., but it could be the case overseas. So not  
25 knowing one way or the other, I just restricted my

1 discussion to what I've speculated on.

2 COMMISSIONER WILLIAMSON: Thank you for that  
3 clarification.

4 You've suggested, both of you suggested that  
5 we go back to the year 2003 in terms of production in  
6 the U.S. because I guess one plant was closed down.  
7 Is there any reason for us to look at a longer time  
8 period in terms of the production in the U.S. or  
9 competition? Say if we went back five years, is there  
10 anything that would shed light on the present  
11 situation?

12 MR. TREINEN: I think the fact that,  
13 especially the price differential between the average  
14 price of Chinese imports and the average price of the  
15 U.S. industry, it indicates there's a gap there that  
16 may have fluctuated slightly, but that gap basically  
17 continued. As you saw, that gap started at the  
18 beginning of the period in question in 2004, but it  
19 existed before that period.

20 So Chinese imports had already influenced  
21 pricing and had restricted, suppressed pricing in our  
22 industry before 2004, so that suppression had been  
23 maintained through the period.

24 MS. SCHEWE: I believe it's possible that if  
25 you looked at a longer timeframe you might find that

1 there was more injury involved in the overall U.S.  
2 industry. As we mentioned in our testimony, not only  
3 did ICL have to shut one of its plants, the Trenton  
4 facility in Trenton, Michigan. But in addition to  
5 that, NALCO took down their SHMP plant as well and  
6 suffered as a result of that prior to.

7 COMMISSIONER WILLIAMSON: That plant is  
8 located where?

9 MS. SCHEWE: That plant is actually in  
10 Elwood City, Pennsylvania.

11 COMMISSIONER WILLIAMSON: Thank you.

12 Has there been any trend in terms of  
13 changing your customer base? And to what extent do  
14 you say your large customers drive the industry as  
15 opposed to smaller ones? I know some, I forgot who it  
16 was that was testifying, that you had, were trying to  
17 serve some of your customers directly in light of the  
18 fact of the competition with I think it was Univar and  
19 the way they were sourcing.

20 MS. SCHEWE: I actually was the one that  
21 commented on the Univar situation.

22 Over the course of time as we mentioned in  
23 my testimony, we have moved away from the kaolin  
24 market which is kind of characterized by very large  
25 users of SHMP, and moved more into food products which

1       tend to use less volume. So our customers  
2       characteristically have become smaller users. So as a  
3       result of that we are able to get a slightly higher  
4       price than potentially a large volume customer would  
5       have in this market.

6               MR. TREINEN: One thing I would add, I'm not  
7       sure if this answers your question, but let me try.  
8       There's also a difference in terms of grades which I  
9       mentioned in my testimony. In all cases you need to  
10      balance the production of granular and powder because  
11      you produce both at the same time.

12             If you have a skewed sales mix towards  
13      granular then you're building powder and that really  
14      reduces your efficiency. You build up inventory that  
15      can't be sold. That was our situation in 2006.

16             So sometimes it forces you to correct your  
17      sales strategies and product mix in order to match the  
18      sales opportunities with what we produce.

19             In that case we had to go out to recover  
20      sales to a high volume customer that took the product  
21      that we had been accumulating that we weren't selling.  
22      It left us no choice but to reduce the price in that  
23      case.

24             COMMISSIONER WILLIAMSON: Are the, is the  
25      major Chinese producer under a similar constraint? Or



1 is it because of their large size they're not?

2 MR. TREINEN: I'm not sure, but I would  
3 imagine that in order to get the regular chain  
4 granular material or the long chain granular material  
5 they have to naturally produce some powder because of  
6 the screening process, the sieving process that you go  
7 through to sort out those different grades.

8 COMMISSIONER WILLIAMSON: Thank you.

9 I was wondering, and this might be for you,  
10 Mr. Cannon. Can you discuss the extent to which the  
11 Commission has --

12 CHAIRMAN PEARSON: Commissioner Williamson,  
13 the red light has come on. Is it a brief question.

14 COMMISSIONER WILLIAMSON: No, it's not.  
15 I'll come back to it later. Thank you.

16 CHAIRMAN PEARSON: It's my turn now. See, I  
17 didn't want him carving into my time.

18 COMMISSIONER WILLIAMSON: Sorry.

19 CHAIRMAN PEARSON: Not a problem.

20 Mr. Cannon, let me start with a technical  
21 clarification regarding your slides 3 and 4 dealing  
22 with the raw material cost for soda ash and phosphoric  
23 acid.

24 I see the current price of soda ash is  
25 listed as about \$1.80 per metric ton. That seems to

1 me not a high price for any product in the world  
2 today. Is there any explanation for the pricing?

3 MR. TREINEN: That's an error on the slide.  
4 We changed it from dollars per ton to make it indexed,  
5 and we neglected to take off that dollars per metric  
6 ton at the top.

7 This is an index, so one is 100 percent  
8 starting in 2003, and the other prices vary from that.  
9 So I apologize for the error.

10 CHAIRMAN PEARSON: Just out of curiosity,  
11 what's a ton of the stuff worth?

12 MR. TREINEN: At the FOB site it's running  
13 about \$130 a ton. Somewhere in that nature.

14 CHAIRMAN PEARSON: I can relate to that. I  
15 used to deal with commodities that were measured in  
16 dollars per ton and what not, so I'm with you.

17 I have some questions just regarding the  
18 production process for SHMP. This is a batch process,  
19 right? One batch at a time in the furnace? Not a  
20 continuous flow process.

21 MR. KEMP: This is Russ Kemp.

22 It is continuous. It's very similar, in  
23 fact, to a glass furnace. You fire it up and keep it  
24 going as long as you can.

25 CHAIRMAN PEARSON: So the inputs go into one

1 end of the furnace and then over some period of time  
2 they move through the furnace and come out the other  
3 side in a relatively finished state.

4 MR. KEMP: That is correct. The chemical  
5 transformation takes place in the middle of the  
6 furnace and the end of the furnace, and then yes, you  
7 have product, molten at that stage at the far end  
8 which is then cooled.

9 CHAIRMAN PEARSON: So it comes out of the  
10 furnace in a molten state and then obviously it gets  
11 into a cooler environment and it solidifies.

12 MR. KEMP: That's correct.

13 CHAIRMAN PEARSON: I should apologize, we  
14 didn't have a chance to do a tour of a facility, the  
15 Commissioners didn't. We were involved in too many  
16 other investigations so we haven't been getting out of  
17 town very much.

18 What then determines the particle size or  
19 the ratio between granular production and powder  
20 production? It's coming out of the furnace in a  
21 molten state, it cools. Is there something about the  
22 cooling process that affects the particle size? Or is  
23 particle size really something that's determined back  
24 inside the furnace?

25 MR. KEMP: No, the particle size is

1 determined after it's solidified.

2 The first stage in the cooling process is  
3 basically a big chill wheel, at least in our case.  
4 ICL's may differ. Where the sheets of glass that come  
5 off look very much like glass. They're several inches  
6 across. At that point we need to reduce the size in  
7 some fashion.

8 We have a mill, a continuous mill with a  
9 rotating element inside and what comes out of there is  
10 a spectrum of particle sizes from the granular  
11 fraction that in most cases we're looking for.  
12 Sometimes we're looking for the powder as well. Then  
13 we run the product from that mill across a series of  
14 screens to remove the oversized particles and then  
15 separate the granular and the powder fraction.

16 So it's basically mill efficiency that  
17 determines how the particle size split is in our  
18 process.

19 CHAIRMAN PEARSON: Ms. Schewe?

20 MS. SCHEWE: Actually this is a very  
21 traditional process and this is one we employ in our  
22 plant in Lawrence, Kansas as well.

23 CHAIRMAN PEARSON: So the idea is to try to  
24 run the fracturing mill or whatever the name would be  
25 called, to try to run that in a way to give you the

1 most desired distribution of chunks coming out of it  
2 or shattered stuff coming out of it.

3 MR. KEMP: That's correct.

4 MS. STACHIW: This is Nancy Stachiw.

5 If you look at the samples you'll see some  
6 of these big chunks that would be then further milled.  
7 So you can see some people do buy these large chunks  
8 of product, but the process that Russ described is  
9 virtually the same as what we utilize as well.

10 CHAIRMAN PEARSON: At those times when you  
11 are producing, trying to produce longer chain product,  
12 the furnace runs more slowly? The product stays in  
13 the furnace for a longer period of time?

14 MR. KEMP: Right. Thermodynamically,  
15 basically, you have to give the sodium hexamita  
16 phosphate more time to build longer chain lengths. If  
17 we run the furnace really fast we end up with  
18 something short. Go the other way, going to long  
19 chain, we have to purposely slow down the feed stock  
20 into the furnace, maintain the temperature, and  
21 because of the residence time therefore, we can  
22 spontaneously, we can assemble longer molecules.  
23 Other than that, the process is very similar.

24 MS. STACHIW: I will also mention, though,  
25 that we do change the sodium to phosphorous ratio and

1 input higher phosphorous, higher phosphoric acid  
2 because the  $P_2O_5$  is higher in the longer chain.

3 CHAIRMAN PEARSON: Right. You're going to  
4 come out with a product that's got higher phosphorous  
5 content so you want to put it in at the start so it's  
6 there at the end, right?

7 MS. STACHIW: Correct. Thank you.

8 CHAIRMAN PEARSON: At one time I actually  
9 knew a little bit about chemistry, but this was a  
10 long, long time ago.

11 Can you give me a sense, if it's  
12 confidential you can discuss it in the briefs, but a  
13 sense of how much longer the long chain product stays  
14 in the furnace relative to a short chain product or  
15 regular chain product?

16 MR. TREINEN: I can try to answer that a  
17 little bit different way. There's approximately five  
18 percent more production of regular chain in a day's  
19 time than there is long chain. So I would assume five  
20 percent is roughly the factor.

21 CHAIRMAN PEARSON: That's just what I wanted  
22 to understand. We should think of the cost difference  
23 then between producing the short chain and long chain  
24 of roughly five percent is a ball park.

25 Ms. Schewe?

1 MS. SCHEWE: I think also to keep in mind  
2 the ratio we talked about, that Nancy talked about  
3 earlier of P<sub>2</sub>O<sub>5</sub> versus soda ash. The higher the P<sub>2</sub>O<sub>5</sub>  
4 content, it would drive additional cost as well.

5 MR. TREINEN: But you're right, the five  
6 percent efficiency factor, or the residence time, that  
7 has more to factor the cost of the furnace, the  
8 natural gas and the fixed costs that go with it, so  
9 whatever cost it takes to operate the plant for a day  
10 is spread over five percent less production. That's  
11 why it's higher.

12 So there's a fixed cost element, and as  
13 Angie said, there's a raw material differential for  
14 long chain --

15 CHAIRMAN PEARSON: If we think in terms of a  
16 cost differential of maybe 5 to 15 percent, something  
17 like that, that would be a ball park --

18 MR. TREINEN: Five percent.

19 CHAIRMAN PEARSON: -- relative to thinking  
20 of a 100 percent cost differential. Okay.

21 MR. TREINEN: Yes.

22 CHAIRMAN PEARSON: Ms. Schewe, let me try a  
23 question on the Trenton plant. What's been the fate  
24 of that plant? Does it still exist?

25 MS. SCHEWE: The Trenton facility was a

1 shared facility, but at one point in time Astaras was  
2 a joint venture between Salucia and FMC Corporation.  
3 We had what I would call coexisting plants. Our  
4 facility in Trenton was at an existing Salucia plant.

5 At this point in time all of our assets  
6 related to the Trenton facility that were part of  
7 Astaras has been dismantled but the Salucia plant  
8 still remains in production and existence.

9 CHAIRMAN PEARSON: The Salucia plant makes  
10 some variety of other products.

11 MS. SCHEWE: Correct. Unrelated to  
12 phosphates.

13 CHAIRMAN PEARSON: Was the decision to close  
14 the Trenton SHMP facility made by ICL or was it made  
15 by --

16 MS. SCHEWE: The decision to close that  
17 particular facility was made by Astaras, again, owned  
18 50/50 by Solutia and FMC Corporation.

19 CHAIRMAN PEARSON: So that was a decision  
20 made before ICL became an owner of the facility.

21 MS. SCHEWE: That's correct.

22 CHAIRMAN PEARSON: So ICL knew it was buying  
23 a facility that had been closed or was being closed?

24 MS. SCHEWE: We were purchased by ICL in  
25 November of 2005, and at that point in time we had



1 already closed down the facility and had it had  
2 basically been taken down to the ground, so it was not  
3 part of our discussion at that point in time as far as  
4 ownership.

5 CHAIRMAN PEARSON: Good.

6 Was it closed in part because of technical  
7 obsolescence, inefficiencies? Was it too old to run  
8 effectively?

9 MS. SCHEWE: No, I would say generally  
10 speaking it was very near as far as history or length  
11 of time in service to our Lawrence facility. It was  
12 really related to market conditions. As we've talked  
13 about, really what I mean by that is the Chinese  
14 dumping of product into the U.S..

15 CHAIRMAN PEARSON: I know you testified to  
16 that. Well, I may come back to this, but the question  
17 that's on my mind is we saw an increase in imports  
18 following the closure of the plant which is perhaps  
19 not to be unexpected. What I'm trying to understand  
20 is, was the plant closed because of the import  
21 pressure as you've indicated? Or is it kind of the  
22 other way around and that we've seen an increase in  
23 imports because the plant was closed perhaps for other  
24 reasons?

25 MS. SCHEWE: The plant was closed because

1 we, quite frankly, couldn't enjoy adequate profits at  
2 that facility related to pricing pressure from  
3 imports. That's why that particular facility was  
4 closed.

5 MS. BAKER: I see the light's on. Could I  
6 offer a footnote?

7 CHAIRMAN PEARSON: A brief one.

8 MS. BAKER: I understand your suggestion  
9 that perhaps after the plant closed the imports filled  
10 the void. However, there was another domestic  
11 producer, Innophos. Their capacity was not fully  
12 utilized, and yet if you look at 2003 to 2004, their  
13 output went down also. They didn't fill the void  
14 either. The imports came and captured that.

15 CHAIRMAN PEARSON: Okay.

16 MR. TREINEN: I could add that NALCO closed  
17 their plant approximately the same time, the end of  
18 2003. So if you take the two closures, there was some  
19 void in the supply at that point, and part of it was  
20 made up from China.

21 CHAIRMAN PEARSON: Thank you for those  
22 additional responses, and thank you to my colleagues  
23 for indulging me.

24 It's always dangerous for the Chairman to go  
25 on in the red light because then it sets a

1       questionable tone.

2                     Madame Vice Chairman, your turn.

3                     VICE CHAIRMAN ARANOFF:  Thanks, Mr.

4       Chairman, and welcome again to all the witnesses.

5       Actually I was going to pick up right where the

6       Chairman left off, so we could have done all that red

7       light stuff on my time.  But in any event, let me go

8       back to Mr. Treinen, since you seem to be the

9       knowledgeable one about the NALCO plant.  Anyone else

10      who has knowledge of that plant can feel free to

11      answer.

12                     We know that plant closed the end of 2003.

13      Is there anything on the record in this case or on the

14      public record that you're aware of that stated the

15      reasons at the time for the plant closure?

16                     MR. TREINEN:  NALCO is a customer of ours so

17      we do deal with them directly to sell them a number of

18      products.  And in fact when they decided to close

19      their plant we started selling them SHMP from our

20      plant.

21                     They made their decision, as I understand

22      from them, on a cost, a make versus buy decision, that

23      they could buy it cheaper than they could make it when

24      they included lower cost, or lower priced product from

25      China.

1           The pricing from China basically drove them  
2 out of the market. Their prices were down. They used  
3 part of their own production in their own water  
4 treatment business and part of it they sold. The  
5 selling part prices were suppressed so their economics  
6 were not good and they were better off just buying  
7 what they needed from China and partially from  
8 domestic sources.

9           Most customers at that point in time did not  
10 buy exclusively from China, even though the costs may  
11 have been lower, because they needed to ensure the  
12 reliability of their supply. So they usually chose  
13 dual sources.

14           VICE CHAIRMAN ARANOFF: Prior to the closure  
15 of the NALCO plant in 2003, was NALCO buying SHMP from  
16 either of the other domestic producers, or was it  
17 entirely self sufficient?

18           MR. TREINEN: It was entirely self  
19 sufficient. They have a capacity that's larger than  
20 their own requirements and their captive demand.

21           VICE CHAIRMAN ARANOFF: What do we know  
22 about the condition of their production facility in  
23 terms of how long it might take or how much it might  
24 cost to put it back into production?

25           MS. SCHEWE: I've recently spoken to NALCO

1 on this particular situation. As Tim mentioned,  
2 they're also a customer of ours.

3 As far as the situation with regard to the  
4 furnace, there are actually two furnaces there. They  
5 are slightly smaller than we would traditionally have  
6 as a phosphate producer. And one of their furnaces,  
7 they've already begun production for internal  
8 consumption. Again, as Tim mentioned, as they did a  
9 make versus buy analysis back in the 2003 time period,  
10 they've yet again done a make versus buy analysis and  
11 at least for the short term after the dumping duties  
12 were assessed to the Chinese, they have begun to  
13 produce their own SHMP in one of their furnaces.

14 In addition, as I mentioned, they have two  
15 furnaces. The other furnace would require a small  
16 investment and could be up and running within a two to  
17 three month period of time.

18 VICE CHAIRMAN ARANOFF: So you're both  
19 losing a customer to the extent that they start to  
20 produce. So where do we see the net benefit to the  
21 domestic industry?

22 MS. SCHEWE: The folks from NALCO,  
23 obviously they go through a similar process that we  
24 do. As we talked about, one of the key raw materials  
25 going into the process is phosphoric acid. Both

1 Innophos and ICL sell merchant grade phosphoric acid  
2 so we would still be a supplier to them, just of a  
3 different material.

4 VICE CHAIRMAN ARANOFF: Okay.

5 MR. CANNON: Also it could be noted that the  
6 market in terms of demand is plenty large enough to  
7 accommodate both of these producers and NALCO and  
8 probably some imports too.

9 VICE CHAIRMAN ARANOFF: I looked at the  
10 numbers in Respondents' brief where they talked about  
11 the difference between what the domestic industry is  
12 currently producing and what the market is demanding.  
13 But if you add the capacity that appears to be  
14 available at NALCO, you're getting closer.

15 Let me ask some questions about the  
16 announcement by Innophos about the imminent expansion  
17 in capacity. As I understood the testimony earlier  
18 today, these are plans that have been somewhat on the  
19 drawing board for years, waiting for the market  
20 conditions to be right. Is that correct?

21 MR. TREINEN: Yes, that's correct. Our  
22 plant had laid out a project. This is primarily  
23 packaging equipment which is one of the bottlenecks  
24 that we have at our plant. But to upgrade that  
25 packaging equipment wasn't a good investment at the

1 time because we were operating significantly below  
2 capacity and our margins on this product were not very  
3 good at all. So we were looking at the same kind of  
4 make versus buy or whether or not the production plant  
5 should stay in operation, much less additional  
6 investments. So that project was put on hold.

7 Then as we got into this petition and saw  
8 that there was a very good chance that we would be  
9 able to raise prices if imports, if a duty was imposed  
10 on imports from China, we decided this was a good time  
11 to make that investment and expand our capacity  
12 because there would be additional demand available if  
13 the Chinese import volumes dropped off.

14 So we chose to make that investment decision  
15 in 2007 as we were progressing through this case.  
16 That capacity will be on line very early in the second  
17 quarter of this year.

