

THE UNITED STATES INTERNATIONAL TRADE COMMISSION

In the Matter of:) Investigation Nos.:
) 701-TA-430A and 430B and
 DURUM AND HARD RED SPRING) 731-TA-1019A and 1019B
 WHEAT FROM CANADA) (Final)

Thursday,
 September 4, 2003

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

The hearing commenced, pursuant to notice, at 9:35 a.m., before the Commissioners of the United States International Trade Commission, the Honorable DEANNA TANNER OKUN, Chairman, presiding.

APPEARANCES:

On behalf of the International Trade Commission:Commissioners:

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THE HONORABLE BYRON L. DORGAN, United States
Senator, State of North Dakota
THE HONORABLE EARL POMEROY, U.S. Congressman, 1st
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State Legislative Appearances:

THE HONORABLE JACK DALRYMPLE, Lieutenant Governor,
State of North Dakota, on behalf of Governor
John Hoeven

In Support of the Imposition of Countervailing and
Antidumping Duties:

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Member, Durum Education, Research, and Marketing
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HARLAN KLEIN, Vice Chairman, North Dakota Wheat
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NEAL FISHER, Administrator, North Dakota Wheat
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JIM PETERSON, Marketing Director, North Dakota
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ANDREW WECHSLER, Managing Director, LECG, LLC
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RICHARD BOLTUCK, Vice President, International Trade, Charles River Associates, Inc.
DANIEL A. SUMNER, Director, University of California Agricultural Issues Center; and Frank H. Buck, Jr. Chair Professor, Department of Agricultural and Resource Economics, University of California-Davis

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On behalf of National Grain Trade Council:

RANDY LINVILLE, Chief Executive Officer, Scoular
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KENT HORSAGER, President, Minneapolis Grain
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P R O C E E D I N G S

(9:35 a.m.)

1
2
3 CHAIRMAN OKUN: Good morning. On behalf of
4 the United States International Trade Commission, I
5 welcome you to this hearing on Investigation Nos.
6 701-TA-403A and 403B and 731-TA-1019A and 1019B
7 (Final) involving Durum and Hard Red Spring Wheat From
8 Canada.

9 The purpose of these investigations is to
10 determine whether an industry in the United States is
11 materially injured or is threatened with material
12 injury or the establishment of an industry is
13 materially retarded by reason of subsidized imports
14 and less than fair value imports of the subject
15 merchandise from Canada.

16 Schedules setting forth the presentation of
17 this hearing and testimony of witnesses are available
18 at the Secretary's desk. I understand the parties are
19 aware of the time allocations. Any questions
20 regarding time allocations should be directed to the
21 Secretary. Since all written testimony will be
22 entered in full into the record, it need not be read
23 to us at this time. All witnesses must be sworn in by
24 the Secretary prior to testifying.

25 Copies of the notice of institution, the

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1 tentative calendar, as well as transcript order forms,
2 are available at the Secretary's desk. Transcript
3 order forms are also located in the wall rack outside
4 the Secretary's office. Finally, if you will be
5 submitting documents that contain information you wish
6 classified as business confidential, your requests
7 should comply with Commission Rule 201.6.

8 I note for the record that Charlotte Lane
9 was sworn in as a Commissioner on August 27, 2003, but
10 as she is still in the process of transitioning to
11 Washington, D.C. she will not be attending today's
12 hearing.

13 Madam Secretary, are there any other
14 preliminary matters.

15 MS. ABBOTT: No, Madam Chairman.

16 CHAIRMAN OKUN: Will you please announce our
17 first congressional witness?

18 MS. ABBOTT: The Honorable Kent Conrad,
19 United States Senator, State of North Dakota.

20 CHAIRMAN OKUN: Welcome, Senator Conrad.

21 SEN. CONRAD: Thank you. Thank you very
22 much for this opportunity. We appreciate very much
23 your attention to these very important issues.

24 Madam Chairman and members of the
25 Commission, I appreciate this opportunity to testify

1 on the serious injury done to growers in my state by
2 unfairly traded imports of Canadian durum and hard red
3 spring wheat. As you probably know, North Dakota is
4 very proud of its role as the dominant producer in the
5 United States of abundant, high-quality durum, the
6 wheat used to make pasta products, and hard red spring
7 wheat used for high-quality bakery products.

8 Before discussing the particulars of the
9 case, allow me to give you a little background on this
10 issue from a North Dakota perspective. For the past
11 decade, North Dakota farmers have been the victim of a
12 flood of unfairly traded Canadian imports in grain.
13 The charts I have with me illustrate this story.

14 Before the passage of the U.S.-Canada Free
15 Trade Agreement, the U.S. imported virtually no
16 Canadian grain. None. Since the negotiation of the
17 Canadian Free Trade Agreement, imports of Canadian
18 durum have grown to 20 to 25 percent of the U.S.
19 market.

20 As my first chart shows, although imports
21 slowed somewhat after limits were imposed following
22 the 1994 Section 22 investigation, imports have
23 resumed their unacceptably high levels since those
24 limits expired. On total wheat imports from Canada
25 the picture is very much the same. However, I would

1 note that the sharp drop in imports for the most
2 recent year is very much an aberration caused by
3 severe drought in Canada.

4 Meanwhile, Canada maintains an almost
5 complete ban on exports of U.S. wheat to their
6 country, so North Dakota farmers watch day after day
7 after truckload after truckload of Canadian grain
8 passes their farm on the way to their elevators, but
9 they can't sell even a few bushel north of the border.

10 This happened not because Canadian farmers
11 are more competitive, more productive or more
12 efficient, but because of flaws in the Canadian Free
13 Trade Agreement that allowed the Canadian Wheat Board
14 to use its unique status as a government backed
15 monopoly to aggressively undercut U.S. prices and
16 flood our market with unfairly traded grain.

17 These imports have cost North Dakota farmers
18 hundreds of millions of dollars in lost sales and
19 lower prices. The Commerce Department confirmed these
20 unfair activities in its final determination just last
21 Friday, which found that the Wheat Board subsidizes
22 and dumps its wheat into the U.S. market, gaining a
23 substantial competitive margin of over 13.5 percent on
24 durum and over 14 percent on hard red spring wheat in
25 a market where pennies a bushel can make all the

1 difference.

2 On the question of injury, given the volume
3 of imports and the size of the competitive advantage
4 Canada uses to undercut U.S. prices, there should be
5 little question that Canadian imports are materially
6 injuring U.S. producers.

7 Let me cite just a few statistics that
8 highlight the injury being suffered by North Dakota
9 farmers. First, Canadian imports are estimated to
10 have cost American farmers \$1.2 billion since passage
11 of the U.S.-Canada Free Trade Agreement. Let me say
12 parenthetically \$1.2 billion in Washington may not
13 seem like a lot of money. In North Dakota, \$1.2
14 billion is a staggering amount of money, and it
15 represents extraordinary injury to the producers that
16 I represent.

17 Further, durum acreage is down 26 percent.
18 Hard red spring wheat acreage is down 22 percent.
19 Imports have captured 21 percent of the domestic food
20 use market for hard red spring wheat. Import
21 penetration of the U.S. durum milling market has
22 reached 28 percent.

23 Beyond these statistics there are real
24 people, thousands of hard-working families who every
25 time I go home talk to me about their frustration. I

1 can't tell you the level of anguish, the level of
2 concern of farmers all across North Dakota who tell me
3 at every stop how can it be that truckload after
4 truckload of Canadian grain goes by my place on the
5 way to the elevator, and I can't send a bushel north?
6 How is that fair?

7 How is it fair that I have to go to the
8 elevator and have to wait in line behind dozens of
9 trucks from Canada when this is supposed to be a free
10 trade agreement based on an ability of either country
11 to sell in the other's market based on their own
12 ability to compete?

13 Before concluding, I want to highlight one
14 further issue, which is explained in greater detail in
15 my written testimony. During today's hearing, you may
16 hear claims that U.S. farmers aren't injured because
17 the Farm Bill somehow protects them from injury.

18 First let me note that this is completely
19 the opposite of what the Wheat Board's argument was to
20 this Commission just 10 years ago in the Section 22
21 investigation. I would urge you to ask your staff to
22 go back and look at the case they made then. It is in
23 direct contravention of the case they make now.

24 Moreover, according to the OECD, Canada
25 benefits from even greater agricultural subsidies than

1 do U.S. producers. Canada, with a producer subsidy
2 equivalent of 20 percent of the value of agricultural
3 production, compares to the comparable rate of 18
4 percent in the United States.

5 As a member of the Conference Committee that
6 wrote the final Farm Bill, I helped write the
7 provisions on commodity programs. As proud as I am of
8 the work on this issue, it simply is not true that
9 commodity programs fully offset the injury done to
10 U.S. producers by the price depressing actions of the
11 Canadian Wheat Board. Stated simply, higher market
12 prices are always better for farmers. Always.

13 Because the bulk of farm program payments to
14 wheat farmers are in the form of direct payment not
15 tied to production -- not tied to production -- our
16 farm programs do little to cushion the effect of lower
17 prices caused by Canadian imports except when prices
18 absolutely collapse and loan deficiency payments kick
19 in.

20 In 2002, the year for which we have the most
21 recent records, fully 97 percent of American farm
22 programs to farmers that are wheat farmers, 97 percent
23 were in the form of direct payments. Moreover, durum
24 and hard red spring wheat have historically commanded
25 premium prices in the U.S. market.

1 The Canadian imports have flooded the market
2 for these premium wheats, eroding the premium, causing
3 some growers to shift acres out of production and
4 adding to the economic injury suffered by the
5 industry. It is worth emphasizing that counter to the
6 Canadian argument, this shift is a direct result of
7 Canadian imports, not the Farm Bill.

8 In conclusion, North Dakota farmers are
9 proud people. They don't like to come and ask for
10 help from anyone, but in this case they desperately
11 need your help. This case is an opportunity for you
12 to send a signal to farmers in North Dakota and across
13 the country that the United States will insist on fair
14 trade and give them a fair, fighting chance in global
15 competition. Please take this opportunity to restore
16 some small measure of hope to farmers all across the
17 northern tier of the United States.

18 I want to conclude by again thanking you for
19 your attention. I know this is a most difficult
20 issue. I know it's not going to be easy to listen to
21 testimony throughout the day, but I very much
22 appreciate your attention.

23 This is an issue that really matters to
24 thousands of farm families who don't deserve to have
25 money taken from them because of unfairly traded

1 Canadian imports.

2 I thank you.

3 CHAIRMAN OKUN: Thank you very much for your
4 testimony.

5 MS. ABBOTT: The Honorable Byron L. Dorgan,
6 United States Senator, State of North Dakota.

7 CHAIRMAN OKUN: Good morning, Senator
8 Dorgan.

9 SEN. DORGAN: Good morning. Thank you very
10 much. It's Byron Dorgan.

11 I'm very pleased to be here, Madam Chairman
12 and members of the Commission. You're going to hear a
13 great deal about wheat today, and I might tell you
14 that wheat is important. Thomas Jefferson suggested
15 early on that perhaps Members of Congress should be
16 reimbursed in bushels of wheat. That, of course, was
17 decided not a wise course of action two centuries ago,
18 but had that been the case perhaps the price of wheat
19 would have been better than it has been more recently.

20 Let me talk to you just for a few moments
21 about my passion about this issue and how we have come
22 to this point. You have heard I think an excellent
23 presentation by my colleague, Senator Conrad, and will
24 from my colleague, Congressman Pomeroy, and from the
25 Lieutenant Government of our state. You will hear

1 presentations that are empirical in nature and
2 statistical analysis.

3 I'm not going to do that. I could, but last
4 evening I was trying to think of what I might want to
5 say to you and decided to take a different track. I
6 have testified here a number of times on this issue.
7 This is the longest tortured trail of public policy I
8 have ever seen, and I'm hoping today might be a step,
9 a final step, the right step to solve a problem that
10 is chronic, nagging and very difficult and dangerous
11 for our family farmers.

12 You're going to hear from a lot of people
13 today. I noticed on your agenda as I was reading it
14 last evening these are people by and large with pretty
15 big titles. They came here in big cars, I'm sure.
16 They wear dark suits. They're going to talk about big
17 things.

18 They're going to say to you, at least some
19 of them, what problem? There's no problem here.
20 There is not a grain issue problem with Canada. What
21 they're going to suggest is that you do nothing. You
22 do what government does best and do what government
23 has done on this issue for 10 years. Do nothing.

24 Well, let me introduce you to a man who
25 isn't here this morning. His name is Kevin Neece.

1 He's a family farmer from Wishek, North Dakota.
2 Although Kevin can't be here to speak to you this
3 morning, I'm going to speak on his behalf and tell you
4 what he told me.

5 Kevin lives on a farm near Wishek with his
6 brother, and they farm the farm that his grandfather
7 farmed, his father farmed, and now Kevin and his
8 brother farm that farm. He doesn't wear an Hermes
9 necktie. He doesn't wear Ferragamo shoes. He doesn't
10 drive a Lincoln Navigator. He drives a pickup truck,
11 likes country music, goes to church, plants some
12 seeds. He tries to harvest a crop and take it to the
13 elevator and hopes he can make a living.

14 Unfortunately, Mr. Kevin Neece is a family
15 farmer who's been told by this country that we
16 negotiated a trade agreement with Canada that will be
17 good for him, and he's discovered in the last 10 years
18 it has been in fact a disaster.

19 Let me tell you what Kevin Neece says about
20 the unfair grain trade from Canada. He says: "The
21 unfair grain trade from Canada has been a disaster for
22 our farm." He and his brother previously planted 960
23 acres of wheat. They now plant 160 acres of wheat.
24 Why? Because they can't make a living producing wheat
25 at these prices and because unfairly subsidized,

1 deeply subsidized grain is coming into our country
2 from Canada unabated.

3 It's been going on for a long, long time,
4 and no one will lift a finger to help Kevin and other
5 family farmers, thousands of them, who are struggling
6 trying to make a living and who are consigned by our
7 government to have to compete against a Canadian
8 monopoly called the Canadian Wheat Board that has
9 targeted our market deliberately and relentlessly.

10 For 10 years I have fought this battle, and
11 very little has happened. Today might be the final
12 step. Today is not a day in which we debate the
13 question of is there unfair trade. Today is defining
14 injury.

15 We've already decided there is unfair trade.
16 The USTR said after their investigation: "Acts,
17 policies and practices of the Government of Canada and
18 the Canadian Wheat Board are unreasonable and burden
19 or restrict U.S. commerce." That's already been
20 decided.

21 Now, this stems from a complaint filed fully
22 three years ago. Three years ago. The decision by
23 USTR that unfair trade exists was a year and a half
24 ago. We are now at this stage of the process where
25 the question is is there injury.

1 Now, I don't want to trivialize ever these
2 kinds of proceedings, but one of my favorite books is
3 Fulghum's book, All I Really Need To Know I Learned In
4 Kindergarten. Is there injury? Of course there's
5 injury. For God's sake, of course there's injury. I
6 could give you dozens of examples of it. My colleague
7 already has given you some.

8 I would refer you to the Center for
9 Agricultural and Trade Studies at North Dakota State
10 University, a state university at Fargo, North Dakota.
11 The Center for Agricultural and Trade Studies is a
12 center that I helped create and fund through federal
13 funding, and they have done the studies on this.
14 You're welcome to access all of the studies.

15 In the year 2001-2002 crop year, they say
16 that U.S. farmers, mostly North Dakota farmers I must
17 say in this circumstance, have lost \$124 million.
18 Now, that money comes out of his pocket. It comes out
19 of his pocket.

20 The question for the "government," it seems
21 to me that is posed by Kevin Neece and others is will
22 someone finally stand up for family producers, for
23 family farmers in this country and insist and demand
24 unfair trade and insist and demand that our trading
25 partners, in this instance Canada, comply with fair

1 trade rules and comply with the agreements that were
2 reached.

3 The only answer for that can come from you
4 at this point, and the answer must be, it seems to me,
5 that of course there is injury. The analysis is all
6 around us, and it's easy to find. You must exhibit
7 the strength at this point to make the right decision.

8 I want to tell you one more thing. I was in
9 the U.S. House when the U.S.-Canada Free Trade
10 Agreement was passed. I think it was incompetently
11 negotiated, and I think the interests of American
12 farmers were largely sold out in that negotiation.

13 But, having said all that, the agreement is
14 as it is, and then other trade restrictions and
15 agreements on the books are as they are. We have
16 rules and regulations. The USTR has already decided
17 that we are victims of unfair trade, but that's not
18 new for me. I knew that eight and 10 years ago, held
19 hearings on it in the Ways and Means Committee then,
20 have testified here I think this is the third time.

21 Let me describe it in more vivid terms, if I
22 might. One day on a very windy day in North Dakota,
23 perhaps 30 or 35 knot winds blowing from the north,
24 which is where they usually blow from in our part of
25 the country, I was riding in a truck, a 12-year-old

1 orange truck, a two-ton truck, taking some durum
2 wheat, and I was riding with Earl Jensen because he
3 owned this little orange truck, and we were taking
4 durum wheat up to the Canadian border.

5 Every mile on the way to the Canadian border
6 we met 18-wheel trucks, 18-wheelers, coming from
7 Canada into our country hauling Canadian grain,
8 Canadian wheat into the American marketplace. Truck
9 after truck after truck, we met semi truckload after
10 semi truckload of Canadian grain coming into this
11 marketplace. This was eight years ago, and it's
12 happened every day, every week since.

13 We got to the Canadian border after seeing
14 all of these trucks full of Canadian grain coming into
15 our marketplace, and we were stopped at the Canadian
16 border because Earl Jensen in his 12-year-old orange
17 truck couldn't take a couple hundred bushels of U.S.
18 durum into Canada.

19 Fundamentally unfair. We know it's unfair.
20 We've lived with this burden for a long, long time.
21 The question for Kevin and Earl Jensen and North
22 Dakota farmers is why is it that unfairly subsidized
23 grain can be targeted into our marketplace by a
24 sanctioned monopoly in Canada that would be illegal in
25 this country called the Canadian Wheat Board, and our

1 government sits on its hands for 10 years? Why is
2 that the case?

3 There hasn't been an answer for that until
4 this moment, until a time when finally the USTR, which
5 should itself have initiated an investigation many
6 years ago. The USTR has said clearly this is unfair
7 trade, and now let us determine whether there is
8 injury.

9 This proceeding is one that I think gives
10 you the opportunity, gives us the opportunity, gives
11 our government the opportunity to prove to the
12 skeptics, prove to me, prove to others, that there is
13 a dispute resolution that works, that there are people
14 who will stand up for our producers, who are victims
15 of unfair trade when it exists and where it exists.
16 This is the step, this is the time, this is the date
17 that must happen.

18 I deeply, very much appreciate your
19 willingness to allow all of us to testify. You have a
20 full day of hearings. I shall not burden you further,
21 but understand my passion about this. This is about
22 real people who are victims of unfair trade by other
23 countries that target our country and target these
24 markets.

25 Shame on them and shame on us for letting it

1 go on for 10 years. Prove to this country and prove
2 to Kevin Neece and prove to American family farmers
3 that this will work and that you will make it work,
4 that you will stand for producers who are victims of
5 unfair trade. Today is the day to do that.

6 Madam Chairman and Commissioners, thank you
7 very much for your time.

8 CHAIRMAN OKUN: Thank you very much for
9 those remarks.

10 MS. ABBOTT: The Honorable Earl Pomeroy,
11 United States Congressman, 1st District, State of
12 North Dakota.

13 REP. POMEROY: Thank you, Madam Chair,
14 members of the Commission.

15 On behalf of North Dakota's hard red spring
16 wheat and durum growers, I sure thank you for holding
17 this crucial hearing. I know you're aware of the
18 final margins which the Department of Commerce imposed
19 just last week, 13.55 percent for durum, 14.16 percent
20 for hard red spring wheat.

21 These are enormous margins for an ag
22 commodity such as wheat. I believe they speak for
23 themselves as to the clear injury our wheat farmers
24 have suffered for so many years at the hands of the
25 Canadian Wheat Board.

1 The Canadian Wheat Board is a government
2 sanctioned state trading enterprise, STE. Under
3 federal authority, the Canadian Wheat Board has
4 monopoly on sales of western Canadian wheat going into
5 the export market and the domestic Canadian human
6 consumption market.

7 With these exclusive rights and a government
8 guaranteed initial payment to producers, the Canadian
9 Wheat Board can price and enter forward contracts
10 without facing commercial risks. As part of its
11 monopoly and influence, they control every aspect of
12 marketing, including long-term market development,
13 development and control of wheat varieties, day-to-day
14 negotiation and execution of sales contracts.

15 No truly commercial grain merchandising
16 entity anywhere in the world has this kind of
17 protection from market realities. That's not all.
18 The Canadian Wheat Board also enjoys preferential
19 freight rates, access to government owned rail cars,
20 special car allocation privileges, all negotiated and
21 protected with the approval of the Canadian
22 Government.

23 As has now been proven, these factors all
24 have a subsidizing effect and allow the Canadian Wheat
25 Board to sell its wheat in the United States at less

1 than fair market value. Ending this unfair trade is
2 of crucial importance to our farmers, North Dakota
3 farmers in particular. Agriculture is the leading
4 revenue producing industry in our state. Hard red
5 spring and durum are two of our leading crops.

6 Unfortunately, our wheat farmers have been
7 continuously on the losing end of the unfair wheat
8 trade from Canada that has unfolded over the last 12
9 years. They've seen prices drop. They've seen the
10 Canadian Wheat Board send truckloads and trainloads of
11 wheat into the United States while our wheat of the
12 very same quality is refused for human consumption in
13 Canada by an arbitrary and intentionally subjective
14 Canadian grading system. They've seen the Board
15 engage in unfair pricing, market practices supported
16 by Canadian Government subsidies in order to increase
17 market share.

18 After more than a decade of facing these
19 activities, our farmers are demanding that their
20 government stand firm and take action in this matter.
21 The Commission is, of course, an independent body, but
22 I think you should take note that the United States
23 Government now recognizes the serious trade problem
24 with Canada involving the two classes of wheat subject
25 to today's hearing.

1 Now, although they have on all points
2 refused to truly open their books, the Canadian Wheat
3 Board will stand before you today or their lawyers and
4 make representations of complete innocence. I will
5 focus on what I anticipate to be one of their
6 arguments in particular, and that is that hard red
7 spring wheat is virtually identical to hard red winter
8 wheat and, therefore, no injury.

9 Let me just say that if you were to pull
10 into any elevator in North Dakota today and talk to
11 the farmers gathered there that there's no difference
12 between a hard red spring and hard red durum, you'd be
13 laughed out of the place.

14 Now, they make the argument, the Canadians
15 will make the argument, because they don't have the
16 control of hard red winter that they have over hard
17 red spring, and the determination of injury is
18 considerably different.

19 What I think is critical to this fact
20 question is the ultimate resolution of the U.S.
21 Department of Agriculture operating under the U.S.
22 Grain Standards Act, which directs USDA to establish
23 standards for U.S. wheat and other commodities. These
24 standards are based on public comment.

25 USDA is required to seek comment every five

1 years. Before they can establish or revise any of the
2 standards, they have to solicit the views of all
3 sectors of the industry. Since being established in
4 1916, these standards have undergone many changes, but
5 one thing that has never seriously been under review
6 is whether or not you should have separate and
7 distinct classes for hard red spring versus hard red
8 durum. They do remain separate questions, as
9 supported by the broad view of the wheat industry and
10 further supported due to separate characteristics and
11 separate market pricing.

12 North Dakota farmers remain the nation's
13 leading producer of hard red spring wheat and durum
14 wheat. They can overcome the natural and periodic ups
15 and downs of the agriculture cycle, including price
16 fluctuation and significant variation in production
17 circumstances, but what we can't overcome is that for
18 over a decade the Canadian Wheat Board has been
19 distorting trade in these two classes of wheat under
20 investigation.

21 As the world's largest single wheat
22 exporting entity, the Canadian Wheat Board's monopoly
23 actions distort trade, deflate wheat prices. Canada's
24 unfair trade practices have reduced returns to U.S.
25 wheat farmers. The unfair and market distorting

1 practices of the Wheat Board have continued unabated
2 for a decade and have caused a crisis in U.S. wheat
3 trade.

4 Our farmers are trying to hang on, but no
5 amount of good weather or herbicide is going to
6 greatly increase the quality of their lives or solve
7 this problem until this issue is addressed. There's
8 simply no relief from the persistent and growing
9 stress of the Canadian Wheat Board, which is why in
10 the last round of investigations in this matter the
11 U.S. Trade Representative, with the Commission's
12 guidance from the Section 332 investigation,
13 affirmatively found that: "The Government of Canada
14 grants the Canadian Wheat Board special monopoly
15 rights and privileges which give it competitive
16 advantages that hurt U.S. wheat farmers."

17 Ambassador Zellick found that for several
18 years the Board has taken sales from U.S. farmers, and
19 it is able to do so because it is insulated from
20 commercial risk, the benefit of special privileges,
21 competitive advantages due to the monopoly control
22 that it has over a guaranteed supply of wheat.

23 I would point out to the Commission progress
24 and reform in international trade has substantially
25 changed during the last decade, and the role of sales

1 to governments as state trading enterprises has
2 significantly decreased. In 1990, 90 percent of all
3 international wheat purchases were made by government.
4 That figure is now 40 percent and continues to drop.

5 In fact, the evolving character of how state
6 trading enterprises are treated in international trade
7 is revealed by the terms and conditions by which China
8 recently joined the WTO. They are subject to many
9 more conditions on their state trading enterprise than
10 Canada would ever acknowledge as appropriate for their
11 state trading enterprise.

12 They have refused to commit to any
13 negotiations toward a fair resolution of this wheat
14 trade distortion, and that is what has caused our
15 Wheat Commission to bring this very expensive, very
16 difficult, very time consuming action from the
17 beginning.

18 Our hard red spring and durum wheat farmers
19 are not asking for special treatment. They want a
20 chance, a fair chance to compete. Unfortunately, they
21 cannot overcome the damaging effect of the Canadian
22 Wheat Board on their own, and it's time for our
23 government -- well past time for our government -- to
24 insist that Canada play by the rules.

25 They've been distorting the wheat trade in

1 the free trade area for way too long. The Canadian
2 Wheat Board has been given every opportunity to reform
3 its practices, and on every occasion it has utterly
4 dismissed these entreaties from the United States.

5 Madam Chair, members of the Commission, I
6 respectfully submit that it is time for U.S. trade law
7 to be enforced. On behalf of North Dakota wheat
8 farmers, I ask you to return an affirmative finding in
9 these investigations. Thank you.

10 If I might be of any further assistance to
11 you in your investigation, please call. Thank you
12 very much.

13 CHAIRMAN OKUN: Thank you very much for
14 those remarks.

15 MS. ABBOTT: The Honorable Jack Dalrymple,
16 Lieutenant Governor, State of North Dakota, on behalf
17 of Governor John Hoeven.

18 CHAIRMAN OKUN: Welcome, Lieutenant
19 Governor.

20 LT. GOV. DALRYMPLE: Madam Chair, thank you
21 very much, members of the Commission. It's a pleasure
22 to be with you this morning.

23 Governor John Hoeven wanted to be here this
24 morning. He managed to come down with a case of sinus
25 infection, decided it did not mix well with the

1 pressurization systems in small aircraft, so I'm here
2 to present this testimony.

3 It's a pleasure for me. I was 16 years in
4 our state legislature, spent a lot of time studying
5 this issue over the years. I also happen to be a
6 wheat producer from North Dakota.

7 Madam Chair and members of the Commission,
8 thank you for holding this important hearing this
9 morning. These countervailing duty and dumping
10 investigations are receiving broad interest and
11 support across not only our state, but the entire
12 Northern Great Plains region.

13 It is our hope that after you have reviewed
14 the information in these proceedings that you will
15 come to know what governors in the region have known
16 for so many years; that U.S. hard red spring and durum
17 wheat farmers have suffered injury at the hands of the
18 Canadian Wheat Board, and they will continue to face
19 the threat of additional injury until the subsidies
20 the Government of Canada provides to the Canadian
21 Wheat Board and the unfair pricing practiced by the
22 Board are permanently addressed.

23 I will keep my remarks brief. As you know,
24 you have many witnesses to hear from and questions to
25 ask, but please feel free to call upon me later for

1 further information or insight into the injury our
2 farmers have suffered.

3 Agriculture is the leading revenue producing
4 industry in North Dakota, and wheat is by far the
5 state's chief agricultural commodity. North Dakota
6 ranks first in the United States in the production of
7 hard red spring and durum, the products under review
8 by the Commission.

9 We are proud to point out that our farmers
10 grow approximately 44 percent of the nation's hard red
11 spring wheat and 70 percent of its durum, and we must
12 emphasize to the Commission that the wheat we produce
13 is of the highest quality.

14 North Dakota wheat farmers' problems with
15 the Canadian Wheat Board date back to the negotiations
16 for the Canada-U.S. Free Trade Agreement and later
17 NAFTA. Both of these agreements failed to adequately
18 address the practices of a state supported monopoly
19 export board such as the Canadian Wheat Board and its
20 impact on U.S. producers.

21 Wheat farmers in North Dakota have been
22 particularly vulnerable to these practices not only
23 because they live along the border with Canada, but
24 also because they produce the same hard red spring
25 wheat and durum.

1 The omission of a remedy from these trade
2 agreements was documented at the time by the *Wall*
3 *Street Journal* in an article that stated: "The
4 agreement was positive for almost all U.S. industries,
5 with the noted exception of a group of wheat growers
6 in North Dakota." That was nearly 14 years ago.
7 North Dakota has suffered a great deal of injury in
8 that long period of time.