18 VICE CHAIRMAN ARANOFF: That was the next  
19 question I was going to ask you. The funding for this  
20 has already been spent?

21 MR. TREINEN: Yes. It's well underway.  
22 I've announced that it's a 15 percent expansion of our  
23 capacity.

24 VICE CHAIRMAN ARANOFF: I just wanted to  
25 sort of reach behind the term announced, because

1 companies will oftentimes announce things that they  
2 don't actually ever do. So this is something that's  
3 actually underway, funds have already been spent.

4 MR. TREINEN: The engineering work is  
5 complete and the equipment is on order and we have a  
6 plan to install it in April.

7 VICE CHAIRMAN ARANOFF: And you can tell me  
8 either now or if it's confidential in your post-  
9 hearing, but is this being paid through internal  
10 company funds? Have you borrowed the funds? How are  
11 you financing this expansion?

12 MR. TREINEN: This is with internal funds.

13 VICE CHAIRMAN ARANOFF: Thank you. And you  
14 said it will be on line in the spring.

15 MR. TREINEN: That's correct.

16 VICE CHAIRMAN ARANOFF: A number of the  
17 arguments that were made this morning and in your  
18 brief depend upon the Commission looking back to 2003  
19 in making its injury analysis in this case.

20 Mr. Cannon, do we have sufficient data on  
21 the record to assess the issues of volume price and  
22 impact that are laid out in the statute if we were to  
23 look back to 2003?

24 MR. CANNON: I believe actually in the staff  
25 report you have in the footnotes several of the pieces



1 of data that I presented including the 2003 data for  
2 domestic shipments in the confidential data. We  
3 presented it also at the preliminary stage. And it's  
4 in the record, it's in our brief as well.

5 Also I would point out that while we think  
6 it's relevant, obviously, and it's important for you  
7 to look at this, it's not necessary. You can still  
8 find injury on three years.

9 VICE CHAIRMAN ARANOFF: I assumed that would  
10 be your position. But just to clarify, we do have  
11 complete questionnaire data from the domestic industry  
12 that would cover 2003?

13 MR. CANNON: No, I'm sorry. You have the  
14 similar data elements that I showed which were the  
15 trend in shipments. I don't think we did the full  
16 questionnaire at the preliminary stage back to '03. I  
17 think we have P&L. Kind of the import volume,  
18 domestic shipment, that piece.

19 VICE CHAIRMAN ARANOFF: I guess I would ask  
20 you, if you're serious about this 2003 argument and  
21 really want us to look at it, if there is additional  
22 information to fill out our record with respect to the  
23 domestic industry for 2003, that you provide it in the  
24 post-hearing.

25 MR. CANNON: All right. My recollection is

1 we did actually have all of this including P&L in the  
2 full on, all the questionnaire data. So in the post-  
3 hearing I can probably just point to where it is. I  
4 feel pretty certain it was all exhibits to the  
5 petition. We had all that.

6 VICE CHAIRMAN ARANOFF: Okay.

7 MR. CANNON: We were actually set to perhaps  
8 file a little sooner, but Christmas.

9 VICE CHAIRMAN ARANOFF: We thank you for not  
10 doing that, actually. We were busy then.

11 If we need to have census data for imports  
12 during that period, anything else that we might need  
13 to look at it if we were seriously interested in doing  
14 that would be helpful.

15 Thank you.

16 Thanks, Mr. Chairman.

17 CHAIRMAN PEARSON: Commissioner Okun?

18 COMMISSIONER OKUN: Thank you. I think I  
19 just have a couple of follow-ups. Mr. Treinen, let me  
20 start with you, and then go to Ms. Schewe.

21 I'm still trying to understand, when you  
22 have production of I think it was different particle  
23 sizes, you talked about that you need to be more  
24 competitive on particular product, and I took it that  
25 that was you're producing in your plant and you're

1 producing one particular size of the powder. I think  
2 you used the example of powder. Once you sold to the  
3 customer you were selling that powder to, you need to  
4 move the powder somewhere else and therefore that  
5 would be at a lower price. Was that what you were  
6 trying to say? I'm just trying to make sure I  
7 understood that.

8 MR. TREINEN: Yes, Commissioner Okun.

9 The change in business from year to year,  
10 typically we would either win a customer or lose a  
11 customer and our product mix changes.

12 So in the case of 2006, we lost a customer  
13 who decided to buy from China, and that customer was  
14 very important in rounding out our product mix. So  
15 during 2006 the grade that they previously bought, we  
16 didn't have another customer to take that product so  
17 it accumulated in inventory. We in fact had to, we  
18 lost other business as well, and our capacity was  
19 fairly low. We had to close the plant for three  
20 months. Inventory built up.

21 When we restarted the plant we still had  
22 that grade in surplus because we didn't have adequate  
23 customer mix to sell that grade. So going into the  
24 following year we were more aggressive in our pricing  
25 to win that customer back. We were successful in

1 winning that customer back at a very low price. We  
2 had to meet the Chinese price, and it was very close  
3 to our variable cost, but we already had some of that  
4 product in inventory and it rounded out our product  
5 mix to better match what we actually produced  
6 naturally.

7 COMMISSIONER OKUN: Okay, your argument is  
8 that because of a loss of a customer's sales, that  
9 that therefore had a kind of cascading effect on your  
10 prices for more than just that lost sale.

11 MR. TREINEN: That's correct.

12 COMMISSIONER OKUN: Ms. Schewe is that a  
13 similar situation for your company? For ICL?

14 MS. SCHEWE: Yes, we've had similar  
15 situations in the past where if we have a significant  
16 amount of granular we may have inventory building up  
17 of our powdered material. As Nancy mentioned,  
18 typically what we try and do is we work that into what  
19 we call our water treatment market segment which is a  
20 little less concerned about the actual sizing of the  
21 material. But typically we have to do that at a  
22 discount versus where our standard pricing would be,  
23 which is basically meaning to say that we have to be  
24 able to meet the Chinese price head on instead of  
25 perhaps being able to get a slight premium.

1                   We experienced that particular issue  
2 throughout 2007 where we were selling some of our  
3 powder material to a selected customer in that  
4 particular manner.

5                   COMMISSIONER OKUN: Okay. I understand that  
6 testimony now.

7                   In terms of the different customers, you've  
8 both mentioned there are a small number of customers  
9 who still want domestic product because of concerns  
10 over contamination, and that you see the Chinese  
11 product in all your other product lines.

12                   I'm just trying to make sure I understand.  
13 For the other product lines, do you believe your  
14 customers will continue to, that those will be  
15 customers who are looking for more than one source of  
16 product? In other words they want more than one  
17 source because of concerns about reliability of supply  
18 for their business?

19                   MS. SCHEWE: I would say generally speaking  
20 that's somewhat customer specific. Although I thin in  
21 many cases for a large user, yes, security of supply  
22 would be a key component potentially in a purchasing  
23 agent's mind as far as who they might have an  
24 agreement with.

25                   COMMISSIONER OKUN: Okay.

1 Mr. Treinen, any other comments?

2 MR. TREINEN: Our answer is very similar to  
3 that. The customers' purchasing philosophies differ  
4 from customer to customer. Some like to maximize  
5 their leverage by buying all from one supplier.  
6 Others feel that leaves them too vulnerable, depending  
7 on their product and application and the location of  
8 their suppliers. But some customers have a purchasing  
9 philosophy not to get stuck with just one supplier, to  
10 have multiple sources. So I've seen customers going  
11 both ways.

12 I think in the case of the risk of  
13 contamination of the product, that also depends on  
14 their industry and what they're in. If they have  
15 customers who are very sensitive to that kind of thing  
16 then they may want to think twice about buying from  
17 China. But in some industries that's really not a big  
18 concern.

19 COMMISSIONER OKUN: In the opening from  
20 Respondents and in their briefs, I think we'll hear  
21 this afternoon more about their argument that there is  
22 no causal connection because if you have these  
23 different segments that might prefer U.S., and then  
24 you have bigger segments where they want to have two  
25 sources in any event, that that would not be a price

1 driven decision that would affect U.S. prices.

2 Help me understand again your response to  
3 that argument.

4 MR. TREINEN: I think the pricing that the  
5 Chinese suppliers have offered in the market, as you  
6 saw on our graphs, is constantly below our price. I  
7 think there is a limit, though, as to how much the  
8 market will buy from China because there are customers  
9 who would not take the risk of buying 100 percent of  
10 their supply from China.

11 But I think the pricing decision is  
12 significantly impacted by the suppression of prices  
13 from China.

14 I think you had asked earlier, two aspects  
15 of that. One is that it depresses prices in certain  
16 negotiations because you have to meet a competitive  
17 offer, but it also has an overall suppression of  
18 prices where when we have a cost increase we're not  
19 able to pass that on because there are alternative  
20 prices at lower levels from the Chinese producers.

21 MS. SCHEWE: I would add to that that as you  
22 look at the time period that's in question here, I  
23 think both parties have indicated that has resulted in  
24 inadequate profits for this particular business  
25 segment for us.

1                   COMMISSIONER OKUN: Since we're going to  
2 have a closed session later, I think I'll save some of  
3 my questions about that aspect of the case for the  
4 closed session.

5                   With that, Mr. Chairman, I have no further  
6 questions. I very much want to thank you for all your  
7 responses. It was very helpful.

8                   CHAIRMAN PEARSON: Commissioner Lane?

9                   COMMISSIONER LANE: We've heard some  
10 discussion about inventory and inventory accumulation  
11 based on customer mix demand. Can you explain the  
12 inventory shelf life to me? And is the shelf life  
13 longer for long chain?

14                  MS. STACHIW: This is Nancy Stachiw from  
15 ICL.

16                  The shelf life for the medium chain and long  
17 chain are the same. We give 18 month shelf life.

18                  COMMISSIONER LANE: Does everybody agree  
19 with that?

20                  MR. CANNON: I think in the testimony we  
21 suggested that there's a longer shelf life on long  
22 chain in the product. In other words, in the Sunny  
23 D'Lite there, when it gets to that point, after the  
24 SHMP gets in solution in water it will break down, and  
25 long chain breaks down more slowly so it will last



1 longer in the final product.

2 But while it's still in the little bag or  
3 bottle and it's still SHMP, it has the same shelf  
4 life.

5 MS. STACHIW: As we sell it to the customer  
6 it has the same shelf life, but as Mr. Cannon  
7 discussed, when it's utilized in a product, when our  
8 customers use it to make toothpaste or a beverage or a  
9 meat product, it would allow the product to have a  
10 longer shelf life than a regular chain.

11 COMMISSIONER LANE: Okay. Thank you.

12 At any time since 2004 have you had to turn  
13 away any customers or have you chosen to turn away  
14 customers due to unavailable capacity or other  
15 reasons? And if so, could you please describe the  
16 situation and the timeframe?

17 MR. TREINEN: This is Tim Treinen.

18 Generally speaking we have had adequate  
19 capacity available, however in some cases a customer  
20 would require a volume of a certain grade which we may  
21 not have had available if they had an inconsistent  
22 demand requirement.

23 We basically contract our business and make  
24 sure that we don't commit to sales of any product that  
25 we don't have the capability to produce.

1 Occasionally, though, a customer who may also be  
2 buying from China, can't get his alternate supply,  
3 comes to us for a larger volume. In those cases we  
4 may not be able to meet their immediate demand.

5 COMMISSIONER LANE: I'm sure that this  
6 afternoon we're going to hear that there are issues  
7 relating to supply. So are you saying that when you  
8 have not been able to offer the customer what they  
9 want, it's because the customer has come to you too  
10 late or is changing the mix or whatever? That it's  
11 basically lack of planning on the customer's part?

12 MR. TREINEN: Not necessarily.

13 COMMISSIONER LANE: I don't want you to get  
14 mad at your customers, but is that basically what the  
15 problem is?

16 MR. TREINEN: No, I was just citing one  
17 specific example that I recall is that we had a  
18 request for additional quantity that we did not have  
19 in our plan and in that case we weren't able to supply  
20 it immediately.

21 But we can also shift our mix. There are  
22 ways to produce more of a certain grade. For  
23 instance, if somebody needs more powder than we have  
24 from our natural production mix we could take the  
25 granular or plate material and grind it further.

1       However, that extra process adds additional cost. We  
2       may not have been able to do that at the same price  
3       we'd offered the product to that particular customer.

4               So if we have a contract and it commits to a  
5       certain quantity of a particular grade and they want  
6       more, then it might increase my cost in order to  
7       supply that additional quantity. But certainly in  
8       most cases we could do that.

9               COMMISSIONER LANE: Thank you.

10              Ms. Schewe, did you have something you  
11       wanted to add?

12              MS. SCHEWE: I'll just add from the ICL  
13       perspective that we have capacity available. But from  
14       time to time in this industry we have unplanned  
15       outages and that may cause us to have to work with  
16       customers for a short period of time to have work-  
17       arounds as far as what they would typically expect  
18       from an order to deliver time standpoint. So delivery  
19       times, our delivery lead times can be something we  
20       have to work through on a case by case basis in a  
21       situation where we may have some unplanned down time.

22              COMMISSIONER LANE: Let's talk about  
23       unplanned outages. I can't remember, one of the  
24       companies in the staff report did have an extended  
25       outage. What problems did that cause, and why do you

1 have unplanned outages?

2 MR. TREINEN: Innophos had an extended  
3 outage that I referred to in 2006. We had our plant  
4 shut down for approximately three months.

5 The reason for that was because you have to  
6 run an SHMP furnace at full capacity. You run it 24  
7 hours a day, seven days a week. If you shut it down,  
8 it takes a long time to heat this furnace up. And  
9 shutting it down and then starting it back up at a  
10 later date, that adds additional wear and tear on the  
11 furnace and the brick.

12 So the optimum duration of a furnace is to  
13 run it, as I said, constantly. Then you would have to  
14 typically rebrick the furnace in an 18 month interval.  
15 So you'd normally have to take the plant down for  
16 planned outage at approximately the end of the 18  
17 month period. It would normally take two to three  
18 weeks to rebrick the furnace and start it back up  
19 again.

20 In the case of 2006 when we had our outage,  
21 we shut the plant down because we had too much  
22 inventory and there was a mismatch between our  
23 production rates and our sales volumes.

24 During that three month period that we had  
25 the plant down, we did go ahead and rebrick our

1 furnace even though it might not have been required  
2 for a couple more months, but we took advantage of the  
3 plant being down three months and used about two to  
4 three weeks of that period to rebrick the furnace.

5 COMMISSIONER LANE: And during that period  
6 of time were you able to meet all of your customer  
7 needs because of the inventory that you had on hand?

8 MR. TREINEN: Yes.

9 COMMISSIONER LANE: Thank you.

10 Ms. Schewe, did you have something you were  
11 going to state about why you have unplanned outages?

12 MS. SCHEWE: I can't tell you why they're  
13 unplanned because they're unplanned. But from a  
14 perspective as far as customer service to those  
15 customers, again, as I mentioned, we do work with our  
16 customers in those given situations to accommodate  
17 their demand needs.

18 In certain cases we have purchased from co-  
19 producers in order to ensure that they continue to  
20 have the high service levels that they have  
21 historically had with our organization.

22 In late 2007 we made an investment in our  
23 SHMP plant to make both of our furnaces food grade  
24 worthy. So we believe that has increased our customer  
25 service response time and we don't foresee these

1 issues continuing in the near future.

2 COMMISSIONER LANE: Okay, thank you.

3 U.S. producer prices for all four pricing  
4 products increased between 2004 and September 2007.  
5 How were you able to increase prices when the Chinese  
6 product was selling at sometimes substantially lower  
7 prices during this period?

8 MR. TREINEN: I think we had heard some  
9 indication from the pricing trends of Chinese prices  
10 that the Chinese prices had also increased during that  
11 period. Not as much as we would have liked to have  
12 increased our prices to recover the higher cost of raw  
13 materials and the cost of production.

14 So I think there was some suppression there,  
15 but there was some movement in both the Chinese price  
16 as well as our price. But not to the extent that we  
17 would have had the Chinese imports been suppressing  
18 the marketplace.

19 COMMISSIONER LANE: Okay.

20 MS. SCHEWE: I would also add that during  
21 this time period the product mix of our sales could  
22 have had something to do with the difference in the  
23 prices between the U.S. producers and the Chinese.  
24 China has a large presence in the technical medium  
25 chain and we have a higher percentage of our sales in

1 food which may attribute to part of the difference  
2 between the two prices.

3 MR. CANNON: Finally I would observe that  
4 the prices we're talking about are averages for the  
5 domestic producers. So typically when they leave the  
6 kaolin market or when they lose a contract they happen  
7 to lose the lowest price contract. In other words,  
8 the prices at the very bottom are the ones which they  
9 finally give up on and the Chinese take that sale. So  
10 their average price over time indeed does tend to move  
11 up. When you look at those averages it's natural, I'm  
12 sure this occurs in every case.

13 COMMISSIONER LANE: Thank you.

14 Thank you, Mr. Chairman.

15 CHAIRMAN PEARSON: Commissioner Williamson?

16 COMMISSIONER WILLIAMSON: Thank you, Mr.  
17 Chairman.

18 For both Petitioners, you can do this in  
19 post-hearing if you want, but I was wondering  
20 approximately what share of your sales are to Univar,  
21 and do you have other customers that account for also  
22 major shares of your sales? To what extent are you  
23 dependent on these major buyers?

24 MR. CANNON: We'll do that in the post-  
25 hearing brief.

1           Also I'd point your attention to, in each  
2 questionnaire response they identify their top ten  
3 customers and it gives the percentage toward the back.  
4 You can see who those companies are and how high  
5 Univar is on the list.

6           COMMISSIONER WILLIAMSON: Good. Thank you.

7           Also can you discuss the extent to which the  
8 Commission as a whole has looked at pricing to  
9 distributors versus pricing to retailers or end users  
10 in their past decisions, and what prices should the  
11 Commission look at in this case?

12           MR. CANNON: I think we would be happy to do  
13 that in a brief. My understanding of the precedent is  
14 that you generally look at both prices to the end user  
15 markets and prices to distributors. And particularly  
16 here where some of the very largest customers are  
17 industrial end users, they are these companies that  
18 operate mines, they're municipal water treatment  
19 companies, very large users, they buy a large volume,  
20 buy directly. So in fact they might even have a lower  
21 price than a distributor who resales. But I believe I  
22 can cite you cases where the Commission has looked at  
23 both those price levels and analyzed both.

24           COMMISSIONER WILLIAMSON: Thank you.

25           When the antidumping orders were put in



1 effect on the Chinese SHMP in Mexico, how was the  
2 previously Chinese supply/demand filled? Do you have  
3 any information on that? Anyone?

4 MR. TREINEN: I don't know the volumes of  
5 Chinese imports into Mexico, but I do know that there  
6 is one producer of SHMP in Mexico. The company is  
7 called Quimir. They have a capacity, as I understand  
8 it, of about 7,000 tons in their plant. I know that  
9 when the Chinese antidumping duty was imposed in  
10 Mexico, the volume coming from Mexico to the U.S.  
11 decreased that year.

12 My presumption is they had enjoyed higher  
13 domestic sales because of the dumping order and  
14 preferred that versus some of the sales in the U.S.  
15 market.

16 COMMISSIONER WILLIAMSON: Thank you.

17 On page seven of Xingfa's brief they  
18 indicate that the use of shipments of importers rather  
19 than imports appear to be a reasonable approach, and I  
20 was wondering if you agree with that distinction.