9 The unfair and market distorting practices
10 of the CWB, which have continued unabated for all
11 these years, have caused massive harm to the U.S.
12 wheat industry. We applaud the efforts of the U.S.
13 Trade Representative, the Department of Commerce and
14 the Commission for the recent and multiple
15 undertakings which are attempting to resolve this
16 matter.

17 Canada is a good neighbor, an important ally
18 to the United States and a major trading partner. It
19 is truly a shame that they have always refused to come
20 to the negotiating table to resolve this longstanding
21 dispute.

22 We support the effort for agricultural
23 reform in the current round of WTO negotiations, but
24 we're not certain what will happen at the upcoming WTO

1 Ministerial Conference in Mexico next week. Also,
2 there is one major problem with the WTO. True reform
3 is at best several years away, and many of North
4 Dakota's farmers need action sooner rather than later.

5 The Commission's investigations may be the
6 last best hope for a generation of North Dakota wheat
7 farmers. If there is to be true free trade in North
8 America, then it must also be fair trade. The final
9 determination in these investigations should support
10 this basic and fundamental aspect of our existing
11 trade agreements. Partners in trade that refuse to
12 disclose the prices and terms under which they sell
13 their product can never be considered fair traders and
14 must be countered in some way.

15 The government subsidies and dumping now
16 confirmed by the Department of Commerce have caused
17 and threaten to continue causing injury to U.S. hard
18 red spring and durum wheat farmers. People and assets
19 remain tied to wheat farming in North Dakota for a
20 variety of reasons -- agronomic, economic and
21 sociological. These barriers to exit, as well as
22 barriers to reentry, have set the stage for a slow and
23 painful decline of wheat farming in our state unless
24 the predatory practices of the CWB are stopped.

25 In growing an agricultural commodity such as

1 wheat, capital investments in land and equipment, as
2 well as variable costs of fertilizer, fuel and
3 herbicides, add up to a significant cost of production
4 which cannot realistically be trimmed. Furthermore,
5 many wheat farmers in North Dakota have limited
6 options for growing of their crops due to the short
7 growing season and limited rainfall potential.

8 Our local economics are broadly agricultural
9 based. Consequently, the injury inflicted by the
10 Canadian Wheat Board's unfair pricing below market
11 value reverberates throughout our entire state. The
12 decline of wheat farms hurts other local businesses
13 and leads to a loss of service sector jobs even in our
14 larger cities. The figures confirm that net farm
15 income in recent years has been negative. This is why
16 we have seen more and more wheat farmers leaving
17 agriculture.

18 Farmers have come to me many times in the
19 last few years and asked me why U.S. wheat prices
20 remained low even while supplies are decreasing and
21 demand for wheat has actually risen. The answer lies
22 in the quiet, systematic dumping of wheat into our
23 domestic markets by the Canadian Wheat Board.

24 With low prices and negative net incomes
25 facing the state's growers of wheat, one might think

1 that the idea of exiting farming altogether would
2 become more attractive, yet abandoning the farm is an
3 impossible step for many North Dakota growers,
4 especially those who have lifetimes of family labor
5 invested in the farm and a long-term bank debt to pay
6 off.

7 The determination by the Department of
8 Commerce is, of course, only part of the solution. In
9 short, wheat farmers faced with low prices due to the
10 Canadian Wheat Board's unfair pricing and Canadian
11 Government subsidies have little recourse.

12 Consequently, hard red spring and durum
13 farmers in our state have experienced a steep decline
14 in farm income during recent years and will continue
15 to face bleak prospects until Canada agrees to or is
16 forced to rein in the trade distorting practices of
17 the Board.

18 We will also continue to see deep
19 frustration that our federal government has not
20 addressed the unfair trading practices of the CWB.
21 You may ask how the actual injury is occurring to our
22 wheat farmers. Ultimately, much of the real damage
23 comes from the creation of a separate marketplace,
24 apart from the Minneapolis market, apart from the
25 global market.

1 In this scenario, the Canadian Wheat Board
2 sells wheat in long-term contracts without any hedge
3 or offsetting purchases normally used by the free
4 market grain trade. This practice in essence does not
5 input the free market with this major market moving
6 activity. Later, when prices should rise due to short
7 supplies, the market is held down by the Board's
8 marketing mistake as cheap stocks continue to flow
9 into the USA.

10 The key point here is that this tremendous
11 loss of potential value is caused not by Canadian
12 farmers nor by grain companies, but rather by the
13 Government of Canada, which obscures their share of
14 the loss within their system over time.

15 For the same reason, CWB is the only seller
16 able to make multi-year contracts with U.S. buyers.
17 They do not need to cover their risk with offsetting
18 purchases as other grain suppliers do. If they are
19 caught short, they simply deliver at lower prices and
20 conceal the loss of value, knowing that they are
21 ultimately backed by the Government of Canada. The
22 resulting level of injury from these marketing
23 practices varies tremendously from year to year, but
24 over time we know that the damages are significant.

25 As for the threat of future industry to our

1 wheat farmers, let me detail one issue for your
2 consideration. Agriculture and Agri-Food Canada has
3 recently increased its estimate for Canadian non-durum
4 wheat stocks for the just completed 2002-2003 crop
5 year. Canada produced a total supply of Canadian non-
6 durum wheat at 17.2 million tons with domestic use
7 forecast to be 7.2 million tons, leaving about 10
8 million tons available for export.

9 In a crop season with record low production,
10 industry observers have noted that ending Canadian
11 stocks should have been reduced to the barest possible
12 minimum. Instead, the Canadian Wheat Board, in order
13 to avoid a pool deficit, only accepted contracts for
14 the top two grades of non-durum wheat.

15 The result is that farmers in western Canada
16 will be left with almost near normal ending stocks
17 after a year of the lowest production in modern times.
18 All of this excess wheat is waiting to be dumped in
19 the U.S. market if the Commission should fail to issue
20 a final determination of injury.

21 Meanwhile, it is disappointing that U.S.
22 millers continue their attempts to disparage the
23 quality and quantity of U.S. hard red spring wheat and
24 durum. In fact, our wheat is of the highest quality,
25 and data confirms that supplies and stocks are more

1 than sufficient to support domestic needs.

2 Furthermore, U.S. Customs data confirm that
3 the wheat U.S. millers are importing from Canada is
4 typically of no better quality than U.S. wheat. It is
5 troubling that our millers stand so ready to sacrifice
6 the livelihood of our own U.S. wheat farmers in order
7 to continue to accept unfairly dumped wheat from the
8 CWB.

9 It is also troubling that millers can
10 officially state that they support reform of state
11 trading enterprises in WTO negotiations, yet appear
12 before you today, I'm sure, in support of the world's
13 largest state trading enterprise.

14 We sincerely hope and realize the untenable
15 position --

16 CONGRESSMAN DALRYMPLE: We sincerely hope
17 and realize the untenable position they are presenting
18 to the world trading community. If this trade problem
19 is not addressed, the injury to the domestic Hard Red
20 Spring Durum and Wheat industries could ultimately
21 force the millers to become dependent on Canadian
22 imports. And if they think the CWB will not take
23 advantage of that, they are surely mistaken.

24 U.S. millers should look at certain export
25 markets in which the board has come in and underpriced

1 U.S. wheat to such an extent that U.S. market share
2 was rubbed out. Not surprisingly, once U.S.
3 competition was done prices rose considerably.

4 The North Dakota Governor's Office agrees
5 wholeheartedly with the members of Congress who have
6 testified today and believes that the Commission has a
7 unique opportunity to bring this longstanding trade
8 dispute to a resolution.

9 North Dakota wheat farmers harbor no
10 illusion that the CWB or the Canadian government will
11 alter any of their prior positions on the status and
12 activities of the board unless forced to do so by its
13 trading partners. A strong finding of injury to U.S.
14 Hard Red Spring Wheat and Durum farmers by the
15 Commission in these investigations will go a long way
16 in creating equity in our wheat markets.

17 The injury to North Dakota's farmers has
18 been and will continue to be significant if action is
19 not taken. Our farmers are not asking for any
20 advantage in wheat markets. They simply want a fair
21 opportunity to compete. You have it within your
22 authority to finally correct an injustice that has
23 been neglected for nearly 20 years.

24 Madam Chair, members of the Commission,
25 thank you very much for the opportunity to appear

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1 before you this morning. Thank you.

2 CHAIRMAN OKUN: Thank you very much both for
3 traveling to be with us here and for your testimony.

4 Madam Secretary, is that the end of our
5 government witnesses?

6 MS. ABBOTT: Yes, Madam Chairman.

7 CHAIRMAN OKUN: Let us proceed with opening
8 statements.

9 MS. ABBOTT: Opening remarks on behalf of
10 the petitioners will be made by Charles A. Hunnicutt,
11 Robins, Kaplan, Miller & Ciresi.

12 CHAIRMAN OKUN: Welcome, Mr. Hunnicutt.

13 MR. HUNNICUTT: Thank you, Chairman Okun,
14 and it's still morning, good morning.

15 My name is Charlie Hunnicutt. I represent
16 the petitioners, the U.S. Durum and Hard Red Spring
17 Wheat industries.

18 The Commission has before it today a classic
19 case of injury and threat of injury to the domestic
20 industries being caused by subsidized and dumped
21 imports of Durum and Hard Red Spring Wheat from
22 Canada.

23 As the Commission is well aware, Durum and
24 Hard Red Spring Wheat are commodity products. The
25 United States and Canada are the world's largest

1 producers of these products. Respondents, the
2 Canadian Wheat Board, is the largest single seller of
3 wheat in the world, holding more than 20 percent of
4 international market.

5 The record before the Commission
6 demonstrates significant increases in the volume of
7 dumped and subsidized subject merchant imports from
8 Canada up till the filing of these petitions and this
9 investigation, and due to significant increases in
10 production in Canada during the current crop year an
11 imminent threat of resumed massive importations of the
12 dumped and subsidized merchandise.

13 The record demonstrates prices were low when
14 subject imports were high, and prices increases when
15 subject imports declined. The record demonstrates
16 underselling by the subject imports, and price
17 suppression and depression caused by the subject
18 imports.

19 The impact of these increasing volumes of
20 dumped and subsidized imports has been material injury
21 to the domestic industries producing Hard Red Durum
22 and -- I'm sorry, I'm doing the same thing as the
23 Congressman did -- -- producing Durum and Hard Red
24 Spring Wheat in the form of actual and potential
25 declines and domestic output, sales, market share,

1 profits, and utilization of capacity. Employment in
2 the domestic industries is also down.

3 Put in the context of commodity products,
4 the dumping margins are huge. As respondents have
5 noted, profit margins are slim in the downstream
6 industries where the subject merchandise is used.
7 Price differences of just a few pennies determine
8 purchasing decisions.

9 In its preliminary determination, the
10 Commission noted that it would not expect to find that
11 subject imports consistently oversell or undersell the
12 domestic like product. Thus, the existence of
13 demonstrable underselling is significant in markets
14 that clear on a daily, hourly, and even minute-by-
15 minute basis.

16 Even without evidence of particular
17 instances of underselling, there could be no doubt
18 that the existence of significant volumes of subject
19 imports have had a suppressing/depressing effect on
20 farmer prices in the U.S. market.

21 The Commission has long recognized that laws
22 of supply and demand affect prices. These laws apply
23 to commodity products such as the subject merchandise
24 as much as they apply to any other product; for
25 example, pasta.

1 We do not dispute respondents' claims that
2 global conditions have an effect on domestic prices,
3 but we differ from respondent in that we believe
4 domestic conditions of supply and demand also affect
5 prices in the domestic market. Increased domestic
6 supply of the subject imports has had a materially
7 adverse impact on U.S. prices. Moreover, the United
8 States is a premium market for Durum and Hard Red
9 Spring Wheat, and but for the price suppression caused
10 by subject imports prices would reflect that premium
11 status.

12 As a result of the inadequate returns on
13 Durum and Hard Red Spring Wheat, U.S. farmers have
14 reduced plantings of these products. While actual
15 production this year will be up from last year, and
16 more than sufficient for domestic demands, to a
17 significant degree farmers who are able to do so have
18 made the strategic decision to get out of the Durum
19 and Hard Red Spring Wheat business. This is evidenced
20 by the reduce plantings that occurred in the spring of
21 2003.

22 Confronted with widespread reporting of
23 projected increases in Canadian production of Durum
24 and Hard Red Spring Wheat in 2003, our U.S. farmers
25 chose to reduce planting of those crops. The

1 projections have proved correct. Canadian production
2 this year in the harvest now underway will
3 significantly exceed last year's levels and return
4 Canada to a position whereby it can once again pounce
5 on the premium U.S. market.

6 Respondent has argued that Canadian imports
7 are not the only cause of injury to the U.S. industry.
8 That might be true. But in a Title 7 investigation
9 imports do not have to be the only cause of injury or
10 even the largest cause of injury. Rather, they must
11 cause injury that is material.

12 The injury to the domestic industry from
13 these imports is material, and with the 2003-04
14 harvest now being completed, the threat of further
15 material is imminent.

16 In sum, the evidence demonstrates that
17 dumped and subsidized imports of Durum and Hard Red
18 Spring Wheat from Canada are a cause of material
19 injury to the U.S. industry producing those
20 commodities and a continuing treat of such injury. We
21 urge the Commission to make affirmative determinations
22 in these investigations.

23 Thank you very much.

24 CHAIRMAN OKUN: Thank you.

25 MS. ABBOTT: Opening remarks on behalf of

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1 the respondents will be made by Richard O. Cunningham,
2 Steptoe & Johnson.

3 CHAIRMAN OKUN: Good morning, Mr.
4 Cunningham.

5 MR. CUNNINGHAM: Good morning.

6 No jokes today. Instead, I urge you to keep
7 in mind two fundamental distortions that allay a part
8 of petitioners' arguments.

9 First, they used the wrong data for both
10 U.S. shipments and apparent domestic consumption.
11 They calculate U.S. shipments by subtracting U.S.
12 grain company exports from farmers' production.
13 Farmers do not export. Their production is sold to
14 U.S. grain companies, in a few cases to local mills.
15 If some of that wheat is later exported, that's a
16 decision made by the purchaser. To the farmer, all of
17 his or her sales are domestic sales and must be
18 recorded as U.S. shipments.

19 This is no different from a domestic steel
20 producer selling to a U.S. service center which then
21 re-exports part of its inventory to Canada.

22 And from the standpoint of the farmers who
23 are, after all, the petitioning industry in this case,
24 apparent domestic consumption must include all farmer
25 sales without deducting the volume that grain

1 companies that later export.

2 Why is this so important? Look at the first
3 chart we have for you, which is a petitioners' chart
4 to which we have added the export column that they
5 forgot.

6 Look at the difference this makes. It's
7 this subtraction of the volume exported by the grain
8 companies that allows them to argue that U.S. farmer
9 production is sufficient to supply all U.S.
10 consumption.

11 The truth is that there exists continually
12 what the industry refers to as a wheat deficit: the
13 amount by which total demand by U.S. purchasers exceed
14 total U.S. farmer production.

15 Don't just accept that because I say it.
16 Look at any of the periodic reports of the U.S.
17 Department of Agriculture.

18 Indeed, the fact here is that U.S. farmers
19 cannot claim to have lost any volume at all to
20 imports. Apart from what they may choose to retain as
21 increased stocks, U.S. farmers in every year sell
22 every bushel of wheat they produce.

23 The fact that imports are needed to fill
24 U.S. demand also means that petitioners cannot simply
25 say that any significant volume of imports regardless

1 of twins is materially injurious. Since the volume
2 represented by Canadian imports is needed to help fill
3 the wheat deficit, that volume would have been brought
4 into the market from elsewhere if Canadian imports had
5 not been present.

6 The second fundamental distortion lies in
7 petitioners' price effects arguments, and this
8 distortion involves what is probably the central issue
9 in this case: the argument that the volume of
10 Canadian imports has depressed prices in the U.S.
11 market.

12 Petitioners would have you believe that
13 Canadian imports to head to head with farmers' sales,
14 and that the supply/demand balance relevant to wheat
15 prices is the supply/demand balance in the U.S.
16 market.

17 Both premises are false. Canadian imports
18 do not compete directly with U.S. farmers' sales which
19 are made to grain elevators. Contrary to what Senator
20 Conrad said, no Canadian wheat is sold to U.S. grain
21 elevators.

22 Rather, the Canadian Wheat Board competes
23 with the U.S. grain companies that buy and then resell
24 the farmers' wheat. This fact is of profound
25 significance because that competition between the

1 grain companies and the Wheat Board is undeniably
2 global in nature. And in the global supply/demand
3 balance that truly determines the level of wheat
4 prices, Canadian imports are immaterial, and that is
5 shown dramatically by the second chart attached to my
6 statement.

7 Free of these distortions it is readily
8 apparent that this case requires a negative
9 determination. Canadian imports are needed to help
10 fill the wheat deficit. U.S. farmers literally lose
11 no volume to Canadian imports nor do Canadian imports
12 have any measurable effect on U.S. prices. Those
13 prices are set by global forces of supply and demand,
14 and Canadian imports are immaterial in that process.

15 The absence of any material effect of
16 Canadian imports will be immediately apparent when the
17 Commission does what petitioners conspicuously do not
18 do; namely, apply your standard analyses to the facts
19 of this case. There is no pattern of underselling, no
20 correlation whatsoever between import trends and any
21 adverse trends in U.S. production, plantings or
22 prices.

23 One final point: Petitioners would have you
24 just assume that the U.S. farmers are injured. Maybe
25 so. But where is the evidence?

1 They can sell every bushel they grow.
2 Prices are at or near the highest level of the POI.
3 Land values continue to increase. And there is no
4 evidence of any cost/price squeeze.

5 Where is the injury let alone the causation?

6 Thank you.

7 CHAIRMAN OKUN: Thank you.

8 Madam Secretary, will you please ask the
9 first panel to come forward?

10 MS. ABBOTT: Yes. The first panel in
11 support of the imposition of countervailing and
12 antidumping duties please come forward. The panel
13 members have been sworn.

14 (Witnesses sworn.)

15 CHAIRMAN OKUN: Mr. Hunnicutt, it looks like
16 all the members of your panel are now seated and have
17 their names tags. You may proceed.

18 MR. HUNNICUTT: Thank you, Madam Chairman.

19 Again, I'm still Charlie Hunnicutt, counsel
20 for the petitioners, the North Dakota Wheat
21 Commission, the Durum Growers Trade Action Committee,
22 and U.S. Durum Growers Association.

23 Appearing with me today to testify in the
24 following order are: Harlan Klein, a farmer and vice-
25 chairman of the North Dakota Wheat Commission; Mark

1 Birdsall, a farmer and director of the U.S. Dural
2 Growers Association; Alan Lee, a farmer and chairman
3 of the U.S. Wheat Associates; Neal Fisher, a farmer
4 and administrator of the North Dakota Wheat
5 Commission; and economist Andrew Wechsler, managing
6 director of LECG, LLC.

7 Also available today to assist with any
8 questions the Commission may have are: Jim Peterson,
9 marketing director of the North Dakota Wheat
10 Commission; Andrew Szamosszegi, economist and
11 managing consultant of LECG, LLC; and Vincent Smith,
12 professor of agricultural economics at Montana State
13 University.

14 I mentioned specifically our farmer
15 representatives and witnesses because they are here to
16 testify before you today during their main harvest
17 period, and I think that's something that they should
18 be commended for.

19 Before we turn to their testimony, I would
20 like to ask that any unused time remaining at the end
21 of our affirmative presentation be reserved for
22 rebuttal.

23 CHAIRMAN OKUN: That will be done.

24 MR. HUNNICUTT: Thank you.

25 Harlan.

1 MR. KLEIN: Good morning, Chairman Okun, and
2 members of the Commission. My name is Harlan Klein,
3 and as vice-chairman of the North Dakota Wheat
4 Commission, I am here to testify on behalf of North
5 Dakota Hard Red Spring Wheat and Durum producers.

6 Hard Red Spring Wheat and Durum Wheat
7 continue to be the backbone of our farm economy in our
8 region. Putting in place final antidumping and
9 countervailing duties cover Hard Red Spring Wheat and
10 Durum is critical to the survival of the wheat
11 industry.

12 In addition to my North Dakota Wheat
13 Commission duties, I also serves as chairman of a
14 regional grain marketing co-op called Southwest Grain,
15 a division of Cenex Harvest States.

16 Southwest Grain consists of 11 satellite
17 elevators located in nine counties in southwest North
18 Dakota and northwest South Dakota. Over 5,000 farmers
19 who make up Southwest Grain annually deliver 20
20 million bushels of high-quality Hard Red Spring Wheat
21 and Durum.

22 The flood of Canadian wheat imports has
23 caused economic injury to the members of Southwest
24 Grain.

25 As chairman of my elevator cooperative

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1 board, I have heard our grain merchandiser talk about
2 lost sales opportunities due to the Canadian Wheat
3 Board selling practices and also the heavy hand they
4 carry in competing against our smaller elevator
5 companies.

6 Let me try to describe a type of competition
7 my local co-op is against with the Canadian Wheat
8 Board and how their actions have directly impacted my
9 return on Hard Red Spring Wheat.

10 In my area, we are well known for consistent
11 and high-quality Hard Red Spring Wheat. We are
12 typically more arid than eastern Hard Red Spring Wheat
13 growing regions and a bit warmer. This allows us to
14 produce high-quality Hard Red Spring Wheat with high
15 levels of vitreous kernels, high falling numbers,
16 higher protein, and little damaged kernels.

17 In addition, because average yields tend to
18 be less than other eastern regions, our elevators
19 specialize in servicing the top end of the demand for
20 both domestic and export customers. This allows us to
21 receive premiums over other locations for our wheat,
22 compensating some of the lower average yields.

23 I emphatically disagree with the U.S.
24 millers' claim that Canadian Spring Wheat is of higher
25 quality than our U.S. Hard Red Spring.

1 Our local producers and marketing managers
2 know our future is tied to keeping quality advantage
3 and we have the shipment records to prove it. On an
4 average annual year, more than 80 percent of our Hard
5 Red Spring Wheat loading is Grade No. 1.

6 We know we have met domestic millers'
7 quality needs in the past, and can in the future. Our
8 biggest worry is the Canadian Wheat Board selling
9 practices to the domestic mills.

10 For many years, in the late eighties and
11 early nineties, we shipped tremendous amounts of Hard
12 Red Spring Wheat to domestic millers in the Midwest
13 U.S. They never expressed any concerns about quality,
14 disappointments, or problems with service. However,
15 in the mid to late nineties, we started seeing a
16 decline in the sales to the domestic mill. Canadian
17 Wheat Board had taken sales by being cheaper on a
18 delivered basis to the elevator. Notably, the
19 preliminary tariffs were imposed this spring. We are
20 now doing business again with this mill.

21 What happens when we lose business on a
22 domestic mill? We get a lower price for our wheat
23 which means the price at my elevator can offer its
24 local producers declines.

25 My current farming operation of Hard Red

1 Spring makes up the largest percentage of my total
2 acreage. In the past, I have received premium prices
3 for quality attributes associated with Hard Red Spring
4 Wheat. But due to the massive flood of Canadian wheat
5 imports, the price that I receive for Hard Red Spring
6 Wheat has eroded. My production costs have increased
7 and are continuing to go up.

8 For example, fuel and fertilizer prices have
9 skyrocketed. The lower returns for Hard Red Spring
10 Wheat have forced me to experiment with growing other
11 crops such as sunflowers and canola. Unfortunately,
12 these other crops are less suitable for my local
13 climate and soil conditions, making them more risky to
14 produce.

15 Let me walk you through a typical year in
16 the farming operation. My planting decisions are made
17 in January - February based on price projections, soil
18 moisture conditions, and land use crop rotation. I
19 secure seed, fertilizer, and check on availability of
20 other crop inputs such as herbicides and seed
21 treatments.

22 In April, we usually begin planting Hard Red
23 Spring Wheat and continue into May. In June, we apply
24 herbicides and monitor crop development. In August,
25 Hard Red Spring Wheat harvest begins and extends into

1 early September. During harvest, we deliver our wheat
2 to our local elevator or store it on the farm.

3 Throughout the year my marketing decisions
4 are based on daily monitoring of local elevator prices
5 and futures at the Minneapolis Grain Exchange. I am
6 also very familiar with long-term supply and demand
7 trends which historically impacts on prices.

8 The effects of potential Canadian wheat
9 imports were very important this past -- apparent this
10 past year. In January and February of 2003, a pivotal
11 time for farmers who plant spring wheat seeded crops
12 like Hard Red Spring Wheat, Hard Red Spring Wheat
13 future prices were declining. This decline was in
14 response to expectations that both the Canadian and
15 U.S. Spring Wheat crops were going to be strong in
16 2003, and imports of Canadian Hard Red Spring Wheat
17 would increase substantially.

18 As a result, North Dakota farmers cut back
19 on their planting for Hard Red Spring Wheat by one-
20 half million acres compared to 2002.

21 Keep in mind that producers had made their
22 decisions to decrease Hard Red Spring Wheat plantings
23 and were well underway planning the 2003 crop ahead of
24 the May 2003 Department of Commerce announcement to
25 impose preliminary dumping duties on imports of

1 Canadian Hard Red Spring Wheat and Durum.

2 In order to ensure that our domestic wheat
3 industry will remain vibrant and an integral spoke in
4 our nation's economic wheel, I urge you to find what
5 is very apparent in North Dakota; that the wheat
6 industry is suffering serious injury and the massive
7 flood of Canadian wheat imports is the cause of the
8 injury, and the domestic wheat industry cannot
9 withstand continued waves of unfairly traded Canadian
10 wheat imports, particularly when these wheat imports
11 affect American wheat producers' bottom line.

12 On behalf of the North Dakota Wheat
13 Commission and the North Dakota Hard Red Spring Wheat
14 and Durum producers, I urge you to use your authority
15 to prevent any further deterioration of the U.S. wheat
16 industry by ordering these antidumping and
17 countervailing duty orders.

18 Thank you for the opportunity to testify
19 today.

20 CHAIRMAN OKUN: Thank you.

21 MR. BIRDSALL: Good morning, Madam Chairman,
22 members of the Commission.

23 My name is Mark Birdsall. I am here today
24 as a durum producer from a fourth generation family
25 farm in northwestern North Dakota, and as the current

1 director and past president of the U.S. Durum Growers
2 Association, an organization that is an advocate for
3 working for improved profitability in U.S. durum
4 production through research marketing, regulatory
5 trade, and value-added issues of durum farmers.

6 The Canadian import issue has been a
7 priority for my organization for a number of years
8 because it's leading to the demise of durum production
9 in our state, and the profitability of an industry
10 that has been an economic engine for not only
11 producers but local elevators and communities as well.

12 In addition to my involvement with the U.S.
13 Durum Growers Association, I also serve on the Durum
14 Education, Research, and Marketing Committee for
15 Dakota Growers Pasta Companies, which is headquartered
16 in Carrington, North Dakota.

17 Dakota Growers Pasta Company is the third
18 largest pasta company in the United States. The
19 company wanted the Commission to know they have
20 already contracted their durum needs for the next six
21 months, all with 100 percent top-quality U.S. milling
22 durum. They also support producers in their effort to
23 bring about fair pricing in the market with this trade
24 investigation.

25 Today, I would like to explain the impact

1 the Canadian Wheat Board has had on durum producers as
2 a while in my region, as well as my own farming
3 operation. It's a serious issue that needs attention
4 and immediate action.

5 Durum might be a relatively small part of
6 the overall U.S. wheat crop, but is the primary crop
7 for thousands of producers in my state and
8 northeastern Montana. Durum is a specialty wheat that
9 has its own unique challenges and issues that require
10 specific focus. This creates more market volatility
11 and producer vulnerability.

12 Producers of durum are especially affected
13 by the Canadian Wheat Board selling into the U.S.
14 market. In fact, something has gone array in our
15 industry. The risk/reward needs of durum pricing has
16 diminished to the point it's no longer profitable to
17 produce durum. Just as for every other U.S. Hard Red
18 Spring producer, my variable cost -- fertilizer fuel
19 and repairs -- are all going up in excess of any price
20 increases that might have occurred. I am in a
21 cost/price squeeze.

22 What has caused this to happen? It's almost
23 solely due to below cost quality devalued pricing
24 practices of the Canadian Wheat Board. Millers do not
25 have to pay adequate market returns or quality

1 premiums for Canadian Wheat Board sold durum. This is
2 solely bleeding the production industry that requires
3 risk premiums and incentives to fully cover production
4 risks and market volatility that are natural parts of
5 this specialty crop.

6 Durum producers have met many challenges
7 throughout the years to build and maintain our
8 position as a primary production region for durum in
9 the world. We have always placed a strong emphasis on
10 research that deals with agronomic needs and ensures
11 the highest quality standards as well. As a result,
12 we have strong gluten durum varieties that meet the
13 needs of the domestic pasta industry with protein
14 levels in durum to meet labeling requirements, and
15 storage technology that protects key milling
16 attributes. These efforts have paid dividends to the
17 U.S. millers.

18 Those investments have been costly, but
19 usually the market has rewarded us for our efforts.
20 Those rewards are being squashed by the Canadian Wheat
21 Board, and are actually nonexistent in many cases.

22 I am here today on behalf of an industry
23 that needs U.S. Government help in meeting a challenge
24 that is far too big for individual producers to
25 tackle. The Canadian Wheat Board monopoly is

1 seriously damaging the durum production industry in
2 the United States. Unchecked, we will reach a point
3 when we can no longer be considered a strong source
4 for high volumes of quality durum.