21 MR. CANNON: Yes.

22 COMMISSIONER WILLIAMSON: And why?

23 MR. CANNON: As I pointed out, if you use  
24 the census data you essentially produce the same trend  
25 as our chart showed. But because of the census data

1 being the blue line, for example, because a lot of  
2 that came in right at the end of 2005 and went into  
3 inventory, it didn't really move out into the market  
4 until 2006. So if you use shipments of imports you  
5 see essentially the red line, and what you see is that  
6 in 2005 the penetration through the market was not  
7 quite as great. By the same token, there was not this  
8 fall-off in 2006.

9 And in fact I would submit it's a similar  
10 phenomenon that's going on in interim 2007. It isn't  
11 that suddenly demand is greater in the market, it's  
12 that a big volume of imports moved in right before the  
13 Commerce preliminary decision and that's all sitting  
14 in inventory and it's gradually going to work through  
15 the market from now until March when you vote.

16 COMMISSIONER WILLIAMSON: Thank you.

17 I take it during the interim periods, it's  
18 also true what's happened there?

19 MR. CANNON: Yes, however during the interim  
20 period the shipment data that the staff collected are  
21 not as complete. Not as many people answered the  
22 questionnaire.

23 The staff, I think, elected to use the  
24 import data, the census data in the interim period,  
25 and I thought it was a reasonable decision because the

1 data that you have are obviously not complete. Not  
2 all the importers answered the questionnaire.

3 COMMISSIONER WILLIAMSON: Thank you.

4 Turning to a different question, I know SHMP  
5 usually is a relatively small percentage cost for most  
6 of the products in which it's used. But is there a  
7 significant difference in terms of there are some  
8 products in which it is really a much more important  
9 part of than others?

10 MS. STACHIW: Could you repeat the question  
11 again?

12 COMMISSIONER WILLIAMSON: Is SHMP a much  
13 more important input in some products than in others?  
14 I wanted to get sort of a generalization as to --

15 MS. STACHIW: Yes. There are some  
16 applications such as water treatment where it's used  
17 at maybe five, ten parts per million. In a beverage  
18 it might be used at .1 percent. A cheese application,  
19 half a percent. So it varies by application. There  
20 are some that use quite a bit more. Toothpaste, for  
21 example, a third of the formulation might be SHMP.

22 COMMISSIONER WILLIAMSON: Thank you. That's  
23 exactly what I wanted to know about.

24 Commissioner Lane asked a question about the  
25 outages and I was wondering what happens to your

1 employees during the outage periods? Do you use them  
2 in other facilities or in producing other products?

3 MR. TREINEN: Yes. In our case, for  
4 instance in the three month outage that I mentioned  
5 earlier in 2006, we used the employees to do other  
6 routine maintenance. We had an old plant at the site  
7 that we did some work on to try to dismantle part of  
8 the utilities in that site. We had some upgrades that  
9 had been put off for some time. They did some rework  
10 and packaging off line. Various tasks.

11 We also forced some vacation to be used  
12 during that period so that the employees, generally  
13 speaking, maintained their employment. We did have  
14 following that outage, or I guess late in the outage  
15 we did have a lay-off of a couple of employees at that  
16 site.

17 COMMISSIONER WILLIAMSON: Thank you, Mr.  
18 Chairman. I have no further questions.

19 I want to thank the witnesses for their  
20 testimony. Thank you.

21 CHAIRMAN PEARSON: Going back to my  
22 production question. I think I have one more.

23 Is the ratio of production of short chain  
24 product to long chain product, is it driven solely by  
25 your expectations of what customers want to buy, or is

1       there some technical production issue that plays some  
2       role in the short chain versus long chain decision?

3               MR. TREINEN:  It's actually regular chain,  
4       we refer to regular chain versus long chain.

5               It's strictly a matter of running in  
6       campaigns.  As we forecast our customers' requirement  
7       we may run three weeks on a regular chain campaign,  
8       and then we might convert to long chain and run for a  
9       week or five days, ten days, depending on the mix.

10              Generally speaking it's about 75 percent  
11      regular chain and 25 percent long chain, but that may  
12      vary from year to year.

13              CHAIRMAN PEARSON:  Okay.

14              MS. SCHEWE:  And we're very typical.  Again,  
15      as you looked at our numbers, a majority of our  
16      material is the regular chain.  But there's no  
17      technical reason why we're producing one versus the  
18      other.  It's really related to what the customer  
19      requests.

20              CHAIRMAN PEARSON:  Thank you.

21              A question for both firms regarding your  
22      phosphoric acid supply.  If this is confidential  
23      information answer it later.

24              I'm wondering, are both firms purchasing  
25      merchant phosphoric acid out on the marketplace?  Or

1 are there relationships with supplying firms that  
2 could influence either your ability to get phosphoric  
3 acid or the pricing?

4 MS. SCHEWE: We're both a manufacturer of  
5 phosphoric acid as well as we have a long term  
6 arrangement for purchase of phosphoric acid.

7 CHAIRMAN PEARSON: So with a single firm, a  
8 single supplier, long term relationship?

9 MS. SCHEWE: Correct.

10 MR. TREINEN: Innophos has a similar  
11 situation. We have a purified phosphoric acid plant  
12 in Geismar, Louisiana. We have a long term supply  
13 arrangement to purchase merchant grade acid which we  
14 then purify at that plant with a single supplier. So  
15 we produce the purified acid there that can be used in  
16 our phosphate productions. Then we also have a long  
17 term purchase contract to purchase purified phosphoric  
18 acid with a single supplier.

19 CHAIRMAN PEARSON: Should we understand the  
20 phosphoric acid market to be sufficiently liquid, that  
21 it's not hard to find phosphoric acid? Or are there  
22 sometimes supply constraints on phosphoric acid?

23 MR. TREINEN: Typically speaking there  
24 haven't been constraints on supply.

25 CHAIRMAN PEARSON: You say there have been?

1 MR. TREINEN: Have not been. But more  
2 recently the market is getting much tighter, which  
3 correlates to the increase in pricing that we  
4 mentioned earlier. This is mostly driven by the  
5 higher demand for merchant grade acid somewhat driven  
6 by the biofuels demand, the additional demand for  
7 crops which are used in biofuels which increases the  
8 demand for fertilizer.

9 That in the last couple of years has  
10 resulted in additional demand for merchant grade acid  
11 and tightened up the market in that respect.

12 MS. SCHEWE: And just for clarification,  
13 merchant grade acid is a component in fertilizers and  
14 that's really what we're talking about here is the  
15 demand for MGA indirectly related to the surge in  
16 fertilizer consumption worldwide, given the growth in  
17 China and India's population, as well as even in the  
18 U.S.. Movement towards corn preferentially over soy  
19 beans which requires more fertilizer for consumption.  
20 So a tightening in the overall global market for in  
21 this case MGA which is a precursor to our purified  
22 phosphoric acid.

23 CHAIRMAN PEARSON: Mr. Cannon, perhaps in  
24 the post-hearing brief you could provide a little more  
25 detail about the sources of phosphoric acid that are

1 used by your clients.

2 MR. CANNON: We would be happy to.

3 CHAIRMAN PEARSON: Thank you.

4 There has been some discussion of getting  
5 product of a new supplier qualified for a given use.  
6 Ms. Stachiw, maybe you could address that in a little  
7 more depth. I presume you are the interface between  
8 getting ICL product qualified for uses that customers  
9 might have, or that you help them dream up, whichever  
10 way we should look at it.

11 Is this a difficult thing to do, to get  
12 qualified?

13 MS. SCHEWE: Typically it's not. Again,  
14 it's customer dependent. Oftentimes it's merely a  
15 customer submitting a specification. It's a quick  
16 review. Okay, we meet the sizing, we meet this. It's  
17 just okay, let's place an order.

18 Other times a customer might have specific  
19 sizing and they want a certain cut or they want you to  
20 certify a certain iron level or run some additional  
21 testing. Then there might be some discussion back and  
22 forth. It really just depends on the customer, on the  
23 application.

24 CHAIRMAN PEARSON: Would we be correct to  
25 understand that the larger volume customers tend to



1 have less specific criteria, thus they might find it  
2 easier to qualify a new supplier than say a food grade  
3 customer which has very specific criteria?

4 MS. SCHEWE: I don't know that you could  
5 generalize in that way. A lot of it depends on the  
6 customer's process, what kind of, do they do blending,  
7 do they make a solution. Certainly for food it's a  
8 little bit more stringent, it requires more testing,  
9 must meet FCC, but to really say that the food  
10 customers have more strict specifications, I could not  
11 say that.

12 To prepare for this we did do a thorough  
13 review of all of our customer specifications and in  
14 general where we see the differentiation is sizing.  
15 That's where most customers when they have a special  
16 request, it's around sizing.

17 CHAIRMAN PEARSON: What have been the  
18 longest and shortest periods of time to get qualified  
19 that you're aware of in the industry? Either your  
20 firm or some other firm.

21 MS. SCHEWE: Well, it could be a minute of  
22 just looking at what their requirements are and saying  
23 okay, we've got it. It's our standard. Two, it could  
24 take submitting samples, running special screens,  
25 doing tests. It could take a couple of months.

1                   CHAIRMAN PEARSON: But probably not longer  
2 than a couple of months.

3                   MS. SCHEWE: No.

4                   CHAIRMAN PEARSON: Thank you.

5                   I think my final question has to do with why  
6 we're not seeing more non-subject imports. In the  
7 staff report we are aware that Thermophos from the UK  
8 is a significant producer of SHMP and we're not aware  
9 of any of that product coming into the United States.

10                  Are there things going on in the UK market  
11 that have led to that? Does anyone have any  
12 knowledge?

13                  MR. TREINEN: I can speak to that. The  
14 operation that's currently owned by Thermophos in the  
15 UK was part of Rhodia until 2004. I was of course  
16 with Rhodia at the time when that business was sold  
17 off so I was involved in the operation to some degree  
18 of our business in the UK.

19                  They have two furnaces in the UK. They have  
20 a combined capacity of somewhere above 25,000 tons.  
21 They have for quite some time not run at anywhere near  
22 that capacity and they've either alternated their  
23 furnaces or operated only one furnace at a time. But  
24 they've had minimal demand. Back in the '90s when I  
25 was with Albright and Wilson, and those operations

1 were also part of Albright and Wilson global business,  
2 sometimes we would rely on SHMP produced in the UK,  
3 and then we would import that and resell it into the  
4 market if there was a gap in our ability to supply the  
5 full market requirements.

6 But I think that has diminished. I can only  
7 conjecture that it's a relative issue between the cost  
8 of running the extra furnace, and as I said earlier,  
9 it's very difficult to run at less than full capacity.

10 So if they don't have enough additional  
11 demand to run the second furnace, then they're only  
12 running it part of the time and you have to make your  
13 choice. Are you going to push for that additional  
14 sales to fill out the capacity, or just run one  
15 furnace? That would be based on the value that they  
16 can get in the export markets.

17 I guess in summary I would say the pricing  
18 levels in the United States that they could enjoy  
19 wouldn't justify them starting their second furnace  
20 prior to the antidumping. It's very possible that  
21 they may reconsider the U.S. market after the  
22 antidumping and the price elevation that we're seeing  
23 now.

24 CHAIRMAN PEARSON: Okay. Thank you very  
25 much for that answer. I learned a lot more about

1 Thermaphos than I expected I would.

2 With that I have no further questions.

3 Vice Chairman?

4 VICE CHAIRMAN ARANOFF: Thanks, Mr.

5 Chairman.

6 I want to pick up there a little bit with  
7 non-subject imports.

8 In your direct presentation, Mr. Cannon, you  
9 stated that non-subject producers in Europe are mainly  
10 captive consumers of SHMP. Do we have anything on the  
11 record that bears that out?

12 MR. CANNON: Yes, I believe in the staff  
13 report you have confidential data in that regard.

14 I'm stating that based on the fact that it's  
15 knowledge of the companies as to their affiliated  
16 producers in Europe and what they're doing, and indeed  
17 we've only recently gotten questionnaire response data  
18 from B.K. Giulliani who's affiliated to one of these  
19 two producers.

20 I can point to it in the post-conference.  
21 That's a pretty heavily bracketed part of the report.

22 VICE CHAIRMAN ARANOFF: Okay. What I'm  
23 interested in is, often when we look at non-subject  
24 producers when we're doing our Bratsk inquiry, we  
25 might look at what they consume internally, what they

1 sell in their home market. In the case of European  
2 producers we might look at what they sell in Europe or  
3 within the EU, and then sort of stuff that actually  
4 gets exported outside of that area. I won't speak for  
5 my colleagues, but I sometimes will view that  
6 hierarchy in terms of its availability or the  
7 likelihood that it might come into the U.S. market.

8 So if there's any way you can help me to  
9 break down what these non-subject producers are doing  
10 in terms of how much of it is committed to export, and  
11 if so where it's going, that would be helpful.

12 MR. CANNON: Okay.

13 VICE CHAIRMAN ARANOFF: Thank you.

14 I know this was discussed a little before  
15 but I'm not sure if we got an answer.

16 China has an export tax, a rebate on this  
17 product, and it was either fully or partially  
18 rescinded in July of 2007. Does anyone know by what  
19 amount that rebate was lowered?

20 MS. SCHEWE: Yes, that rebate was lowered  
21 from 13 to five percent July 1st, 2007.

22 VICE CHAIRMAN ARANOFF: Is there any way to  
23 tease out what effect that might have had on levels of  
24 the Chinese exports relative to the fact that you're  
25 also right about the period of time when the Commerce

1       prelim was kicking in?

2                   MS. SCHEWE: I think as we're looking at the  
3       quarterly data --

4                   MR. CANNON: The quantity and value of  
5       imports quarterly, right?

6                   MS. SCHEWE: I think if you look in  
7       actuality you see a stark increase in imports from  
8       China during the period that we're talking about here,  
9       being the second quarter, early third quarter  
10      activity.

11                   I would actually say that's not related.  
12      Obviously it wouldn't be related to costs going up,  
13      but our premise here is that it's related to the  
14      Commerce preliminary duties being imposed effective  
15      September 7th and trying to bring in material prior to  
16      that date.

17                   MR. TREINEN: I might add that because the  
18      Chinese price over the period in question was, the  
19      average price had a constant gap between the U.S.  
20      producers' price and the Chinese import price, that if  
21      the Chinese import price went up by eight percent that  
22      would not put it out of competitive level with the  
23      U.S. price. It simply allowed the U.S. price to  
24      increase proportionally. So I don't think it would  
25      have had any effect in the volumes coming from China.

1           VICE CHAIRMAN ARANOFF: Okay. I think I may  
2 have reached the end of my questions so I'll thank you  
3 all for your answers.

4           Thank you, Mr. Chairman.

5           CHAIRMAN PEARSON: Commissioner Lane?

6           COMMISSIONER LANE: I'm not sure how to  
7 pronounce the name of the Chinese company. Would one  
8 of you help me out so that I can attempt to get it  
9 right? X-I-N-G-F-A.

10          MR. TREINEN: It's Hubei Xingfa.

11          COMMISSIONER LANE: Xingfa. Okay.

12                 Xingfa contends on page three of its pre-  
13 hearing brief that it chose not to participate in the  
14 Commerce investigation following the preliminary  
15 determination. However, you allege in your brief that  
16 Xingfa's dumping margins were obtained on the basis of  
17 Xingfa's questionnaire responses, not adverse facts  
18 available.

19                 Can you explain this apparent discrepancy?

20          MR. CANNON: Yes, thank you.

21                 Xingfa submitted their questionnaire  
22 response with all their data. Commerce threw it in  
23 the computer. Out popped a number. They found they  
24 were dumping by 180 percent.

25                 At that point Xingfa decided they didn't

1 want to be verified or audited and they pulled the  
2 plug and they stopped, they left the investigation.

3           Unfortunately, Commerce hasn't made its  
4 final decision. They're going to make it on Monday.  
5 But I would expect that Commerce will probably use the  
6 preliminary margin which was based on Xingfa's own  
7 data.

8           The only reason I point that out is just  
9 that I know that number is substantial. They are  
10 dumping by clearly a very large margin.

11           It's unusual, and therefore it occurred to  
12 me that the Commissioners might think this must be a  
13 facts available type situation. I just wanted to let  
14 you know that it's not, and in fact this is based on  
15 their own data. They were dumping by 183 percent.

16           COMMISSIONER LANE: Thank you.

17           The actual profits and returns on assets for  
18 the domestic industry are business proprietary so I  
19 will not reference the actual numbers. I assume this  
20 can be done in post-hearing brief.

21           However, what level of operating income as a  
22 percentage of revenue and stated as a return on assets  
23 do you believe is necessary to sustain this industry  
24 and to allow for investment in new capacity? And what  
25 price levels would you have to achieve to be able to



1 generate those levels of profit?

2 Mr. Cannon?

3 MR. CANNON: I think given the different  
4 situations of both companies and the fact that this  
5 question is a mixture in terms of both adding volume  
6 to their sales as well as getting higher prices, that  
7 to analyze this we would like to do this in our post-  
8 hearing submission where we can use the actual numbers  
9 and run a spreadsheet for you

10 COMMISSIONER LANE: That would be great.

11 You may have touched on this a little bit,  
12 Mr. Treinen, when you said that you buy your  
13 phosphoric acid on long term contracts. I just  
14 wondered, what percentage of your need do you buy  
15 through these long term contracts? And have your  
16 practices regarding raw material acquisition changed  
17 since 2004?

18 MR. TREINEN: Yes. It varies year to year,  
19 depending on the relative price of internal production  
20 versus the purchase contracts which are indexed and  
21 vary from year to year, but the specifics of that are  
22 confidential and I would have to give you the answer  
23 in a post-hearing brief.

24 COMMISSIONER LANE: Thank you.

25 Ms. Schewe?

1 MS. SCHEWE: With regard to ICL, our change  
2 of ownership has provided a phosphoric acid plant that  
3 we did not have prior to our purchase by ICL. So our  
4 strategies have changed significantly over the course  
5 of the time period in question. But again, we would  
6 have to provide that sensitive information in the  
7 post-hearing brief.

8 COMMISSIONER LANE: Okay. I would  
9 appreciate that.

10 It looks like this product is sold  
11 domestically both to distributors and to end users.  
12 Are your prices to distributors typically lower than  
13 your prices for similar product sold to end users?  
14 And if so, what would be the typical percentage or  
15 incremental difference per pound?

16 MR. TREINEN: I can speak for Innophos.  
17 Typically the prices sold to distribution are higher.  
18 Partially because most of the direct customer sales  
19 are to large volume customers who qualify for volume  
20 discounts and more competitive pricing pressure.

21 In terms of the specific differences, I'd  
22 have to give you that information in a post-hearing  
23 brief.

24 COMMISSIONER LANE: Thank you.

25 MS. SCHEWE: I apologize, but we're in a

1 similar situation as far as the value or the  
2 attractiveness of the distribution business which is  
3 typically small end users versus a large end user on a  
4 direct basis. We'll be happy to provide that  
5 information in a post-hearing brief.

6 COMMISSIONER LANE: Thank you.

7 Now are imports sold at mostly the  
8 distributor level or end use level? And does that  
9 make a difference when we compare prices of imports to  
10 your prices in the U.S. market?

11 MR. TREINEN: I would say that I'm not  
12 really aware of any users who import the product  
13 directly. I think most of the users of Chinese  
14 imports buy through a broker or distributor. But in  
15 most cases those are sold by a distributor or broker  
16 who handles the importation, the logistics, for the  
17 producers in China. They are competing with us at  
18 direct sale customers that we have.

19 COMMISSIONER LANE: Ms. Schewe, do you agree  
20 with that? That there aren't people who are buying  
21 directly from China?