5 Durum is a primary wheat crop in my region
6 because of the agronomic environment. We have
7 experimented with other crops through the years, but
8 in many cases they have been less profitable and
9 higher risk. For example, some farmers tried soybeans
10 this year. Our area had a normal weather pattern this
11 year, which meant good moisture until about mid-July,
12 and then dry through the end of August. This produced
13 excellent durum yields and quality this year, but left
14 soybeans less than 12 inches tall turning brown with
15 very low yield potential.

16 This is durum country, not soybean country.
17 We need durum as a crop to survive. It's sad to see
18 our primary industry and communities being downsized
19 by an unfair foreign monopoly which places no value on
20 the cost and risks involved in producing and marketing
21 this crop.

22

23 As durum producers in the early 1900s, we
24 faced the challenge of fusarium head blades. We as
25 producers have invested in research, better crop

1 rotations, better varieties, disease forecasting
2 systems, and improved use of fungicides and
3 application techniques to successfully solve the
4 problem. Our fusarium head blade-invested bushes have
5 dropped dramatically over the years.

6 In am in the certified feed business. Over
7 the past several years, I have watched my durum seed
8 sales decrease, mainly as a result of the Canadian
9 Wheat Board actions. My neighbors are not being paid
10 enough for the risk of growing durum while watching
11 their fuel and fertilizer costs skyrocket.

12 With favorable yields this past year and the
13 preliminary duties imposed on Canadian imports,
14 farmers are showing a renewed interest in durum
15 production for the first time in years. I received a
16 call from one of my durum seed retailers last week
17 telling me he would take 100 percent of my seed
18 production for next year. This has put some
19 excitement back into the durum production on my farm,
20 but it will be short-lived if final duties are not
21 imposed.

22 The injury caused to durum producers by the
23 Canadian Wheat Board is real. We as producers have
24 gone through a very trying and tempering time. Some
25 farmers have survived, many have not. We cannot force

1 our durum producers through this again. They deserve
2 the relief offered by this action.

3 Thank you for your time and consideration.

4 CHAIRMAN OKUN: Thank you.

5 MR. LEE: Madam Chairman, members of the
6 committee, my name is Alan Lee. I am a third
7 generation farmer from northwestern North Dakota.
8 This is a prime production area for Spring Wheat and
9 Durum.

10 I currently serve as the chairman of U.S.
11 Wheat Associates. I have also served as chairman of
12 the North Dakota Wheat Commission, past chairman of my
13 local elevator board. I am currently mayor of my
14 small community.

15 In these roles, I believe I have an
16 extensive and a broad understanding of the impact of
17 the Canadian Wheat Board's unfair marketing practices
18 not only in my farm, but also how it impacts my
19 community and my local elevators.

20 My farming operation, watching and listening
21 for marketing practices, and watching trends is a
22 must. Like any other businessman, I have to know what
23 my markets are doing and try and anticipate how they
24 are going to move. To help me make the most informed
25 decision, I know my production costs. I watch

1 seasonal price patterns. I gather information. I
2 anticipate market moves. I visit with people. And I
3 watch what the supply and demand is doing in the
4 United States and also in our export markets.

5 For the Hard Red Spring Durum and Wheat that
6 are produced on my farm, there is one issue that has
7 severely impacted my ability to market profitably over
8 the past several years; that is, the market signal for
9 durum and for high-protein spring wheat no longer
10 seemed to work. An example of this would be in the
11 fall of 2002, durum prices began to rise based on the
12 small production of both in the United States and in
13 Canada. Given these tighter supplies, I, like any
14 other producers, and my elevator managers all
15 anticipated that durum prices would increase in this
16 local area. The should approve \$5.50 to \$6 a bushel.

17 After 1995, the Section 22, a similar crop
18 demanded \$6.50 a bushel. The reason, historically it
19 has enjoyed these price increases, and we have been
20 well rewarded for having taken on the additional risk
21 of growing that as a crop. Supply and demand are
22 truly working. A shorter crop should command higher
23 prices, and therefore we can still cover our costs and
24 often even enjoy a profit.

25 But with the reality of this, durum prices

1 spiked in early September at about \$5.25 a bushel.
2 Before I just got a little bit of harvest done, then
3 they rapidly fell off. The Canadian Wheat Board is
4 once again to blame for the loss of the prices in my
5 market.

6 Despite the initiation of the trade
7 investigation in September of 2002, imports of
8 Canadian durum continued to roll across the border
9 through the fall, eliminating any shortness in the
10 market. Once again the Wheat Board's ability to
11 disregard potential price swings and a guaranteed
12 supply allowed them to fill many of the millers' needs
13 that once again took away the need for the millers to
14 offer higher prices to U.S. farmers based on shorter
15 supplies.

16 This cost me a minimum of 50 cents a bushel.
17 I don't know if I were to use historical price
18 patterns, I could easily make the argument that it
19 well exceeded a dollar a bushel. I sold the bulk of
20 2002 crop for \$4.35 a bushel. Good price. It was
21 higher than the market because I had especially good
22 quality. But even so on the 2002 durum crop I
23 estimate a loss a minimum of \$25,000. That, I
24 believe, would impact anybody in this room. It
25 certainly impacted me and most other durum producers.

1 Needless to say, I reduced my durum
2 plantings in the spring of 2003 by 30 percent. I
3 switched to spring wheat. Spring wheat is a lower
4 risk crop to raise, but it doesn't always yield as
5 well in my area, and it's less profitable.

6 Profit is what we need. With higher
7 fertilizer prices doubly in the past two years, fuel
8 prices up by 30 percent, my parts and repairs are
9 going up substantially, it's even more important that
10 we not have a price that is further depressed by
11 actions of the Canadian Wheat Board.

12 It would not bother me so much if it was an
13 individual Canadian producer that was selling his
14 durum at low cost. Eventually he's going to have to
15 recoup that loss or he's going to broke by not meeting
16 his break-even expenses. However, I cannot compete
17 with the Canadian Wheat Board with its government-
18 backed financing and government-guaranteed monopoly.
19 I can compete with Canadian farmers, but I cannot
20 compete with the Wheat Board.

21 As chairman of U.S. Wheat Associates, I have
22 had the unique opportunity to travel to numerous
23 international markets and visit customers. I have
24 heard firsthand accounts from these customers of how
25 the Wheat Board markets its wheat crop, pricing sales

1 under U.S. market and quality give-aways are quite
2 routine. Statements such as, "We really like U.S.
3 wheat. We would like to buy it. It's good. But it's
4 not price competitive with the wheat offered by the
5 Wheat Board" are very commonplace.

6 These practices happen in international
7 markets, why would the Wheat Board operate any
8 differently in the U.S. market? They do not have a
9 bottom line to meet like my fellow producers or my
10 local elevators.

11 Producers in my area are keenly aware of the
12 direct impact that the Wheat Board sales have had in
13 our market. Many producers have come up and thanked
14 me for the efforts of the North Dakota Wheat
15 Commission in dealing with the impact of Canadian
16 durum and spring wheat. They recognize the impact of
17 duties that were set and they have had in maintaining
18 a strong price in the durum market. Their only
19 question to me is how long will we have this relief.
20 Since the duties were imposed in May, my local
21 elevator has made sales to domestic mills that for
22 several years have not been interested in talking to
23 them.

24 In conclusion, I would like to emphasize the
25 need for you to find that there has been and continues

1 to be injury to the American farmer. If you sat in
2 this chair and you had experienced firsthand the
3 frustrations of losing markets, of seeing your prices
4 decline in the face of short supplies, and even when
5 you have quality crops in your bin, of seeing yourself
6 and your neighbors trying other crops that are not
7 well suited for our climate, I do not have a doubt in
8 my mind that you would say yes, they have been
9 injured. They are being negatively impacted by the
10 actions of the Canadian Wheat Board, and they deserve
11 the relief that is offered by this action.

12 Thank you.

13 CHAIRMAN OKUN: Thank you.

14 MR. FISHER: Good morning, Madam Chairman,
15 members of the commission. My name is Neal Fisher.
16 My family and I have a farming and ranching operation
17 in Kidder County, North Dakota. I am also the
18 administrator of the North Dakota Wheat Commission,
19 which is an entirely producer-controlled organization
20 that represents the majority of producers of U.S. Hard
21 Red Spring Wheat. Our stakeholders also produce the
22 majority of the durum wheat grown in the United
23 States.

24 I am here today because of the subsidization
25 and dumping of Canadian Hard Red Spring and Durum

1 Wheat in the U.S. market is reeking havoc with our
2 farmers and the businesses that depend on them. Thus
3 with unfair interest rates it's a grim future indeed
4 of ebbing market share, flattened prices and
5 additional downsizing of acreages and output.

6 It is important to note that Hard Red Spring
7 Wheat accounts for just 21 percent of all U.S. wheat
8 production, and durum accounts for just five percent.
9 These are truly specialty wheats, characterized by
10 greater price volatility and market sensitivities than
11 common wheats. Prices of these specialty wheats often
12 move independently from pricing patterns of other less
13 market-sensitive wheat classes.

14 Hard Red Spring Wheat and Durum markets are
15 therefore more vulnerable and more easily disrupted by
16 significant market penetration, which we are here to
17 demonstrate today.

18 The U.S. milling industry has misconstrued
19 the adequacy of supply and quality issue to support
20 their incorrect claims that Canadian imports are
21 somehow necessary to support their industry. One
22 might also ask at this time what might have been if
23 the onslaught of unfairly traded Canadian imports had
24 not had such a negative impact on U.S. producer
25 returns and played such a dramatic role in reducing

1 U.S. planted area and production.

2 While the CWB has unfairly taken our market
3 share, U.S. farmers have been forced to cut production
4 because of low prices. During the period of
5 investigation unfair trade of Canadian spring wheat
6 and durum cost American farmers approximately \$2
7 billion in lost sales and depressed prices.

8 U.S. farmers respond to market forces
9 typically when deciding when and how much wheat to
10 sell. Their attention to daily market prices, as we
11 attributed to our earlier witnesses, is in contrast to
12 western Canadian wheat farmers who are forced to
13 eventually deliver all of their wheat to the Canadian
14 Wheat Board, the monopoly buyer and seller.

15 This means that when prices are down U.S.
16 farmers hold their wheat off the market. Not so in
17 Canada. Without restrictive duties, the flood of
18 imports and the threat of unfair competition from
19 Canada places additional burden on U.S. wheat prices.

20 Despite all difficulties, U.S. producers
21 still manage to produce high-quality durum and Hard
22 Red Spring Wheat in sufficient quantities to meet all
23 domestic and export market demand. The U.S. milling
24 has tried to distort the actual quality data and
25 profiles of the U.S. durum and Hard Red Spring Wheat

1 crops in an effort to leave the false impression that
2 U.S. durum and Hard Red Spring Wheat are somehow
3 inferior to Canadian wheat.

4 The data in the public version of the staff
5 report confirm that the North American Millers
6 Association is wrong. Purchasers were asked to
7 compare U.S. and Canadian durum and Hard Red Spring
8 Wheat on 19 purchase factors. Overall, U.S. durum was
9 rated comparable to Canadian durum, and was superior
10 with regard to its protein content.

11 U.S. Hard Red Spring Wheat was also rated
12 comparable overall to Canadian Hard Red Spring, and is
13 known in the industry to be higher in protein and in
14 gluten strength than Canadian Hard Red Spring Wheat.

15 Moreover, U.S. supply and demand data shows
16 a surplus of wheat at the end of each of the last 15
17 years, averaging 42 million bushels for durum and 189
18 million bushels for Hard Red Spring Wheat.

19 Looking back over the past decade, U.S.
20 flour mills have routinely had ample access to top-
21 grade U.S. Hard Red Spring Wheat. Annual production
22 of No. 1 and No. 2 grade Hard Red Spring has always
23 exceeded domestic food use, and sometimes almost
24 doubled the quantity processed each year. Yet in
25 seasons with increased supplies of top-grade U.S.

1 wheats imports of Canadian wheat have not declined in
2 a corresponding manner.

3 Likewise, imports of Canadian durum in no
4 way correlate with the situations of tighter supplies.
5 Marketing years like 1998 and '99 poured cold water on
6 NAMA's assertions that the quality or quantity of U.S.
7 crop has anything to do with the import levels that
8 ensue.

9 1998 and '99 was the year when U.S. durum
10 farmers produced a crop of 138 million bushels. That
11 was the largest since 1982. Yet durum imports from
12 Canada reached a near record 20 million bushels in
13 that season. Clearly, unfair pricing of Canadian
14 imports is indeed at play here.

15 In looking at supply and demand data for
16 U.S. durum, Mr. Potter from the American Italian Pasta
17 Company ignores the U.S. desert durum crop produced in
18 Arizona and California, which annually contributes 18
19 to 25 million bushels of good-quality durum to the
20 U.S. supply.

21 He will tell you that about half of this
22 high-quality production is contracted to Italy before
23 planting, and therefore is not available to U.S mills.

24 Well, this false in the American system.
25 AIPC, which recently opened a plant in Arizona, is

1 certainly as capable as any Italian company to
2 contracting advance with Arizona's producers for this
3 good-quality production.

4 The truth is the entire northern grown crop
5 and the entire desert durum crop is available to U.S.
6 millers and pasta manufacturers first if they choose
7 to step up. They simply have to compete with the
8 export customers for the best U.S. supplies by
9 offering that best price.

10 The millers' quality assertions are also
11 disproved by the following truth. First of all, Asian
12 and European buyers continue to import U.S. Hard Red
13 Spring Wheat under stringent quality specifications on
14 a steady basis. Empirical data would indicate that
15 such imports are in fact on the increases. This
16 negates the millers' claim that U.S. growers produce
17 inferior varieties.

18 Moreover, in 2002, significant increases in
19 sales were also noted in sophisticated markets in
20 Latin America, throughout the continent, Mexico,
21 Venezuela and a number of other countries despite the
22 premiums on the Hard Red Spring over the Winter Wheat
23 at that time.

24 U.S. system is able to meet these higher
25 quality specifications and these buyers pay for the

1 added value. U.S. millers, on the other hand, are not
2 willing to pay for the superior spring wheat and durum
3 characteristics available here.

4 The millers also profess to have knowledge
5 concerning the quality of Hard Red Spring Wheat
6 varieties developed under the U.S. breeding programs,
7 but instead they rely on the Canadian Grain Commission
8 opinion as their basis for an ostensibly new discovery
9 that Allison, the leading Hard Red Spring Wheat in
10 North Dakota, is somehow inferior to their wheats.

11 The facts are that Allison was reviewed
12 through the Wheat Quality Council annual evaluation
13 program in 1999, prior to its release. It passed with
14 very high marks from the domestic milling industry.
15 Bay State Milling, for example, is one of the
16 companies that made these comments approving the
17 Allison variety.

18 In addition, Cargill, ConAgra, ADM, and others are
19 among the evaluators that reviewed and approved
20 Allison as a variety suitable for the region.

21 The self-serving statements that the millers
22 now make in the prehearing submission for these trade
23 investigations are completely inconsistent with the
24 comments they made in the evaluation process of this
25 fine variety.

1 It is also notable that the international
2 buyers have also rated Allison as one of their
3 preferred varieties in the annual wheat performance
4 evaluations.

5 I would like to comment a little bit on farm
6 programs at this time. The Wheat Board also argues
7 that the existence of U.S. farm programs has caused
8 the United States to rely on imports for supplying the
9 domestic market. However, as USDA data and Senator
10 Conrad indicated earlier today, during the entire
11 period of investigation the majority of U.S.
12 Government payments to wheat producers were completely
13 decoupled from production.

14 There is broad agreement among the economic
15 community that these decoupled programs have little or
16 not effect on wheat production or on the market.

17 Recent studies also indicate that insurance
18 programs have negligible effects on farm production
19 decisions and on market behavior. Payments for wheat
20 under the U.S. Price Support Program were negligible
21 in the major Hard Red Spring Wheat and Durum states of
22 North Dakota, Minnesota, Montana from October 2000
23 through September 2002.

24 The facts simply do not support the Wheat
25 Board's contention that U.S. farm programs are

1 responsible for a reduction in Hard Red Spring Wheat
2 and Durum plantings and production.

3 CWB's claim that dry peas, lentils, soybeans
4 and what have you, other alternative crops are
5 replacing durum and Hard Red Spring Wheat acreage is
6 also wrong. Soybeans are not a competing crop in
7 Montana. No soybeans were planted in that state
8 between 2000 and 2002. Soybean acreage has declined
9 since 2000 in South Dakota, and soybeans are not grown
10 in any significant quantity in North Dakota's key
11 durum production region.

12 Furthermore, soybeans have been an
13 established crop in southeastern North Dakota for many
14 years. The largest soybean producing county in that
15 region is also one of the top two spring wheat
16 producing counties in the state even today.

17 This suggests that any increases in soybean
18 acreage during the period of investigation has more
19 likely been at the expense of barley and oat acreage.

20 Much has also been made of the disease issue
21 regarding fusarium head light or scab, and its impact
22 on the availability of quality in the U.S. system. I
23 am here to tell you that this issue has changed
24 dramatically in recent years and no longer presents
25 the concern it once did for producers or processors.

1 Contrary to respondents' arguments,
2 declining acreage is not correlated with incidents of
3 fusarium. The Wheat Board relies on outdated
4 information and studies that fall outside of the
5 period of investigation. In fact, as the petitioners'
6 expert, Dr. Marsha McMullen, has established, fusarium
7 has been on a steady decline since 1993 as problem.
8 It now affects only negligible levels of U.S. durum
9 and Hard Red Spring Wheat production and it's
10 approaching zero in the current market year.

11 The quality issues that the millers have
12 raised in this instigation are not supported by their
13 actions in the marketplace. The record in these
14 investigations indicates that there is complete
15 adequacy of supply, and perhaps more importantly, that
16 quality is not an issue in the current market either.

17 I would like to comment on the fact that
18 Hard Red Spring and Hard Red Winter Wheats are indeed
19 separate products just briefly at this point.

20 We live in an age of performance enhancers,
21 if you will. Some for this and some for that. But
22 you might say that Hard Red Spring Wheat is one of the
23 original all natural performance enhancers in the
24 milling and baking industries. As a result, U.S. Hard
25 Red Spring Wheat is sold in nearly 100 countries

1 annually to upgrade lower protein weaker wheats like
2 Hard Red Winter, local or indigenous wheats, or maybe
3 cheaper wheats from alternative origins like the Black
4 Sea.

5 According to research conducted by North
6 Dakota State University's Agricultural Economics
7 Department, demand for Hard Red Spring Wheat for just
8 this specific purpose is growing at a rate greater
9 than demand for any other class of wheat, and in
10 sophisticated market such as Western Europe, Asia, and
11 Latin America.

12 Japan is the single largest overseas market
13 for U.S. Hard Red Spring Wheat with annual purchases
14 of 50 million bushels a year. The Japanese, who are
15 considered to be very astute traders and marketers,
16 also purchase a similar amount of U.S. Hard Red
17 Winter, but they typically pay a considerable premium
18 for the Hard Red Spring. It's ludicrous to think that
19 the Japanese of all countries would pay as much as \$25
20 million a year every year for a difference that didn't
21 exist.

22 Watching Proclamations by a host of domestic
23 processing companies also bear out the fact that these
24 prominent firms and the advertising agencies in their
25 employ value Hard Red Spring Wheat much differently

1 from Hard Red Winter Wheat. I would like to cite a
2 few examples.

3 The label on a bag of Pillsbury's Best Bread
4 Flour states that it is made exclusively with Hard Red
5 Spring Wheat which is higher in proteins and makes
6 better bread.

7 ConAgra's website, describing its flour
8 products, states that its stone-ground whole wheat
9 flour is premium quality whole wheat flour milled from
10 clean, sound, Hard Red Spring Wheat. ConAgra also
11 markets a Magnifico Specialale Spring Wheat Flour, a
12 King Midos Special Premium Baker's Flour, Producer
13 High Gluten Flour, and Cairo Premium High Gluten
14 Flour, stating that its all four types are milled from
15 clean, sound Hard Red Spring Wheat.

16 Likewise, Bay States Milling product
17 description on its website includes information on
18 nine types of flour, including Bouncer Premium High
19 Gluten, Golden Tiger High Gluten, Perfect Diamond High
20 Gluten, all described as being made from the finest
21 spring wheats available. Bay State lists its winter
22 wheat flours separately, interestingly enough.

23 Progressive Baker affiliated with Cargill
24 also specifically markets four types of spring wheat
25 flour under the names of High Gluten Spring King

1 Patent, Gibraltar Medium High Gluten, and Whole Wheat.

2 I could go on, but I think the message is
3 crystal clear. There are differences and there are
4 separate classes distinguishing Hard Red Spring from
5 Hard Red Winter Wheat for a reason. They are
6 different and they perform differently.

7 The millers cannot argue that there is a
8 lack of Hard Red Spring Wheat on one hand, and try to
9 tell us that Hard Red Spring and Hard Red Winter are
10 like products on the other. These claims contradict
11 each other.

12 The millers flawed supply and demand claim
13 is not credible if you consider the enormous size of
14 the U.S. Hard Red Winter Wheat crop that's produced
15 each year. If Hard Red Spring and Hard Red Winter
16 were actually the same product as they claim, there
17 would be no shortage obviously.

18 I think the Canadian Wheat Board would agree
19 that Hard Red Spring Wheat and Hard Red Winter Wheat
20 are different indeed. Whether U.S. or Canadian, one
21 thing is certain, there are distinct differences
22 between Hard Red Spring and Winter Wheats.

23 Thank you, Madam Chairman and members of the
24 Commission. I will be happy to answer any questions
25 you might have.

1 CHAIRMAN OKUN: Thank you very much.

2 MR. WECHSLER: Thank you. My name is Andrew
3 R. Wechsler. I testify as a professional economist
4 having worked for, consulted for the North Dakota
5 Wheat Commission for the last decade.

6 My handout just expands on my oral
7 testimony, and I won't be referring to it, so you need
8 not distract yourself with the many pages if you don't
9 wish to.

10 In a sense, the essence of this case is one
11 of commodity products with significant dumping and
12 subsidy margins, clear evidence of price underselling
13 and price depression, and an adverse import impact on
14 U.S. producer revenues and farm incomes. I think
15 that's one sentence.

16 We have commodity products here. Subject
17 Canadian imports are highly substitutable and
18 interchangeable with the equivalent domestic like
19 products.

20 The staff in its prehearing report, your
21 prehearing report, has apparently reported the highest
22 substitutional elasticity ever estimated for any
23 commodity product considered by the ITC, a range of 10
24 to 15. There is great price sensitivity, and 14
25 percent margins translate into a potential pricing

1 advantage of 50 cents per bushel at current market
2 prices. This is a commodity product where pennies
3 matter, and the purchaser questionnaires affirm the
4 importance of price. Quality is important, but it's
5 largely the same.

6 Subsidies and dumping in such a situation
7 necessarily are injurious. Injury in a commodity
8 market is purely a question of supply and demand.
9 Subsidies are long known to increase supply, a lesson
10 that is taken in Econ I as far back as something years
11 ago would have seen it in Samuelson's Introduction to
12 Economics.

13 Subsidies and dumping simply increase
14 supplies of CWB wheat relative to U.S. wheat in the
15 U.S. market. They artificially increase the CWB, the
16 Canadian market share.

17 Increased supply in a commodity market
18 necessarily depresses the market clearing price for
19 wheat sold to U.S. elevators by U.S. growers. U.S.
20 growers are definitive worse off because U.S. price,
21 volumes, revenues, and market share must decline below
22 what they would have been absent the subsidies and
23 dumping.

24 The Canadian Wheat Board recognized this
25 connection itself when it cited European subsidies as

1 the cause of its pool deficit in 1991.

2 Please note that the latest USDA revisions
3 to its official export data used by the staff and
4 everyone in this hearing have increased CWB market
5 shares over the prehearing report levels.

6 We have frequent CWB underselling now
7 confirmed for all four products, specific products
8 investigated: Hard Red Spring, the staff report based
9 on prehearing pricing comparisons of U.S. and Canadian
10 wheats, find the No. 2 Hard Red Spring underselling in
11 10 of 18 instances compared. For No. 1, it's five of
12 18.

13 With respect to durum, No. 2 durum, the
14 prehearing report finds -- reports underselling in 18
15 of 22 comparisons. Now with respect to No. 1 durum,
16 the prehearing report comparisons show no underselling
17 as in zero of 25 instances.

18 We looked at this anomaly carefully because
19 our producers have always been telling us there is
20 underselling. And it turns out that purchaser prices
21 on which these comparisons are made include
22 transportation. Both the standard ITC methodology and
23 the Appendix E approach are biased when there is a
24 non-random skewing of high-priced shipments by one or
25 another supplier to distant U.S. mills.

1 For instance, if a hypothetical mill in Key
2 West buys most of its wheat from the CWB, and those
3 prices are compared with a mill in Minneapolis which
4 buys most of its product domestically, the embedded
5 transport cost differential could show overselling
6 even when there is significant underselling.

7 The way to surmount this potential source of
8 bias is to conduct mill-specific comparisons on a
9 delivered price basis.

10 We did that. The confidential results are
11 in the prehearing brief of the North Dakota Wheat
12 Commission, and it shows frequent underselling even
13 for No. 1 durum.

14 Canadian Wheat Board is the price leader.
15 The board proclaims its market power in fancier words
16 to its own membership. It's the largest single seller
17 of wheat in the world. It's a price maker, while U.S.
18 growers are price takers.

19 Large volumes of CWB forward sales obviously
20 depress the prices of much shorter term U.S. sales.

21 Now, we looked at -- Professor McNew and I
22 looked at in a study the impact of CWB on U.S. wheat
23 prices. We built an econometric model that model both
24 supply and demand factors. We found large,
25 significant, adverse impacts on U.S. prices. In Hard

1 Red Spring, each million bushels of Canadian imports
2 is associated with an average 5.3 percent cents per
3 bushel decline in U.S. prices. We found these results
4 statistically significant in 48 of 57 mini-market
5 comparisons.

6 In durum, the suppression from each million
7 Canadian bushels of imports was 19 cents per U.S.
8 bushels, and was statistically significant in 22 of 23
9 markets examined.

10 My colleague, Dr. Shink, an econometrician,
11 and I studied the import impact on U.S. grower income.
12 We looked at, since grower income isn't by specific
13 wheat, we looked North Dakota and Montana wheat
14 because that is most purely an HRS and durum wheat
15 place, so it keeps it to the subject like product.

16 We used North Dakota and Montana data, and
17 we found large adverse income effects from Canadian
18 imports, to wit, changes in subject imports from
19 Canada effect per unit farm income much more than do
20 other changes in supply and demand. Each 10 million
21 bushels of Canadian HRS and durum case North Dakota
22 and Montana farm income to drop by approximately \$107
23 million.

24 Having examined material injury and its
25 cause, let us go to the Alice in Wonderland looking

1 glass world according to this Canadian Wheat Board.

2 MR. WECHSLER: I will talk of many things if
3 I have enough time.

4 Consider the CWB's post-petition behavior.
5 The Canadian Wheat Board is an incorrigible, strategic
6 manipulator. For instance, CWB exports to the U.S.
7 market post-filing declined disproportionately more
8 than exports to other markets after the petition was
9 filed. And we have some extremely strange
10 arrangements for Canadian millers made by the Canadian
11 Wheat Board to keep them competitive. Additionally,
12 the CWB voided final round purchases in the 2002-2003
13 crop year to avoid an embarrassing pool deficit
14 requiring an infusion of government of Canada funds
15 and to make the CWB's ITC inventory numbers look less
16 threatening, because Canadian farmers holding those
17 don't answer your questionnaires.

18 HRS and HRW are not the same like product.
19 Their own price elasticities as reported in the
20 pre-hearing report are inelastic, according to both
21 the staff and the literature. This contradicts them
22 being close substitutes for one another. If they were
23 close substitutes, you wouldn't have inelastic demand
24 for hard red spring taken alone.

25 HRS and HRW blends are often, as the report

1 shows, in fixed proportions. Again, this is the
2 opposite of substitution. It's interesting, the
3 source of that were the millers' questionnaires in the
4 preliminary investigation. Suddenly, the millers have
5 changed their tune. A very interesting change.

6 These two wheats are treated as separate
7 products by producers, elevators, traders, millers,
8 consumers, the USDA and the exchanges. No elevator
9 mixes the two and no miller buys a mix. In fact, HRW
10 is treated as a contaminant in an HRS elevator.
11 Kansas City is the source of pricing for HRW; the
12 Minneapolis Exchange, hard red spring.

13 The CWB has claimed it behaves as a normal
14 market participant. Well, we prepared an objective
15 econometric market analysis of this strange claim.
16 The results show a significant negative relation
17 between relative U.S. price and CWB imports. CWB
18 imports perversely increase when U.S. prices fall.
19 Normal market participants would be attracted by
20 increasing prices, not lower U.S. prices. But the CWB
21 dances to the beat of its own drum. The CWB's claim
22 to be a normal market participant is patently false.

23 I think it's Appendix 20 they've now
24 submitted a VAR analysis. Vector auto regression
25 cannot accommodate a simultaneous model and therefore

1 this kind of a model should not be used for supply and
2 demand analysis in which supply and demand factors
3 change simultaneously.

4 Their model is aimed at measuring the impact
5 of CWB imports on changes in U.S. prices, but the CWB
6 model is very poorly documented, it does not report
7 its equations, data or model estimates. This is the
8 most disgraceful hide-the-ball trust me approach I've
9 seen in 25 years associated in one way or another with
10 the ITC. Statistical work that can't be replicated
11 should not be considered.

12 The model assumes a basic structural
13 relationship between three variables: price for the
14 rest of the world, price for the United States and
15 imports into the U.S. from the CWB. Unlike
16 econometric model, this VAR model cannot test this
17 basic relationship, it simply assumes it.

18 Well, without getting into the data which
19 they hide and the intermediate results which are
20 hidden, we can see that the basic relationship they
21 have is completely illogical due to two ludicrous
22 assumptions.

23 First, the price for the rest of the world
24 dictates imports to the U.S. in this model, but the
25 price to the U.S. has no effect on U.S. imports.

1 Think about that.

2 Second, the price in the United States has
3 no effect on the price in the rest of the world, yet
4 we've heard a lot about U.S. exports to the rest of
5 the world. That's just a ludicrous assumption.

6 Clearly, the CWB's VAR model is mis-specified and
7 therefore its results provide no useful information.

8 Now consider the CWB's so-called
9 co-integration model in Appendix 24. It actually
10 proves that the U.S. is separate from other markets,
11 not joined to them at the hip. It's aimed at showing
12 a single world market which sets price independently
13 of CWB imports in the U.S. It estimates the impact of
14 a one cent change in U.S. price on other prices in the
15 U.S. and abroad, 1.0 indicates that the law of one
16 price holds, that they are fully co-integrated.

17 Well, the U.S./Canada estimate is
18 significant and it's high at 0.9 but it's definitely
19 not 1.0, so there is not full co-integration there.
20 U.S./Australia is not even significant and is low at
21 0.6 to boot. U.S./Argentina is significant, but not
22 high. U.S./E.U. is not significant and also not high.
23 That's all their results. Yet the anonymous piece's
24 author concludes that global prices "tend to converge,
25 producing 'a single economic market.'" The conclusion

1 is incorrect based on its own results, but even more
2 incorrect, it would not obviate the impact of CWB
3 imports on U.S. prices. The CWB's co-integration
4 piece thus is an irrelevant digression in this case.

5 In conclusion, there is clear injury and
6 causation. U.S. imports of Canadian HRS and durum are
7 facilitated by significant Canadian subsidies and
8 large dumping margins. Canadian imports are
9 underselling and depressing U.S. prices received by
10 growers, reducing U.S. volumes and thereby reducing
11 U.S. wheat grower income.

12 Canadian market shares always comes at the
13 expense of U.S. market share, whatever it is. For a
14 commodity product like wheat with inelastic demand and
15 almost near perfect substitutability within wheat
16 classes, there is necessarily a causal link between
17 injury and any factor like subsidies and dumped
18 imports that increases U.S. supply above what it would
19 otherwise be.

20 Regardless of the direction of changes in
21 CWB market share in any particular year, the mere
22 presence of subsidized and dumped imports in the U.S.
23 market must come -- must come -- at the expense of the
24 competing interchangeable U.S. products.

25 I conclude with one final thought. There is

1 lots of discussion about HRS and HRW and whether
2 they're one like product. The requirement for a
3 single like product is interchangeability.
4 Substitution is evidence of that, but
5 interchangeability is a lot more than some
6 substitution; it's extremely high substitution.
7 Interchangeability means you can practically put on a
8 blindfold and go to a bin of one and substitute it for
9 a bin of the other. Even taken at face value the most
10 extraordinary claims of the CWB don't get us to that
11 kind of substitution between HRS and HRW.

12 Thank you very much.

13 CHAIRMAN OKUN: Thank you.

14 MR. HUNNICUTT: As a final part of our
15 presentation, Madam Chairman, I would like to point
16 out a few issues with respondent's presentation before
17 we conclude. There are many, but I'm going to mention
18 just a few.

19 First, the board argues in its brief that
20 the bilateral trade in hard red spring and durum
21 between the United States and Canada is driven
22 primarily by minor differentials in transportation
23 costs to different markets and that a few cents per
24 bushel can have a significant impact. While the low
25 prices of Canadian durum and hard red spring plays a

1 significant role in this trade, petitioners agree that
2 transportation costs are a factor.

3 U.S. farmers have long complained about
4 preferential rail rates for Canadian wheat and durum
5 and the fact that it costs less to transport wheat
6 from Saskatchewan to Minneapolis via North Dakota on
7 Canadian rail carriers than it does to transport wheat
8 from North Dakota to Minneapolis on those same or U.S.
9 carriers.

10 The Department of Commerce has now
11 determined that the Canadian Wheat Board benefits from
12 continuing rail subsidies that amount to between one
13 and two cents per bushel, precisely in the range that
14 the board claims can affect significant volumes of
15 trade. In addition to other factors, the proven
16 subsidies have had and will continue to have a
17 material adverse effect on the domestic industry.

18 Second, regarding transshipment, the board
19 claims that the official trade statistics of the
20 United States fail to account for its transshipments
21 of durum and hard red spring through the United States
22 en route to other countries.

23 In our pre-hearing brief, we noted a number
24 of fundamental flaws in the CWB's analysis and its
25 recommendation that the commission substitute Canadian

1 Grain Commission statistics for official U.S.
2 statistics in its final determination.

3 One additional point to keep in mind,
4 however, is that to the extent there is any doubt
5 about the accuracy of the U.S. official statistics,
6 that doubt is largely, if not entirely, the result of
7 the board's own behavior. The board admits that it
8 became aware of this alleged problem during the
9 preliminary phase of this investigation. Their brief
10 asserts that because NAFTA eliminated duties some
11 businesses may see less reason for the administrative
12 burden of accurate import reporting.

13 Nevertheless, given the importance of this
14 issue to the Canadian Wheat Board in this proceeding,
15 petitioners cannot understand why the board would not
16 have ensured accurate import reporting during the
17 years since these investigation began, so that
18 attempts to impeach official data at this point would
19 not be necessary.

20 More than likely, it did, and thus the
21 official data is accurate. If it is not accurate,
22 that was the board's choice. A party's intentional or
23 negligent failure to accurately report information to
24 Customs should not be a basis for disregarding
25 official Customs data for the benefit of that party.

1 Third, regarding prices, the Canadian Wheat
2 Board argues that there is one world price for hard
3 red spring and durum and that this price is what
4 drives the U.S. market, not any conditions of local
5 competition and, at least according to the board,
6 certainly not any imports from Canada. This argument
7 is simply wrong.

8 The United States is a premium market for
9 hard red and durum and prices in the United States
10 reflect that status. The board admits this when it is
11 talking to Canadians, even if it does not do so before
12 this commission. In a teleconference responding to
13 the Department of Commerce's final determinations in
14 these investments posted to the CWB's website, Adrien
15 Mezner, president and chief executive officer of the
16 board, stated that the United States is a premium
17 market, that in a typical year the board sells about
18 \$400 million worth of wheat and durum to the United
19 States and repeatedly stated that the loss of revenues
20 as a result of these duties is expected to be about
21 \$46 million a year to the pool account.

22 To be exact, Mr. Mezner stated, "The
23 47 million is a calculation of the extra revenue that
24 we get by selling into the U.S. market versus our
25 alternatives in the offshore market, so it really

1 looks at what revenue we feel we could get if we sold
2 that wheat and durum into the U.S. market versus the
3 returns that might be deemed from other markets in the
4 offshore side."

5 If all the world is at one price level, as
6 claimed in their brief, then there should be no loss
7 in revenue to the pool account from selling to other
8 non-premium markets instead of the United States.

9 This is also a possible calculation of the
10 revenue lost to U.S. producers if the same Canadian
11 wheat enters our domestic market and U.S. wheat moves
12 to the offshore side.

13 Finally, there is a crucial inconsistency
14 with regard to the Canadian Wheat Board and millers'
15 claims and the commission should pay very close
16 attention to exactly what they're saying because it
17 proves that hard red spring and hard red winter wheat
18 are distinctly different like products. The
19 commission in fact has probably already noticed this
20 inconsistency.

21 On the one hand, the millers and the board
22 argue that the only difference between hard red spring
23 wheat and hard red winter wheat is protein content.
24 On the other hand, when making their specious argument
25 concerning alleged problems with the Alton variety,

1 the millers' focus is not on protein levels. Instead,
2 when criticizing the Alton variety, the millers focus
3 on other hard red spring milling and baking quality
4 characteristics that actually distinguish hard red
5 spring from hard red winter wheat.

6 In fact, they focus on the very same
7 characteristics petitioners rely on in distinguishing
8 the two wheats. These milling and baking quality
9 characteristics include absorption, mixing times,
10 strength and elasticity.

11 As petitioners have maintained and as the
12 respondents have finally acknowledged, these are the
13 very characteristics that make hard red spring
14 suitable for end uses for which hard red winter would
15 never qualify and they are not related solely to
16 protein content. These quality characteristics and
17 the different end uses associated with them establish
18 a clear dividing line between hard red spring and hard
19 red winter.

20 Also, purchaser questionnaire responses as
21 summarized in the pre-hearing report rated U.S.
22 produced hard red spring wheat superior or comparable
23 to Canadian produced hard red spring wheat with
24 respect to protein levels. If the board is correct
25 that quality depends on protein, then there should be

1 agreement among all present here today that U.S.
2 produced hard red spring wheat is superior or
3 comparable to Canadian hard red spring wheat. I doubt
4 that's what you're going to hear today.

5 We further note that during verification by
6 the Department of Commerce the Canadian Wheat Board
7 asserted that there is very little trading activity at
8 the extreme ends of the grade and protein spectrums
9 both because of lack of demand and availability.
10 Thus, the comparison of prices of 13 percent hard red
11 spring wheat and 13 percent hard red winter wheat is
12 relatively meaningless. Nevertheless, a comparison of
13 prices of hard red spring and hard red winter wheat at
14 13 percent protein does in fact demonstrate that they
15 are different and that there is great volatility.

16 Thank you, Madam Chairman. That concludes
17 our affirmative presentation.

18 CHAIRMAN OKUN: Thank you very much.

19 Before we begin our questioning this
20 morning, I want to take this opportunity to thank all
21 the members of the panel for being with us today and
22 in particular to the farmers who have left their farms
23 during harvest to come here. As you probably are
24 aware by now, with statutory time tables, we don't
25 have that much room for making changes in our calendar

1 and so it often means that people have to travel at
2 inconvenient times and we greatly appreciate you
3 taking the time to be with us.

4 I do want to remind you with two tables of
5 witnesses if you can just give your name when you
6 respond to questions, it's easier both for us and for
7 the reporter.

8 With that, Vice Chairman Hillman will begin
9 the questioning.

10 VICE CHAIRMAN HILLMAN: Thank you, Madam
11 Chairman.

12 I, too, would join the chairman in thanking
13 you very much for the efforts that all of you have
14 made to be with us this morning and for all the
15 information that was provided in your pre-hearing
16 brief and in your testimony. It's extremely helpful,
17 so thank you.

18 Let me start first by asking maybe more from
19 the farmers' perspective for you to comment on
20 something that Mr. Cunningham said in his opening
21 statement and that's this issue that the Canadian
22 imports do not compete directly with U.S. farmers'
23 grain sales. I mean, he's arguing that the Canadian
24 Wheat Board sales are to the grain companies, whereas
25 you, the farmers, are selling to the grain elevators;

1 that there is a different level of trade there and
2 therefore there isn't this direct competition.

3 I wanted to give you an opportunity both to
4 sort of tell me your sense of sort of the particulars
5 of kind of when and how you feel you are competing
6 with the Canadian product.

7 And perhaps, Mr. Birdsall, we'll start with
8 you. I know you are obviously on the board of an
9 elevator company, so help us understand from that
10 perspective and from a farmer perspective this issue
11 of competition with the Canadian Wheat Board.

12 MR. BIRDSALL: Thank you. Mark Birdsall.

13 Commissioner Hillman and other members of
14 the commission, I as a farmer in the United States am
15 responsible fully for the decision I have to market my
16 crop. I have to check market prices, I have to
17 constantly look at my breakevens, I have to search out
18 the best markets I can, whether it be my local
19 elevator or local mills for pricing.

20 When I go to the elevator and decide I'm
21 going to sell my durum and the elevator manager tells
22 me he's not getting bids from millers, he's selling
23 the durum that I give to him, one of his markets is
24 millers and when he says he's not getting any interest
25 millers to purchase durum, it's a strong signal to him

1 that those millers are buying durum somewhere else.
2 So we have a direct contact there with our elevators
3 and they are directly influenced.

4 When the mills are buying durum from
5 Canadian sources, they're not buying it from our local
6 elevators. Period. And that happens. And when that
7 happens, our prices go down.

8 VICE CHAIRMAN HILLMAN: Okay. So it's
9 translated to you in terms of in essence an issue of
10 demand, as opposed to -- what I'm trying to understand
11 is does your elevator operator tend to tell you that
12 the millers are asking for a different price or it's
13 purely a kind of buy or not buy decision?

14 MR. BIRDSALL: He will just tell us that
15 they're not contacting him for purchase of durum.

16 VICE CHAIRMAN HILLMAN: Okay. On the hard
17 red spring side, is there anything else anyone would
18 want to add to that?

19 Mr. Klein?

20 MR. KLEIN: Harlan Klein. On the hard red
21 spring side, it works basically the same way. The
22 prices that we get through our elevators as producers
23 is directly linked to what that elevator can sell that
24 wheat for. And if buyers are not in the market or if
25 buyers back out because they're getting the supply

1 from the Canadian Wheat Board or some other area, that
2 means we do not get the price that that's at. There's
3 less demand, that dictates then a lower price, which
4 reflects back to the elevator, which then reflects
5 back to what they're paying the producers.

6 VICE CHAIRMAN HILLMAN: Okay. And are you
7 as farmers typically aware of what the millers are
8 purchasing for? Or pretty much that's really in the
9 domain of the elevator operator?

10 MR. KLEIN: That's more in the domain of the
11 elevator, but we as producers are talking to that
12 marketing manager or marketing director at our
13 elevators and they are the people that are in direct
14 contact with the people who are actually buying and in
15 our conversations we want to know what's going on,
16 who's in the market, we like to know where our
17 products are going to, what our customers are, because
18 as producers we need to link ourselves with that kind
19 of end use so that we know where our products are at,
20 what we need to be doing as producers to meet their
21 demands. It comes and filters all the way back
22 because we as producers need to know that so that we
23 can be competitive in these markets that we're in.

24 VICE CHAIRMAN HILLMAN: Okay. Let me follow
25 up a little bit more in terms of trying to understand

1 the pricing data. I mean, I will say, Mr. Hunnicutt,
2 in listening to your opening remarks, you are
3 describing this case in very traditional commission
4 terms: this is what happened on volume, this is what
5 happened on price, this is what happened on impact.
6 And yet obviously the nature of this product means
7 that we don't have really what I would consider really
8 traditional data in terms of looking particularly at
9 the impact side. There isn't this clear sort of
10 correlation of this is what imports did, this is what
11 prices did and this is the financial performance of
12 the U.S. industry producing the product. That's kind
13 of the nature of the data.

14 So I'm trying to sort out to some degree
15 kind of what is the best proxy and one of the issues
16 I'm struggling with is the issue of what do we make of
17 changes with prices?

18 I mean, obviously, we have a lot of pricing
19 data, both sort of broad brush pricing data from the
20 exchanges as well as particular pricing data, but
21 obviously we have to overlay that with what was
22 happening in terms of the drought that occurred in the
23 most recent year and in general with production.

24 So I'm wondering if you all can help me.
25 I mean, Mr. Hunnicutt described it as a direct

1 correlation between prices and import volumes: that
2 when imports were up, prices were down; when imports
3 were down, prices were up. And, obviously, I can look
4 for that correlation, but I have to overlay that with
5 what was happening in terms of production volumes and
6 what was happening in terms of the drought.

7 So I'm wondering if from the farmers'
8 perspective if you can describe for me your sense of
9 what was happening in the previous crop year when
10 there was a significant drought in Canada and
11 obviously to some extent in the United States and how
12 and when did you see that affecting prices?

13 MR. ALAN LEE: I think as I said in my
14 testimony, being aware of the drought, being aware of
15 the severe drought in Canada and in the northwestern
16 corner of our state it was also quite severe, in my
17 area we were just a little bit above average drop, but
18 the durum prices did spike, they ran up pretty good.
19 And, traditionally, prices will do that in light of a
20 drought, if there's some perceived shortage or
21 anticipation of a shortage. When the reality of the
22 crop becomes real, the prices may well decline again.

23 This year, they ran up to about \$5.25 a
24 bushel, I think, before harvest and at that time my
25 sense is that the market then thought that there was

1 going to be probably reasonable supplies. And at the
2 same time also my elevator, while he was looking for
3 this, he was also anticipating -- we were all
4 anticipating a higher run up because if you have a
5 short of crop, it should run up. And that's just
6 traditional.

7 In the '70s and '80s and '90s, when we had a
8 short crop, it would traditionally run up, especially
9 durum. Very volatile. And what's happened, though,
10 and this is came directly from my elevator manager, he
11 said the mills have gone out and filled their needs.
12 He said they've bought ahead from the Canadians, they
13 weren't buying from them, they weren't buying from
14 other elevators. And so our sense is that the bids
15 were not there and the prices spiked, came back down,
16 and we didn't get that anticipated run up that we
17 should get in light of a short crop, especially if
18 it's a U.S. crop. We have a good quality crop.

19 VICE CHAIRMAN HILLMAN: Okay. Okay. So
20 clearly you're saying that as people started to
21 appreciate the severity of the drought you saw prices
22 start to come up. And, again, obviously for us the
23 trick is to figure out whether the prices are coming
24 up in response to the import issue or whether they're
25 coming up in response to a drought or a drought year

1 as well.

2 How about on the hard red spring side? Any
3 comment on the drought, when you saw it, how it
4 affected you, and how we should factor that into our
5 looking at prices?

6 MR. KLEIN: On the hard red spring side,
7 it's very similar. We were looking at drought through
8 the region, we were expecting stocks to be a little
9 tight. Prices did run up for a short period of time,
10 just until about harvest, and at that point they began
11 taking off in the other direction due to contracts
12 that were being made and rolled forward, which was
13 imports coming in from Canada supplying some of those
14 needs and instead of being -- the Canadians had
15 realized that they didn't have the bushels to go out
16 into the export side, they backed off of that, but the
17 domestic production that they had contracted started
18 getting pulled forward because they were looking at
19 some tighter stocks. So that instead of the supply
20 and demand keeping a rise going ahead, by pulling the
21 later delivery production closer it takes that market
22 and brings it back downward again much quicker than it
23 should have.

24 VICE CHAIRMAN HILLMAN: Okay. I appreciate
25 that.

1 Given that the red light has come on, I will
2 come back to this more linked to the impact side.

3 Thank you.

4 CHAIRMAN OKUN: Commissioner Miller?

5 COMMISSIONER MILLER: Thank you, Madam
6 Chairman.

7 Let me join in thanking all of the witnesses
8 for being willing to be here today and help us
9 understand the wheat market, wheat production, your
10 industry. It's very important to us and welcome back
11 to Mr. Lee and Mr. Fisher. I think you were both here
12 in 2001 as well as your counsel, of course, for the
13 332 investigation.

14 I think I want to start on a couple sort of
15 data issues just so that I find out whether we're
16 operating on sort of the same page, if I could, data
17 issues related to volume in particular.

18 On volume, I think our staff has provided
19 you with this USDA data that we have received
20 regarding imports, looking at imports based on the end
21 use certificate information. I believe that that was
22 provided to you all late yesterday.

23 Mr. Wechsler, I know you in your testimony
24 included these Canadian imports as a share of apparent
25 consumption. I didn't know when you referred to this

1 being USDA updated data if that's what you were
2 referring to. I don't think it is, that it's just
3 sort of a back of the envelope kind of calculation.

4 MR. WECHSLER: No. No. I didn't have
5 knowledge of this handout. I have it now and I'll
6 look at it.

7 COMMISSIONER MILLER: Okay. Okay.

8 MR. WECHSLER: The USDA, when I'm talking
9 about revisions, this is totally a matter of course.
10 They come out with an initial set of numbers and much
11 like the GNP accounts and what not, they get revised
12 at least once or twice along the way.

13 The revisions that were made -- actually
14 there, was a set of revisions just before the staff
15 report that didn't get into the draft report and so we
16 were including the latest revisions the USDA announced
17 prior to our filing in the recalculations.

18 COMMISSIONER MILLER: Okay.

19 Mr. Hunnicutt?

20 MR. HUNNICUTT: And, Commissioner, I think
21 the data you're referring to -- I'm Charles Hunnicutt.
22 The data you're referring to was handed to us by the
23 staff just immediately prior to the hearing, so we
24 actually haven't looked at it yet.

25 COMMISSIONER MILLER: Okay. Okay.

1 And I heard your comment at the end of your
2 initial testimony about your view of the imports for
3 consumption and the responsibility of CWB, I heard
4 your point on that, but just as a general -- do you
5 have any reaction not to the data, but to the general
6 reliability and point of it being more reliable
7 perhaps to use the USDA data based on the end use
8 certificates?

9 MR. HUNNICUTT: I'll just have to give you
10 an initial impression, not having reviewed it. We
11 have in the past tried to reconcile U.S. Customs data
12 with end use certificate data collected and have been
13 entirely unsuccessful at ever reconciling them, so
14 I think we would have to look at it to see where it is
15 now in terms of the reliability of the data.

16 COMMISSIONER MILLER: Okay. Okay.

17 MR. HUNNICUTT: And that's not a comment on
18 the reliability either way, it's just that there's
19 something that's not connecting in the data.

20 COMMISSIONER MILLER: All right.

21 Anybody else have any -- no other comments?

22 No?

23 (No response.)

24 COMMISSIONER MILLER: Okay. Well, please do
25 take a look at it, I think it's an important issue

1 that we have to resolve to make sure we're looking at
2 the right set of numbers.

3 MR. WECHSLER: I can tell you that the CGC
4 data are really not usable. There's a timing
5 difference, they don't count Puerto Rico as part of
6 the United States. Shipments to Puerto Rico, they
7 treat as exports. There are a number of issues with
8 the CGC data that make them a woefully inadequate
9 substitute for what's available within the United
10 States.

11 COMMISSIONER MILLER: Okay. All right.
12 Well, I agree. This is USDA data we're talking about,
13 though, so we want to see what your reaction is to
14 that.

15 And then I also am interested if you have
16 any reaction to Mr. Cunningham's suggestion in his
17 opening statement that we should be subtracting U.S.
18 exports from production in calculating apparent
19 consumption because they're not truly exports by U.S.
20 farmers, they're sort of downstream, I guess I would
21 suggest, a downstream export.

22 Mr. Wechsler?

23 The other issue, data issue, that I wanted
24 you to comment on was Mr. Cunningham's suggestion that
25 we should subtract the exports -- I think I'm getting

1 this right -- or not subtract, not subtract exports
2 from production in calculating apparent domestic
3 consumption because all sales by the farmers are
4 domestic sales and it's sort of a downstream export.
5 I may be characterizing that incorrectly.

6 MR. WECHSLER: I would characterize that as
7 a clown show, a circus act by Mr. Cunningham. We'll
8 show you a flow chart of where wheat goes. It's not a
9 question of the elevators changing this into another
10 product and the product becoming used for multiple
11 different uses. There are direct flows of 100 percent
12 wheat through this situation.

13 If Mr. Cunningham were going to pursue this
14 argument logically, then he should have said that the
15 CWB shouldn't have had a questionnaire and you should
16 have sent your questionnaires to Canadian farmers, the
17 point being that the commission wanted to get
18 head-to-head numbers. It's done that in various ways.

19 The argument is a legal slight of hand
20 rather than economic argument, an analytical one, and
21 if you accept that, then why don't you throw out the
22 purchaser questionnaires? They're not producers,
23 they're just mid-level people, what do they tell you?
24 They're not part of this industry, according to that
25 approach either.

1 I think it's a jest, really.

2 COMMISSIONER MILLER: Okay. Well, since
3 Mr. Cunningham led with it this morning, I think it's
4 an important argument for you all to respond to.

5 Then let me go on and ask a little bit more
6 about prices or go to the issue of prices and it
7 relates to exports as well because I'm interested
8 in -- and I think Vice Chairman Hillman was beginning
9 to do some of this, ask some of these questions about
10 U.S. prices, U.S. producers as exporters and the world
11 market prices. And much of the argument of the
12 respondents is that there is a world market price and
13 U.S. production is part of that, Canadian production
14 is part of that, all the world producers of wheat all
15 make up that U.S. price.

16 Now, Mr. Hunnicutt, I listened to your
17 comments at the end of the testimony about what the
18 Canadian Wheat Board itself has said about the U.S. as
19 a premium market, so I heard you there, but I'd just
20 like to have a better understanding if I could as to
21 do you as -- you've talked about each of your own sort
22 of marketing operation, how you are following world --
23 not world, you follow market indicators to think about
24 what your prices are going to be and what you ought to
25 be doing in response to what you expect, tell me a

1 little bit about how the world market plays into that
2 and whether you're mostly looking at what's just going
3 on in the U.S. and Canada, how much you're looking at
4 what's going on worldwide, how much of a difference,
5 if any, do you see?

6 I mean, just tell me each of you as
7 marketing entities in and of yourselves how you
8 observe all of this.

9 MR. FISHER: Neal Fisher, North Dakota Wheat
10 Commission. The price that ultimately gets paid to
11 the producer at the elevator certainly is made up of a
12 number of sources and results of markets, but there
13 are very independent pricing opportunities in the
14 domestic and in the world market. You sell at premium
15 prices in Italy in Japan, you might sell for lower
16 prices other places. That's not the job of the
17 producer, but he is watching those kinds of things as
18 the marketing year progresses.

19 I would not subscribe to the theory that
20 there is a world price for durum or spring wheat under
21 any circumstances because the market is made up of
22 many opportunities for sales, both domestically and
23 export.

24 COMMISSIONER MILLER: Okay. Anybody else?
25 Mr. Birdsall, would you like to --

1 MR. BIRDSALL: Yes. Mark Birdsall. When it
2 boils down to durum specifically, when I sell my
3 durum, it comes down to the fact that locally I go in
4 and I try to get the best price I can and that price
5 is based on local mills because we're in the best
6 position to supply it. And when bushels come in from
7 another country that offset mine, it costs me price.

8 MR. SZAMOSSZEGI: If I just may quickly add
9 to that, I'm Andrew Szamosszegi and I'm with OECG, in
10 different proceedings in front of the Commerce
11 Department, the board stressed that this is a North
12 American market with different dynamics than the world
13 market, so it's -- we can't understand how in front of
14 this body in turn they argue that it's one price and
15 the price here reflects prices everywhere else. It's
16 much more complicated than that. There are specific
17 North American dynamics driven by largely Canada and
18 the United States.

19 MR. WECHSLER: Drew Wechsler. If I could
20 add to that, there are two things going on here: one
21 is a logical comparison, are the claims by the CWB
22 consistent in this hearing with elsewhere and there's
23 a substantive question, is there a single price in
24 effect worldwide?

25 Mr. Boltuck's operation which prepared their

1 co-integration piece did not quote this from one of
2 the key articles and sources he cited. Barry
3 Goodwin's statement in the opening introduction to the
4 article which Mr. Boltuck uses or CRA uses with no
5 author's name on it, "The law of one price has been
6 studied extensively in international commodity
7 markets. The empirical evidence has overwhelmingly
8 concluded that adherence to it is limited."

9 Now, the question is what's going on in
10 wheat?

11 There is an array of prices, there is a
12 constantly moving relationship among that array. They
13 don't move in lock step, but they are related.
14 They're related across all classes and across all
15 countries that trade with one another in any fashion.

16 The analytical question, the challenge, is
17 does that defeat the ability for conditions in one
18 particular market to diverge significantly to allow,
19 for instance, in this forum material injury due to
20 subsidies and dumping in that market. And all
21 studies, including the one of the VAR study that was
22 submitted by CWB, have shown that the integration is
23 sufficiently imperfect, that it allows substantial
24 other things to happen in the markets. Some markets
25 are characterized, for instance, by substantial

1 negotiation of the prices.

2 CHAIRMAN OKUN: Mr. Wechsler, you can't see
3 the red light, but it's been on for some time.

4 COMMISSIONER MILLER: I was just going to
5 actually catch him on that, but I also was going to
6 note --

7 And I will come back to you, Mr. Lee,
8 because I saw you reaching for the microphone. I will
9 come back to you next time and give you an opportunity
10 to respond to the question as well.

11 Thank you.

12 CHAIRMAN OKUN: Commissioner Koplan?

13 COMMISSIONER KOPLAN: Thank you, Madam
14 Chairman.

15 This might be dangerous, but I'm going to
16 start with you, Mr. Wechsler. I know I only have ten
17 minutes on this round.

18 If I could lead off, and I want to thank the
19 witnesses for their direct presentation and their
20 answers to the questions thus far, but if I could lead
21 off first with page 11 of your submission that is
22 headed the Canadian Wheat Board is the price leader?
23 I've looked at that and I just want to call your
24 attention to something. I'm sure that you've looked
25 at it, but it's not reflected in what you're saying,

1 and that's the section of the staff report that deals
2 with price leadership and that's in Chapter 5 of the
3 staff report at pages 4 and 5 of that chapter.

4 Let me save a little bit of time for you,
5 I have it in front of me, and it states that -- the
6 only thing that's BPI in there are the identities of
7 the purchasers who have responded, otherwise, it's all
8 public in that section.

9 It says "The commission's purchase
10 questionnaire asked if durum hard red spring and hard
11 red winter winter wheat markets had price leaders."
12 This ties into your submission.