22 MS. SCHEWE: I think to say there are no end  
23 users that are buying material directly from China is  
24 a slight overstatement. We can see in the import  
25 statistics there are certain customers, at least for a

1 portion of their purchases, are importing directly  
2 from China. But as we look and we're in the  
3 marketplace discussing new contracts, we are really  
4 dealing with pricing that a distributor for the most  
5 part is offering to an end users of Chinese material.

6 So I think the appropriate view is to look  
7 at the price being sold to the end user versus the  
8 price of the actual material being imported into the  
9 U.S..

10 COMMISSIONER LANE: Okay, thank you.

11 I may have a follow-up question in the in  
12 camera proceeding, but thank you for your answers.

13 Mr. Chairman, that's all I have.

14 CHAIRMAN PEARSON: Commissioner Williamson?

15 COMMISSIONER WILLIAMSON: Actually, Mr.  
16 Chairman, I have just one last question for both  
17 companies.

18 Partially because we haven't had an  
19 opportunity to visit your facilities, I'm trying to  
20 get an idea of the impact, where the two plants are  
21 located. You don't have a lot of workers compared to  
22 some other industries, but are they primarily skilled?  
23 Are you producing a number of other products at these  
24 different plants? I'm just sort of trying to get an  
25 impact on the industry of the difficulties in terms of

1 the earnings on this product.

2 MR. KEMP: Yes. This is Russ Kemp. I'll  
3 talk about Innophos. Our plant, I mentioned we call  
4 it Waterway. It's on the Little Calumet River. It's  
5 as far south in Chicago as you can go. So our  
6 workforce is drawn from the local area, south Chicago,  
7 and a few people perhaps come in from Indiana. That  
8 particular site is standalone today. There's a small  
9 blend operation, but today the entire sustenance of  
10 the plant is our sodium hexametaphosphate operation.

11 Like most chemical units these days, it's  
12 highly instrumented and with advanced controls. Our  
13 operators are more technical certainly than in many  
14 places or than the chemical industry was a generation  
15 or two ago. Plus, as our instrumentation needs change  
16 or improve over time, we have to make sure we have  
17 skilled people onsite to address instrumentation  
18 repairs and other mechanical repairs as well. That's  
19 a brief summary.

20 COMMISSIONER WILLIAMSON: Okay. Now are you  
21 headquartered -- I mean, is your --

22 MR. KEMP: Our headquarters are actually in  
23 Central New Jersey. This is one of our plants that's  
24 a stand-alone facility.

25 MS. SCHEWE: Our SHMP plant is located in

1 Lawrence, Kansas and is not a stand-alone unit. It is  
2 a very large plant, one of our largest phosphate  
3 plants and it produces a large array of our sodium  
4 based phosphate products as well as some selective  
5 grades of thermal acid.

6 And similar to the operations of Innophos,  
7 over the course of time the operational aspects have  
8 diminished given the increases in technology. The  
9 actual SHMP unit is somewhat stand-alone in that it's  
10 in its own building with no other operations involved  
11 in that particular facility.

12 I would say generally speaking that more of  
13 the laborious activity related to the production of  
14 our SHMP is actually on the packaging side which is  
15 also a stand-alone facility. It's not common to our  
16 other phosphate products.

17 COMMISSIONER WILLIAMSON: That's also  
18 located in Kansas?

19 MS. SCHEWE: Yes, it's attached to the  
20 actual SHMP furnace operation.

21 COMMISSIONER WILLIAMSON: Why was Lawrence  
22 chosen?

23 MS. SCHEWE: It was chosen by the Chairman  
24 of FMC at the time who coincidentally happened to  
25 graduate from the University of Kansas.

1 (Laughter).

2 COMMISSIONER WILLIAMSON: Where are you  
3 headquartered? Where is ICL headquartered?

4 MS. SCHEWE: Our North American headquarters  
5 are in St. Louis, Missouri, but we're actually an  
6 Israeli owned company so our corporate headquarters  
7 are in Tel Aviv.

8 COMMISSIONER WILLIAMSON: Thank you. I  
9 appreciate that. I just wanted to get a better  
10 picture of the industry.

11 Thank you, no further questions.

12 CHAIRMAN PEARSON: Are there any further  
13 questions from the dais?

14 (No audible response).

15 CHAIRMAN PEARSON: Mr. Deyman, do members of  
16 the staff have any questions for this panel?

17 MS. TURNER: Robin Turner, Office of the  
18 General Counsel. We have one, I believe. It's a  
19 follow-up question.

20 Mr. Cannon, this is a follow-up question to  
21 a discussion you had early in the questioning period  
22 with Commissioner Okun regarding increases in pricing.  
23 It also follows from Mr. Treinen's testimony about  
24 increases in prices in the, after the 2007 period in  
25 2008 with the contracts that are now being

1 renegotiated.

2           If you could provide, if you're not planning  
3 to already in your post-hearing brief for both  
4 companies, any kind of evidence that shows that there  
5 have been these kinds of price increases. not  
6 necessarily the pricing data, but contracts actually  
7 that show that the prices are being increased. That  
8 would be very helpful.

9           Thank you.

10           And staff has no further questions.

11           MR. CANNON: Thank you very much for that  
12 question.

13           CHAIRMAN PEARSON: You will answer it as  
14 requested, right?

15           MR. CANNON: Oh, yes.

16           CHAIRMAN PEARSON: Good.

17           Does counsel for the Respondents have any  
18 questions for this panel?

19           MR. NEELEY: We do not.

20           CHAIRMAN PEARSON: That brings us to the end  
21 of the first part of the hearing.

22           I think we better take a lunch break now.  
23 And in honor of Commissioner Okun's preference for  
24 long breaks, we will come back at 1:15, having nearly  
25 a full hour. A huge luxury.



1                   Be mindful that the room is not secure, so  
2 if you have items that should be secured, please take  
3 them with you.

4                   We stand in recess until 1:15.

5                   (Whereupon, at 12:15 p.m., the hearing in  
6 the above-entitled matter was adjourned, to reconvene  
7 at 1:15 p.m. this same day, Thursday, January 24,  
8 2008.)

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A F T E R N O O N   S E S S I O N

(1:20 p.m.)

CHAIRMAN PEARSON: Good afternoon. This hearing will now come back into order.

Madame Secretary, are there any preliminary items before we begin this section?

MS. ABBOTT: No, Mr. Chairman, and I'll note that all these witnesses have been sworn.

CHAIRMAN PEARSON: Very well.

Mr. Neeley, are you in charge?

MR. NEELEY: Sort of. At least I'll start.

CHAIRMAN PEARSON: Let me just say at the outset that we very much appreciate the Respondents being here, and in particular the representative from the private sector. You're here with all these attorneys, Mr. Smith, you're very brave and we appreciate that.

Please proceed.

MR. NEELEY: Thank you very much.

Again, I'm Jeffrey Neeley from the law firm of Greenberg Traurig. We're here on behalf of Hubei Xingfa.

Xingfa is the largest Chinese producer, which I think all of you are aware of. Not only the largest producer, but also by far the largest exporter

1 of sodium hex to the United States.

2 The Commission during the preliminary phase  
3 of this investigation didn't have the opportunity to  
4 hear from Hubei Xingfa through certainly no fault of  
5 yours, but simply because they couldn't get organized  
6 in time. Nevertheless, during the preliminary phase  
7 of this case the Commission did look very carefully,  
8 we think, at pricing, for example and did express some  
9 concerns and said that you would raise these questions  
10 and follow up on them in the final phase, and we're  
11 glad to see that you're doing that.

12 I wanted to clarify a couple of things at  
13 the outset about Hubei Xingfa. Some of what was said  
14 this morning about our cost structure I think was not  
15 entirely accurate. I don't think it was intentional,  
16 but I think it was not entirely accurate. We're glad  
17 to give you more information on our cost structure in  
18 a post-hearing brief in confidence.

19 But it is true that Hubei Xingfa is located  
20 in the Three Gorges area of China which is a beautiful  
21 area, and is full of waterfalls and full of  
22 hydroelectric power. A lot of that hydroelectric  
23 power is not just the Three Gorges Dam, however,  
24 although we probably do get some of our electricity  
25 from that. We have a lot of our own dams and

1 hydroelectric production and it makes us really a  
2 quite efficient company and a company that can produce  
3 at fairly low costs, we believe.

4 I would say that, and this is partly in  
5 response to some questions that Commissioner Lane had  
6 which I thought were good questions about why we're  
7 here, if there were inconsistencies in what we were  
8 saying in our brief.

9 Just to reiterate and to make absolutely  
10 clear, what we said in our brief is that, I'll just  
11 quote it. "This dumping margin was the result of the  
12 particular approach taken by Commerce with regard to  
13 the surrogate values from India which are used in  
14 place of actual Chinese costs in so-called non-market  
15 economy cases. Given this approach, Hubei Xingfa  
16 chose not to participate in the Commerce investigation  
17 following the preliminary determination."

18 I agree, I think what Mr. Cannon told you  
19 this morning was accurate. They did rely on our own  
20 input, but the other side of that equation at the  
21 Commerce Department, as I think some of you know, is  
22 that they use these surrogate costs from India.  
23 That's the law, we have to live with it. We could  
24 talk about that for a long time, but that's what it  
25 is.

1           Given the particular surrogate values that  
2 they used which were very high from India, which we  
3 didn't agree with, but frankly we made an investment  
4 decision that it didn't make sense to continue at the  
5 Commerce Department, so we didn't. That's part of,  
6 really the explanation of that side of what was going  
7 on.

8           What we have made out in our brief is that  
9 this case is really about causation. It has to be  
10 more, as we all are aware, more than just the fact  
11 that imports are up and U.S. profits are down, if  
12 that's an argument. There are a lot of other things  
13 that the Commission looks at, in particular prices, in  
14 particular how those prices may be affecting financial  
15 performance, things of that sort.

16           Here what we find is that the trends are  
17 going in directions that would not be expected or  
18 consistent with injury. Specifically, the Commission  
19 expressed some concern about those prices in the  
20 preliminary, and in a typical dumping case what we  
21 find is there's some very aggressive pricing going on  
22 by the foreign Respondents; they're gaining market  
23 share; there's falling profits; there's falling U.S.  
24 employment. These phenomena can be linked together  
25 and they're readily apparent.

1           Here it is a very disjointed presentation,  
2           although I have to commend Mr. Cannon and his group  
3           did a fine job in presenting their case. The data  
4           just don't support what they're saying.

5           The reason that it's disjointed are the  
6           following. First of all, sodium hex is a small, but  
7           it is an important product of various products. But  
8           because of it being a small element in most final  
9           products, while price, we're not here to tell you that  
10          price is totally irrelevant, but it is really not the  
11          driving force in many decisions, and I think the staff  
12          report supports that.

13          Things like timely deliveries, quality.  
14          Those things become much more important than price  
15          when you have this economic fact.

16          Secondly, there are a limited number of  
17          suppliers in the world. I think today you've heard  
18          from all the big players in the U.S. market. You've  
19          got ICL, you've got Innophos, you've got Hubei Xingfa.  
20          Alternative suppliers are very important under these  
21          conditions and I'm sure the folks from Procter and  
22          Gamble can talk more about that. But it inevitably  
23          happens that there are plant shutdowns, that there are  
24          problems. Not just with the domestic industry, but  
25          frankly with Hubei Xingfa and other companies

1 worldwide. It's just the nature of the chemical  
2 industry.

3           When you have these kinds of problems and  
4 when you have an input that can be critical for a  
5 business, even though it may not be that high of a  
6 cost, suddenly delivery times, quality becomes much  
7 more important than price in many instances.

8           Thirdly, the U.S. companies are really in  
9 different market segments. I think we can see this  
10 from their own questionnaire responses which I  
11 mentioned in our opening. Without going into  
12 confidential information I think you will see there is  
13 a large and significant and continuing price  
14 difference between U.S. companies that cannot, is not  
15 consistent with price being the only factor in the  
16 marketplace.

17           Finally, some U.S. companies, and this comes  
18 from questionnaire responses, and again without  
19 revealing anything confidential, some companies simply  
20 prefer U.S. sodium hex for one reason or another.

21           So there are other things, very significant  
22 things going on in this marketplace besides price.

23           What do we see from the data?

24           What we see is there is an increased market  
25 share of Chinese imports from 2004 to 2006 according

1 to the staff data. We chose those periods to look at  
2 because we didn't think they could be alleged in any  
3 way to be distorted by what happened after the case  
4 was filed in 2007, so what we've got is instead of  
5 looking at the interim data, at least at the outset,  
6 we said we'll look at 2004 to 2006 because there are  
7 no possible distortions to be alleged and this will  
8 give them sort of their best shot.

9 But what we see is that while there is a  
10 loss of market share, this loss of market share is  
11 really not consistent with what's going on with prices  
12 or the theory that prices are driving everything.

13 What we see, and we can point to some of the  
14 very charts that Mr. Cannon put up, but the most  
15 important one I think is with regard to item one or  
16 product one, which is by far the most important  
17 product. I think that's public knowledge. I'm not  
18 going to go into the percentages, although that is in  
19 our brief. But this is the most important product.

20 But what we saw from the chart that Mr.  
21 Cannon put up is that the prices, if you begin in 2004  
22 and you go to 2006, the prices are coming together.

23 I agree that our prices continue to be lower  
24 than the U.S. prices, but they are coming together and  
25 they're coming together quite significantly during



1 that period of time. Meaning, put another way, that  
2 our prices are increasing much more rapidly than the  
3 U.S. prices.

4 What you would expect to see if this was all  
5 price driven is that we would be losing market share.  
6 And yet, as I just said, it is the opposite. Why is  
7 that? It means there's got to be something else going  
8 on here. I expect people in Procter and Gamble can  
9 shed some more light on some of that. But the staff  
10 report does, I think, a fine job in saying that there  
11 are these other factors that people simply take into  
12 account.

13 What we're saying is that the pricing data  
14 are just inconsistent with the theory of the price  
15 driven everything that we heard this morning. You can  
16 put out all the anecdotes you want, but the data just  
17 don't seem to support it.

18 We would note one thing on pricing, and I'm  
19 not sure I have a solution as to how to solve this,  
20 but for the interim periods as we heard this morning,  
21 the staff relied on import data, and this is really  
22 more on the market share rather than the pricing. But  
23 for those interim periods they relied on import data  
24 rather than shipments.

25 As we've seen, there's a fairly significant

1 lag or difference between the imports which go into  
2 inventory and what ultimately shipped.

3 So what you've got is for 2004 through 2006,  
4 a dependent on shipment data. Then we shift to a  
5 different methodology for those interim periods.

6 Just looking at the data that we see in the  
7 staff report for things like, for the individual  
8 pricing data for the different, the four products that  
9 you looked at, we seem to see a different trend if  
10 you're looking at shipments rather than looking at  
11 imports.

12 So it would be good to work with the staff  
13 to see if there's another way to do this. I  
14 understand what Mr. Cannon was saying this morning,  
15 there may be some issues that the staff is trying to  
16 work through. But it looks to us like there may be a  
17 bit of a distortion unintentionally because of the  
18 difference in methodology.

19 With regard to one of the fundamental  
20 questions or arguments being made by the domestic  
21 industry which is price suppression. Price  
22 suppression has to be more than simply prices are not  
23 keeping up with rising costs. I mean that part may be  
24 clear, but there has to be a causal link to something  
25 that we are doing as Chinese Respondents. To us that

1 just simply is not there in the data.

2           Again, going back to my reference, for  
3 example, to product number one, is really inconsistent  
4 with the idea of price suppression. There just is not  
5 this causal linkage.

6           If the domestic industry has not been able  
7 to raise their prices it is not because of aggressive  
8 pricing by the Chinese Respondents. We've been  
9 raising our prices a whole lot faster than they have.  
10 It has been for some other reasons, perhaps quality,  
11 perhaps shutdowns, perhaps just the idea that people  
12 would like to have alternative sources, but it  
13 certainly is not consistent with the data.

14           I'd like to mention a couple of other things  
15 and then I will turn it over to the people from  
16 Procter and Gamble.

17           First of all, the theory of 2003 being used  
18 as the base period rather than the normal Commission  
19 period of starting in 2004, this seems to be driven  
20 largely by the shutdown of the Trenton plant and the  
21 idea that somehow it would be more accurate to use  
22 data from 2003.

23           A couple of comments at the outset on that.  
24 First of all, what happened in 2003, whatever it was,  
25 was five years ago. It does not seem to us that that

1 is present injury in any way, shape or form, no matter  
2 how you spin it.

3 The reality is that the 2003 or the 2004  
4 data we think you will see the same problems that the  
5 domestic industry has with pricing data, the same  
6 problems with regard to trying to link what has been  
7 going on with Chinese pricing in the U.S. market, with  
8 what's been going on with market share. So either  
9 date seems to us to have the same effect.

10 But another point which we'd like to raise,  
11 and I think it was discussed a little bit this  
12 morning, is we kept hearing from ICL that we did this  
13 with the plant, and we did that, and we did the other.  
14 It wasn't the ICL plant. I suppose that comes out  
15 because some of the folks there probably worked there  
16 before when it wasn't ICL's, but ICL didn't take over  
17 the plant until later.

18 So whatever ICL did, they knew this plant  
19 was closed as far as we can tell. They paid a price,  
20 knowing what the situation was. That's what they  
21 bought into with their eyes open. ICL is not a small  
22 company. ICL is a very sophisticated company,  
23 probably the most sophisticated company in the world  
24 in the phosphate business. So I would suggest they  
25 knew what they were buying.

1           Another point, the Bratsk analysis which I  
2 know we all like to talk about. In our view this is  
3 really not a Bratsk case. In this sense, you'll hear  
4 me in other cases come here and talk to you about  
5 Bratsk and its implications. But here it's almost the  
6 anti-Bratsk in some ways. It seems to us that the  
7 problem here is not that there's a bunch of off-shore  
8 potential for a lot of other sodium hex to come into  
9 the United States, but just the opposite. There's a  
10 real big problem in terms of shortages at least in the  
11 short term.

12           Finally, just a couple of seconds on threat.  
13 There have been some numbers waved around with regard  
14 to Hubei Xingfa in a number of submissions I think by  
15 the Petitioners. We've heard the number of 70,000  
16 metric tons is our capacity. I'm not exactly sure  
17 where that comes from, but from the client what I  
18 understand is that there were studies that were done  
19 in the past about expanding the capacity of sodium hex  
20 in China. They looked at it. They decided it really  
21 didn't make sense from a marketing point of view.  
22 There just wasn't the market demand to support it and  
23 it wasn't done.

24           We can certainly provide in a post-hearing  
25 brief in confidence data information, details of where

1 the bottlenecks are, how the capacity was calculated  
2 at Hubei Xingfa. But we feel very confident what  
3 we've supplied is accurate.

4 In terms of other markets, there are a  
5 number of other markets that Hubei Xingfa sells to.  
6 Certainly the U.S. market is not unimportant to it but  
7 there are alternative markets and there's no real  
8 reason to think that the demand, that the U.S.  
9 customers are going to change their approach in any  
10 radical way in the future, and we do not see there  
11 being any threat of material injury by reason of  
12 imports of sodium hex from China in the future.

13 So that concludes my portion for now, and I  
14 will turn it over to Art LaFave and the folks from  
15 Procter & Gamble.

16 MR. SMITH: Good afternoon. My name is Matt  
17 Smith. I'm a senior purchasing manager at Procter &  
18 Gamble. I'm responsible for all of P&G's purchases of  
19 phosphates for consumption in North America, to  
20 include SHMP. We purchase SHMP for use as a cleaning  
21 agent and our oral care and pet care products,  
22 including Crest Toothpaste and Iams dog food. There  
23 is no substitute for SHMP in these applications.

24 All of our SHMPs source from three  
25 companies: ICL, Innophos, and Hubei Xingfa. The SHMP

1 that P&G purchases is a non-standard product made to  
2 P&G's particular specification. Because of P&G's  
3 stringent specification, there are no other suppliers,  
4 who can supply SHMP to us besides these three  
5 suppliers.

6 During the period of investigation, the U.S.  
7 producers were only qualified -- the only  
8 manufacturers qualified to supply to our oral care.  
9 Hubei Xingfa did not supply to P&G. In pet care, all  
10 three producers were qualified to supply and P&G  
11 purchased from all three producers.

12 P&G's demand for SHMP is driven by demand  
13 for our end products, Crest and Iams. Over the course  
14 of the period of investigation, P&G's total demand for  
15 SHMP increased substantially due to organic growth of  
16 our base brands, plus initiatives in the new  
17 formulations used in SHMP as a chassis. The domestic  
18 industry has shared in this growth with significant  
19 increases in shipments to P&G between 2004 and 2007.

20 P&G has also increased its purchases from  
21 Xingfa. It should be noted the price that Xingfa is  
22 charging for its product had also increased by more  
23 than one-third over this period. Early pricing from  
24 Xingfa was for specification that is not identical to  
25 the specification applied later in the period of

1 investigation. When the specification was changed,  
2 Xingfa changed its production process, increasing its  
3 cost of production. After this change occurred,  
4 Xingfa's price exceeded that offered by the domestic  
5 industry.

6 P&G typically negotiates annual contracts  
7 based on the calendar year. The contracts provide for  
8 the supply of an estimated quantity of SHMP at an  
9 agreed to price. The domestic producers typically  
10 produce this product and campaigns designed to produce  
11 a month's worth of forecasted demand. They then ship  
12 the order. If there's any unanticipated demand from  
13 P&G's end product, P&G cannot just purchase additional  
14 SHMP off the shelf from the North American producers.  
15 P&G's only viable alternative in this situation has  
16 been to purchase SHMP from Xingfa, which is produced  
17 in advanced and held in larger quantities by their  
18 distributors in the United States.

19 Due supply disruptions in the domestic  
20 industry and at Hubei Xingfa, it's been very important  
21 for P&G to have at least three different sources of  
22 supply for this product. For example, in the second  
23 quarter of 2005, Chinese producers experienced severe  
24 production issues due to power outages and supply  
25 disruptions. In August 2006, ICL's furnace went down,



1 halting production of their SHMP. In July 2007, ICL's  
2 furnace went down again, causing another disruption.  
3 Another supply disruption involving Chinese product  
4 occurred in July 2007 and ICL's furnace went down once  
5 again in December 2007. In each of these situations,  
6 P&G had to quickly find alternative supply as a  
7 result. Based on this history, SHMP production has  
8 been very unreliable and multiple suppliers are needed  
9 to ensure continued manufacturing of P&G's products.

10 P&G has been operating in an arena of  
11 constant production issues and capacity constraints in  
12 the SHMP industry. Sourcing product from China has  
13 been necessary, because of lack of available capacity  
14 with the U.S. producers. Since the filing of the  
15 petition, which has resulted in the application of  
16 duties in the amount of 183 percent, we have still had  
17 to ship material from China, because of limited  
18 capacity to produce this product in North America.  
19 When the preliminary duties were levied, P&G asked  
20 Innophos whether they could supply the quantity  
21 previously supplied by Xingfa. Their response  
22 indicated that this could not be done at any price  
23 without a change in P&G's specification. This  
24 suggests a quantity formerly supplied by Xingfa was  
25 not harmful to Innophos's operations.

1                   In at least one case, the domestic industry  
2 hurt itself by its own actions during the period of  
3 investigation. When Hubei Xingfa experienced  
4 production difficulties in the second quarter of 2005,  
5 P&G sought to source the shortfall from the domestic  
6 industry. One domestic producer could not supply the  
7 additional quantity needed due to capacity  
8 constraints. The other offered to supply the  
9 additional quantity needed, but only at twice the  
10 price charged by the other U.S. supplier. This action  
11 was not consistent with P&G's policy of developing  
12 strategic partnerships and P&G has not purchased  
13 further SHMP from that domestic producer.

14                   I would like to note that prices on one  
15 phosphate product can influence the prices agreed to  
16 on another phosphate product. P&G typically  
17 negotiates with its domestic suppliers on a range of  
18 phosphate products, including MSP, TSP, DKPP, TSPP,  
19 STPP, SAPP, and SHMP. Over this period, in order to  
20 keep SHMP pricing stable, P&G agreed to higher prices  
21 or higher volumes for other phosphate products. This  
22 is an element of price formation in the domestic  
23 market that has nothing to do with prices being  
24 charged by Hubei Xingfa. As a matter of fact, the  
25 North American producers typically offered the lowest

1 price for SHMP over the period of this investigation.

2 If an antidumping duty order is issued and  
3 an antidumping duty determined by the Department of  
4 Commerce is maintained, P&G may have to take business  
5 -- may have to make business decisions to eliminate  
6 this chemistry and the subsequent benefits to the  
7 consumer or research alternative chemistries to  
8 deliver the same benefit without the use of SHMP. P&G  
9 has already taken steps in this direction. Largely  
10 because of the cost of SHMP, P&G has removed SHMP from  
11 many of its Iams brands and has removed the associated  
12 claims from the marketing of this product.

13 Thank you, very much, for the opportunity to  
14 testify here today. I would be pleased to answer any  
15 questions you may have.

16 MR. NEELEY: And that's the end of our very  
17 short presentation. We would be glad to answer  
18 questions.

19 CHAIRMAN PEARSON: Okay. Thank you, very  
20 much. We will begin questioning this afternoon with  
21 Commissioner Williamson -- wait, excuse me. I've got  
22 too much here on the list. I looked too far down. We  
23 will begin the questioning this afternoon with  
24 Commissioner Lane and I will try not to be the least  
25 popular chairman here.

1           COMMISSIONER LANE: Well, at least we're  
2 paying attention to you, Mr. Chairman. That ought to  
3 keep you happy.

4           Mr. Neeley, this question is for you. In  
5 your pre-hearing brief, you argue that since the  
6 pricing strategies of the two predominant U.S.  
7 companies differ substantially, the use of an average  
8 U.S. price masks what is going on in the marketplace.  
9 If the prices are so substantially different for U.S.  
10 producers, shouldn't that require us to look at the  
11 average prices? In other words, if your products  
12 compete throughout the U.S. market, doesn't the  
13 Commission have to look at the average prices of the  
14 domestic producers to get a fair comparison?

15           MR. NEELEY: I think we're not suggesting  
16 you not look at average prices. I think it's just  
17 useful to look at the individual prices -- well,  
18 you've only got two U.S. producers, so it's not that  
19 difficult to do. And I think when you look at them,  
20 you're going to see very different patterns and you'll  
21 see where Hubei Xingfa, for example, and other  
22 producers fall in there. So, I'm not suggesting you  
23 not look at it. Just, it's additional information we  
24 think is useful for you to look at.

25           COMMISSIONER LANE: Okay, thank you. On

1 pages nine and 10 of your pre-hearing brief, you  
2 discuss pricing product comparisons from the first  
3 quarter of 2004 to the last quarter of 2006. As a  
4 post-hearing exhibit, I would like you to replicate  
5 your analysis, based on the average prices in 2004 and  
6 the average prices in 2006 and provide the same  
7 summary that you show on page 10 based on average 2004  
8 to average 2006 prices.

9 MR. NEELEY: Sure. We'll be glad to do  
10 that.

11 COMMISSIONER LANE: Okay, thank you. You  
12 argue in your pre-hearing brief that if the domestic  
13 industry is experiencing a cost price squeeze, such a  
14 squeeze cannot be attributable to subject imports. I  
15 guess I don't understand your argument. Are you  
16 saying that as import prices go up, the domestic  
17 industry should also be able to raise its prices?

18 MR. NEELEY: Yeah, in a way that's what  
19 we're saying, is that if we are causing them to keep  
20 their prices down, if we are raising prices -- let's  
21 just use numbers that I pull out of the air -- but, if  
22 we're raising our prices by 50 percent and they're  
23 raising it by 25 percent from the base period in 2004,  
24 why is that we're the ones that are keeping them from  
25 raising it more? It's not very apparent why that is

1 the case.

2 COMMISSIONER LANE: Okay. If the  
3 competition from subject imports continues to hold  
4 back domestic prices to a level that does not allow  
5 for a reasonable profit, isn't there a causal link  
6 between the financial condition of the domestic  
7 industry and the price of the subject imports?

8 MR. NEELEY: I'm sorry, could you repeat  
9 that? I'm not sure I totally followed you.

10 COMMISSIONER LANE: Okay. If the  
11 competition from the subject imports continues to hold  
12 back domestic prices to a level that does not allow  
13 for a reasonable profit, isn't there a causal link  
14 between the financial condition of the domestic  
15 industry and the price of the subject imports?

16 MR. NEELEY: If we're holding them back,  
17 certainly; but, we don't think we're holding them  
18 back. That's our point.

19 COMMISSIONER LANE: Okay, thank you. In the  
20 pre-hearing brief, you are arguing that the high  
21 dumping margin could cause a shortage of SHMP in the  
22 United States market. Yet, Xingfa chose not to  
23 participate in the Commerce investigation after the  
24 preliminary determination. Does your argument suggest  
25 that Xingfa should be rewarded for not participating

1 in Commerce's investigation?

2 MR. NEELEY: No, I don't think we should be  
3 rewarded for it by any means. We're going to end up  
4 with an extremely high dumping margin, which I am sure  
5 that the Commission will take into account, and we  
6 were aware of that when we chose not to do it. It was  
7 a matter, on the part of Xingfa, of simply deciding  
8 where to make an intelligent investment in its time  
9 and energy. And given what I said earlier about the  
10 methodology, which is law, the methodology with regard  
11 to the use of surrogate values, we didn't see that it  
12 made much sense to continue at the Commerce  
13 Department.

14 COMMISSIONER LANE: Okay, thank you. On  
15 page 15 of your pre-hearing brief, you continue your  
16 argument that something other than aggressive pricing  
17 of Chinese imports must have prevented the domestic  
18 industry from raising their prices further than they  
19 did. Are you suggesting that if the Commission  
20 concluded that the price of Chinese imports was only  
21 one of several factors holding down domestic prices  
22 and profitability, we must then make a negative  
23 determination?

24 MR. NEELEY: I think it depends on what  
25 those other factors are. But, I think that -- and we

1 can brief this further in our post-hearing brief --  
2 but, there are a number of cases in the past where the  
3 Commission has found that other factors were leading  
4 to a loss of sales or a loss of volume for the U.S.  
5 industry, factors other than price, and the  
6 Commission, in those instances, have found no injury.  
7 We think that's what is going on here. So, we can --  
8 I think it may be useful to discuss that further in  
9 our post-hearing brief and show you those.

10 COMMISSIONER LANE: Okay, thank you. Mr.  
11 Smith, I have a question for you and you may have  
12 answered this in your testimony, but I didn't quite  
13 pick up the first part of your testimony. Have  
14 Petitioners been able to supply P&G with all of the  
15 chemicals that P&G requested from them since 2004?

16 MR. SMITH: Have they been able to supply to  
17 contracted quantities, is that what you're asking,  
18 ma'am?

19 COMMISSIONER LANE: Have they been able to  
20 supply you with all of the chemicals that you were  
21 trying to buy from them?

22 MR. SMITH: No, they have not. Because of  
23 our specification, they've been limited on the amount  
24 that they've said they've been able to supply to P&G.

25 COMMISSIONER LANE: And is this still an



1 ongoing problem?

2 MR. SMITH: It is.

3 COMMISSIONER LANE: And have they not been  
4 willing to meet your specifications --

5 MR. SMITH: They've asked --

6 COMMISSIONER LANE: -- or inability -- or  
7 they have an inability to?

8 MR. SMITH: They've asked us to change our  
9 specification. And I believe with their current plant  
10 constraints, it would take some investment on their  
11 part in order to produce more of our specification,  
12 which they -- investment, which they have not made.

13 COMMISSIONER LANE: Okay. And is it a big  
14 adjustment to meet your specifications?

15 MR. SMITH: I'm not sure I'm the right one  
16 to provide a prospective on that. It's more of a  
17 technical question. Our specification has a more  
18 stringent particle size distribution and so,  
19 therefore, requires either additional milling or  
20 sieving beyond what they normally do. According to  
21 the conversations that we've had with the producers,  
22 they're limited in the amount that they can produce of  
23 our product, because of our specification.

24 COMMISSIONER LANE: And so is this a  
25 recently development or have the domestic -- or has

1 the domestic industry never been able to produce to  
2 your specifications?

3 MR. SMITH: I've gone back as far as the  
4 questionnaire required and over the period, to my  
5 knowledge, they've never been able to produce. We've  
6 always offered more volume than what they've been able  
7 to supply. When we negotiate, we offer more volume.  
8 There is a limit to the amount of volume that they've  
9 been able to supply historically.

10 COMMISSIONER LANE: Okay. So, you are  
11 asking for a specific specification and they are not  
12 able to give you the amount of that specific  
13 specification that you are seeking?

14 MR. SMITH: That is correct, ma'am.

15 COMMISSIONER LANE: Okay. And maybe you can  
16 answer this post-hearing. Even prior to 2004, was  
17 that the case?

18 MR. SMITH: I think I would have to answer  
19 that post-hearing.

20 COMMISSIONER LANE: Okay, thank you. Thank  
21 you, Mr. Chairman.

22 CHAIRMAN PEARSON: And now it's Commission  
23 Williamson's turn.

24 COMMISSIONER WILLIAMSON: Thank you, Mr.  
25 Chairman. I want to thank the witnesses for their

1 testimony. Mr. Smith, I want to continue with the  
2 line of questioning of Commissioner Lane and you may  
3 have to do this post-hearing. Of the product that the  
4 domestic industry is not -- cannot meet your  
5 specification, I take it you purchase a wide range of  
6 SHMP products and a wide range of phosphate product  
7 and I wanted to find out how significant is that  
8 particular product of your total consumption or demand  
9 for SHMP and has that changed?

10 MR. SMITH: We have a specification for our  
11 pet care and our specification for our oral care, very  
12 similar specifications. So, it's not necessarily a  
13 wide range and that's all the SHMP that we actually  
14 ask for them to supply, is the two specifications.

15 COMMISSIONER WILLIAMSON: Okay. So -- but,  
16 they're not other products that you're using SHMP in?

17 MR. SMITH: Besides pet care and our oral  
18 care? No, sir.

19 COMMISSIONER WILLIAMSON: Okay. And I think  
20 you've indicated that you've already decided to use  
21 another product in the pet care line?

22 MR. SMITH: We've actually pulled SHMP out  
23 of certain brands and chose to take the marketing  
24 claims from SHMP that we have on our finished products  
25 off our packaging. So, we've reduced our demand that

1 way.

2 COMMISSIONER WILLIAMSON: Could you give us  
3 post-hearing an indication of how much that is  
4 reducing the demand for SHMP?

5 MR. SMITH: Sure.

6 COMMISSIONER WILLIAMSON: How much you need  
7 for other products and I guess how much are you saying  
8 that the domestic industry can't supply you with?

9 MR. SMITH: Yes; yes, sir.

10 COMMISSIONER WILLIAMSON: So, we can get a  
11 clear -- I'll get a clearer picture of exactly what  
12 the impact of the problem is. Do you know other U.S.  
13 consumers, who have a similar problem?

14 MR. SMITH: No. I do not know of other  
15 consumers with a similar stringent specification as  
16 what we have. I do believe that the U.S. market is a  
17 net importer, though, and, therefore, the U.S.  
18 producers have not been able to supply -- to meet the  
19 demand of the U.S. market, at least our demand.

20 COMMISSIONER WILLIAMSON: Okay. I think  
21 I've already asked you how much -- you know, to give  
22 us an indication of how much you consume for the year,  
23 so we can get -- so, we can put this in context.  
24 Thank you.

25 Mr. Neeley, China's been, people have all

1 talked about being a very hot economy. We talked  
2 about a number of products, in which, I guess, their  
3 demand has influenced world-wide prices. So, I was  
4 wondering, what about the cost of -- there was some  
5 discussion this morning about electricity, but what  
6 about the cost of the other inputs for SHMP and what's  
7 happening with your costs there?

8 MR. NEELEY: Well, the other -- another main  
9 input into the process is phosphorous rock, which  
10 Hubei Xingfa has its own mines. I've been to the  
11 mines. I mean, I've seen them with my own eyes. And  
12 they bring out the rock, they mine the rock, and they  
13 convert it from that point. So, the reason that they  
14 are where they are in Hubei province is (1) because of  
15 the very low electricity costs and, also, because of  
16 the proximity to the phosphorous mines. Phosphorous  
17 is not found in that many places in the world, so this  
18 is one of the places where they can find it and very  
19 efficiently mine it and convert it. And we can  
20 certainly find out other information about other cost  
21 factors, as I offered before. But, those two come to  
22 mind right off the top of my head.

23 COMMISSIONER WILLIAMSON: You mentioned that  
24 your pricing in the U.S. has gone up, I guess, higher  
25 than I think you said the domestic industry's prices.

1 MR. NEELEY: Yes.

2 COMMISSIONER WILLIAMSON: What's the driving  
3 force for that?

4 MR. NEELEY: Well, I think the driving force  
5 is a couple of things. One, the cost within China  
6 have certainly gone up. The world prices have gone  
7 up. And most fundamentally, Hubei Xingfa is a company  
8 that is run like a business. I mean, it seems an  
9 opportunity to make more money and it tries to raise  
10 its prices. I think that's the most fundamental of  
11 why they've gone up so much.

12 COMMISSIONER WILLIAMSON: Okay. Would you -  
13 - the domestic industry sort of characterizes you as  
14 sort of the price leader in the U.S. Would you -- do  
15 you agree with that?

16 MR. SMITH: We've certainly been the price  
17 leader upwards since 2004.

18 COMMISSIONER WILLIAMSON: Okay. I guess the  
19 question I'm trying to get at is just trying to figure  
20 out is the fact that the domestic industry is not  
21 raising their prices enough and you sought of say,  
22 well, it's not our fault.

23 MR. SMITH: Exactly.

24 COMMISSIONER WILLIAMSON: I'm just trying to  
25 clarify.

1           MR. SMITH: I mean, price leadership can go  
2 in two directions. I mean, you know, there are price  
3 leaderships in the airline industry, when they're  
4 tacking on surcharges or whatever and people may or  
5 may not follow that price leadership. I mean, we've  
6 been a price leader upwards, at least during the  
7 period of investigation.

8           COMMISSIONER WILLIAMSON: Okay. So,  
9 everybody's costs are going up faster, even if you  
10 decide not to raise yours as much as costs are going  
11 up, you still can be -- is it possible you still could  
12 be holding down their ability to raise prices?

13           MR. SMITH: Well, what I'm suggesting is  
14 they certainly could raise their prices a lot more  
15 than they have, in terms of comparing it to what their  
16 costs are. I mean, certainly, they've been -- our  
17 price has been raised very substantially, I think in  
18 line with overall costs, probably for them as well as  
19 for us. But, we've certainly raised them a lot. And  
20 to the extent that they're not raising them more, it's  
21 -- we don't believe it's our fault.