13 "Eight purchasers reported that there were
14 no price leaders in the durum wheat market, three
15 reported that there was a price leader."

16 And it goes on and it says, "All 13
17 responding purchasers reported that there was no price
18 leader in the hard red spring wheat market.
19 Similarly, all 13 responding purchases reported that
20 there were no price leaders in the hard red winter
21 wheat market."

22 It goes on and says, "The commission's
23 purchaser questionnaire asked if the Canadian Wheat
24 Board, any other foreign exporter or any U.S. grain
25 company influenced prices in the U.S. markets for

1 durum wheat, hard red spring wheat or hard red winter
2 wheat and responses were as follows: four
3 affirmative, seven negative for durum wheat; four
4 affirmative, nine negative for hard red spring wheat;
5 and three affirmative and 10 negative for hard red
6 winter wheat."

7 When I look at that and I look at your
8 submission, they seem to contradict each other and
9 I don't know the source as you've laid this particular
10 page out, but certainly the questionnaire responses
11 don't seem, from my standpoint, to support that and
12 I wonder if you took that into account or wonder if
13 you might comment on that now.

14 MR. WECHSLER: Yes. And I'll try to do it
15 very briefly. I read the staff report. I was making
16 my judgments on additional factors, the size of the
17 board and the fact that they -- and I don't think the
18 staff report -- the staff report is reporting what
19 purchasers are reporting to you in the questionnaires.
20 I don't think the purchasers considered the
21 disproportionate dependence of the Canadian Wheat
22 Board on forward contracting compared with U.S. grain
23 sales and forward contracting seems to me to be a
24 factor that provides a basis for having price
25 leadership when it is not distributed uniformly among

1 all participants, so it's a separate judgment.WPWPCCO

2 The second point would be that I don't think
3 price leadership is dispositive in this case.

4 COMMISSIONER KOPLAN: Well, I'm not saying
5 that. I'm saying that in looking at that table and
6 then looking at the staff report -- I hear what you're
7 saying, but I have to rely on the information that we
8 gather and certainly sending out purchaser
9 questionnaires is common to determinations of this
10 nature. And so I appreciate your response, but if you
11 could expand on that for the post hearing, I would --
12 I'm not trying to cut you off, but I would appreciate
13 anything else you might give me on that.

14 MR. WECHSLER: I'm happy to do so.
15 Thank you.

16 MR. SMITH: Commissioner Koplan, I'm sorry
17 to interrupt. I'm Vince Smith, professor of
18 agricultural economics at Montana State University.
19 Drew did not cite in the report the results of two
20 studies because they occurred outside of the period of
21 investigation, but an early study by Barry Goodwin and
22 Matt Holt, both professors at North Carolina State,
23 and myself looked in detail at the times series
24 properties of internationally traded wheats and we did
25 find fairly consistent evidence that shocks to the

1 price of wheat out of Canada generated further shock
2 in wheat prices in other countries, both in the U.S.
3 and elsewhere in the world.

4 We used what are called impulse response
5 functions to look at this. That is, we said, all
6 right, what if the Canadian Wheat Board raised its
7 price or lowered its price by a certain amount, do we
8 see that transmitted into other markets? And the
9 answer was generally yes. There was very much weaker
10 evidence that shocks flowed from Australia, the U.S.
11 and the European markets into the world markets in the
12 same way.

13 Now, this is an older study based on data
14 running from about 1985 to 1994, so you've got to be
15 careful on this.

16 WPWPCCIn addition, a study that was not
17 cited by the Canadian Wheat Board in their time series
18 analysis by --

19 COMMISSIONER KOPLAN: If I could just break
20 in for a second, understand that when I look at data
21 there is a period of examination that we look at and
22 that's triggered by when a case is filed and so there
23 are statutory windows in effect that we're looking
24 through. I appreciate what you're saying, but if it's
25 way outside that period, I have to rely on the data

1 that falls within the window.

2 MR. SMITH: Commissioner, we do understand
3 that, but there are a couple of studies that have
4 looked at the wheat board since the Canadian Free
5 Trade Agreement that have found evidence of some price
6 leadership -- or it's better to say evidence
7 consistent with price leadership. The board itself
8 consistently claims that it is itself the price
9 leader. I was surprised to see it still has on its
10 home page the statement "We use our single desk
11 selling power" or something like that to essentially
12 manage world markets.

13 Lorne Hehn in 1993 and '94, who was then the
14 chief commissioner of the wheat board, made exactly
15 the same sort of claim.

16 COMMISSIONER KOPLAN: Thank you. Perhaps
17 you could get together in your post-hearing response
18 and I would appreciate your combined post-hearing
19 submission on that point.

20 Just for a moment before I go on to some
21 other questions, on page 18, Mr. Wechsler, your
22 criticism of the CWB's VAR analysis; quite frankly,
23 I've discussed that with staff. This came in,
24 I guess, August 28th to us and I've got perhaps a fair
25 amount of questions on that this afternoon, so my only

1 request of you is if you could pick up on what you've
2 -- when I plant durum, I plant for the domestic
3 market. I do everything I can because I know if I can
4 meet that market, they're a very selective market,
5 they have high demands, and if I can meet their
6 quality parameters, I'm going to do very well in the
7 export market.

8 In spring wheat, I look at it a little bit
9 differently. I know that Japan, Korea and Taiwan are
10 very discerning markets and they probably have the
11 highest standards that our local elevator tries to
12 meet because a fair amount of our wheat goes to the
13 export market.

14 WPWPCCSo I make my selections. I look at --
15 NDSU and the North Dakota Wheat Commission run a
16 variety of study trials and they put out a booklet
17 that tells us what the best wheats are for milling and
18 baking characteristics as well as agronomic and I look
19 at those things and I try and select two or three that
20 fit my area, four or five that are in the category
21 that's recommended.

22 My local elevator manager is very careful to
23 try to recommend that all of us as growers produce
24 these wheats because he knows that -- the Japanese
25 trade team was there the other day, they're there,

1 they're looking at varieties and they're very
2 interested in what we produce. So he tries to steer
3 us all along that same line.

4 So I think in the spring wheat market, if
5 I have to grow spring wheat, I try and grow a variety
6 that will meet the export demand and it will also do
7 very well on the domestic side, and then durum is the
8 other way, I look at the durum market as being the
9 price leader for domestic. We produce for premium
10 markets and that's the way we make our selection

11 MR. LEE: As to what the price actually is,
12 we produce a high-quality wheat. I'm going to get a
13 premium. If I produce a high-quality durum, I'm
14 normally going to get a premium.

15 COMMISSIONER MILLER: Okay. I appreciate
16 that.

17 I don't know if anybody else, any other
18 producer that didn't have an opportunity -- Mr. Klein,
19 did you want to respond to that? I don't think you
20 did earlier. I don't know if you want to add
21 anything. I just want to give you an opportunity if
22 you do want to.

23 MR. KLEIN: Harlan Klein. A lot of the
24 parameters are the same for me. We're looking at I'm
25 a predominantly hard red spring. We have to look at

1 the export market because there is a large percentage
2 of hard red spring that gets exported, but we are
3 looking at both, and we look at the premium markets,
4 as Mr. Lee had just said. They are our premium
5 markets. If we can meet those, they're as stringent
6 specifications as domestic mills require, so our
7 parameters will fit both situations.

8 It just gives us -- if the domestic mills
9 have enough production then it can be taken into the
10 export market, so it gives us that extra latitude to
11 be looking for a different market, but we are looking
12 for the premium markets trying to maximize the amount
13 of money, the income that we can receive from the
14 products that we produce because of the quality that
15 we're putting out there.

16 COMMISSIONER MILLER: The way you described
17 that, it's almost as though you're anticipating or
18 hoping at least for higher prices in your export
19 markets because it's a premium market, or you'd like
20 to produce a product that you think will meet that
21 kind of standard and I assume, therefore, receive a
22 higher price for it?

23 MR. KLEIN: Right. We're looking for
24 producing that top quality so it has the avenues of
25 going two different directions. Because you have the

1 ability to market in several different directions, you
2 do not have to take the lower bid because our
3 elevators and so forth are looking with the qualities
4 that they have.

5 The people who want the high quality
6 generally will come in and look at we can procure this
7 high quality. We are more willing to pay a premium
8 for that because we know exactly how it's going to
9 work, how it will fit into our mills, its milling
10 characteristics. Those will be consistent for what
11 they want, so they specify protein premiums, dockage
12 levels, cleanliness to levels that are very low, and
13 we look to meet those.

14 COMMISSIONER MILLER: I may come back with
15 some more questions after I think about the answers
16 I'm hearing from you.

17 Let me ask some questions or have you all
18 address a bit further the questions of the competition
19 between hard red winter and hard red spring wheat if I
20 could, those of you who are in that industry or who
21 are producers of hard red spring in particular.

22 You know, much of the record gives me the
23 impression that we essentially compete pretty equally
24 if they're at the same protein level. I mean, if the
25 protein level is the same, are they substitutable?

1 The Respondents certainly would have us believe that.
2 I guess I would describe you all as describing them a
3 little bit more as complementary because of the
4 blending issues and the objective of not the elevator,
5 but the millers being to reach a certain protein level
6 perhaps in their flour.

7 Mr. Fisher, your testimony addressed this
8 pretty extensively, but, you know, I guess I'm just
9 trying to make sure I understand the degree of this
10 substitutability or not.

11 MR. FISHER: Thank you, Commissioner Miller.
12 Neal Fisher.

13 These two classes of wheat are definitely
14 not direct substitutes. I think I cited a number of
15 examples that would indicate that the industry,
16 farmers, USDA, the Grain Inspection Service, any
17 exporter or any miller keeps them distinctly separate.

18 Now, they may use them in the same mill
19 grist, but they want to know exactly the proportions
20 that are in there because of the functionality of the
21 two, and that's the issue, the separate, very
22 distinctly separate functionalities of the two wheats.

23 We talk about farina graph curves. We talk
24 about absorption levels and loaf volume as the
25 performance characteristics, and they're very

1 different between spring wheat and durum or spring
2 wheat and hard red winter wheat.

3 I'm sorry. As producers, as marketers, we
4 never talk about them in the same -- casting them in
5 the same light or for the same purposes. The overlap
6 that you would see is a complementary rather than a
7 substitutability issue.

8 COMMISSIONER MILLER: You know, I hear you
9 all saying that. Tell me. If that's the case, don't
10 you see prices of the two of these, these two
11 products, moving so closely in tandem? I mean, why
12 does it appear that the prices are so closely related
13 if they are so different?

14 MR. FISHER: Again, Neal Fisher. If I might
15 answer that?

16 There are probably going to be some
17 similarities in the price patterns of almost any
18 commodity. As you look at the drought that affected
19 the area in the central United States last year, the
20 prices of the commodities produced in that area tended
21 to track each other. All things produced there went
22 up. In the ensuing year, all things went down, so
23 there's a tracking in all of these commodities.

24 In terms of the difference in spring wheat
25 and winter wheat, even durum to some extent, which has

1 a distinctly different end use, may track to some
2 extent the other classes of wheat, but that does not
3 indicate a substitutability issue in that case for
4 certain.

5 MR. WECHSLER: If I may add, the staff
6 report at I-10, the prehearing report, reports that
7 over the three year POI the price of 13 percent hard
8 red winter averaged -- that's a long period; there's a
9 lot of data points -- \$3.69 a bushel. The same 13
10 percent protein hard red spring wheat averaged \$3.81.

11 That's more than a five percent price
12 differential over a three year period averaging the
13 different movements there. One has to explain the
14 source of a persistent price differential in the very
15 same market or a long period of time if they're
16 perfect substitutes. If they're interchangeable, you
17 wouldn't see a five percent price difference. That's
18 just the average.

19 At various times you see it more or less,
20 but it's saying that there are a significant set of
21 differences, and end uses are the only thing that can
22 account for that persistent difference in the U.S.
23 market at the same protein level, and the differences
24 in end uses are in fact dictated not just by protein,
25 but by all those other product characteristics.

1 COMMISSIONER MILLER: You know, I can look
2 at the tables or the charts on Roman V-10 and 11, and
3 durum looks pretty different, and spring and winter
4 look -- it's a shorter period of time.

5 I take your point. I mean, there appears to
6 be over time a fairly consistent difference between
7 spring and winter, but these two tables show me them
8 moving so much together in terms of the way they turn.

9 I know the red light is on, and I'll
10 continue to puzzle over it. I may have to come back,
11 but this time I better, particularly since Mr.
12 Wechsler was indicating, and I'm not going to let him
13 continue at this point in time.

14 I see Mr. Fisher wants to talk, but I'm
15 going to have to come back to Mr. Fisher.

16 CHAIRMAN OKUN: Commissioner Koplan?

17 COMMISSIONER KOPLAN: Thank you, Madam
18 Chairman.

19 Let me pick up, if I could, with where
20 Commissioner Miller is going with this. In our
21 preliminary determination, we acceded to your request,
22 and we defined hard red spring wheat as a separate
23 like product. It doesn't include hard red winter
24 wheat, but we noted that the issue was a close one and
25 that we were going to explore it further now.

1 Although I dissented from the affirmative
2 preliminary determination, I did join in the like
3 product portion of the Commission's views, and both
4 the Canadian Wheat Board and the North American
5 Millers' Association continue to urge us to find that
6 hard red spring wheat and hard red winter wheat should
7 be combined for purposes of our like product.

8 For example, in their prehearing brief, NAMA
9 argues that their analysis of each of the six factors
10 that we look at -- physical characteristics and uses,
11 interchangeability, channels of distribution,
12 production processes, facilities and employees,
13 producer and customer perceptions and price -- they go
14 through each of those, and they provide I think some
15 persuasive support for their position.

16 In its prehearing brief, the CWB states that
17 roughly 60 percent of responding purchasers reported
18 that either hard wheat class could be substituted for
19 the other in its end uses. That's in their prehearing
20 brief at page 70 citing to purchaser questionnaire
21 response to question Roman numeral III-7-B and
22 III-7-C.

23 All of that gets me to just this. Don't the
24 dividing lines blur between these two products when in
25 a given crop year their protein levels overlap and

1 become basically the same?

2 I hear what you're saying, Mr. Wechsler,
3 with that differential that you cited, but, frankly,
4 it seems to me that they do blur when these protein
5 levels overlap and become basically the same.

6 I'd like to hear. I don't want to beat this
7 to death, but I'd like to hear a bit more from the
8 domestics on this, or perhaps you might want to walk
9 through the six factors for purposes of the
10 posthearing. Which would you prefer, Mr. Hunnicutt,
11 because I'm not there.

12 MR. HUNNICUTT: Correct. I understand.

13 COMMISSIONER KOPLAN: I'm struggling with
14 this issue.

15 MR. HUNNICUTT: I guess is that an
16 either/or, or can we do both? We would be delighted
17 to walk through them again in our posthearing
18 submission for you, but I think Mr. Wechsler may have
19 some things to add on elasticities.

20 COMMISSIONER KOPLAN: Well, I think I
21 understand when we're talking about the elasticities,
22 but I think I'd like to hear from the domestics on
23 this point and then for purposes of the posthearing
24 you and Mr. Wechsler can put together something that
25 analyzes the rest.

1 MR. HUNNICUTT: Yes, sir. Very good.

2 COMMISSIONER KOPLAN: Thank you.

3 Mr. Fisher, I see you started to put your
4 hand up.

5 MR. FISHER: I apologize for that,
6 Commissioner Koplan.

7 COMMISSIONER KOPLAN: Don't apologize.

8 MR. FISHER: Maybe there are a couple of
9 other examples that we could strengthen a little bit,
10 some of the points that we've made thus far.

11 For example, last winter when the protein
12 premium, which seems to be somewhat of an issue here,
13 when the protein premium between the two classes was
14 relatively flat, which would indicate that maybe there
15 wouldn't be a lot of demand necessarily for high
16 protein wheats at that time because they were
17 available, there still was a 50 cent class premium at
18 the Gulf market, for example, and somewhat closer to
19 35 or 37 cents at the Pacific Northwest market.

20 This indicates that even though, you know,
21 that the proteins might have been closer than in some
22 other years, which was influenced by the drought in
23 Kansas, Oklahoma and so on, that here still was a
24 distinct preference, to the tune of 50 cents at the
25 Gulf and 35 to 37 cents at the Pacific Northwest, for

1 the spring wheat, specifically for the spring wheat.
2 That's why they bothered at the Pacific Northwest
3 market, the Gulf, based off the Minneapolis and the
4 Kansas City boards, to separate the two.

5 Also, if you go to either of the elevators
6 that are represented here at Berthold or Elgin that
7 our two farmers in the front row or three farmers in
8 the front row represent here, you'll find them
9 segregating those two classes of wheat. They don't
10 mix them.

11 Someone used the term contaminant. I'm
12 hesitant to do that, but they do not mix them for
13 purposes of marketing. There are penalties for that
14 in the Federal Grain Inspection Service in the grain
15 standard. It's called wheat of other classes. That
16 is a discount factor, a severe one.

17 Each miller, as he imports or buys in the
18 domestic market and puts his mill grist together,
19 wants to know exactly what those properties are. He
20 may mix them like blue and yellow to get green, but he
21 doesn't want green. He wants the blue and the yellow.

22 That's something that I think speaks very
23 strongly to that is that they do not allow mixing of
24 these classes of wheat in the system. There are
25 specific grading standards for each class, and I think

1 that denotes a distinct separation of the two.

2 We can address -- certainly there are many,
3 many more volumes of evidence as to why this is the
4 case, and we can submit that certainly in posthearing
5 as you suggest.

6 COMMISSIONER KOPLAN: Thank you. I
7 appreciate that. I also look forward to the
8 posthearing on it.

9 If I could come back to the question I had
10 in the last round, and perhaps I'd like to give the
11 domestics an opportunity to comment on this and I
12 could hear from Mr. Wechsler further in the
13 posthearing on it, but I had stated that in my
14 preliminary views I found that the increase in the
15 volume of subject imports of durum wheat during our
16 period of examination wasn't large enough, in my
17 opinion, to have caused the large decrease in domestic
18 production, and I made the finding in part because
19 domestic farmers reduced their acreage planted before
20 the increase in the volume of subject imports occurred
21 in 2001 and 2002.

22 If anything, I said the latest data relating
23 to the volume of subject imports by quantity make them
24 look less significant over the period of examination
25 than they did last November because now I'm looking at

1 a 15 percent increase rather than 23.3 percent during
2 the current window I'm looking at.

3 Moreover, domestic production went down
4 during the period nearly 28 percent. The quantity of
5 U.S. inventories has declined further. Over the
6 period they've declined 85 percent, so I'd like to
7 hear some comments from either you, Mr. Fisher or Mr.
8 Birdsall or any of the industry witnesses that are
9 here on how you think I should be arriving at a
10 different result.

11 Mr. Birdsall?

12 MR. BIRDSALL: Mark Birdsall. I guess I'm
13 pretty specific to durum. That's what I raise. When
14 I looked at the ability and the prospects of the
15 Canadian crop --

16 COMMISSIONER KOPLAN: This is durum I'm
17 referring to.

18 MR. BIRDSALL: Yes.

19 COMMISSIONER KOPLAN: Okay.

20 MR. BIRDSALL: Durum, the Canadian crop.
21 That has a huge impact on my decision of what I'm
22 going to raise.

23 When I know their imports can come in here
24 basically unrestricted, I have a real hard time
25 putting a lot of my acres to durum because I know that

1 any price appreciation is going to be tempered. I
2 think that that ability and knowing that it could
3 possibly be a 180 million bushel crop up there that
4 would have access to my domestic market which I
5 target, that has a huge impact. I do not know how
6 much of that is going to come in, and it has a huge
7 impact on my decision.

8 COMMISSIONER KOPLAN: What did the loss of
9 the CRC program have on your decision? When I look at
10 acreage planted in the first crop year of our period
11 of examination, I see a drop from the first year from
12 3.9 million acres to 2.9 million in the second and
13 third years of our period of examination in the
14 production. Didn't that have any impact at all on
15 you?

16 MR. BIRDSALL: Are you referring to the CRC
17 insurance program?

18 COMMISSIONER KOPLAN: Yes. Yes.

19 MR. BIRDSALL: In my case, absolutely not.

20 COMMISSIONER KOPLAN: It didn't?

21 MR. BIRDSALL: There was some instances in
22 1999 where that did play a factor in non-traditional
23 areas because there was some durum produced there, but
24 in my case absolutely not. It didn't have an effect
25 on my acreage because I was growing durum for quality

1 and for the domestic market.

2 COMMISSIONER KOPLAN: But this took place in
3 2001, didn't it, the CRC program being dropped?

4 MR. BIRDSALL: The CRC program was
5 instituted in 1999. It was modified in 2000 and then
6 completely dropped in 2001, but it did not have an
7 effect on my durum acreage --

8 COMMISSIONER KOPLAN: It did not?

9 MR. BIRDSALL: -- and bid.

10 COMMISSIONER KOPLAN: Okay.

11 MR. FISHER: Commissioner Koplan, might I
12 add just a brief comment to the CRC discussion?

13 COMMISSIONER KOPLAN: Yes.

14 MR. FISHER: Neal Fisher. I think it's
15 interesting. When we look at the CRC and the year of
16 implementation that Mr. Birdsall has mentioned that in
17 the year of its implementation durum acreage increased
18 only I think it was 200,000 acres from 3.8 million to
19 four million acres.

20 It didn't have a great impact on the upside
21 in terms of its implementation, so I guess in my mind
22 I'm finding a hard time linking it then to the decline
23 two years later directly to that decline that you have
24 referred to in the 2001 year.

25 COMMISSIONER KOPLAN: I think there was

1 testimony, just to close quickly on this. I think
2 there was testimony earlier that you all make a
3 decision in January of each crop year as to what
4 you're going to do in the year in front of you, that
5 you're anticipating. You're kind of betting on what
6 the situation is going to be.

7 Knowing that this happened, wouldn't that be
8 factored in when you next come around to decide what
9 you're going to do, whether you're going to shift
10 product?

11 MR. FISHER: Certainly to answer that, there
12 are a multitude of things that are factored in in that
13 period from probably in December, January, February as
14 they begin to decide and make those decisions --
15 watching the market, watching the prices, watching the
16 behavior of your competitors.

17 COMMISSIONER KOPLAN: So wouldn't this be
18 one factor?

19 MR. FISHER: It may have been a factor of
20 consideration. I still find the linkage to that
21 entire decrease to be somewhat questionable.

22 COMMISSIONER KOPLAN: Thank you.

23 Thank you, Madam Chairman.

24 CHAIRMAN OKUN: Thank you.

25 I want to return to this hard red spring/

1 hard red wheat, but from a little different
2 perspective, which is for my question I want you to
3 assume that I'm going to stay with saying they're not
4 the same like product. They're two different like
5 products.

6 What I'd like a response to is, okay, if I
7 say they are two different like products and I look at
8 these same pricing charts that Commissioner Miller was
9 looking at in the staff report on V-10 and V-11 and
10 you see how closely hard red spring and hard red wheat
11 move, and again assume over this longer period there's
12 a premium because of the different proteins.

13 My question is how do we evaluate where
14 imports play a role for hard red spring? When I see
15 their prices, it's the prices of hard red spring
16 moving, you know, very closely with hard red wheat
17 where you don't have the case of the Canadian imports.

18 Actually, I'm going to ask the farmers to
19 respond first, Mr. Wechsler, and then you can respond
20 from your perspective.

21 MR. KLEIN: Well, in my area there's a very
22 small amount of hard red winter that does get
23 produced. In fact, once in a while I dabble in it,
24 depending upon what the growing conditions are like.

25 The two wheats are very different in the

1 fact they will grow in similar patterns. You use the
2 same equipment to grow it in that respect, but their
3 uses. When we harvest that crop, there's two
4 different timeframes. Winter wheat is generally
5 earlier than the spring wheat, meaning we plant it in
6 the fall so it's the first thing out of the ground.

7 When we harvest that, it is totally kept
8 separate. We take it to the elevators. It gets sold
9 separately. It's classified hard red winter wheat.
10 The prices on our board are different. We have hard
11 red winter for different protein levels, just like we
12 have hard red spring for different protein levels.

13 The general thing that happens, though, in
14 our area is the protein levels of hard red winter are
15 always going to run two, three to four percent lower
16 than hard red spring. When you take that into account
17 what we grow in a year, in a given year you'll run, as
18 an example, probably if you've got a fairly drier year
19 you've got probably 10 or 11 protein winter wheat.
20 You'll be running 14 or 15 percent protein spring
21 wheat. A very big difference in those wheats to the
22 producer, and they are very different in that respect.

23 CHAIRMAN OKUN: Okay. Again, I take the
24 point on the differences. What I'm trying to
25 understand, and I think it goes back to my earlier

1 question, which is whether trying to evaluate the
2 impact of imports on hard red spring prices isn't
3 harder to discern than in durum where you don't have
4 -- I mean, I guess in hard red spring you've got the
5 exchanges where you've got the futures market.

6 I mean, it seems to me, I guess, the more I
7 hear the more I think that you kind of have distinct
8 ways in which these prices are being set, and so I'm
9 trying to understand from you whether you think that's
10 not accurate, that you are going to feel the same
11 import pressure from Canadian imports than the durum
12 where it's more thinly traded. That's kind of at the
13 heart of what I'm trying to get at. These charts on
14 hard red winter had made me think about it.

15 Mr. Fisher, anything else to add? I know
16 Mr. Wechsler has that microphone. He's ready to go.

17 MR. FISHER: I apologize for taking the mike
18 away.

19 CHAIRMAN OKUN: We gave this option, by the
20 way, to the economist, so don't think we're picking on
21 him. We try to hear from you first and then let the
22 economist come in.

23 MR. FISHER: Thank you, Chairman Okun. I
24 think that still the biggest difference is the
25 distinctly different uses, the different bidding

1 arrangements. All of that speak very highly to the
2 differences.

3 Whether there's more sensitivity in durum,
4 it is a smaller commodity, but spring wheat is very
5 much a specialty wheat as well, and that's why we sell
6 it in a hundred countries around the world and very,
7 very aggressively in this market, the domestic market,
8 as an improver wheat.

9 That's not what hard red winter wheat is
10 used for, and so I think you're on the right track in
11 keeping them distinctly separate.

12 CHAIRMAN OKUN: Okay. Mr. Wechsler?

13 MR. WECHSLER: I would take exception. You
14 do beat up on economists, but that's what we're here
15 for. We just get beat up on last.

16 Certain things are arguable, and certain
17 things are decided by the facts. The prehearing
18 report is decisive on this in certain places, although
19 they've taken great care, the staff, not to preclude
20 the Commission from the freedom it likes to have in
21 pursuing these questions at hearing and then reaching
22 independent decisions.

23 At II-23, Elasticity Estimates, they are
24 independent of the current controversy and based on a
25 study of how demand behaves for hard red spring wheat

1 are reported there. They're not guesses. They're not
2 the normal elasticity estimates. These are actually
3 ones empirically found in the literature.

4 For hard red spring wheat, the demand is
5 very inelastic, from $-.47$ to $-.21$. You cannot have
6 highly inelastic demand for hard red spring wheat if
7 hard red winter wheat is a good substitute. It simply
8 can't happen.

9 When the Commission staff estimates
10 elasticities in cases where there isn't a literature
11 basis for providing precise estimates like there is
12 here, one of the factors it determines it looks at,
13 and you can determine this in independent discussions
14 with your staff.

15 One of the key factors it looks at in
16 whether it provides an elastic or inelastic estimate
17 is whether there are any close substitutes outside the
18 like product or outside that product. If there are
19 close substitutes, they are going to come up with a
20 more elastic demand. The literature is clear on this.
21 The prehearing report is clear on this.

22 Let me bring up another issue. I was
23 debating it because you suffer under a lot of
24 complicated things being submitted here today and more
25 to come in the afternoon.

1 The question of blending and whether the
2 blends are fixed or vary according to price has been
3 an issue. In the preliminary, the millers supported
4 basically fixed blends, and those were reported, using
5 the language in the staff report a few pages hence
6 from here, notwithstanding the differences in prices
7 and whatnot, and I'm paraphrasing now, but the blends
8 are largely fixed.

9 Now they're claiming the blends vary
10 according to price, and the information, if you look
11 at it in the purchaser questionnaires as now provided,
12 shows variance in the blends from certain millers
13 without the quantities estimated from year to year
14 based on the changes in characteristics that they're
15 claiming in the relationship between HRW and HRS.

16 One miller reports something, and I'll fuzz
17 it up a bit, where it was 50/50 in one year. It's
18 49/51 in another. Another miller says in this
19 particular use it was 70/30 one year, and it was 60/40
20 in another. That evidence is misleading on the
21 question of substitution too, because the question of
22 substitution can cross years.

23 CHAIRMAN OKUN: Okay. I'll let you expand
24 in that posthearing. I know the argument you're
25 trying to make is slightly different than where I'm

1 trying to go, so you can expand posthearing, but there
2 are a couple other things I want to cover.

3 One relates now to the demand side for these
4 wheats, and one of the things that I'm interested in
5 is what the decline in apparent consumption means, you
6 know, what that means in this market and then also how
7 that relates with the product where you have exports
8 both in durum and the hard red spring side when the
9 information that I saw in Petitioners' brief -- I
10 believe it was Exhibit 31 -- with regard to worldwide
11 demand for wheat, which was going up.

12 That, as I recall, wasn't broken out by
13 wheat classes, but I wondered if you could comment on,
14 you know, how you as farmers, and specially maybe, Mr.
15 Klein, you because you were talking about actually
16 growing for the export market, how you think that
17 plays right now in prices.

18 My yellow light is on, so you can say some,
19 and I'll come back.

20 MR. KLEIN: We look at where the demands are
21 going to be. Like I stated before, we do try to
22 produce for the domestic market. The export market
23 carries a lot of the same characteristics that people
24 are looking for -- very high quality, very high
25 standards, and they're interchangeable between the

1 two.

2 If the export market picks up where there's
3 bigger demand, it should then increase the want of
4 that grain within the U.S. also, so it should bring up
5 the domestic market at the same time. They should
6 both carry, you know, in a direction simultaneously
7 and vice versa. If there's big demand here, that
8 should shore up the export market demand that's going
9 overseas.

10 CHAIRMAN OKUN: Okay. My red light has come
11 on. I have some other questions on that, but let me
12 come back to them.

13 Let me turn to Vice Chairman Hillman again.

14 VICE CHAIRMAN HILLMAN: Thank you. I guess
15 if I could just follow up a little bit for you to
16 comment as well on this issue of sort of what our
17 numbers tell us in terms of what consumption has done
18 and what your perception is sort of going forward?

19 I mean, I do find it striking for a product
20 like hard red spring wheat, which presumably, you
21 know, goes into a lot of end uses, but where at least
22 our data would show this very significant decline in
23 overall apparent consumption.

24 Again, I realize there's a lot of things
25 that go into calculating U.S. consumption, U.S.

1 apparent consumption, but this 33 percent decline over
2 this period that we've looked at is very substantial;
3 not quite as large a decline in our numbers on durum.

4 I wondered if you all can comment on how
5 that affects you? I mean, are you well aware that
6 there is this big downturn in consumption? How does
7 it affect you in terms of your production or your
8 prices, and does it say anything to you about what's
9 likely to happen over the sort of near or long-term
10 future in terms of consumption of the product?

11 MR. HUNNICUTT: You're talking domestic
12 consumption?

13 VICE CHAIRMAN HILLMAN: Correct.

14 MR. HUNNICUTT: Yes.

15 VICE CHAIRMAN HILLMAN: Domestic
16 consumption.

17 MR. KLEIN: Okay. If the decline is there
18 in the domestic consumption, that's where the increase
19 and, if I'm understanding right, the worldwide
20 consumption is increasing from the numbers that we see
21 through commissions and so forth.

22 That's where if we have a lower consumption
23 rate here we're looking at trying to move it into the
24 export market because we're looking at whatever we
25 produce we need to get it consumed some way, and the

1 more of it that we can get consumed should be what
2 drives that price factor.

3 If we are shipping it, whether it's domestic
4 or whether it's export markets, all that wheat is
5 going out. If we've got wheat coming in from another
6 source, that means there has to be -- that uses up
7 some bushels that are here that should go to one of
8 those two places.

9 If there's wheat coming from the north into
10 our domestic mills, that means some of our wheat is
11 not going to go there. It's got to go then onto the
12 export side, and that lowers our number of bushels
13 that go into the domestic market.

14 VICE CHAIRMAN HILLMAN: Okay. Let me follow
15 up just a little bit. Some of this may go a little
16 bit to the question that Commissioner Miller was
17 asking earlier to you, Mr. Hunnicutt, in terms of, you
18 know, what data we're really looking at.

19 Again, if I'm looking at the data that we've
20 got on U.S. consumption, domestic consumption, you
21 know, it would show an almost 100 million bushel
22 decline in terms of again this is U.S. consumption on
23 the order of 328 million bushels in the 2001-2002
24 year, 230 million in the following year. I mean, that
25 is a huge change in U.S. consumption.

1 I'm just trying to get a better sense of how
2 you fell to this. I mean, what do you do? How do you
3 deal as farmers with that level of a change in U.S.
4 consumption?

5 I mean, maybe what you're telling me is it
6 doesn't really matter because the export markets pick
7 it up, but it strikes me as a very big difference to
8 be selling 100 million bushels less in the U.S. market
9 in one year than you did in the previous year, and
10 yet, you know, I'm just curious how you feel that.
11 Did you feel that? What does it look like for the
12 next year?

13 MR. FISHER: Commissioner Hillman, may I
14 respond? Neal Fisher.

15 I think this is a point that maybe more of
16 the potential witnesses in the room are going to agree
17 on. There is concern over the declining domestic
18 consumption of wheat food products as a whole in this
19 country. This is not confined to hard red spring
20 wheat. It's across the board.

21 We're in the business or promotion at the
22 North Dakota Wheat Commission, and we have worked
23 together with some of the other Respondents in the
24 room on promotional programs. We are quite concerned
25 about the overall trend.

1 You know, if I might digress, the Atkins
2 diet and things like that have affected wheat
3 consumption in this country. This is an industry wide
4 phenomenon. It's not selective in our two particular
5 classes of wheat here, but it is a point, you know,
6 worthy of note.

7 I'm not sure how we address this with the
8 imports issue or if, you know, we can even make any
9 relationship to that, but it definitely has an impact
10 certainly on the attitudes of everyone in the
11 industry.

12 VICE CHAIRMAN HILLMAN: Okay. Anything
13 else? Like I said, just sitting here looking at these
14 numbers it looks like this huge change from one year
15 to another.

16 Is it just the way in which we collect the
17 data, or did you feel out there that there was this
18 huge decline in domestic demand, U.S. consumption of
19 hard red spring wheat between 2001-2002 and the
20 following year? Did that seem to be what was
21 happening in the market?

22 MR. SZAMOSSZEGI: Can I just make a quick
23 comment?

24 VICE CHAIRMAN HILLMAN: Sure.

25 MR. SZAMOSSZEGI: There is some element of

1 sausage making in those statistics, and I would hazard
2 to state that the food use numbers might be a better
3 barometer of what's going on. Those, the decline is
4 maybe along the lines of 16 percent, which is, I
5 think, a lot less than the total domestic use figure
6 that you cited.

7 VICE CHAIRMAN HILLMAN: Okay.

8 MR. SZAMOSSZEGI: That may be part of what's
9 going on. These people here before you produce a lot
10 of high quality wheat that they sell, try to sell into
11 premium markets in the United States and elsewhere.

12 That's the market they're selling to, and
13 their demand here has gone down 16 percent.
14 Significant, but maybe not the same extent that you
15 might see in the overall domestic use figures.

16 VICE CHAIRMAN HILLMAN: Okay. I appreciate
17 that.

18 I guess then if I can turn to the issue of
19 impact? Mr. Cunningham, in his opening statement,
20 made reference, you know, to kind of what is the
21 evidence of material injury? Leave aside causation,
22 but let's just talk purely on the side of injury.

23 He commented that in his view one of the
24 things that we should be looking at is land values.
25 Given that land values have increased, I mean, I'm

1 sure Mr. Cunningham will argue that is a sign that the
2 industry is not in fact injured.

3 I wondered. We obviously have, you know, a
4 lot of data here. None of it is of the traditional
5 looking at capacity, capacity utilization, production,
6 employment and fundamental profitability, numbers that
7 we would look at in a lot of cases.

8 I'm just wondering from the industry
9 perspective. What are the best indicia of the health
10 of the industry? I mean, what data should we be
11 looking at if we're trying to get an overall
12 assessment of is the industry as a whole injured?
13 What's the best numbers for me to look at?

14 MR. HUNNICUTT: Vice Chairman, let me start
15 -- Charles Hunnicutt -- and then let others chime in.

16 Because there were not, of course,
17 questionnaires to the producers in this case there is
18 limited data that relates directly to the domestic
19 industries that are defined by the subject imports.
20 What we've tried to do and what I think we can try to
21 refine more is to take those closest proxies for
22 issues like farm income or even land values,
23 employment, and narrow them down as closely as
24 possible to the impacted farms.

25 That's looking at North Dakota data or

1 Montana data, trying to allocate it by the number
2 since wheat is the predominant crops to try to
3 allocate those figures. I think you see some of that
4 in the prehearing report where the staff has tried to
5 do that.

6 I have to say we have struggled in trying to
7 come up with methodologies to help you more refine to
8 narrow it down so you feel more comfortable with it,
9 but the indicia for farm income and the other
10 indicators of injury that we do have for the relevant
11 regions show consistent declines, so I don't think
12 that there's a problem there.

13 We can go into some more details on the
14 individual items, but I think --

15 VICE CHAIRMAN HILLMAN: I think it would be
16 helpful.

17 MR. HUNNICUTT: Okay.

18 VICE CHAIRMAN HILLMAN: I will be honest.
19 Obviously we have, you know, the broader USDA data on
20 the cost return, the cost return data. It's
21 problematic because you either have to look at it
22 nationwide or you can look at it in the Northern Great
23 Plains, but that's capturing non-subject product
24 within that data. That's capturing all wheat, so that
25 to me is somewhat problematic data.

1 Then when you look at the specific data on
2 durum, again it's only North Dakota. It doesn't tell
3 me anything about whether California or Arizona durum
4 producers are in a completely different financial
5 picture or are doing very differently.

6 Then if I go on the hard red spring side, we
7 don't have any data from Montana. I mean, that's the
8 second largest producing place, and we have no data so
9 it makes it very difficult for us to think through
10 again how to assess this.

11 Even when I look at the data that we do
12 have, and again I would like whatever you can help us
13 understand. We have the data, you know, broken down
14 by own, cash rented, share rented. I have no sense of
15 how best to put those together to figure out what do I
16 make of the industry as a whole.

17 Given that the statute requires us to make a
18 determination on injuries to the industry as a whole,
19 I have to have some help analytically with how is it.
20 I mean, I can't just add those numbers. I don't
21 really have a good feel for what portion of the
22 industry is in each category, what portion of the
23 farmers are in the owned versus the cash rented versus
24 the share.

25 The data, quite frankly, is quite different

1 for each of those three segments, so anything that you
2 could provide that would help us feel more comfortable
3 that this is the most appropriate data in terms of
4 giving us the most accurate picture of these indicia
5 of injury. I mean, how much emphasis should we place
6 on land value? Is that a good indicator or not a good
7 indicator?

8 I will come back, given that the red light
9 is on, to the issue of what do we do about the
10 government payments. Thank you.

11 CHAIRMAN OKUN: Commissioner Miller.

12 COMMISSIONER MILLER: I was going to follow
13 up on Chairman Okun's questions. I'm now going to
14 follow up first on Vice Chairman Hillman's questions
15 because that was the underlying, and really, because I
16 would like to see if anybody today, rather than just
17 waiting for your post-hearing submission, can help a
18 little bit on that, because I, like Vice Chairman
19 Hillman, am trying to understand what I'm looking at
20 in the North Dakota tables that we have.

21 So I don't usually ask witnesses to so
22 directly kind of interpret a table for me, but I think
23 in this case I would like to. If there is someone --
24 I don't know, perhaps Professor Smith or Mr. Fisher,
25 I would welcome the impressions of those who are

1 actually farming as well, but who -- who wants to --

2 MR. SMITH: Well, can I talk about land
3 values, ma'am?

4 COMMISSIONER MILLER: Yes.

5 MR. SMITH: Vincent Smith. In 1996, we
6 introduced decoupled payments in the farm bill, the
7 1996 farm bill. These were large. They were tied to
8 the land. It's unambiguous.

9 In 1998, '99, 2000, we saw effectively
10 through supplementary emergency transfers of sums by
11 Congress, those lump-sum payments expanded --

12 COMMISSIONER MILLER: Mr. Smith, I
13 apologize. Could you just pull my microphone a little
14 closer to you.

15 MR. SMITH: I do apologize, ma'am.

16 COMMISSIONER MILLER: Thank you.

17 MR. SMITH: In 1996, we saw the advent of a
18 new program in government programs applied explicitly
19 to the land, and this is a very important program for
20 wheat both in North Dakota and Montana. We saw the
21 introduction of these production flexibility contract
22 payments.

23 We saw those payments increased in '98 on a
24 one-year basis through an emergency act of Congress.
25 We saw them replicated, the increase replicated in

1 1999 and 2000, and we saw the increase embedded in the
2 new FAIR Act so that it a permanent, well, permanent
3 in the sense that determines the act, increase.

4 Those for wheat land prices have very
5 clearly been the dominant driving force, because they
6 are tied to the ownership of the land. I think it's a
7 little incomplete -- to be fair to the respondents'
8 lawyer, and he isn't an economist, I do understand
9 that -- but I think it's a little incomplete to
10 suggest that land price is going up has much to do
11 with the behavior of prices in the wheat market.

12 A recent study that is still being veted by
13 USDA, by Barry Goodwin again, whose name has been
14 mentioned earlier, and Ashra Kommishra, suggests that
15 there is a very large effect onto the value of land
16 from these government payments.

17 The land story in wheat country is extremely
18 closely tied to the decoupled payment story after
19 1996. So land prices are not at all a good indicator
20 of what has been going on for the wheat producer in
21 terms of their market revenue. And these programs, of
22 course, were not intended to redress any injury that
23 has been caused by dumping and price discriminatory
24 behavior by a single market seller. Those are not
25 related to, in any imaginable form, the current

1 concerns of this case.

2 COMMISSIONER MILLER: Okay. All right.
3 Thank you, I appreciate that, you're addressing that.
4 But I really want to get someone to look at, you know,
5 for example, Table I and 4-4. That's the one on Hard
6 Red Spring Wheat by land -- VI-4, I'm sorry, by land
7 tenure in North Dakota. And just as Vice Chairman
8 Hillman was saying, well, what do I do with this owned
9 versus cash rented versus share rented, and which of
10 the lines here should I concentrate on.

11 I don't usually really ask witnesses to
12 address tables so specifically, but I -- but that's
13 also because I don't usually have to deal with tables
14 I'm not at all used to dealing with.

15 MR. WECHSLER: Could you clarify again which
16 table by page or number?

17 COMMISSIONER MILLER: At Roman VI-8 page,
18 page Roman VI-8.

19 MR. WECHSLER: Okay. Table VI-4 on VI-8.

20 COMMISSIONER MILLER: Page Roman VI-8.

21 MR. HUNNICUTT: Commissioner, give us 30
22 seconds.

23 COMMISSIONER MILLER: Okay. It's Table IV
24 for that chapter.

25 (Pause.)

1 COMMISSIONER MILLER: And now, you see, I
2 sort of go into putting this question to you on the
3 assumption that you're used to looking at this kind of
4 table and I'm not. But as I watch you all puzzling
5 over it, I realized that may indeed not be the case.

6 Mr. Lee, do you want to make a -- it looks
7 like you want to make a comment --

8 MR. LEE: Well, I'm not sure if --

9 COMMISSIONER MILLER: -- while they are
10 looking at.

11 MR. LEE: I'm not sure if it will clarify
12 anything, but just practices in the farming community.

13 COMMISSIONER MILLER: Sure.

14 MR. LEE: Like for my own farm.

15 COMMISSIONER MILLER: Sure.

16 MR. LEE: I own about a third of my land. I
17 cash rent about -- of the balance it's probably 50/50
18 cash rent and share crop. So when you look at the
19 tables, I mean, really -- I don't know what the table
20 is saying, but --

21 COMMISSIONER MILLER: They don't tell us.

22 MR. LEE: Okay.

23 COMMISSIONER MILLER: They don't tell me
24 exactly what you just said. I have no idea.

25 MR. LEE: And I think I'm fairly similar.

1 Most of

2 us --

3 COMMISSIONER MILLER: Do both?

4 MR. LEE: -- do all three.

5 COMMISSIONER MILLER: Do all three.

6 MR. LEE: They do all three. I have share
7 crop, I have cash rent agreement, and I own. And the
8 land I have bought.

9 COMMISSIONER MILLER: And you, I assume,
10 look at your return sort of as -- sort of the average
11 across, you're looking at your total return.

12 MR. LEE: Right. In fact, I because of
13 lower crop returns, I have gone away from most of my
14 share crops and gone to a cash rent, and I negotiated
15 them down this past year. So for whatever that's
16 worth. But because my crop returns with the higher
17 inputs I cannot -- I cannot give a third of the crop
18 away any longer.

19 COMMISSIONER MILLER: Right.

20 MR. LEE: And still cover my expenses, so I
21 negotiated those away, went to a lower cash rent.

22 COMMISSIONER MILLER: Okay. And of course,
23 I'm going to assume your return is greater on your own
24 land because you're not paying the cash.

25 MR. LEE: No, it's a wash because generally

1 you're making payments. In my case, I'm making
2 payments on the land.

3 COMMISSIONER MILLER: Okay.

4 MR. LEE: But the long-term effect is yes, I
5 will own that land some day.

6 COMMISSIONER MILLER: Okay. And so you were
7 struggling. We have some data that tells us the value
8 per acre, depending on whether it's owned or cash
9 rented or share rented, but that doesn't really tell
10 me total income. It just tells me you see it -- what
11 does it tell me? I'm not sure it tells me anything.
12 That's what I am trying to figure out.

13 MR. FISHER: Commissioner Miller.

14 COMMISSIONER MILLER: Mr. Fisher.

15 MR. FISHER: May I make just a, and maybe
16 this is not the observation you're looking for, but as
17 I look at this table I see a very checkerboard picture
18 of net returns under any of those categories. And you
19 know, we all know that our costs have gone up
20 dramatically. Fuel is up, fertilizer. There was some
21 comments this morning about fertilizer bills doubling
22 this last year, so costs have gone up. Returns have
23 not necessarily responded.

24 And if you under any of these, and I'm not
25 sure that this is where you were going with this, but

1 under the own, cash rented or share rented, the net
2 return column or line in each of these cases is very
3 checkered with near --

4 COMMISSIONER MILLER: Is that return that
5 you think I should look at? Is that the line that you
6 would say is most significant of the lines reflected
7 there?

8 MR. FISHER: Well, it seems to me that
9 that's the best reflection of what these gentlemen are
10 earning from their land or maybe an indication of what
11 -- of damage or injury that is coming their way
12 regardless of the type of ownership or land tenure
13 system that they are under. These are all rather
14 modest. They are negative. They are negative numbers
15 in this period 1999 through 2002 in most instances.

16 COMMISSIONER MILLER: Yes, but understand,
17 you know, again, I don't know how much is owned versus
18 cash rented from this table, and that's why Mr. Lee's
19 answer was kind of interesting.

20 MR. FISHER: In answer to that, we may be
21 able to -- certainly we would be able to gather some
22 information that would be able to -- for example, we
23 could go to our Farm Management Service through the
24 Extension Service that works with producers and gather
25 information that would be at least an accurate

1 representation of the average farmers in maybe a high,
2 medium or low income or output group, and how much
3 land they own typically, how much they cash rent, and
4 how much they share rent.

5 I am confident we can provide those kinds of
6 numbers.

7 COMMISSIONER MILLER: Okay.

8 MR. FISHER: You know, they wouldn't be a
9 perfect fit over the entire farming population, but it
10 would be a good representative sample of, I think,
11 high end farmers probably.

12 COMMISSIONER MILLER: And that's better than
13 what I start with right now which is no sense.

14 MR. FISHER: I'm sorry if we sort of
15 misunderstood where you wanted us to go with that.

16 COMMISSIONER MILLER: Well, it's really
17 trying to understand what this tells me, and what it
18 doesn't tell me that I still need to know.

19 MR. SZAMOSSZEGI: And just to break in,
20 Andrew Szamosszegi from LEGC, another possibility for
21 you to look at is also total product return, because
22 that's in part a function of the price as well as the
23 quantity sold, so that would be the top line under
24 each.

25 COMMISSIONER MILLER: Right.

1 MR. SZAMOSSZEGI: And look for trends in
2 there.

3 COMMISSIONER MILLER: Right.

4 MR. SZAMOSSZEGI: So those are -- I mean,
5 net return is one thing. I know I appreciate that you
6 want, and we also want a better sense of the share --
7 let's say most farmers actually do, but it's also
8 important to take a look at the total return because
9 that's impacted directly by the price.

10 COMMISSIONER MILLER: Okay. I'm sorry I
11 didn't get back to following up on the Chairman's
12 questions to you regarding prices of winter and spring
13 wheat. I know I wasn't in the room, but I listened to
14 every word of it in the anteroom, so I do have some
15 follow-up question. I will come back to it if it's
16 not further addressed.

17 CHAIRMAN OKUN: Commissioner Koplan.

18 COMMISSIONER KOPLAN: Thank you, Madam
19 Chairman.

20 On pages 20 and 21 of the millers' brief, it
21 states that there is something called the Allison
22 variety of Hard Red Spring Wheat that makes up 37.4
23 percent of the 2003 North Dakota Hard Red Spring Wheat
24 crop, but that in Canada, Allison now can only be
25 marketed as feed grade at a significant price

1 discount.

2 I would like you to comment on the assertion
3 of the millers that this new variety of Hard Red
4 Spring Wheat, which was released by North Dakota State
5 University in 2000, and is now widespread in the
6 United States, but not permitted for food use in
7 Canada due to poorer performance in milling and baking
8 quality.

9 I note that apparently in Canada they did
10 gain temporary registration from the Canadian Grains
11 Commission but that was not renewed this year because
12 they stated that there were problems with its milling
13 and baking quality; specifically, that it didn't meet
14 CGC standards for kernel hardness, starch damage,
15 falling number, and flour color.

16 The millers allege that the attraction of
17 planting this particular crop is that there is a high
18 yield and that there is resistance to fusarium head
19 blight.

20 I'm trying to determine what the percent of
21 the U.S. Allison variety is considered food grade
22 versus feed grade, and what the percent of the U.S.
23 Hard Red Spring Wheat purchased by millers would be
24 the Allison variety.

25 Do millers buy any Allison from Canada? And

1 if so, how much? And finally, what HTS subheading
2 would Canadian Allison be classified under, and would
3 it be a subject product, part of the subject product
4 in these investigations?

5 Mr. Fisher?

6 MR. FISHER: May I respond?

7 COMMISSIONER KOPLAN: Yes.

8 MR. FISHER: Mr. Koplan, this is a question
9 that I think has some very easy answers, but it could
10 take a long time because I might enjoy talking about
11 this for some time.

12 The variety Allison is one of the best
13 varieties in the spring wheat industry in the world
14 today, not only because it is disease resistant, it
15 lacks a little in yield to some of the varieties that
16 these gentlemen could be planting, but it is extremely
17 good quality. It ranks at least as high as No. 3 and
18 sometimes No. 2 in the overall overseas variety
19 analysis program that U.S. Wheat Associates conducts
20 with its more than 100 customers around the world each
21 year.

22 COMMISSIONER KOPLAN: So you think that the
23 Canadian Grain Commission was mistaken in withdrawing?

24 MR. FISHER: Well, in their system, their
25 highly restrictive system it probably isn't a mistake,

1 because the other world standard of quality -- a
2 variety Granden in about 10 years ago suffered exactly
3 the same reception in Canada, and it had more to do
4 with the visual -- the kernel visual
5 distinguishability issue, which doesn't technically
6 fit their very restrict band of kernel identity rather
7 than functionality in their system. So that also was
8 a victim of this. But Granden was one of the highest
9 regarded quality wheats in both the domestic and the
10 world market that we have ever had.

11 Allison follows that pretty closely, and I
12 think, you know, it is significant that this is a
13 variety that does have very strong disease resistant
14 characteristics, and this issue that the millers
15 continue to bring up of fusarium head blight, and the
16 resultant vomatoxin or DON levels that can occur. It
17 is approved in the U.S., and it is, as you correctly
18 state, 37 percent of the area in the states. It's
19 gone up dramatically remarkably in spite of its yield
20 drag. Producers are willing to grow it because of the
21 disease resistance, and because of its high quality.
22 It is highly sought after.

23 Mr. Reeder of the staff has a sample of it.
24 I think it's a very attractive looking wheat, and the
25 milling characteristics are very good.

1 Now, converse to that, if the Canadians are
2 not growing that, I don't know what they are growing
3 in terms of a disease resistant variety that might
4 prevent that vomatoxin issue from becoming an issue in
5 their export streams, because they have the fusarium
6 problem equally or greater than we do in North Dakota.
7 That's where our fusarium area is located, is along
8 the Canadian border. That's where Allison makes up 70
9 percent of the acres in our crop reporting districts
10 in that area, and we are quite proud of that.

11 The miller acceptance --

12 COMMISSIONER KOPLAN: Well, let me back up
13 then.

14 Are you telling me then that the percent of
15 U.S. Allison variety is all considered food grade in
16 this country?

17 MR. FISHER: Absolutely.

18 COMMISSIONER KOPLAN: Okay.

19 MR. FISHER: Absolutely, without a doubt.
20 No question.

21 COMMISSIONER KOPLAN: And in answer to my
22 question in terms of what percent of the U.S. Hard Red
23 Spring Wheat purchased by millers would be the Allison
24 variety, are they purchasing all of it from you?

25 MR. FISHER: They most certainly are. It's

1 universally used within the export and the domestic
2 system, so I would find it difficult to make that
3 determination.

4 However, if we look at the -- if we were
5 going to market, for example, a hypothetical example,
6 market strictly the 2003 crop, since it is 37 percent
7 of the material that is being produced this year, I'll
8 bet that the durum mills in this -- or the spring
9 wheat mills in this country and those in the export
10 markets will be buying 37 percent Allison.

11 COMMISSIONER KOPLAN: Are you exporting it
12 as a foods?

13 MR. FISHER: Absolutely.

14 COMMISSIONER KOPLAN: You are exporting it
15 as --

16 MR. FISHER: Absolutely, it's a part of the
17 mainstream or will be a continued part of the
18 mainstream of the U.S. spring wheat industry and they
19 are quite proud of that.

20 COMMISSIONER KOPLAN: Okay. If I could stay
21 with you. What HTS subheading then would it be
22 classified under?

23 MR. FISHER: Since the -- this may be a
24 technical question that I may be out of my league here
25 that maybe Mr. Hunnicutt or Mr. Wechsler can answer

1 that. Since these wheats are considered feed wheat,
2 and I have to put quotes around that because sometimes
3 these wheats have reentered the U.S. market and been
4 quite millable, if you know what I mean.

5 And so I think that -- you know, that is an
6 issue that I probably am further along with than I
7 should be at this point.

8 MR. HUNNICUTT: Mr. Commissioner, Charles
9 Hunnicutt. I believe they are classified under Hard
10 Red Spring Other category, but I'll have to get into
11 post-hearing submission to really check that for you
12 accurately.

13 COMMISSIONER KOPLAN: But they treat it as
14 food rather than feed?

15 MR. HUNNICUTT: Yes, they should be because
16 they are a milling quality wheat.

17 COMMISSIONER KOPLAN: Under our HTS.

18 MR. FISHER: Under that other category, that
19 is the largest category of imports of Canadian.

20 COMMISSIONER KOPLAN: So this would be a
21 subject product in these investigations. Do you buy
22 any Allison from Canada? Is it imported into the
23 United States? And if so, how does it come in? Does
24 it come in as feed or does it come in as food?

25 MR. FISHER: I don't know that we have a --

1 Commissioner Koplan, I'm not sure that we have --
2 pardon me.

3 COMMISSIONER KOPLAN: That's okay.

4 MR. FISHER: That we have good indications
5 because since it was an experimental and it was a
6 limited licensing in Canada, I really doubt that there
7 is a great deal of production going on in Canada
8 today, so I suspect that our imports of it at this
9 point would be limited, but I don't have good, hard
10 evidence to show that.

11 COMMISSIONER KOPLAN: Thank you. Your
12 responses have been very helpful on this. I
13 appreciate it. The only place I have seen it in has
14 been in the millers' brief.

15 Mr. Peterson, I don't want to let you go
16 without calling on you today.

17 The North Dakota Wheat Commission note that
18 exports of Hard Red Spring Wheat finished 18 percent
19 ahead of last season. That's your Dakota Gold
20 Newsletter of July of this year. The newsletter also
21 notes that U.S. exports of Hard Red Spring Wheat
22 accounted for 54 percent of total spring wheat usage,
23 and that U.S. exports of durum wheat accounted for a
24 third of total durum usage.

25 Do prices of Hard Red Spring Wheat and Durum

1 for domestic sales differ from the prices received for
2 exported wheat? How are the prices for foreign sales
3 of the two like products of domestic wheat set in the
4 marketplace. And if you know, how do the prices of
5 the subject imports of Canadian Hard Red Spring Wheat
6 into the United States differ from the prices the
7 Canadian Wheat Board receives for its exports to other
8 foreign markets?

9 MR. PETERSON: Okay, I'm not -- Commission
10 Koplan, it's kind of a long question and a lot of
11 complex details. But I think just, and we may have to
12 get back to you, if we may.

13 You know, I think there is very much direct
14 impact on Canadian spring wheats and durums and U.S.
15 Hard Red Spring Wheats an Durums, and in a free
16 competitive market there is a sale side, a bid side to
17 each market. And you know, when elevators are setting
18 their bids, as producers are responding on how much to
19 sell, it's this give and take in the market. And I
20 think, you know, they all do have a little bit of
21 particular influence at different times.

22 And you know, the export markets, some of
23 them demand a very high quality protein, you know,
24 high grades. There is other domestic demand that
25 demands some lower values and lower grades, and so

1 that's all reflected through the bids.

2 COMMISSIONER KOPLAN: Yes, but don't tell me
3 your price on this. I'm trying to understand,
4 because you export 54 percent of your total spring
5 wheat usage, you export it. Are yo getting a better
6 price overseas than you're getting here?

7 MR. PETERSON: I would say it's very much
8 the same or a lower price. I mean, the domestic
9 market is the premium market that elevators and
10 producers want to serve. And I think some of the
11 questions have alluded to the market is not working is
12 the bid side of the market no longer functions in the
13 domestic market when the board is there.