22           COMMISSIONER WILLIAMSON: You found this out  
23 that, hey, there's something else. I guess you've  
24 never really given us a theory about what the other --

25           MR. SMITH: Well, no, I mean, I'm sorry if I

1 haven't been as clear. But, I mean, I think there are  
2 other things going on here. The theory of what else  
3 is going on is (1) what was mentioned by Procter &  
4 Gamble of the need for alternative sources, because  
5 these plants go down quite often. So, people make  
6 choices as to what to buy for reasons other than  
7 price. And that's a major reason. And certainly, you  
8 know, quality and not being dependent on one company  
9 are very big reasons, as to what else is going on.

10 COMMISSIONER WILLIAMSON: On page four, your  
11 raise an interesting thing about antitrust -- possible  
12 antitrust violations, but you give no indication that  
13 it regards SHMP. And I want to know how is the  
14 Commission supposed to evaluate this or what are you  
15 trying to suggest here?

16 MR. NEELEY: What I'm trying to suggest is  
17 that when you have a limited number of players in any  
18 market and we've heard from Procter & Gamble, you've  
19 heard from -- so, you can look at your own data,  
20 you've got basically three players in the U.S. market  
21 today of any significance, ourselves and the two U.S.  
22 producers. If you go to the point where you have two  
23 U.S. producers, there's always a risk of antitrust, I  
24 suppose. I'm not suggesting that's going to happen.  
25 I would think that since they were being investigated



1 for other similar products, that people are going to  
2 be very cautious. But, what the reality is when you  
3 have a duopoly, you've got a real potential problem  
4 for consumers, whether it's because of antitrust  
5 reasons or for other reasons. And I think it should  
6 be a concern of consumers and an explanation as to why  
7 consumers have looked for alternative sources.

8 COMMISSIONER WILLIAMSON: Okay. So, that  
9 was sort of also suggest that you're going to have  
10 companies that are able to make enough money to stay  
11 in business.

12 MR. NEELEY: Well, I think there's plenty of  
13 room for everybody to make money in this business.

14 COMMISSIONER WILLIAMSON: I'm not sure  
15 whether in your testimony, you addressed the question  
16 about deciding to looking back to 2003. If you've  
17 already said it, you might just repeat it briefly.

18 MR. NEELEY: Yeah, I did, I think, mentioned  
19 it briefly in what I said before. I think that the  
20 fundamental trends that we see would be more or less  
21 the same whether we go back to 2003 or continue, you  
22 know, with 2004. And what I'm saying is the  
23 disjointed nature of the lack of causation would be  
24 there in any event. That's number one.

25 Number two, I mentioned that whatever

1 happened in 2003 really is not very indicative, we  
2 think, of current present injury and any causation  
3 currently. What happened five years ago is largely  
4 irrelevant, I think.

5 And number three, a lot of the argument for  
6 using 2003 was driven by the shutdown of the Trenton,  
7 Michigan plant, which, as I mentioned, people kept  
8 saying, 'we, we, we,' but it really was done by  
9 another company that was a predecessor to ICL. ICL  
10 bought into this industry at a -- with the full  
11 knowledge that that plant had been shutdown and made  
12 the investment on that basis. So, I think there's a  
13 lot of reasons why 2003 doesn't make sense. But, if  
14 you want to use it, I don't think it makes that much  
15 difference to the outcome even.

16 COMMISSIONER WILLIAMSON: Okay. Thank you,  
17 Mr. Chairman.

18 CHAIRMAN PEARSON: Mr. Smith, you commented  
19 a bit about P&G's approach to having multiple  
20 suppliers. Could you discuss that philosophy a little  
21 further, perhaps regarding some products that you're  
22 familiar with?

23 MR. SMITH: Sure. In particular, we can  
24 talk about the products that SHMP goes into.

25 CHAIRMAN PEARSON: Right.

1                   MR. SMITH: And our dog food is well  
2 protected, because we've had three qualified  
3 suppliers, one of them being Xingfa. And the  
4 advantage that we've had with Xingfa is they've been  
5 able to maintain inventory in the United States to  
6 protect against the U.S. producer's production issues.  
7 There is not a whole lot of inventory that is stored  
8 by the U.S. producers in the United States. So, if  
9 they do have production issues, often, we are  
10 scrambling to find product. And the Chinese inventory  
11 has offered us a buffer inventory to overcome any kind  
12 of supply outages and still be able to produce our  
13 finished products.

14                   CHAIRMAN PEARSON: Are there other P&G  
15 products that -- where the company is comfortable with  
16 just a single supplier for a given input?

17                   MR. SMITH: We have contracts with the  
18 strategic suppliers, long-term contracts. Typically  
19 when we have single-source situations, we do have  
20 adequate inventories built up and proper business  
21 continuity plans in place to where if those single  
22 supply sources have an outage, we can overcome the  
23 outage by use of inventory, by use of reformulation.  
24 We don't necessarily have that flexibility with SHMP.  
25 It's not an easy product for us to substitute in and

1 out. We either take it completely out and put nothing  
2 else in or we shut down our finished product  
3 production. So, there are other products, yes, that  
4 are perhaps tied or some other brands that you may be  
5 familiar with where we are able to have single-source  
6 operations successfully, because of the inventory and  
7 because of the business continuity, reformulation  
8 flexibility, et cetera.

9 CHAIRMAN PEARSON: Okay. So, it depends  
10 really on the product and the nature of the -- sort of  
11 the nature of the product?

12 MR. SMITH: Yes.

13 CHAIRMAN PEARSON: Okay. For SHMP, how  
14 important is the price that P&G pays for it relative  
15 to its availability or some other factors?

16 MR. SMITH: I certainly would say that for  
17 P&G, the availability is of number one importance. Of  
18 course, we try to keep our costs down, as much as  
19 possible, because, ultimately, those costs will  
20 potentially have to be passed on to the consumer.  
21 But, if we don't have the product, then we can't make  
22 our product, and so, therefore, we can't sell our  
23 product. So, supply assurance is number one priority.

24 CHAIRMAN PEARSON: And in case of any kind  
25 of disruption, people in your situation, your bonuses

1 are at risk if you -- you can't get product, it's not  
2 a good deal, right? I mean, you have a personal  
3 incentive to try to make this market work, right?

4 MR. SMITH: It's not necessarily a personal  
5 incentive, but it's for our shareholders and the share  
6 price. So, certainly, those that invest in our  
7 company, we try to make smart decisions for.

8 CHAIRMAN PEARSON: And I wasn't trying to  
9 get you to talk on the record about your own  
10 compensation.

11 MR. SMITH: Sir, there's not a whole lot to  
12 talk about there.

13 (Laughter.)

14 CHAIRMAN PEARSON: Okay. I'll accept that.  
15 Has there been a limit on volume that domestic  
16 producers can provide at the previously contracted  
17 price or at a somewhat higher price that they might  
18 want to negotiate if they're needing to commit more  
19 volume to you? This goes back to your earlier  
20 comment.

21 MR. SMITH: When the filing was --  
22 originally occurred in February, we had gone to one of  
23 the U.S. producers and asked them if they could  
24 increase their production output and replace the  
25 Chinese, because we are a very conservative company

1 and we do not like to have that kind of risk hanging  
2 out there. The response that we got back was  
3 virtually no response. They weren't able to provide a  
4 price for increased volume, because they, frankly,  
5 didn't have the capability to produce it. And so, we  
6 have not been able to get the increased volume, at  
7 least from one producer. We only have flexibility  
8 necessarily right now with pet care, because of having  
9 three qualified suppliers. Our oral care has been a  
10 little different. We have more dependency on certain  
11 suppliers there and Hubei Xingfa does not supply the  
12 oral care right now.

13 CHAIRMAN PEARSON: Right. And in terms of  
14 your oral care business, those contracts continue to  
15 go forward as --

16 MR. SMITH: They do. We have had difficulty  
17 with the oral care and the particular supplier there,  
18 as our demand has increased. We have been on monthly  
19 allocation at periods and limited on the amount of  
20 supply we can get. It forces us into making business  
21 decisions when we're looking at initiatives that may  
22 increase SHMP. These initiatives may not happen, if  
23 we're concerned about the availability of supply, and  
24 that is a very valid concern right now at P&G.

25 CHAIRMAN PEARSON: Okay. Does P&G purchase

1 SHMP in any other country for use in P&G products that  
2 would be manufactured outside of the United States?

3 MR. SMITH: Yes.

4 CHAIRMAN PEARSON: Other than the subject  
5 Chinese product that we're talking about here.

6 MR. SMITH: Yes, we do. We actually  
7 purchase in Europe and we actually ship from the U.S.  
8 to Europe, as well as Chinese supply to Europe, also.

9 CHAIRMAN PEARSON: Okay. So, P&G acquired  
10 some SHMP in this country that it then ships to an  
11 affiliated company in Europe to use in the  
12 manufacturer of one of your products?

13 MR. SMITH: That's correct, one of our  
14 plants in Europe.

15 CHAIRMAN PEARSON: Okay. So, are the  
16 products that would be used in P&G plants overseas of  
17 the same specification as the SHMP that would be used  
18 in this country?

19 MR. SMITH: It's a pet care plant with the  
20 same specification.

21 CHAIRMAN PEARSON: Okay. Is there any  
22 possibility of -- if, indeed -- let's say  
23 hypothetically an order would go into place on the  
24 Chinese product, would there be some possibility in  
25 some time frame of P&G bringing some qualified SHMP

1 from a non-subject country into the United States?

2 MR. SMITH: Right now, it's very difficult  
3 to do that. There's a lot of discussion as -- and I  
4 heard earlier, but I didn't really hear much about the  
5 exchange rate and the weak dollar. And if you're  
6 looking at costs, that is certainly one factor that  
7 you have to look at. And if you're looking at  
8 shipping from Europe to the U.S., it is very difficult  
9 for that to be an attractive business for European  
10 producers. And in addition, European suppliers, I  
11 just want to make it clear, European suppliers have  
12 had difficulty meeting our specification, also.

13 CHAIRMAN PEARSON: Okay. And given your  
14 tight specs, it's perhaps more likely that you could  
15 find product that would qualify in Europe than in some  
16 other part of the world or are there producers in  
17 Latin America or elsewhere in Asia that might be able  
18 to provide your specification?

19 MR. SMITH: We are actively talking with  
20 producers in every region, to include Latin America,  
21 to include Asia and Europe. But, it has been -- our  
22 specification has been difficult. So, right now, we  
23 have the three producers that we're talking about  
24 today.

25 CHAIRMAN PEARSON: And how do you find the



1 breakpoint when it gets so difficult to find the  
2 qualified SHMP that you decide to reformulate your  
3 product to not have SHMP in it? I mean, what are the  
4 factors that go into that decision?

5 MR. SMITH: Certainly availability of  
6 supply. I mean, it's a very good question and it's --  
7 we have calls on it every week, because it's not just  
8 SHMP that we have to concern ourselves with. There  
9 are other materials that get the resources, the  
10 technical resources, the business leaders have to make  
11 these kinds of decisions on their brands. And do they  
12 sacrifice the value of their brand by pulling a  
13 product, like SHMP out of the brand, because we aren't  
14 able to get the supply that we need. It's not an easy  
15 decision, because you risk losing market share on your  
16 finished product and ultimately risk hurting your  
17 business.

18 CHAIRMAN PEARSON: The concern is that a  
19 reformulation genuinely could affect the functionality  
20 of the product, as the consumer would perceive it,  
21 and, thus --

22 MR. SMITH: Sure.

23 CHAIRMAN PEARSON: -- you might lose out to  
24 one of your competitor companies that still has a  
25 source of SHMP to put into their competing product?

1           MR. SMITH: SHMP or another product that  
2 they may use as a chassis that serves the same  
3 function.

4           CHAIRMAN PEARSON: Okay. Well, I see my  
5 light has started to turn and I'm going to try to be  
6 good here and pass at this point. Madam Vice  
7 Chairman?

8           VICE CHAIRMAN ARANOFF: Thank you, Mr.  
9 Chairman, and welcome to the afternoon panel or  
10 perhaps the first of the afternoon panels. Mr. Smith,  
11 can you give me your best estimate of what percentage  
12 of U.S. demand for SHMP you think your company  
13 accounts for and perhaps you want to answer me for  
14 both before and after you reformulated your pet food  
15 products?

16           MR. SMITH: I would estimate that we're  
17 probably about 10 percent, maybe a little less. If I  
18 give you the after, it may reveal our volumes. So, we  
19 may have to do that post-hearing, ma'am.

20           VICE CHAIRMAN ARANOFF: Okay. I'd  
21 appreciate that. Thank you very much. Now, Mr.  
22 Smith, you said in your testimony, and I just want to  
23 clarify this, you said that at some point that you  
24 were paying more for Chinese product than you were  
25 paying for domestic product. Did I hear you correct?

1 MR. SMITH: Yes, you did, since 2005,  
2 actually.

3 VICE CHAIRMAN ARANOFF: And is that for  
4 product -- that's for product with identical  
5 specification?

6 MR. SMITH: That is correct, yes.

7 VICE CHAIRMAN ARANOFF: Okay. So, if I went  
8 back to your purchaser questionnaire and looked at  
9 what went into the pricing data, I would see that?

10 MR. SMITH: It does not break it out by  
11 producer in the questionnaire, but we can --

12 MR. LAFAVE: The questionnaire data is an  
13 average of both pet care and oral care and it's  
14 actually an aggregate figure. So, it doesn't reveal  
15 the pricing on -- in pet care, where there's  
16 competition with the Chinese producers. The pet care  
17 prices are generally lower than the oral care price.

18 VICE CHAIRMAN ARANOFF: Okay. If there's a  
19 way that you can break it out to show us that you're  
20 actually paying more for the Chinese product than the  
21 domestic product with the same specification, that  
22 would be, I think, an important piece of information  
23 for us to have in the record. Thanks.

24 Oh, and one more clarification I wanted to  
25 ask you, Mr. Smith. Did your company reformulate its

1 pet food product to reduce the amount of SHMP going in  
2 before or after the petition was filed in this case?

3 MR. SMITH: The reformulation happened in  
4 November of 2007.

5 VICE CHAIRMAN ARANOFF: Okay, thank you.  
6 Mr. Neeley, let me go back to the question that some  
7 of my colleagues have been going at with you, which is  
8 the issue of price suppression. I know you've made  
9 the point that just because prices aren't going up as  
10 fast as costs doesn't create the causal link between  
11 subject imports and price suppression. So, I hear you  
12 there.

13 MR. NEELEY: Okay.

14 VICE CHAIRMAN ARANOFF: But, as a general  
15 matter, the Commission usually finds that if the -- or  
16 frequently finds that if the subject imports are  
17 underselling the domestic product, that that does  
18 create a causal link. And although you've made a  
19 great point to pointing out the Chinese prices are  
20 rising faster than domestic prices and our data do  
21 bear that out for some of the pricing products that  
22 we've look at, not all of them, the fact is that they  
23 have been pervasively underselling the domestic  
24 product for all four products that we've looked at  
25 over the entire period. So, how should we look at the

1 underselling with respect to that causation issue?

2 MR. NEELEY: Yeah. I mean, I think you look  
3 at the underselling and the price trends in a couple  
4 of different ways. One way that I suggest is that it  
5 breaks the overall causal link between what's going on  
6 with the condition of the industry and prices. And  
7 what I'm saying is let's look -- we can look at price  
8 suppression, but let's also look at volumes. I mean,  
9 the story that we hear from the domestic industry is  
10 this is all price driven. Everything is price, price,  
11 price. Well, if that's the case, then why are volumes  
12 going in the opposite direction of what we would  
13 expect with prices coming closer together? I mean, to  
14 us, it's the -- it's part of the same story and that  
15 story is that as prices come closer together, which  
16 you would expect to have happen, there's a couple of  
17 things. One, you would expect to have all our market  
18 share be going down, which it hasn't. You've also  
19 would expect that the financial condition of the U.S.  
20 industry would be getting, if not great, better and  
21 it's not. It's going the opposite way. Why are all  
22 the trends -- I mean, why is the cause and the effect,  
23 why are they going in opposite directions? I mean,  
24 that's our fundamental point and the price suppression  
25 argument is just part of that. It just doesn't -- it

1 doesn't link up in any meaningful way. I mean, I hope  
2 that helps, but that's fundamentally what we're  
3 saying.

4           And I, also, understand that you often do  
5 find price suppression. I've been in a lot of those  
6 cases, myself. But, I don't think, in the cases that  
7 I recall -- and I'm getting old, but I don't recall  
8 all of the cases -- but you usually don't have this  
9 pattern where the Chinese prices are increasing so  
10 much faster than the U.S. prices. I think that what  
11 you'll find in most cases, it's just the opposite.  
12 You can see the clear linkage the Chinese prices  
13 pulling things down or other foreign prices pulling  
14 things down.

15           VICE CHAIRMAN ARANOFF: Okay. I'm going to  
16 come back to that after I've thought about it some  
17 more.

18           MR. NEELEY: Okay.

19           VICE CHAIRMAN ARANOFF: In their pre-hearing  
20 brief, the Petitioners contend that the pricing data  
21 understate the extent of underselling by imports,  
22 because of the way we looked at the data from Univar,  
23 that it is a customer of the domestic producers, as  
24 well as an importer, and so it's resell prices to its  
25 U.S. customers can't be compared and that we should be

1 looking at the prices it pays for its imports from  
2 China. Do you want to respond to that?

3 MR. NEELEY: Yes. There's a couple of  
4 things, I think. One is I'm not sure you have all the  
5 data to do what they want to do. I mean, from what I  
6 can tell, the trends from China are going to be very  
7 similar, whether we look at it from the point of view  
8 of selling to Univar or Univar is selling to its  
9 ultimate customer.

10 You know, one of the problems you have in  
11 this case that you don't have in a lot of cases is the  
12 de-linkage or -- not de-linkage -- but the fact that a  
13 lot of this product goes into inventory. And so, if  
14 you're going to look at it from the perspective of the  
15 sale to Univar, somehow you need to do a lot more work  
16 than to link that back up to what's going on with, for  
17 example, the financial condition of the U.S. industry.  
18 It becomes a very complicated process to get it right.  
19 I'm not saying it's impossible, but we thought about  
20 it, how do you do this. And it's not that easy,  
21 because there's a large lag time and when is it  
22 hitting them? How is it affecting them? Is it  
23 affecting them one way for Univar and another way for  
24 other distributors? Who do you take into account?  
25 Who do you not take into account? I mean, the

1 Commission usually looks at the purchaser's stage for  
2 a lot of reasons and one is that it avoids these  
3 problems. It's a difficult think to link up together.

4 VICE CHAIRMAN ARANOFF: Okay, all right.  
5 Let me switch gears then and ask you, what do you  
6 know, what can you tell me about other producers of  
7 SHMP in China?

8 MR. NEELEY: First of all, let me say, I  
9 have to sort of apologize, my client is not here. The  
10 main reason my client is not here is that they  
11 couldn't get a Visa. The guy had -- the person, who  
12 was the person, who was supposed to come, had made a  
13 trip to the Middle East a few years ago and apparently  
14 that puts him on some sort of list that makes it very  
15 difficult with the State Department. So, I apologize.  
16 He could undoubtedly answer that question. I think  
17 it's probably instead of my speculating, probably  
18 better for us to do it in a post-hearing brief,  
19 because I want to be accurate about it.

20 What I do know from, I think it's in the  
21 staff report and we can discuss it probably more in  
22 the confidential briefing part, is that we are, by  
23 far, the largest producer and even, in a larger  
24 extent, the largest U.S. exporter -- the largest  
25 Chinese exporter to the United States for sodium hex.



1 But, we'll be glad to try to get even more information  
2 than that, if you would like.

3 VICE CHAIRMAN ARANOFF: Okay. I appreciate  
4 the fact that your client tried to get here. That's  
5 an increasingly common problem that we have --

6 MR. NEELEY: Yes.

7 VICE CHAIRMAN ARANOFF: -- with witnesses  
8 from foreign producers, unfortunately. But, if there  
9 is information that your client can provide to us,  
10 obviously, for purposes of the threat issue, in  
11 particular, we --

12 MR. NEELEY: Absolutely.

13 VICE CHAIRMAN ARANOFF: -- it would be  
14 helpful to know about the rest of the Chinese  
15 industry.

16 MR. NEELEY: Right.

17 VICE CHAIRMAN ARANOFF: Thank you, very  
18 much. Thanks, Mr. Chairman.

19 CHAIRMAN PEARSON: Commission Okun?

20 COMMISSIONER OKUN: All right. Mr. Neeley,  
21 I'm also going to ask about the cost price squeeze and  
22 price leadership, obviously a big part of what you've  
23 argued. And so, again, I want to just further flush  
24 out some of the information or arguments you have  
25 presented. And, again, I understand what you're

1 saying and can see where there is an increase at a  
2 greater percentage rate. What I'm struggling with is  
3 still is the gap was large. The gap is still large.  
4 So, prices -- Chinese prices are lower. I'm not sure  
5 how that prevents Chinese prices from suppressing  
6 domestic prices from rising. I mean, if -- and I  
7 don't think Mr. Smith is actually a good example of  
8 this. But, if you've got a company, a large buyer out  
9 there, who is going to use more than one source or is  
10 using one than more source, what I heard the  
11 Petitioner say was, you know, they can still --  
12 they're still using that Chinese price as a benchmark.  
13 So, the Chinese price is lower. It may have  
14 increased, but it's still lower. They don't seem to  
15 be getting -- and that's why I asked a lot about the  
16 price premium. If you could see that the price  
17 premium was always the same, so the benchmark is the  
18 Chinese price and I've got to raise my price to keep  
19 my premium the same, then I think I could understand  
20 your argument. I'm not sure I see that. And so, I  
21 wanted to see if there's particular things you think  
22 we should look at. I know you've noted that the  
23 interim data may look slightly different, because of  
24 the way things have been collected. So, help me out  
25 on that, because I guess I'm kind of still struggling

1 with this idea that if the prices were still lower,  
2 I'm not sure why that isn't still suppressing price  
3 increases for the domestics.

4 MR. NEELEY: Well, I guess, fundamentally,  
5 what we're seeing is that if you start at a certain  
6 spread, let's say between the Chinese price and the  
7 U.S. price in 2004, and the U.S. industry had a  
8 certain financial performance in 2004, you know, we're  
9 not -- and then that price narrows between the two  
10 during -- between 2004 and 2006. What you would  
11 expect to see is volumes going up, which you -- and,  
12 therefore, the capacity issues that the U.S. industry  
13 complains about having to be at higher capacity, you  
14 would expect as it narrows that their capacity  
15 utilization would go up, that their volumes would go  
16 up. You would expect that their market share would go  
17 up, all of which affects their financial performance,  
18 all of which helps with their costs and would  
19 eliminate, if it happens, the cost price squeeze. And  
20 you're not seeing that happen.

21 And what we're saying is that there is  
22 something else going on here. What's going on, we  
23 think, are a number of things, but one thing that's  
24 going on is that people want an alternative source, as  
25 we've talked about in great detail. So, the volumes

1 haven't gone where they're expected. But, that's not  
2 caused by actions by the Chinese industry, nefarious  
3 actions by the Chinese industry. It's caused  
4 fundamentally to what I talked about at the very  
5 beginning, which is that there aren't very many  
6 players in this industry and they're all in this room.  
7 So, I mean, it's just different than most of the cases  
8 you see.

9 COMMISSIONER OKUN: But, then, it seems to  
10 me that cases would be the same. I mean, then why  
11 wouldn't they -- I mean, again, with only two  
12 producers, U.S. producers, I'm having a hard time  
13 understanding why on those facts, the facts of this  
14 marketplace that if there wasn't price suppression, we  
15 wouldn't have seen the percentage of their increases  
16 match the Chinese, you know. That would be the theory  
17 of the premium. The spread would have stayed the same  
18 and they would have been able to raise their prices,  
19 as the Chinese prices went up.

20 MR. NEELEY: Right. That's what you expect  
21 to see.

22 COMMISSIONER OKUN: That's what you would  
23 expect.

24 MR. NEELEY: Right, right.

25 COMMISSIONER OKUN: But, I don't think --

1 MR. NEELEY: I mean --

2 COMMISSIONER OKUN: I'm not sure that's what  
3 I see.

4 MR. NEELEY: No, you don't see it.

5 COMMISSIONER OKUN: Right.

6 MR. NEELEY: You don't see it.

7 COMMISSIONER OKUN: So, that doesn't make  
8 sense that it's something other than the Chinese  
9 prices to me.

10 MR. NEELEY: Well, if they can't raise their  
11 prices -- say, we raise our prices by 50 percent, if  
12 they can't raise their prices by 50 percent also, is  
13 that our fault? I mean, what have we done to cause  
14 that is what we're saying.

15 COMMISSIONER OKUN: If your prices were the  
16 same, to me is the argument to make.

17 MR. NEELEY: You know, if our quest for the  
18 --

19 COMMISSIONER OKUN: If Chinese prices were  
20 higher, it would be a really easy argument to make,  
21 right?

22 MR. NEELEY: Right. It's never easy.

23 COMMISSIONER OKUN: Okay. All right. Well,  
24 let me -- you've gotten a lot of questions about this  
25 obviously and for post-hearing, if you could kind of

1 further elaborate on what specifically you would point  
2 us to in the record and then what you think the other  
3 things that are going on in the market are --

4 MR. NEELEY: Okay.

5 COMMISSIONER OKUN: -- that supports that.  
6 I think that would be helpful.

7 MR. NEELEY: Yeah. I'll try to be more  
8 articulate.

9 COMMISSIONER OKUN: Yeah, you know, it's  
10 hard to hear. I mean, I'm listening to it and I'm  
11 trying to look at the data and see if I think that  
12 makes --

13 MR. NEELEY: Okay.

14 COMMISSIONER OKUN: -- matches up. But, I  
15 appreciate that. And I don't know, Mr. Smith, you  
16 might be able to shed light on that. I guess I was  
17 saying you weren't the right person, because what I  
18 heard you just say is that you did pay more for your  
19 Chinese and, obviously -- Chinese product and if that  
20 could be broken out, obviously, we'll look at that.  
21 And this might need to be done post-hearing, but I  
22 think if you're providing that date, it would be  
23 interesting to know whether the prices that you paid  
24 for domestic product on the oral care side, where you  
25 don't have any Chinese -- where there's not Chinese

1 competition on that account, whether those prices went  
2 up more or what happened to those prices. If you  
3 could help us understand what happened during the same  
4 time period, where you did not have Chinese product  
5 that you're purchasing, that might be useful, as well.  
6 If that could be done for post hearing.

7 MR. NEELEY: We can certainly do that for  
8 post-hearing.

9 COMMISSIONER OKUN: Okay, thank you. Let's  
10 see, my next question is also for you, Mr. Smith, and  
11 I have to admit it's not -- I'm not asking the  
12 question for me, but for my interested consumer, the  
13 family Miles Beagle Hound, who likes Iams dog food.  
14 I'm curious, what claims have been taken off Iams now  
15 that you've shifted your marketing?

16 MR. SMITH: Unfortunately, that will also  
17 have to be for post-hearing.

18 (Laughter.)

19 COMMISSIONER OKUN: I can't tell anyone.  
20 All right.

21 MR. SMITH: That is very confidential.

22 COMMISSIONER OKUN: I can't tell my dog?

23 MR. SMITH: I certainly can tell Miles,  
24 because I don't think he would tell anybody.

25 COMMISSIONER OKUN: Okay. Well, I will look

1 at that. But, the more serious side, and I guess one  
2 of the questions was, I mean, obviously, there's a lot  
3 going on in the dog food industry with the Chinese  
4 exports, although of a different -- something  
5 different being included in dog food, if I understood  
6 all the information that came out at that time,  
7 because we were saying that had no impact on why  
8 you're reformulating on the SHMP side here for Iams.

9 MR. SMITH: No.

10 COMMISSIONER OKUN: No, okay. I just wanted  
11 to make sure about that, in terms of --

12 MR. SMITH: Your questioning quality?

13 COMMISSIONER OKUN: What's that?

14 MR. SMITH: The quality of the product from  
15 China?

16 COMMISSIONER OKUN: Yes.

17 MR. SMITH: In reality, a lot of the  
18 phosphates that come out of China are of excellent  
19 quality and some of the other phosphates that we do  
20 source are better quality. And so, they are at least  
21 comparable, if not on some phosphates better.

22 COMMISSIONER OKUN: I guess I was just  
23 curious when you were saying that there has been --  
24 that you might be submitting information, there's been  
25 a decline in demand in some of those products, whether



1 that was related to this scare about anything that was  
2 coming in from China caused the industry to make some  
3 shifts, you know, to make sure that that wasn't caught  
4 up in this data --

5 MR. SMITH: Right.

6 COMMISSIONER OKUN: -- that we're looking  
7 at.

8 MR. SMITH: To my knowledge, that has  
9 nothing to do with SHMP decisions.

10 COMMISSIONER OKUN: Okay. That's very  
11 helpful. Let's see, Mr. Neeley, I think back to you,  
12 I asked this morning about the increases in apparent  
13 consumption that we see on the record and during the  
14 interim period. Mr. Cannon had noted that he thinks  
15 that that reflects inventory build up prior to the  
16 imposition of the -- prior to the petition being filed  
17 -- prior to the imposition of the duties. Do you  
18 agree with that or do you think there's anything else  
19 going on with the apparent consumption?

20 MR. NEELEY: Yeah. I think he's probably  
21 right about that. That's one reason we mentioned this  
22 dichotomy, sort of the different methodologies that  
23 are being used for the interim period compared to the  
24 shipments that are being used for the earlier periods.  
25 We think there's not been a big jump. A lot of that

1 is going into inventory. So, it's a little bit --  
2 well, it's quite a bit misleading, actually. So, we  
3 need to kind of figure out a better way to do that  
4 perhaps.

5 COMMISSIONER OKUN: Okay. Then, I remember  
6 your argument, because your argument is our period of  
7 investigation data is different than our annual data -  
8 -

9 MR. NEELEY: Right, exactly.

10 COMMISSIONER OKUN: - and I will be looking  
11 at that. I appreciate that. Then, let's see, I  
12 wanted to go back to in response, I think it was an  
13 exchange you had with Commissioner Williamson about --  
14 this might require a little longer answer, so, Mr.  
15 Chairman, since my yellow light is on, I will stop.  
16 Thank you. Since I asked a question on behalf of my  
17 dog, as well. He used up some of my time.

18 CHAIRMAN PEARSON: I'd be happy if you would  
19 go a little bit on the red. It would make me look  
20 less bad here. Commissioner Lane? Let the record  
21 note that I did not forget you the second time around.

22 COMMISSIONER LANE: Thank you. I'm right up  
23 there with the dog, right?

24 (Laughter.)

25 COMMISSIONER LANE: Mr. Smith, I have a few

1 questions for you. First of all, as I understand it,  
2 P&G gets most of its product -- of this product from  
3 China. And my question is, do you get the product  
4 from one particular facility in China or are there  
5 several facilities that make this product for you?

6 MR. SMITH: If most is more than 50 percent,  
7 I don't think that's a correct statement. Most of our  
8 product does not come from China.

9 COMMISSIONER LANE: Oh, most of it doesn't  
10 come from China?

11 MR. SMITH: That is correct.

12 COMMISSIONER LANE: Okay. Then, so if 50  
13 percent comes from China, the other 50 percent comes  
14 from the United States?

15 MR. SMITH: I would say less than 50 percent  
16 comes from China. And to my knowledge, I think Xingfa  
17 produces at one facility and it's one SHMP furnace  
18 that they have at that facility. Perhaps, Mr. Neeley  
19 can comment on that.

20 MR. NEELEY: Yes, he's correct about that.

21 COMMISSIONER LANE: So, all of the product  
22 that you get from China comes from one specific  
23 facility in China?

24 MR. SMITH: That's correct.

25 COMMISSIONER LANE: And did that facility

1 always produce to your specifications or did you come  
2 up with specifications and they met those  
3 specifications and they started producing to those?

4 MR. SMITH: I believe they brought their  
5 production to our specification.

6 COMMISSIONER LANE: And at that particular  
7 facility in China, do they just do product to the same  
8 specifications that P&G needs or does it do a variety  
9 of products?

10 MR. SMITH: I believe a variety of products.  
11 Mr. Neeley --

12 COMMISSIONER LANE: I mean, I'm not -- I'm  
13 sorry, I better be specific here. A variety of the  
14 same product, but different sizes?

15 MR. SMITH: I'm not aware -- I'm not that  
16 familiar with their production. They product to meet  
17 our specification and I'm not sure exactly how much of  
18 their production is our specification.

19 COMMISSIONER LANE: Okay. Mr. Neeley, do  
20 you have --

21 MR. NEELEY: Yeah. It's our plant. I don't  
22 know what percentage would be for their use. I do  
23 know that Hubei Xingfa makes a number of products, not  
24 just the P&G products, and a lot of other products.  
25 So, we can find out more information about that, but I

1 don't know off the top of my head.

2 COMMISSIONER LANE: So, a hypothetical, Mr.  
3 Smith, if that facility in China shuts down  
4 unexpectedly, what do you -- what's plan B for P&G to  
5 replace that supply?

6 MR. SMITH: Well, we have been in that  
7 situation before in 2005. And we've relied on the  
8 U.S. producers in that situation, to pick up the  
9 demand. But, fortunately, when we do source from  
10 China on going basis, we have typically a month or  
11 more inventory in the U.S. So, if they shut down, I  
12 would not expect them to shut down longer than a  
13 month, unless it was a severe catastrophe, and you can  
14 expedite product using other means of logistics,  
15 simply air freight the product to the U.S., if the  
16 need was there.

17 COMMISSIONER LANE: Okay. You testified  
18 earlier that a portion of the Chinese SHMP that you  
19 purchase is subsequently shipped to one of your  
20 factories outside the United States; is that correct?

21 MR. SMITH: That is correct.

22 COMMISSIONER LANE: Is the SHMP that you  
23 send overseas included in your reported purchases of  
24 SHMP produced in China?

25 MR. SMITH: For that facility? It's not

1 included in those numbers.

2 COMMISSIONER LANE: It's not included in  
3 your purchaser questionnaire?

4 MR. SMITH: No. Circular U.S. plants were  
5 included in that questionnaire. If we were to include  
6 that plant, that plant was shut down last year,  
7 because of spotters disruption in the U.S.

8 COMMISSIONER LANE: Okay. Do you, also,  
9 send any of the domestic SHMP that you purchase to an  
10 offshore P&G factory?

11 MR. SMITH: That is the factory that I'm  
12 referring to, ma'am.

13 COMMISSIONER LANE: Okay. So, you do send  
14 some of your domestically produced -- or purchased  
15 SHMP to an offshore facility?

16 MR. SMITH: Yes, that is correct.

17 COMMISSIONER LANE: Okay.

18 MR. LAFAVE: Commissioner Lane, just to  
19 confirm though, the numbers that he provided in the  
20 purchaser questionnaire were only for SHMP consumed in  
21 the United States.

22 COMMISSIONER LANE: I'm sorry, only SHMP  
23 since 2000 --

24 MR. LAFAVE: Consumed in the United States.

25 COMMISSIONER LANE: Oh, consumed in the

1 United States. Okay, thank you. Mr. Neeley, this  
2 might be a good question for you. Can you discuss the  
3 extent to which the Commission, as a whole, has looked  
4 at pricing to distributors versus retailers or end  
5 users in past decisions and what prices should the  
6 Commission be looking at?

7 MR. NEELEY: Yeah, I addressed a little bit  
8 of that in an earlier comment about the difficulties  
9 of lining up various parts of data, if you look at the  
10 distributor levels. In this particular situation, you  
11 have product that's going into inventory. I have not  
12 reviewed in detail past cases on this, but I can look  
13 at that and address it in the post-hearing brief, if  
14 you would like.

15 COMMISSIONER LANE: Okay, thank you. Mr.  
16 Chairman, that's all I have.

17 CHAIRMAN PEARSON: Commissioner Williamson?

18 COMMISSIONER WILLIAMSON: Thank you, Mr.  
19 Chairman. Mr. Smith, in your response to Commissioner  
20 Lane, you said that there was one -- I think one plant  
21 in Europe where you used to ship SHMP, but that plant  
22 is closed down?

23 MR. SMITH: That plant was closed down for a  
24 period, because of a shortage of SHMP. We had a  
25 supply disruption in the U.S. and, therefore, they did

1 not have enough SHMP to continue production. It is up  
2 and running. It was a brief shutdown.

3 COMMISSIONER WILLIAMSON: Okay. And what  
4 period was that? When was that?

5 MR. SMITH: It was around the second quarter  
6 of 2007.

7 COMMISSIONER WILLIAMSON: Okay. But, now  
8 it's up and are you shipping SHMP from the U.S. to  
9 there?

10 MR. SMITH: We are shipping from the U.S.,  
11 yes.

12 COMMISSIONER WILLIAMSON: Okay, good. I  
13 wasn't clear about that. Thank you. You mentioned  
14 that you need multiple sources of SHMP and that your  
15 inventories are small. I was wondering, are there any  
16 reasons why you couldn't increase inventories to deal  
17 with supply disruptions? I think you said it's 18  
18 months you can keep the product.

19 MR. SMITH: We have many products that go  
20 into our formulations and it is certainly a cost  
21 factor for our plants to increase inventories large  
22 enough to cover unplanned outages, which could be two  
23 weeks to a month. And to hold that kind of inventory  
24 of all of our materials, it would be very costly for  
25 our company. We typically have relied on our



1 suppliers to hold finished product inventory or  
2 distributors to hold finished product inventory for us  
3 and it helps us manage our cash flow better.

4 COMMISSIONER WILLIAMSON: But, how much --  
5 how many days supply do you usually typically maintain  
6 of SHMP?

7 MR. SMITH: It depends on our plant and -- I  
8 would say typically it would be no more than two  
9 weeks, probably closer to one week.

10 COMMISSIONER WILLIAMSON: Okay. And SHMP is  
11 a relatively small component of most of your products  
12 --

13 MR. SMITH: Right.

14 COMMISSIONER WILLIAMSON: -- you use it in,  
15 isn't it?

16 MR. SMITH: As far as a volume standpoint,  
17 it's relatively small. But as far as an importance,  
18 it is an important material on our product.

19 COMMISSIONER WILLIAMSON: Okay. Thank you.  
20 I just wanted a clarification on that. Mr. Neeley,  
21 going back to this question about the narrowing of the  
22 price between the Chinese product and the U.S.  
23 product, in the charts that were distributed this  
24 morning on the underselling, it seemed to me like only  
25 one out of the four products was there really any

1 narrowing, based on this flow of the charts. And so,  
2 you had mentioned a point -- you made quite a bit of  
3 the fact that the prices were narrowing, you know,  
4 which it seemed to me that it was only in the case of  
5 one and I wasn't sure that was necessarily the most  
6 important.

7 MR. NEELEY: Well, actually, the first  
8 product is by far the most important product for the  
9 U.S. industry and we discussed that -- I'm not sure on  
10 which page -- but in our brief, I give the data. So,  
11 on that very most important product, you do see the  
12 most narrowing. I think you do also see narrowing on  
13 product two.