14 COMMISSIONER KOPLAN: What about with durum,
15 are you getting a better price overseas than here?

16 MR. PETERSON: No. I would say the domestic
17 market is, you know, where we get our premium market,
18 and the signals come through that bid side. If there
19 is a shortage in the market of high quality, whatever,
20 you should see a higher bid, but that's where, I
21 think, some of the issues that have been discussed
22 here where the board really destroys that bid side of
23 the market cause without the board there millers would
24 have to bid higher for some of these domestic
25 supplies, and probably why we are seeing the export

1 market pull it out is the domestic mills are not
2 bidding as competitively because the board is
3 artificially lowering those prices.

4 COMMISSIONER KOPLAN: Do you know whether
5 the Canadians, I already asked you this, whether the
6 Canadians are getting a better price here than they
7 are getting overseas with their exports?

8 MR. PETERSON: That I wouldn't know. I'll
9 defer to Mr. Hunnicutt.

10 COMMISSIONER KOPLAN: Let me just say this.
11 If you could give me some detail on this for purposes
12 of the post-hearing, I would really appreciate it.

13 MR. PETERSON: Okay, we certainly will.

14 COMMISSIONER KOPLAN: You know, indicating
15 when, if you can put a time frame on it, and let me
16 know.

17 I see my red light is on, but Mr. Smith, you
18 had reached for your microphone. It's been a long
19 time. I'll come back.

20 CHAIRMAN OKUN: You'll have that
21 opportunity.

22 COMMISSIONER KOPLAN: Thank you.

23 CHAIRMAN OKUN: I was going to follow up
24 with an apparent consumption question but when I had
25 walked out of the room I heard Vice Chairman Hillman

1 ask that question. At the exact time that you were
2 talking about Atkins, I was eating cookies in the
3 anteroom, so you know, I tried my best to reverse that
4 apparent consumption. But anyway, I did hear your
5 answers, and I think I will, of course, look at that,
6 and also I think it relates to Commissioner Koplan's
7 question about what prices are overseas, you know,
8 where consumption looks like it's going up, and any
9 further information you can provide will be, I think,
10 helpful on evaluating that.

11 And I guess I note that in the context of
12 this being, you know, a case where exports are a very
13 large part of this market, and so I think even in our
14 evaluation of volume, imports relative to production,
15 that, you know, I ask you to pay particular attention
16 to that in post-hearing brief, because I think
17 despite, I think, Mr. Wechsler discounting Mr.
18 Cunningham's reports about exports, I don't think --
19 we can't.

20 I mean, I think you have to look at that
21 because it is, again, different that what we see in a
22 lot of case in evaluating imports. But I will let you
23 do that post-hearing.

24 And I had a number of questions of impact,
25 but I think that they really were covered by Vice

1 Chairman Hillman, and Commissioner Miller in asking
2 you to go through those charts. So I will look at
3 what you say about that, but I think, you know, again
4 I think the Vice Chairman said it very well, which is
5 you are arguing a traditional case, and we do not have
6 before us the traditional facts that we look at, and
7 we need a lot of help in understanding, you know, what
8 you would place -- what you would ask us to place
9 emphasis on.

10 I know she asked questions about net return,
11 and if you can comment on that, and as well the other
12 thing in terms of the domestic industry as a whole. I
13 believe the Vice Chairman had mentioned the fact that,
14 you know, where you have California desert durum, and
15 we don't have information on the record to help us
16 understanding how we view the domestic industry as a
17 whole when we don't have all the data there.

18 And then I guess the other question, which
19 I'm not sure was covered, which is in another is
20 employment. This is a case where we have very limited
21 employment data, and I guess maybe for purposes of
22 public hearing whether you could just comment on, you
23 know, how the Commission should evaluate employment in
24 this type of agricultural product case, or whether you
25 believe we have sufficient information available that

1 gives us the answer on impact without having
2 employment data that is very specific.

3 MR. HUNNICUTT: I think, Chairman Okun, it's
4 similar to the answer I gave you the Vice Chairman
5 with regard to the other indicia of injury. We have
6 some broader data that we will try to come up with
7 methodologies for you narrow it down to make it as
8 specific as possible to the domestic industries,
9 because we know there is decline in employment. But
10 how we get that information from the statistical
11 information that's available not having surveyed the
12 industry is very difficult because it's not kept
13 specifically by Hard Red Spring.

14 But we will like the other areas try to
15 provide more specificity on how to allocate in a
16 rational way that makes sense to these industries.

17 CHAIRMAN OKUN: Okay, I will look forward to
18 seeing that. I appreciate that.

19 And then the one other thing that I had
20 caught was when you were talking, I believe it may
21 have been Mr. Fisher talking about cost/price squeeze.
22 And again, if we go back to the same tables that
23 Commissioner Miller was looking at, and you look at
24 the tables before in that chapter, all the tables,
25 what I was trying to figure out, I mean, I can see the

1 fertilizer, fuel categories on page VI-3, but I guess
2 if I look at the total, again going over to some of
3 the North Dakota data, if I look at, you know, adding
4 up the column that adds up total direct and overhead
5 expenses, in the most recent year you see declines in
6 those, and I wanted you to comment on that in terms of
7 -- maybe not you, maybe this is a commerce question,
8 but you know, arguing a cost/price squeeze when at
9 least some of this data would indicate in some cases
10 you see those numbers going down. Again, I'm looking
11 at -- from looking at total direct and overhead
12 expenses in many of these tables that we have here for
13 the '02 year, which is where I see a big decrease.

14 MR. SMITH: Madam Chairman.

15 CHAIRMAN OKUN: Yes.

16 MR. SMITH: 2002 is a very interesting and
17 unusual year. Fairly early on quite a lot of
18 producers knew that although fertilizer was --
19 fertilizer is a bid deal here. Fertilizer counts for
20 about 12, 15, 18 dollars an acre in variable cost.
21 And I know that out of working with the Kansas farm
22 management data in relation to the effect of crop
23 insurance on the environment, we looked very much
24 fertilizer expenditures by wheat producers.

25 It's a very substantial component.

1 Fertilizer costs can change because use of the
2 fertilizer declines even though prices have been going
3 up. Now, the determinants of whether or not a farmer
4 puts a lot of fertilizer on are not best spoken to by
5 me. They are best spoken to by the farmers. But if
6 you have relatively poor soil moisture and you have an
7 expectation of a not very good crop, you would expect
8 to see less fertilizer being added.

9 Now, I can't tell you that that's what has
10 happened in North Dakota, but those sets of issues
11 turn out to be very important, and I would suggest the
12 Commission should look at price data for fertilizers
13 and chemical inputs in particular because they are the
14 things that would be most volatile over the last few
15 years.

16 Machinery and equipment prices have been
17 moving roughly with inflation, and we know that
18 happily inflation has been very modest over this
19 period. But energy costs are a different story, and
20 there is an energy story in 2002 where we saw a sharp
21 run-up in the price of energy throughout different
22 periods of that year.

23 We will certainly try to -- without speaking
24 for Mr. Hunnicutt, I would imagine that we will
25 address that issue in the response.

1 MR. FISHER: Chairman Okun, might I have a -
2 -

3 CHAIRMAN OKUN: Mr. Fisher, yes.

4 MR. FISHER: If you are looking at Table
5 Roman IV-1, am I on the right table?

6 CHAIRMAN OKUN: I was over on Chapter 6,
7 which is the financial data, but I will look over on
8 four.

9 MR. FISHER: I'm sorry, it's VI-1. I'm
10 sorry.

11 CHAIRMAN OKUN: All right.

12 MR. FISHER: In that particular table there
13 appears to be from 1999 through 2000, 2001 and 2002,
14 about a 30 - 40 percent increase in both fuel and
15 fertilizer costs from 6 to 9 dollars roughly on fuel,
16 and from 16 to 22 - 23 dollars on the fertilizer,
17 which is somewhat consistent with what Vince was
18 saying.

19 CHAIRMAN OKUN: Right. And I see it there.
20 And again, I mean, for that particular table with that
21 data set, you know, you can look at variable cash
22 expenses, and they don't show the same picture
23 actually that if I look over on the tables with regard
24 to the North Dakota and the Minnesota total direct and
25 overhead expenses, what those tables are saying.

1 So I guess, that, again, with this data, to
2 try to get some consistency in how we evaluate it, and
3 so again, I can see it on the fertilizer and fuel. It
4 looks like other things may have gone down that affect
5 this, but I don't know that, and it is an argument I
6 know made by respondents that there isn't any
7 cost/price squeeze because of the change in the
8 numbers from '01 to '02, looking at this most recent
9 year. So that would be the reason that I --

10 MR. FISHER: My sense of the -- Chairman
11 Okun, if you ask the producers here, I think they very
12 definitely feel a cost/price squeeze right now with
13 those fertilizer bills hanging over them. In fact, it
14 was a topic of discussion at breakfast this morning
15 unprompted by this discussion certainly, but it was
16 about how fertilizer prices had doubled, and we all
17 know what fuel has done. Even in urban city driving
18 gasoline prices certainly are not low now. Same
19 relationship.

20 CHAIRMAN OKUN: I feel that. Would the
21 producers like to comment on that while I still have a
22 little time here?

23 MR. BIRDSALL: I can just -- Mark Birdsall.
24 I can make the comment on what our fertilizer and fuel
25 prices have done, and like Neal said, we have been

1 talking about it. It's kind of a common conversation
2 is the fact that, you know, we're looking at \$350 a
3 ton for anhydrous versus we were down in \$200 - \$225
4 ton pretty recently. So I mean, we have seen a huge
5 increase.

6 We have seen our fuel increase even on our
7 bulk farm fuel go up as much as 35 to 40 cents a
8 gallon. So those are real costs that we will incur.

9 CHAIRMAN OKUN: All right. Mr. Lee.

10 MR. LEE: I guess the other thing I would
11 like to say is that Mr. Smith was very right in that
12 many farmers have chosen because of the high
13 fertilizer prices to cut back on the amount, which is
14 really a Catch-22, because when you start cutting back
15 on your input costs, you naturally get less on the
16 other end. So I guess I don't choose that. I know
17 Mr. Birdsall here doesn't choose to do that. We
18 continue to pay the bill.

19 But many producers in our area, and our
20 fertilizer sales show that, that many of the guys just
21 opted -- they fertilize so many dollars rather than
22 the proper amount.

23 CHAIRMAN OKUN: Right. And again, the other
24 part is, you know, how much land is planted I'm sure
25 relates to those numbers, so those numbers may look

1 lower because less acres are planted.

2 MR. LEE: Right.

3 CHAIRMAN OKUN: But again, I mean for
4 purposes for evaluating impact I'm asking in the post-
5 hearing in looking at that in a comprehensive way
6 because it is difficult at this point, but those are
7 helpful comments. I appreciate it.

8 I see my red light is on so I will turn to
9 Vice Chairman Hillman.

10 VICE CHAIRMAN HILLMAN: Well, thank you, and
11 I have just a couple of quick follow-ups because it
12 really is more to help us, Mr. Hunnicutt, in the post-
13 hearing put even the comments that we have heard in
14 some degree of context.

15 Mr. Birdsall, I am assuming that the
16 comments that you just made to Chairman Okun relate to
17 now, 2003, I mean what you're paying now. Okay,
18 because some of this may be that what we are hearing
19 about in terms of these cost and these cost increases
20 again is a 2003 issue, and yet our data date, as you
21 know, Mr. Hunnicutt, ends for some of these costs in
22 2003. Indeed, if you're looking at the Great Plains
23 data, it ends in 2001.

24 So it is among the many issues that we could
25 use some help in terms of walking through, you know,

1 the impact factors, if you will, and helping us
2 understand, you know, what data do we actually have,
3 what data do you think is the most accurate in terms
4 of, you know, giving us a sense of what's going on,
5 and if there is anything further, you know, that could
6 or should be put on the record to ask you to do that.

7 MR. HUNNICUTT: Yes, ma'am.

8 VICE CHAIRMAN HILLMAN: Okay, thank you.

9 Just one quick follow-up on the employment
10 question that Chairman Okun asked, because I would
11 share her concern that we have very limited data.
12 That's obviously, you know, one of the key criteria
13 that we normally look at in a regular case, what has
14 happened to employment trends over the period and
15 whether there is again a correlation between imports
16 and that. Very limited data.

17 But I just want to make sure I understand as
18 a factual matter, are employees employed in the Hard
19 Red Spring industry also employed in the Hard Red
20 Winter Wheat industry?

21 I mean do folks basically harvest one crop
22 and then move on and harvest the other, or is it a
23 completely separate labor pool?

24 MR. KLEIN: Well, it would be no because the
25 employment in the Hard Red Spring Wheat is in the

1 northern region. The Hard Red Winter Wheat employment
2 is a very, very small amount in the State of North
3 Dakota because it is a very small acreage. So the
4 employment of people basically would be nonexistent
5 for that part.

6 VICE CHAIRMAN HILLMAN: Okay. And folks
7 don't move to do that?

8 MR. KLEIN: No. No.

9 VICE CHAIRMAN HILLMAN: Okay. All right. I
10 just wanted to make sure I understood when we're
11 looking at the data what we are looking at.

12 And obviously, you know, as always in
13 agriculture crops, you know, we tend to be concerned
14 that our data are very underrepresenting employment
15 given the amount of family labor that contributes on
16 this. If there is anything that you can help us
17 understand how we factor in this issue of whether -- I
18 mean, how much of our data really captures what's
19 going on since, again, I presume that this is not
20 unlike other agriculture cases that we have seen where
21 this issue of family contribution to the labor pool is
22 probably not reported in the regular official hard
23 labor data, and yet, you know, is a significant
24 factor, I'm assuming, but again I'll --

25 MR. HUNNICUTT: Yes, there are family issues

1 in the employment data, and we will try to address
2 that as best we can as well.

3 VICE CHAIRMAN HILLMAN: Okay. Okay. No, I
4 appreciate that.

5 I guess, I think with that, I mean, I think
6 you have heard my concern is that, you know, for the
7 post-hearing as much as you can put on the record in
8 terms of helping us look at these impact factors, and
9 I would also share the Chairman's concern. To the
10 extent that this is an argument about a cost/price
11 squeeze, making sure we have the most information on
12 the cost side of it that you think is appropriate for
13 us to be looking at to understand both the degree and
14 the nature of this issue of cost/price squeeze would
15 be very helpful.

16 And with that I have no further questions,
17 but do thank you all very, very much for your
18 testimony and for your many answers. It's been
19 extremely helpful. Thank you.

20 MR. HUNNICUTT: Thank you, Vice Chairman.

21 CHAIRMAN OKUN: Commissioner Miller.

22 COMMISSIONER MILLER: Thank you, Madam
23 Chairman, and I'll try not to go too much longer, but
24 I do feel the need to go back a little bit to the
25 discussion that we were having earlier and that the

1 Chairman continued on prices of spring and winter
2 wheat. And so I'm going to try sort of a different
3 tact on the question, and that would just be this.

4 Why did Hard Red Winter Wheat prices go up
5 in the fall of 2002? And you know, those of you in
6 spring wheat, well, maybe you follow it, so maybe you
7 know the answer. Mr. Klein, I know you are in spring
8 wheat. You know, maybe you follow it, so maybe you
9 know the answer.

10 MR. KLEIN: Harlan Klein.

11 The direct run-up on the winter wheat at
12 that time was it was a drought factor. The drought
13 factor carrying all the way up through the whole wheat
14 belt through the harvest. As the harvest was
15 progressing from the south on north, production
16 bushels were down. As the combines were coming north,
17 and that lowering of production was the reason that
18 the Hard Red Winter Wheat also had an increase in
19 price.

20 COMMISSIONER MILLER: Okay. Okay. And I
21 think I'm going to ask Mr. Smith just because Montana
22 produces both. Would drought factors influencing both

23 --

24 MR. SMITH: Oh, absolutely.

25 COMMISSIONER MILLER: -- in the same way?

1 MR. SMITH: In 2002, throughout almost all
2 of the state outside of the northeast corner, which is
3 where the mainly grow durum wheat right now,
4 throughout the rest of the state we were in the fourth
5 -- I can't remember if it was fourth, fifth, or sixth,
6 I think it's the fourth year of drought. We're in the
7 fifth year of drought now. We were in the fourth year
8 of drought.

9 COMMISSIONER MILLER: Still?

10 MR. SMITH: Oh, god, yes.

11 COMMISSIONER MILLER: You haven't been to
12 Washington.

13 MR. SMITH: Could you move your weather to
14 us for awhile?

15 COMMISSIONER MILLER: We would like to.

16 MR. SMITH: We were in the fourth year of
17 drought. I actually spoke in June of last year with
18 the president of the Montana Grain Growers
19 Association. He had already plowed under his entire
20 crop. They was in the Golden Triangle, the major
21 wheat growing area in the state. It didn't matter
22 whether you were growing Hard Red, Hard White. If you
23 were doing dry land farming, the odds were that your
24 crop was extremely short, and that shows up in the
25 aggregate data on U.S. wheat production.

1 The crop was short absolutely everywhere in
2 the hard red growing regions of the country, and
3 particularly in Montana. The weather didn't
4 discriminate between Hard Red Winter and Hard Red
5 White.

6 If I may say, in contrast to most millers
7 when they are not testifying before you, well, they do
8 discriminate between Hard Red Winter and Hard Red
9 White -- they certainly discriminate between Hard Red
10 White.

11 On this issue of are they like product and
12 these prices, I actually plotted price differences. I
13 took the Hard Red Spring price for Kansas City and the
14 Hard Red Winter price for -- no, let me get it right.
15 Hard Red Winter for Kansas City and Hard Red spring
16 for Minneapolis, I do apologize. Those differences
17 just around all over the place.

18 Forget levels, look at differences. From
19 one year to the next year to the next they jump around
20 all over the place. Some -- you know, occasionally
21 Hard Red Winter sells at a premium over Hard Red
22 Spring. Sometimes it's the other way around. You
23 don't see that sort of instability in use patterns.
24 You just don't.

25 So no one in their right mind or their wrong

1 mind should ever suggest that at the margin a producer
2 of final product doesn't substitute away from more
3 expensive to less expensive imports. If the price of
4 workers goes up, I tend to bring in more capital
5 equipment, right.

6 What we don't see -- if workers and capital
7 were perfect substitutes, very small changes in prices
8 would mean massive changes in the use of both
9 commodities. You would swing from one to the other.

10 With Hard Red Wheat and Hard Red Spring, you
11 don't see millers -- you don't see the market for Hard
12 Red Spring go to zero when relatively speaking the
13 differences moves in favor of Hard Red Spring, nor do
14 you see everyone swinging into Hard Red Spring when
15 Hard Red Winter is at a premium at 30 percent. You
16 don't see these big movements.

17 And when we look at what are called
18 elasticities of substitution, the economist's attempt
19 to measure the degree of substitutability, if they
20 were interchangeable, if they were essentially
21 interchangeable, if the blue widget or red widgets,
22 and they both worked as a widget, you would see very
23 large elasticities of substitution. They would have
24 to be very large.

25 We don't see that evidence in the literature, or

1 at least I haven't, and I think that the respondents
2 have looked at some of the same literature that I
3 have. You don't see infinite elasticities of
4 substitution. You see elasticities of substitution
5 that have variously been estimated at around one or
6 lower, using one measure that's quite commonly cited.

7 These are not like products in the sense of,
8 gee, product X's price has gone up a little bit, and
9 product Y's price has gone down a little bit, and now
10 I'm just going to use product Y in my input process.
11 It's not what you see in the data. It's just not
12 there.

13 COMMISSIONER MILLER: Okay. I appreciate
14 that, and I understand that argument. I thought in
15 many ways the Chairman was really trying to get at
16 another issue, and that is -- you know, we have our
17 like product analysis. You also have the issue of
18 what affects prices. And with two products moving so
19 closely together I think her question was trying to
20 get at understanding the impact of the Canadian wheat
21 on the price of the product you produced, the spring
22 wheat, when the two products, spring and winter, seem
23 to move so much in tandem.

24 Now, there may be other factors that explain
25 that, and I think the point on the drought explaining

1 the winter price run up most recently, you know, we
2 recognize that the two products are affected by some
3 of similar factors and economic forces, and so I just
4 wanted to pose the question to get the answer in that
5 way and to understand what you see impacting the
6 winter price as well.

7 And with that I think since it is rather
8 late and we have many more witnesses to hear from, I
9 have no further questions at this point. Thank you.

10 CHAIRMAN OKUN: Commissioner Koplan.

11 COMMISSIONER KOPLAN: Thank you, Madam
12 Chairman, I just have a couple of questions left.

13 At pages 13 to 15 of the Canadian Wheat
14 Board's prehearing brief it makes reference to an
15 informational brochure published by the Minneapolis
16 Grain Exchange that summarizes the five factors that
17 drive the market price spring wheat. The brochure is
18 provided in its entirety as Exhibit 1 of the brief.

19 The five factors are growing conditions,
20 crop quality, other commodities, government policy,
21 and exports. That's on page 14 of their brief.

22 Based on the brochure's description of each
23 of the five factors, the board argues that supply
24 conditions in the United States and in other major
25 producing nations combined with global demand for

1 spring wheat and other crops, such as corn and Hard
2 Red Winter Wheat, largely determine the market price.

3 The board concludes with the assertion, and
4 this is a quote, "In light of the trivial volume of
5 U.S. imports of Canadian Spring Wheat in relation to
6 the global balance of supply and demand for wheat, it
7 is not surprising that there is no relationship
8 between imports from Canada in the cash price on the
9 Minneapolis Grain Exchange."

10 How do you respond?

11 MR. HUNNICUTT: Commissioner Koplan, I will
12 let some others fill in, but we disagree with the
13 analysis of the Minneapolis Grain Exchange.

14 COMMISSIONER KOPLAN: I'm shocked. That
15 quote is from the brief. That quote is from the
16 brief.

17 MR. HUNNICUTT: Oh, I'm sorry, I thought you
18 were quoting from the brochure.

19 COMMISSIONER KOPLAN: No, no, not that time.
20 That was from the brief.

21 MR. WECHSLER: I can assure you we disagree
22 with the analysis in the briefs.

23 COMMISSIONER KOPLAN: Thank you.

24 MR. SZAMOSSZEGI: I would just say that we
25 submitted a study that looks at not just -- that looks

1 at the farm prices, and that study finds a very
2 distinct impact between the level of Canadian imports
3 and the level of prices at local elevators in various
4 elevators in the Hard Red Spring Wheat and Durum Wheat
5 growing area of the country.

6 MR. WECHSLER: This general statement is a
7 very similar statement made by the previous head of
8 the Canadian Wheat Board, not the current person, and
9 I'll provide it. But he talks about the structure of
10 wheat prices and the relationship between them top to
11 bottom, all classes.

12 And if you follow the CSB argument, you are
13 basically saying wheat is wheat is wheat. All the
14 prices are related and we're going to sling them into
15 one like product. And I think if they had come in
16 here with that position, which is based on the same
17 kind of general statements, without showing the
18 specific amounts at issue in questions of
19 substitution, they wouldn't have been taken seriously
20 at all.

21 COMMISSIONER KOPLAN: Turning away from the
22 conclusions, the five factors that they list though
23 that they claim drives the market price of spring
24 wheat, do you disagree that those are basically the
25 five factors that we should be looking at?

1 Now, they obviously look at them and come
2 out with these conclusions that I cited, but in terms
3 of growing conditions, crop quality, other
4 commodities, government policy and exports?

5 MR. WECHSLER: Yes, they left out a major
6 one. Imports.

7 COMMISSIONER KOPLAN: Okay.

8 MR. WECHSLER: That is what's at issue
9 today, and they just have a blind spot about imports.

10 COMMISSIONER KOPLAN: I understand. I think
11 we have covered that question. Now the last one.

12 At page 103 of your prehearing brief you
13 argue in part that there is an overwhelming -- there
14 is overwhelming evidence of underselling by the
15 Canadian Wheat Board for No. 1 and No. 2 durum wheat.
16 That assertion does not comport with the data in
17 Tables Roman Numeral V-4 and V-5 of our staff report
18 because the specifics of it are BPI I can't get into
19 the specifics here, but I would like you to comment if
20 you could. Some of that is not BPI.

21 Obviously, for example, you have already
22 talked about the 25 instances of overselling for durum
23 No. 1 by the Canadians in the first table. I would
24 like you to comment on that if you could though.

25 MR. WECHSLER: I'm sorry. I thought we had

1 in my presentation that I had brought over the exact
2 numbers of underselling from the staff report on
3 everything except No. 1 durum.

4 COMMISSIONER KOPLAN: Except No. 1 durum?

5 MR. WECHSLER: Yes, I think my other data
6 were taken based on the staff report, and we haven't
7 gone further and done mill-to-mill comparisons to the
8 other three because they straightforwardly showed it,
9 and we probably would catch more if we did the mill to
10 mill, but it is time-consuming. So we were most
11 concerned about this anomalous result in No. 1 durum,
12 and so we found an explanation.

13 And in fact, in terms of the mill
14 distribution part of the explanation, we were able to
15 identify a specific mill from the data that was
16 collected or the questionnaire responses in the
17 preliminary. In the final, we couldn't identify the
18 specific mill, but we had the process down; that the
19 randomized assumption just didn't work, otherwise
20 those two should have been similar in result.

21 COMMISSIONER KOPLAN: Thank you for that,
22 Mr. Wechsler.

23 I do want to come back to one thing that I
24 just remembered from this morning from Senator
25 Conrad's testimony. He indicated there is a total ban

1 on exports of U.S. wheat to Canada, and I'm wondering.
2 Does that tie in or is that related to a discussion
3 that appears in USTR's foreign trade barrier report
4 for 2003 where it talks about the formation of a
5 disputes settlement panel on March 6th of this year
6 that challenges Canada's requirements to segregate
7 imported wheat in the Canadian grain handling system,
8 and a discriminatory policy there? Is that the same
9 thing that the Senator is referring to?

10 MR. HUNNICUTT: Commissioner, I don't want
11 to speak for the Senator, but my assumption is that it
12 is.

13 COMMISSIONER KOPLAN: It is?

14 MR. HUNNICUTT: I think the Canadians would
15 describe it not as a total ban, but prefer our
16 description which is they maintain a wheat marketing
17 system that effectively precludes U.S. wheat from
18 moving into Canada, and that is part of the U.S.
19 Government's complaint at the WTO against the Canadian
20 both for noncommercial activity of the Canadian Wheat
21 Board, and for discriminating against U.S. wheat
22 exports into Canada, and that is currently pending as
23 a disputes settlement panel in Geneva.

24 COMMISSIONER KOPLAN: How far along is that?

25 MR. HUNNICUTT: The U.S. initial written

1 brief has been filed, and the Canadian initial written
2 brief was filed, I think, about a week and a half, two
3 weeks ago, so it's going to the panel shortly.

4 COMMISSIONER KOPLAN: Thank you for that.

5 I have nothing further. I want to thank you
6 all for your answers to our questions.

7 CHAIRMAN OKUN: I have one last question,
8 and in light of the hour I'm going to pose it for the
9 post-hearing submission, although I am interested in
10 it, and would have loved to have heard about it, but
11 if you could just provide it post-hearing, which is,
12 one of the other statutory issues that we need to
13 consider is the additional burden on income or price
14 support programs relating to the agricultural product.

15 And I would direct your attention to the
16 information we have collected in the staff report at
17 page 2-4, which indicates that U.S. Government
18 payments have declined by two-thirds between 2000 and
19 2002, and are not forecast to rise in 2003.

20 I would ask you to comment on whether -- I
21 mean, looking at this, I guess the question would be
22 whether this doesn't indicate both the relative health
23 of the industries at issue, and the declining rather
24 than an additional financial burden on government
25 programs as discussed in the statute.

1 If you can do that for post-hearing, Mr.
2 Hunnicutt?

3 MR. HUNNICUTT: Yes, ma'am.

4 CHAIRMAN OKUN: Okay, thank you.

5 Check to see if anyone else has any
6 questions up here. Seeing none, let me turn to staff
7 to see if staff has questions of this panel.

8 MR. DIEHL: The staff has -- I have a couple
9 of questions I would like to read, but I would like
10 you not to answer them now. I would like you to
11 address them in the post-hearing brief.

12 There is different figures when you look in
13 different places on the quantity of wheat that's
14 directed towards feed versus human consumption. In
15 the prehearing report, there is some figures at page
16 I-7 that suggests that the quantity directed to feed
17 is quite small. But in the millers' brief at page 15,
18 at least in the case of durum, it looks like that
19 might be higher. If you can shed any light on other
20 sources of information we should consult to understand
21 that issue.

22 As I try to reconcile those two figures, I
23 wondered whether Grade 3 is sometimes considered a
24 food grade; if you could provide comments. Actually,
25 I would like to direct these questions to all the

1 parties.

2 And then on another question, in the
3 Commission's preliminary determination it relied on
4 some data provided by the millers which indicated that
5 about a fourth of HRS and about a fourth of HRW are
6 directed to distinct products in which the wheat and
7 the flour is not mixed, and that about three-quarters
8 of each are directed towards these blended flours used
9 in other products. If all the parties could comment
10 on whether they agree with those figures, and if there
11 is other sources of information we should consider in
12 that regard.

13 Those are all the questions I have, and
14 those are all the questions that the staff has. Thank
15 you.

16 CHAIRMAN OKUN: Thank you. Do counsel for
17 those in opposition to the imposition of
18 countervailing and antidumping duties have questions
19 for this panel?

20 Mr. Cunningham is shaking his head no, and I
21 see no one else indicating.

22 All right, well, I want to thank you once
23 again for your testimony here today, for your patience
24 this morning and this afternoon in answering all
25 questions, and for the submissions you have provided

1 and will continue to provide as we deliberate.