14 COMMISSIONER WILLIAMSON: Two is obvious.

15 MR. NEELEY: Yeah, right, right. Product  
16 three and four, not as much. They're relatively  
17 smaller. But, we gave some information, I think, in  
18 our brief about the narrowing. They're not all equal,  
19 that's true. But, I think for the most important  
20 products, you've definitely seen the narrowing and  
21 you've seen the narrowing enough that you would expect  
22 very different trends, I think, in the financial  
23 performance of the U.S. industry, since it is the most  
24 important product.

25 COMMISSIONER WILLIAMSON: Well, I haven't

1 really tried to plot it.

2 MR. NEELEY: Yeah. I mean, we're not  
3 talking about unimportant products here that are --  
4 where we see the narrowing.

5 COMMISSIONER WILLIAMSON: Okay, thank you.  
6 You mentioned that the U.S. market is segmented. And  
7 I was wondering what factors would prevent any one of  
8 the three major players from moving into other  
9 segments, other than, say, a purchasers desire to  
10 maintain multiple supplies?

11 MR. NEELEY: Well, the maintenance of  
12 multiple suppliers is probably the biggest factor, I  
13 agree with that. In the Commission's staff report,  
14 there was information about certain purchaser  
15 preferring U.S. product. I mean, what it would take  
16 to overcome that? It's difficult to know, but it  
17 appears that at least for some, the fact that your  
18 Chinese is still a non-starter, in that they're not  
19 going to be able to go into those market segments.

20 The other thing that we were talking with  
21 regard to segmentation was the continued difference,  
22 significant difference in most instances between the  
23 two U.S. companies -- forget the Chinese for a  
24 moment -- just the two U.S. companies in price levels.  
25 And to us, that signifies that there is something

1 going on here other than prices. There's a segment of  
2 the market that for whatever reason -- and honestly,  
3 it's a little bit difficult for me to identify it. I  
4 can just tell you, here's the data and there's  
5 something else going on here. But, there's some kind  
6 of market segmentation going on there, apart from the  
7 Chinese, among the U.S. producers, themselves, I  
8 think.

9 COMMISSIONER WILLIAMSON: Will we know it  
10 when we see it?

11 MR. NEELEY: I think the data shows it. I  
12 mean, I think that -- if it's a physically fungible  
13 commodity, which is what the U.S. industry argues, and  
14 yet there's big and significant differences in price  
15 among even the U.S. producers, it suggests that  
16 there's some sort of segmentation going on, on some  
17 basis.

18 COMMISSIONER WILLIAMSON: Okay. I was  
19 hoping you could give more clarity on that.

20 MR. NEELEY: Sorry if I can't. I'm not the  
21 marketing person unfortunately, but I can -- I'm  
22 telling you what I see from the staff report.

23 COMMISSIONER WILLIAMSON: If you have any  
24 additional thoughts on that --

25 MR. NEELEY: Okay. We'll see what we can

1 do. Thank you.

2 COMMISSIONER WILLIAMSON: I appreciate that.  
3 Okay. Mr. Chairman, I have no further questions.

4 CHAIRMAN PEARSON: Mr. Smith, in response to  
5 a question from Commissioner Williamson, you indicated  
6 to the effect that SHMP is an important product in  
7 P&G's formulations. And I think I understand what you  
8 mean by that, but let me just clarify. If a product  
9 contained potato starch and potato starch became in  
10 short supply, you might be able to reformulate it  
11 using wheat starch, for example. In this instance,  
12 are the properties of SHMP relatively so unique that  
13 you can't go out on the shelf and find another product  
14 and incorporate it, in lieu of SHMP?

15 MR. SMITH: That's a fair assumption. It is  
16 difficult for us to replace SHMP and difficult, next  
17 to impossible, at this point, without dedicating a lot  
18 of technical resources and developing a new technology  
19 that does not rely on SHMP as a chassis.

20 CHAIRMAN PEARSON: Okay. So, even though  
21 SHMP overall might not be a large percentage of the  
22 value of the individual product or not a large  
23 percentage of the volume, the specific functionality  
24 that it provides is such that it becomes an important  
25 part?

1                   MR. SMITH: And without it in the product,  
2 it weakens our brands.

3                   CHAIRMAN PEARSON: Okay. Let me do as I did  
4 with the domestics and ask a little bit about the  
5 qualification process. In your experience, I mean,  
6 you've got -- you're dealing both with the oral  
7 products and with the pet food. Is the qualification  
8 process for a new provider of SHMP, would it be the  
9 same for both of those or would there be some  
10 differences?

11                  MR. SMITH: There are still slight  
12 differences. It is still different technical  
13 organizations that manage each area. But, as a whole,  
14 I would say they're very similar qualification  
15 process. And contrary to what was communicated  
16 earlier, our qualifications, we take very seriously,  
17 and a full qualification can last up to two years.  
18 Granted, there are times where we don't do that,  
19 depending on the need and the reason. If there is a  
20 supply outage, we can dedicate more technical  
21 resources and throw more money into a qualification,  
22 expedite it, and take more risk. But, the preference  
23 is to do a full qualification, full stability testing,  
24 and ensure that the product meets all the requirements  
25 that P&G needs for our specification, both the raw

1 material specification and the finished product, which  
2 we then ship to our customers.

3 Stability in the product basically means  
4 that it performs as expected. So, from the first day  
5 you put it into the formulation until two years down  
6 the road, it maintains its properties and you're still  
7 able to use that toothpaste two years from now, if  
8 necessary.

9 CHAIRMAN PEARSON: We've had testimony  
10 suggesting that a closed plant in the United States  
11 for SHMP may come back on line. And if that was to  
12 happen and that plant was to offer a merchant product,  
13 how long might it take to qualify that plant as a  
14 suppliers to P&G?

15 MR. SMITH: I think -- I can give an  
16 example. Since we've had the issues with U.S.  
17 production and U.S. supply, we have started the  
18 qualification of Xingfa for our oral care and this  
19 qualification was started early last year, still is  
20 not complete. So, I would assume in a similar  
21 situation, if another producer came on line and it  
22 made business sense to qualify them, it would take at  
23 least the same time frame, if not longer.

24 CHAIRMAN PEARSON: Okay. And, obviously,  
25 going back to the point that you made earlier, that if

1 there was some genuine market disruption and there was  
2 another source available, that perhaps there would be  
3 a short-term Manhattan product to get the new product  
4 qualified, if it indeed it could be qualified?

5 MR. SMITH: Yes. But, I do want to  
6 emphasize that is very risky for a company to do that  
7 and you could be putting inferior product on the shelf  
8 for your consumers.

9 CHAIRMAN PEARSON: And is that particularly  
10 the case when there are shelf life issues with the  
11 product, where one needs to just manufacture the  
12 product and let it sit for a while to see how it holds  
13 up over time?

14 MR. SMITH: Yes. We've had issues where  
15 we've put product into -- where we put raw materials  
16 into product and put it on shelf and on shelf, our  
17 finished product has changed properties. And it's  
18 very costly, then, to pull that product back off the  
19 shelf.

20 CHAIRMAN PEARSON: Okay. Well, I thank you,  
21 very much. I think I have no further questions for  
22 the public session. So, let me now turn to Vice  
23 Chairman Aranoff.

24 VICE CHAIRMAN ARANOFF: Thank you, Mr.  
25 Chairman. Let's see, Mr. Smith, while we have you



1 talking, I'm going to start by asking this question to  
2 you and then I'm going to apologize to the domestic  
3 industry panel for not having asked this question this  
4 morning and invite you to answer it in your post-  
5 hearing brief. And the question is this, Mr. Smith.  
6 What does a typical price negotiation look like in  
7 this market? When you go to buy this product and  
8 assuming that someone is qualified, that process is  
9 over, what does it look like?

10 MR. SMITH: I think it's very company  
11 specific. For our company, in particular, we  
12 typically offer the incumbent the same volume that  
13 they're supplying . And if they choose to supply more  
14 or supply less, we try to work with them and, of  
15 course, negotiate with them on price to meet our  
16 needs, also. I think the way that this business has  
17 been negotiated historically, we have not gone out and  
18 done formal inquiries, where suppliers come back and  
19 directly compete against one another. We try to have  
20 more of a relationship with the suppliers and talk  
21 through our needs and their needs and try to come to  
22 an agreement meeting both companies' needs. So, it's  
23 not -- it's certainly not we send them a piece of  
24 paper, they send us a piece of paper back, and we go  
25 with the lowest bidder. It's never been that way.

1                   VICE CHAIRMAN ARANOFF: Okay. Do you do  
2 annual contracts or more frequent?

3                   MR. SMITH: Our preference -- as I said  
4 before, we're a very conservative company. Our  
5 preference is to have longer-term contracts with  
6 strategic suppliers.

7                   VICE CHAIRMAN ARANOFF: So more than a year?

8                   MR. SMITH: More than a year, if the  
9 suppliers are willing to do that.

10                  VICE CHAIRMAN ARANOFF: And have suppliers  
11 for SHMP generally been willing to enter into multi-  
12 year contracts?

13                  MR. SMITH: No. We have not typically had  
14 more than one-year contracts.

15                  VICE CHAIRMAN ARANOFF: So typical is a  
16 year?

17                  MR. SMITH: Typical is a year, yes.

18                  VICE CHAIRMAN ARANOFF: And do you do it as  
19 you estimate how much you're going to buy in a year  
20 and then you do a percentage of that to each supplier?

21                  MR. SMITH: That's correct; that is correct.

22                  VICE CHAIRMAN ARANOFF: Okay. So if the  
23 domestic producers would like in their post hearing to  
24 indicate whether that is a typical scenario or whether  
25 with different kinds of customers, it's difference,

1 and I'm particularly interested in whether there's a  
2 difference between sales to end users and sales to  
3 distributors, because I assume there is. Thanks.

4 And one other follow-up with you, Mr. Smith.  
5 One of the things that we were discussing with the  
6 panel this morning is the availability of supply from  
7 European producers of SHMP. And since your company  
8 does source globally and you said you do purchase some  
9 product from European producers, didn't you?

10 MR. SMITH: We do not currently produce  
11 SHMP from European producers. They have a difficult  
12 time meeting our specifications.

13 VICE CHAIRMAN ARANOFF: Okay. So, that was  
14 going to be my next question. You don't buy from  
15 them, because they don't meet your specification?

16 MR. SMITH: That's correct.

17 VICE CHAIRMAN ARANOFF: Okay. Considering  
18 that you've sort of indicated to us that you have  
19 concerns about having multiple sources available to  
20 you, because of supply availability, have you been  
21 working with those producers to try and --

22 MR. SMITH: Yes.

23 VICE CHAIRMAN ARANOFF: -- develop them up  
24 to your specification?

25 MR. SMITH: Those and others, not just the

1 European producers. But, yet, we've been working with  
2 them. Our technical folks are working with their  
3 technical folks to try and adjust their processes, so  
4 they're able to meet our specification, because we're  
5 not able to change our specification.

6 VICE CHAIRMAN ARANOFF: Okay. Is it your  
7 sense that capacity is not a problem for those  
8 producers, that they can take on more of your  
9 business, if they can meet your specification?

10 MR. SMITH: I don't negotiate with the  
11 European producers. We have a global team, a  
12 phosphate team, and there is a regional buyer there  
13 that negotiates with those phosphate producers. I do  
14 not think that capacity is an issue, though I don't  
15 have direct knowledge.

16 VICE CHAIRMAN ARANOFF: Okay, all right.  
17 Have you ever had contact with any Chinese producers,  
18 other than Xingfa?

19 MR. SMITH: Personally, I have not.

20 VICE CHAIRMAN ARANOFF: Are you aware that  
21 the company has?

22 MR. SMITH: We actually have a Chinese  
23 office, who works with other phosphate producers. We  
24 buy other phosphates in China for consumption in  
25 China. So, they do have contact with other SHMP

1 producers, yes.

2 VICE CHAIRMAN ARANOFF: Okay. So, if you  
3 could let us know for post-hearing the extent to which  
4 your company has been approached by or has approached  
5 other Chinese producers, we're obviously interested in  
6 who they are --

7 MR. SMITH: Sure.

8 VICE CHAIRMAN ARANOFF: -- how big they are,  
9 whether or not they have taken steps to get into the  
10 U.S. market.

11 MR. SMITH: Yeah.

12 VICE CHAIRMAN ARANOFF: Thanks. Mr. Neeley,  
13 you had indicated that your client has one furnace in  
14 China and then we have the capacity number in our  
15 record.

16 MR. NEELEY: Right.

17 VICE CHAIRMAN ARANOFF: In the pre-hearing  
18 report, there is a reference to a trade article that's  
19 attached as Exhibit 11, Petitioners' post-conference  
20 brief from the preliminary, indicating that Hubei  
21 Xingfa was reported in 2005 to be in the process of  
22 adding 20,000 metric tons of food grade capacity. Do  
23 you have any comment on that article and what we  
24 should make of it?

25 MR. NEELEY: Yeah. That was -- I tried to

1 address that sort of in my earlier statement. There  
2 were some plans or there were some ideas floating  
3 around of increasing capacity back during that time  
4 period and when Hubei Xingfa looked at it, what they  
5 reported to me is that they researched it, they said  
6 the market just didn't support it. It didn't make  
7 economic sense to do it and they didn't do it.

8 VICE CHAIRMAN ARANOFF: Twenty-thousand  
9 metric tons would be --

10 MR. NEELEY: That's a lot.

11 VICE CHAIRMAN ARANOFF: That's a big --

12 MR. NEELEY: It's a huge amount. I mean, I  
13 don't know that that was the amount that they were  
14 contemplating. But, there were some thoughts of  
15 increasing capacity. But, that's a very significant  
16 increase, certainly. I mean, you look at what our  
17 actual capacity is that we reported to you, it's a  
18 huge increase.

19 VICE CHAIRMAN ARANOFF: Okay. Were the  
20 company's exports affected by the antidumping order in  
21 Mexico?

22 MR. NEELEY: I don't know the answer to that  
23 question, but I can find out. I don't recall Mexico  
24 being a huge market for Hubei Xingfa, but I will  
25 research that.

1                   VICE CHAIRMAN ARANOFF: Okay. And I would  
2 be interested, obviously, that Mexico didn't impose  
3 any antidumping in the absence of any exports from  
4 China. So, there most of been something going on  
5 there. You know, anything that you could tell us  
6 about --

7                   MR. NEELEY: Okay. I'll take a look at the  
8 Mexican situation.

9                   VICE CHAIRMAN ARANOFF: Thanks. Let me take  
10 one last shot of this issue of the Trenton plant and  
11 the 2003 data. In your view, why didn't the capacity  
12 utilization of the domestic industry go up after the  
13 Trenton plant was closed in 2003?

14                  MR. NEELEY: Why did the capacity  
15 utilization not go up in 2004 after the Trenton plant  
16 was closed in 2003?

17                  VICE CHAIRMAN ARANOFF: Uh-huh.

18                  MR. NEELEY: I, in all honestly, have not  
19 carefully looked at what was going on in 2003 and  
20 compared it to 2004 with regard to capacity  
21 utilization. I would like to answer your question. I  
22 think we would be better off, instead of having me  
23 speculate on something I don't really know the answer  
24 to, to look at it a post-hearing brief.

25                  VICE CHAIRMAN ARANOFF: Okay. There's been

1 some mention in the course of this afternoon's panel  
2 of various, mostly relatively short production  
3 shutdowns by domestic producers and that that has, in  
4 some cases, created problems for purchasers. But, our  
5 data shows that the U.S. industry has been losing  
6 market share throughout the period that we're looking  
7 at, not even looking back to 2003. Can you tie the  
8 loss of market share to these shutdowns; in other  
9 words, the domestic industry has actually not been  
10 able to churn out the product? And if not, I mean,  
11 what else could explain the rise in Chinese market  
12 share, except the fact that the price is lower?

13 MR. NEELEY: Yeah. I think that is really  
14 an excellent question. I mean, we did not argue in  
15 our brief that these long shutdowns were the direct  
16 result -- I mean, the story that's being told here is  
17 that there were shutdowns because of prices. You  
18 know, we don't think the data support that, because  
19 what was happening with prices. We didn't make the  
20 argument -- we were trying to be conservative in our  
21 approach, we didn't make the argument that the loss of  
22 market share was purely because of the shutdowns.  
23 We're trying to get more information on exactly why  
24 there were this really extraordinarily long shutdown,  
25 for example, in South Chicago. You know, it seems to



1 be something else going on here besides price,  
2 however, and we're taking a careful look at that right  
3 now. But, yes, I mean, everybody has shutdowns. We  
4 have shutdowns. You heard it from Procter & Gamble.  
5 I mean, that's one of the big problems in this  
6 industry. But the shutdown that we heard about in  
7 South Chicago was extraordinarily long.

8 VICE CHAIRMAN ARANOFF: Okay. Seeing as my  
9 light has changed, I think that's all the questions I  
10 have, Mr. Chairman. Thanks.

11 CHAIRMAN PEARSON: Commissioner Okun advised  
12 me that she has no further questions.

13 Commissioner Lane?

14 (No response.)

15 CHAIRMAN PEARSON: Commissioner Williamson?

16 COMMISSIONER WILLIAMSON: I have no further  
17 questions.

18 CHAIRMAN PEARSON: Vice Chairman Aranoff?

19 (No response.)

20 CHAIRMAN PEARSON: There appear to be no  
21 further questions from the dais. Do members of the  
22 staff have questions for this panel?

23 MS. TURNER: Robin Turner, Office of the  
24 General Counsel. I just have one, and it's for Mr.  
25 Neeley or Mr. Lafave.

1           In terms of the antidumping duty order that  
2           was imposed on imports from China to Mexico, if you  
3           have access to a copy of that order, we would very  
4           much appreciate it. We do ask foreign producers to  
5           provide us that information in their questionnaires or  
6           post-hearing briefs, and thus we would appreciate  
7           having that put on the record.

8           MR. NEELEY: We'll do that.

9           MS. TURNER: That's it for staff questions.

10          CHAIRMAN PEARSON: Okay. Does counsel for  
11          the domestic industry have any questions for this  
12          panel?

13          MR. CANNON: How much time do I have?

14          CHAIRMAN PEARSON: Mr. Secretary, do you  
15          have a time check?

16          MR. BISHOP: You have 15 minutes remaining  
17          from your original 60.

18          MR. CANNON: Of which I get 10 for  
19          confidential.

20          MR. BISHOP: You have to have them for your  
21          in camera, and then you have five for your close.

22          MR. CANNON: I have no further questions.

23          CHAIRMAN PEARSON: Very well. That, then,  
24          concludes this portion of the hearing. Thanks again  
25          to the members of this panel. I appreciate your being

1 here and answering our many questions.

2 Mr. Secretary, do we need a short break in  
3 order to set up for the in-camera session?

4 MR. BISHOP: Yes, Mr. Chairman. We need to  
5 clear the room, and only those who are signatories to  
6 the APO will be permitted back in the room.

7 CHAIRMAN PEARSON: And you're thinking three  
8 or five minutes, something like that?

9 MR. BISHOP: Three minutes is good.

10 CHAIRMAN PEARSON: Three minutes is good.  
11 Let's break for three minutes.

12 (Whereupon, at 3:05 p.m., a short recess was  
13 taken, to be followed by a closed session.)

14 //

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**CERTIFICATION OF TRANSCRIPTION**

**TITLE:** Sodium Hexametaphosphate from  
China

**INVESTIGATION NOs:** 731-TA-1110 (Final)

**HEARING DATE:** January 24, 2008

**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:** January 24, 2008

**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 E. 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:** Mona McClellan  
Signature of Court Reporter