2 I think this would be a good time to take a
3 late lunch break. We will break until 3:00, at which
4 time we will reconvene. I assume no one here has
5 plans to go see the NFL football plaza, so you will be
6 sitting here waiting for traffic to clear with us.

7 Okay, with that, this hearing is adjourned
8 until 3:00.

9 (Whereupon, at 2:05 p.m., the hearing in the
10 above-entitled matter was recessed, to resume at 3:00
11 p.m. this same day, Thursday, September 4, 2003.)

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1 for convenience purposes. We have a number of
2 witnesses from the wheat board, several of whom were
3 in fact -- at least one is in fact currently -- in the
4 farming business themselves, and, of course, we have
5 Dan Sumner with us to testify and Richard Boltuck.
6 Dan will testify on the economic issues.

7 I have distributed and I hope you have
8 copies of an outline of my testimony which I will
9 speak to but not in verbatim style. I will add some
10 things because I think some of the points made this
11 morning relate to what we want to say here and confirm
12 what we are arguing.

13 As an introduction, I think it's worthwhile
14 to pause a second and ask why is Canadian wheat in the
15 market here? And the basic reason is what we might
16 call location economics. A certain amount of Canadian
17 wheat production mostly in the southeastern part of
18 the western Canadian growing area has a transportation
19 cost advantage in reaching parts of the United States.
20 That's a limited portion of the Canadian wheat
21 production, however, that has this advantage and that
22 explains why imports have remained relatively constant
23 since NAFTA and -- the former Canadian subsidies to
24 east-west transport costs.

25 You remember Senator Conrad's chart, by the

1 way. Senator Conrad's chart, if you looked at it,
2 showed one substantial upward move in Canadian
3 imports. That came with the NAFTA. Since then, you
4 will note that imports have bounced up and down in a
5 relatively narrow range and, frankly, the peaks, the
6 one in '93-'94, the one in '98-'99 and the one in
7 2001-2002, are all descending peaks.

8 Canadian wheat is moreover needed in the
9 U.S. market because there are persistent deficits
10 between the amount of food grade wheat produced in the
11 United States and the total U.S. purchases of such
12 wheat for domestic use and for exports. It is very
13 important, no matter how you compute U.S. shipments or
14 domestic consumption, it's really important that you
15 consider exports because exports are the sort of
16 elephant in the middle of the room here.

17 You cannot consider what is basically a
18 supply and demand argument made by the petitioners and
19 say, well, exports have nothing to do with this. The
20 fact is that a farmer sells to a grain elevator, he
21 takes the price at the grain elevator, and the farmer
22 doesn't care whether it goes to exports or to domestic
23 consumption and, generally, a few exceptions perhaps
24 in the case of co-ops, he won't even know whether it
25 goes to domestic or to exports.

1 I would call to your attention the chart
2 that we looked at before to show how much difference
3 the exports make. Durum is probably the most
4 difference, but the point is valid, too, as to hard
5 red spring.

6 In every year on this chart, if you follow
7 what the staff's pattern of analysis is or follow what
8 the petitioners say, you would have a surplus of U.S.
9 production over consumption. That turns entirely
10 around once you consider the portion of U.S. farmers'
11 wheat sold to grain companies and is later exported by
12 those grain companies. In every year, you have a
13 shortage and most of the years there are substantial
14 shortages.

15 In addition to the overall production
16 deficit that stimulates Canadian imports into the
17 United States, there are purchasers in the United
18 States in durum and also in hard red spring who need
19 greater consistency and higher quality and, in many
20 cases, they have a preference for Canadian wheat and
21 are willing to pay a price premium.

22 There is an ironic example of that. You
23 heard Lieutenant Governor Dalrymple speak to you
24 today. Lieutenant Government Dalrymple in his
25 business life is with a company called BWG, which is a

1 company that buys durum wheat. Mr. Dalrymple's
2 company during the period of investigation changed its
3 bylaws to permit them to buy Canadian wheat, which the
4 bylaws had not permitted before and, indeed, even had
5 discussed such purchases with the Canadian Wheat Board
6 although, to my knowledge, there have been no such
7 purchases so far because the prices are too high.

8 All of these basic determinants of import
9 competition are discussed in our brief. I have laid
10 out the pages at which they're discussed and I've
11 tried to do that in this outline at every step so that
12 you can have a handy referral to the brief and the
13 other sources from the points that I'll be making
14 today.

15 So what determines in any given year the
16 level of Canadian imports?

17 There's the size and the quality of the U.S.
18 crop, the size the quality of the Canadian crop, and
19 the level of demand by U.S. grain companies and
20 millers for wheat, including that wheat which they
21 will then send to export markets. And finally, there
22 are the transportation economics that I referred to
23 before.

24 Now, one thing that I think you will find
25 clear at the end of the day in this record is that the

1 volume of Canadian imports is not achieved by under
2 selling U.S.-produced wheat. That's very clear if you
3 look at the consensus of views expressed by the
4 purchasers in response to your questionnaire. The
5 vast majority of them do not Canadian wheat as priced
6 lower, their view is that Canadian wheat is generally
7 equal or higher priced than American wheat. Moreover,
8 the staff report's under selling analysis -- while
9 both sides here agree that it's got some problems, and
10 the biggest problem is one we both agree on, which is
11 they haven't handled transportation costs in such a
12 way as to compare apples with apples -- the staff's
13 report properly viewed confirms there's no pattern of
14 underselling, beyond question as to durum.

15 As to HRS, the staff data for transportation
16 differentials when comparing sales made to different
17 destinations, if you have a U.S. sale that is
18 delivered from the plains states to the northeast
19 compared with a Canadian sale to somewhere in the
20 north central states, you obviously have a much
21 greater transportation cost on the U.S. sale and if
22 you considered delivered prices, you're going to have
23 a higher price of that sale than you are going to have
24 for the Canadian sale solely because of transportation
25 costs. You have to make at least that adjustment.

1 One of the customers I know is working with
2 the staff on that and we're working with the staff on
3 that. I think you will find that that single
4 correction results in the staff's computation for HRS
5 showing preponderant over selling by Canadian wheat.

6 Now, my next point is that there are no
7 adverse volume effects of Canadian imports. I think
8 it's demonstrable in this case that Canadian imports
9 have not deprived U.S. farmers of any volume
10 whatsoever. In each year, farmers have been able to
11 sell all the durum and hard red spring that they've
12 offered for sale, that is, net of any retention --
13 increase that should be increased stocks.

14 Look at Chart 2 prepared for this
15 presentation and that shows that there is a deficit
16 every year for each product when you consider both the
17 exports and the net change in inventories. What that
18 means is that all of the wheat is sold and more is
19 needed.

20 Now, as to stocks, one might say, well, wait
21 a minute, maybe stock trends can show that U.S.
22 producers have been forced to forego sales because of
23 Canadian imports and Mr. Fisher testified that in
24 times of adverse prices farmers hold back production.

25 I would note to you that your data show that

1 stocks have declined over this period in both
2 categories.

3 A second preliminary point here. You have
4 to adjust the import data for hard red spring for
5 transshipments of Canadian wheat. I'm not going to
6 discuss that issue in detail with you. I think it's
7 belabored in our brief. Suffice it to say that we're
8 not the only ones who say the import data is wrong,
9 the Census Bureau says it's wrong. And we and the
10 Canadian statistical authority have gone to some
11 lengths to try and put data together to give you
12 proper statistical data on imports of HRS.

13 A third and final preliminary point relates
14 to the volume analysis of HRS in terms of like
15 product. We have argued, as you know, that HRS and
16 HRW are properly considered as a single like product
17 and I list the basic points that we make here. The
18 one thing I think that's important, that's most
19 important, to note about this is this is a continuum
20 analysis. It's like tomatoes.

21 It is a situation in which where there is a
22 continuum primarily of protein levels and that there
23 is a great deal of overlap, There's predominance of
24 overlap in those levels, between the two products and
25 at each level when you consider sales of the same

1 protein content of HRS and HRW at the same time to the
2 same destination, you find the prices are essentially
3 identical. We'll come back to just how identical they
4 are in just a minute.

5 Now, if you buy our argument, it's pretty
6 clear that HRS imports from Canada cannot have had any
7 material impact on the U.S. industry, they're just too
8 small. They're never above 6 percent in the period of
9 investigation and they go down to negligible in 2002,
10 2003, and they are dwarfed, absolutely dwarfed, by the
11 shifts that go on in the volume of U.S. exports. They
12 just fade into insignificance.

13 But, you know, every once in a while I sit
14 here at this commission and think, you know, Dick, the
15 argument you're making is right, but it strikes me
16 that if you -- HRS and HRW prices at the same time, at
17 the same destination, you would have to argue that
18 that blue line there which is HRW unaffected by
19 Canadian imports somehow is the natural way of the
20 market functioning as they say, but the greatly
21 distorted prices are that red line, but they're the
22 same line, that's the point.

23 Now, Mr. Wechsler said that he had done
24 another comparison, weighted averages, on a single
25 mill or a single customer basis. There's a problem

1 with weighted averages, of course. What he does, as
2 best we can determine, is quarterly weighted averages.
3 But if you do weighted averages, then the data points
4 will vary depending upon the volume sold and that's
5 particularly distorted here when you do it by quarters
6 and it's particularly distorted here when there is
7 some seasonal difference in the volumes of the two
8 products. And particularly if you can envision the
9 peak in prices occurring in one part of the year when
10 HRS is predominantly sold, that will have a different
11 effect on the price of HRS than it has on HRW, which
12 would have much less sales at that point.

13 All right. With those preliminary points
14 out of the way, one thing that's clear here is that
15 imports have not increased significantly. I'll let
16 you look at the figures in our brief on that. They
17 have fluctuated with a fairly narrow range and the
18 current level of imports is down, substantially down,
19 in both categories and particularly in hard red winter
20 where they fell to negligible levels.

21 Sure, it's the drought, but the drought is a
22 normal condition of competition and we talked about
23 that at the last hearing. You all decided it's not an
24 unusual market changing radical thing and I'll live
25 with that.

1 Import trends, more importantly, have no
2 correlation with either U.S. production or U.S.
3 imports or U.S. plantings. If you will look at
4 Chart 4, Chart 4 shows U.S. production versus Canadian
5 imports for both doctor and hard red spring.

6 First of all, look at what a small portion
7 of this is represented by Canadian imports, but,
8 second, I defy you to correlate the trends in those
9 little purple bumps with the trends in the big blue
10 bars on either chart. I have tried to do it, lagged,
11 same year, whatever, there is no correlation.

12 The same is true on Chart 5 dealing with
13 plantings. If you look at the line on U.S. plantings
14 and compare that with the line on Canadian imports,
15 I defy you again to find any correlation. Sometimes
16 plantings go up when imports go up, sometimes
17 plantings go up when imports go down and vice versa.
18 There is no consistent correlation.

19 Most particularly, look at the most recent
20 year where acreage if anything, are flat on these two
21 charts and imports are way down.

22 In summary, the record is devoid of any
23 evidence that there has been any impact on U.S.
24 farmers by the volume of imports and that's what you
25 would have expected in this kind of market where

1 imports are present because of the other factors that
2 we talked about earlier in my presentation.

3 The other factors will be talked about more
4 by Dan Sumner. I have listed two of them here that
5 are particularly important, the disease and poor
6 weather conditions and the crop revenue coverage
7 program. We've talked about them before, Dan will
8 discuss them in more detail later.

9 Let me turn now to price effects because
10 that's what this case really is all about.

11 Farmers are pure price takers. The prices
12 they receive at the grain elevators are durum wheat
13 prices consisting, as the North Dakota Wheat
14 Commission says, and I quote, "of prices in the major
15 spring wheat cash markets for Minneapolis or Portland
16 minus the charge for elevator services and
17 transportation costs." That's what determines the
18 price at the elevator, it's the price at the exchange
19 or the major trading center.

20 Look at Hearing Chart 6. This will show you
21 the flow and I think this is a very important graph
22 and Steptoe & Johnson's great artist, Matthew Yeo, has
23 done this, and what it shows you is the way things go.
24 The farmer sells to the grain elevator, which then
25 sells to the grain trading companies or integrated

1 mills, a little bit he sells directly to a few local
2 domestic mills, and then it is the grain trading
3 companies, the integrated mills and the Canadian Wheat
4 Board that make the sales both to domestic mills and
5 exports.

6 The U.S. industry sales and production are
7 right up here at the top of the chart, just as they
8 are in the steel industry. You would never -- you
9 would never deduct from U.S. steel industry domestic
10 shipments any exports made by steel service centers.
11 You'd never do it. But it's exactly the same thing as
12 what happens here.

13 Now, with this in mind, it makes it clear
14 that it's at this level here that the competition
15 occurs between the wheat board and U.S. wheat and
16 that's a global market.

17 As a consequence, it's not surprising to
18 find there's no correlation -- and, incidentally,
19 there was lots of testimony today that confirmed that
20 fact. Mr. Fisher said we sell HRS in a hundred
21 countries around the world. When they were talking
22 about the Alsen variety, you remember, he said we
23 don't know how much goes to domestic millers and how
24 much goes to exports, we sell it to the grain
25 elevators and after that it's their decision what

1 happens to it.

2 Mr. Fisher also talked about the pasta
3 makers and their relationship with the Arizona desert
4 durum people. What he said there was the pasta makers
5 have to compete with export customers, the Italians,
6 in offering the best price for desert area durum.
7 That's what we're saying, it's a global market here.

8 You should note also Mr. Lee's testimony
9 about the elevator he sells to and how it looks to
10 world HRS markets.

11 And, finally, it was particularly important,
12 I thought, the colloquy that Commissioner Hillman had
13 on the large decline in U.S. demand. You have a huge
14 decline in U.S. demand on one of these products in the
15 most recent year. If that major change in the supply
16 and demand situation doesn't have a mammoth effect on
17 U.S. price, it should tell you that U.S. price isn't
18 dependent upon the supply/demand relationship in the
19 U.S. market because that change is massively bigger
20 than any change in the volume of imports during this
21 period.

22 Now, one of the interesting things about
23 this case is that in fact prices from both durum and
24 hard red spring were at or near their highest for the
25 period at the time the petition in this case was

1 filed. Look at the brief pages there, that's a very
2 important point to note. There is no evidence to
3 suggest that these substantial increases in crop
4 prices have not kept pace with increases in farmers'
5 costs and I would refer you to the data references
6 there.

7 Finally, there is damn little evidence of
8 injury to U.S. durum or HRS farmers here. Prices are
9 up for both durum and HRS over the period. Farmers
10 can sell all of their production every year. Land
11 prices have risen strongly. Whether you look at net
12 returns or total product returns in staff's Tables
13 III, IV, V or IV, almost any line in either of those
14 categories shows the improvement over the POI.

15 Sure, you don't have perfect data, but the
16 data you do have all points in one direction: that
17 this is an industry that's doing well. They're doing
18 so well that -- argue at pages 61 and forward of their
19 brief and as they argued here today, wheat related
20 payments under the U.S. farm program, the payments
21 that are designed to aid the farmers when they have
22 market problems, "were negligible and were close to
23 zero in the major HRS and durum states."

24 Only plantings and production have at any
25 time during this period experienced some less than

1 satisfactory trends and, as we discussed above, those
2 trends had no correlation whatsoever with imports.

3 Now, finally, I'll just tick off the other
4 points on threat because there's no evidence of that
5 here either. Prices have been rising over the period
6 of investigation and you should look, by the way, at
7 Charts 7 and 8, which show those price rises.

8 And, incidently, there was a great deal of
9 talk about plantings and talking about how, gee, in
10 2003 our plantings basically -- we were going to look
11 ahead to the imports that were going to be coming in,
12 that's why we cut back plantings. Well, look at the
13 imports they were looking ahead to: none on either
14 chart.

15 There's no evidence of threat here. I won't
16 go through those. I'm going to turn it over to Dan
17 Sumner now to talk about the economics of this and
18 then if there's time when we get through I'll come
19 back and make a couple of concluding remarks.

20 MR. SUMNER: Thanks, Dick.

21 Good afternoon. You've already heard and
22 read much about this case, I don't want to inundate
23 you with more details and complexities, so instead
24 I'll just take a few minutes to review the salient
25 economic facts and the logic surrounding the effects

1 of imports of wheat into the United States.

2 I also would like to discuss a few of the
3 more important economic mis-impressions that may have
4 arisen from the pre-hearing brief, the economic
5 exhibits and particularly the oral remarks we heard
6 this morning from the petitioners.

7 To understand how prices and quantities move
8 in a commodity market requires defining the relevant
9 market, that's first, and then thinking about the
10 factors that shift the supply or the demand in that
11 market.

12 Prices and quantities for wheat, including
13 import quantities and export quantities, are jointly
14 determined simultaneously.

15 It's literally nonsense to treat either
16 prices or quantities as exogenous in a market in which
17 both prices and quantities are determined together by
18 the various conditioning factors. That is, there are
19 exogenous factors that are driving both prices and
20 quantities, including imports and exports.

21 In that market setting, there are three
22 overriding economic facts that determine the economic
23 implications of wheat imports on wheat prices and farm
24 revenue in the United States.

25 First, the United States is the world's

1 largest wheat exporter in a very large and well
2 integrated global market, in which Canada is also a
3 major player. Let's just remind ourselves -- I also
4 prepared a set of charts for you, the first one looks
5 like that, they're labelled, I think, Charts 1 through
6 7, and this just tells you for the various class
7 aggregates just visually how big a deal is the U.S.
8 exports. And the answer is it's a big deal and we all
9 accept that, I think, at this stage.

10 Then what Chart 2 does for you is place the
11 United States and Canada in the world export picture.
12 You'll notice the U.S. and Canada are both important,
13 the export shares vary a bit from year to year as
14 weather and other things drive this global market.
15 The U.S. and Canada are both big. They're not the
16 dominant parts of the world export market, but they're
17 important in the world export market.

18 The second fact is that Canadian shipments
19 of wheat to the United States are dwarfed by exports
20 from the United States and Canada to other markets,
21 I'm going to show you some pictures on that in a
22 minute, and by production and the flow of wheat in
23 this integrated world market.

24 The third fact is that there is that there
25 is a multitude of factors in addition to the price of

1 wheat that affect the quantity supplied and the
2 quantity demanded for wheat in the United States.

3 On the supply side, these include U.S.
4 weather, wheat diseases, wheat policy, the policy and
5 expected prices for competing crops, just to give you
6 some examples.

7 On the demand side, driving forces include
8 consumer income; consumer demographics; food trends,
9 we heard some about that this morning; exchange rates
10 in various markets around the world; weather and
11 growing conditions in importing countries; weather and
12 other conditions among our competing export suppliers,
13 Argentina, Australia, et cetera; international
14 policies; prices of food or feed products that compete
15 with wheat on the demand side. So all of these
16 factors are driving the supply of wheat in the United
17 States.

18 The first step in analyzing the forces that
19 determine prices and quantities is to appreciate the
20 relevant market in which these equilibrium conditions
21 play out. In this case, that's undeniably this global
22 market for wheat. We can't make sense of the data or
23 compile useful statistical or econometric information
24 treating the United States in insolation from the
25 factors that drive export opportunities for U.S.

1 wheat. Therefore, we must consider this global
2 market.

3 As we do that, let's begin by reinforcing a
4 point that Dick Cunningham made for you a few minutes
5 ago. Let's see how wheat flows through the market.
6 I don't have a nice piece of artwork for you, so I'll
7 describe it in words.

8 It begins with a typical pattern, farmers
9 sell to the elevator, they sell to the grain traders,
10 who move the wheat to the millers. The wheat flows
11 from there into products and the products flow
12 downstream to the ultimate consumers.

13 What's important from the farm point of view
14 is that the wheat farmer faces prices that are tied to
15 quality for that farm, but given that price the farmer
16 does not care and often cannot even learn, cannot
17 know, about the location or the ultimate consumer for
18 his or her wheat, whether in the United States or
19 elsewhere And we heard examples of that this morning.

20 Farmers see the local market price of wheat
21 in their local area. They don't see a separate Tokyo
22 price because someone eats noodles in Tokyo that may
23 or may not have their wheat. They don't see a separate
24 price in seafood based on sour dough bread. They see
25 a price of wheat in their local elevator.

1 It's the grain merchants that arbitrage the
2 -- potential locations, but the -- the farmers receive
3 is the same no matter where in the world their wheat
4 is ultimately sold. Wheat produced in other parts of
5 the world competes with wheat produced in the United
6 States at several steps down the marketing chain from
7 the farm.

8 Grain merchants themselves are
9 multi-national corporations that buy and sell wheat in
10 many counties. They compete directly with one another
11 in many locations where wheat is grown, in many
12 different regions.

13 To get a sense of this, look at Chart 3, if
14 you will, which has world imports. This is the
15 parallel to the world export chart and we just have
16 arrayed for you some identifiable countries that are
17 the major wheat importers on down, beginning with the
18 E.U., which you will remember is also a very major
19 wheat exporter, Brazil and on around.

20 Notice a good 40 percent of that chart are
21 all the other countries. Wheat is sold globally.
22 It's exported around the globe. There's lots of
23 markets for wheat around the globe.

24 What Chart 4 does, it's even more
25 interesting, I think, because it shows the size of the

1 global production of wheat. That's important because
2 much of the competition in the global market involves
3 not exports going head to head, but exports and
4 imports competing for the local market. So if we see
5 this world production chart, we find that India and
6 China are very large producers of wheat. Wheat that
7 is imported by China, for example, competes mainly
8 with Chinese domestic wheat. So there's competition
9 really in this whole world market and that's increased
10 over time.

11 Not only is production for wheat in this
12 world market large with many players, the market is in
13 fact fully integrated. Chart 5 that we've prepared
14 for you shows you lots of individual prices and how
15 those have moved together.

16 Now, these are different types of wheat,
17 different classes, different locations. Notice just
18 how these move, up and down together. This is annual
19 data going back for 20 years. These wheats are moving
20 together. We have several U.S. wheats and several
21 international wheats that are moving together.

22 Even stronger and more compelling evidence
23 is the statistical work that was done in a detailed
24 time series study that's presented in Exhibit 20 in
25 the pre-hearing brief. That is statistical analysis

1 that carefully tests whether various local wheat
2 prices are truly integrated into a single market.
3 It demonstrates that they are and, indeed, fully and
4 strongly co-integrated.

5 Grain traders, Cargill, ADM, Louis Dreyfuss,
6 move wheat wherever the market opportunities are best
7 for them. If the opportunity is higher in Korea, the
8 wheat moves there. If it's better in California, it
9 moves to California.

10 U.S. wheat competes directly with wheat
11 around the globe. The same wheat can compete in
12 California, it may compete in Korea.

13 Shifting the location of competition, which
14 is what we're talking about here, can only have
15 minuscule effects on the prices in either Korea or
16 California.

17 CHAIRMAN OKUN: Mr. Sumner, I hate to
18 interrupt your testimony.

19 I just want to say, Mr. Cunningham, the
20 30 minutes for this panel has expired, I see the red
21 light. I think that there's still --

22 MR. CUNNINGHAM: Let me see if I can get a
23 loan of few minutes from someone.

24 Can I get a loan of a few minutes from
25 somebody? I don't hear a lot of volunteers.

1 May we have one minute to finish up and then
2 we'll go on?

3 CHAIRMAN OKUN: Yes. That would be good.
4 Thank you. I won't take that out of the millers'
5 times, so you will have your full time.

6 MR. SUMNER: I have provided for you, and
7 fortunately, I've tried to write down for you the
8 major points I wanted to make this morning, so I will
9 at this stage ask you to look at what I've prepared in
10 writing that I was going to summarize. It goes
11 through each of the major points we're talking about.

12 There are a couple of things I want to say
13 in response directly to what we hear this morning and
14 that is in response to the economic analysis and the
15 critiques that the petitioners made of some of our
16 work and some critiques that we have of their work and
17 I would invite you to discuss that with us a little
18 further because we have a lot to say about that
19 dispute that was raised this morning.

20 CHAIRMAN OKUN: Thank you very much.

21 You may proceed with the millers'
22 presentation.

23 MS. ANDERSON: Good afternoon. I am Jean
24 Anderson of Weil, Gotshall & Manges, joined by my
25 colleague John Ryan across the way. We're

1 representing the North American Millers' Association
2 and its ad hoc CVD AD committee.

3 You are first going to hear testimony from
4 executives of companies that mill durum and produce
5 pasta, then from three millers of hard red spring
6 wheat. Thereafter, you will hear from a
7 representative of the National Grain Trade Council,
8 who is accompanied by the president of the Minneapolis
9 Grain Exchange. Also on the panel and available for
10 questions are several other executives of millers and
11 pasta producers and the vice president of the North
12 American Millers' Association.

13 As we have much to cover, I will turn the
14 proceedings over to Dave Potter of American Italian
15 Pasta Company to begin.

16 MR. POTTER: Thank you and good afternoon.
17 My name is Dave Potter. I'm an executive vice
18 president of American Italian Pasta Company. AIPC is
19 the largest pasta producer in the U.S., with four
20 domestic pasta production facilities and two large
21 durum wheat mills. Combined, we have annual pasta
22 capacity of over one billion pounds, which represents
23 approximately 25 percent of the total U.S. market
24 share. We process between 23 and 25 million bushels
25 of durum wheat annually.

1 I am here today to make three very important
2 points:

3 First, U.S. durum producers have not been
4 able to produce adequate quantities of good milling
5 durum for the U.S. past industry.

6 Number two, Canadian durum provides
7 desirable quality attributes and is strongly needed to
8 supplement domestic durum production; and

9 Third, Canada is not under selling durum
10 values into the U.S. market.

11 North Dakota has suffered reoccurring
12 disease issues, especially with fusarium head blight
13 or scab that dramatically limits how the grain can be
14 used at the mills due to vomitoxin. Over the last
15 three years, only half of the North Dakota durum
16 production graded number 1 or number 2 hard amber
17 durum, the quality preferred by the mills. I agree
18 that we had a strong crop this year due to the dry
19 conditions, but one year does not make a trend and
20 scab spores remain in the soil for several years
21 waiting for the right growing conditions, so certainly
22 risk remains.

23 At the macro level, the 20-year average U.S.
24 production of 96 million bushels falls well short of
25 the average usage of 135 million bushels used by the

1 domestic mills, our appetite for exports and the seed
2 and feed requirements. Over the last three years,
3 only 40 to 45 million bushels of good quality was
4 available each year for the 70 million plus needed at
5 U.S. mills.

6 On page 3 of the North Dakota Wheat
7 Commission's own publication, "To Tell the Truth,"
8 they correctly illustrate the total U.S. durum
9 production of good million quality fell short of food
10 use in the U.S. in eight out of the last ten years.
11 This includes the strong desert durum that was
12 referenced earlier and there is no way that ending
13 stock simply can cover the back to back to back
14 production shortfalls.

15 Suggesting there is plenty of durum,
16 Mr. Fisher earlier stated that the five-year average
17 durum carryover stocks were 42 million bushels. Since
18 you can't grind averages at the mill, this is another
19 example of distorting funny math. The fact is our
20 current stocks are only 23 million bushels and that's
21 a 40-year low. The bottom line is clear: the U.S.
22 milling and pasta industries need imported durum wheat
23 to make a good pasta product that competes with
24 aggressively priced imported pasta from Italy, Turkey,
25 Mexico and South America.

1 Although we originally bought all of our
2 durum from North Dakota and Montana, by the mid '90s,
3 our growth rate and the continued disease issues in
4 North Dakota drove us to initiate additional sourcing
5 in the U.S. desert, Mexico and Canada. What we
6 learned over the last ten years was that each growing
7 area routinely has certain strengths and weaknesses in
8 the various grain quality characteristics and when
9 blended together provides a very consistent performing
10 pasta product.

11 Consistent product performance is the best
12 definition of pasta quality from our customers. While
13 North Dakota normally produces the highest protein
14 levels, virtually all other important grain
15 characteristics are routinely provided by other areas.
16 For instance, Canada consistently provides lower ash
17 levels, better pigmentation, lower damaged kernels,
18 less shrunken and broken kernels, higher test weights
19 and generally a cleaner grain as the shipments are
20 aggressively cleaned to eliminate dockage.

21 From my nine years of direct dealings with
22 Canadian Wheat Board, I can testify to the fact that
23 they are not and have never been under selling the
24 U.S. durum market prices. To the contrary, they
25 rightfully are selling at a nickel to a dime per

1 bushel higher than the Minneapolis market prices and I
2 pay further premiums on freight to our Missouri mill.
3 But we are willing to pay the premiums for Canada
4 durum because we offset the cost with better mill
5 yields and improved product quality from the cleaner
6 grain, lower ash, better color pigmentation, and lower
7 damage.

8 If the Canadian Wheat Board was really under
9 selling the U.S. values, why wouldn't the imports be
10 higher? Average imports of only 16 million bushels
11 are only 20 to 22 percent of the total mill use and
12 U.S. exports exceed imports by a factor of three to
13 one.

14 U.S. durum makers are down because the
15 northern U.S. region failed to address varietal
16 research needed to confront the various diseases in
17 North Dakota. Their product as a result has grown
18 increasingly dependent on ideal growing and harvest
19 conditions and fewer farmers are simply willing to
20 take the risk of growing durum.

21 Thank you very much for your consideration.

22 MR. VIERS: Good afternoon, commissioners.
23 My name is Greg Viers. I am the wheat procurement
24 manager for Barilla America.

25 Barilla was established in 1877 in Parma,

1 Italy. Currently, we have eight pasta plants
2 worldwide with an annual output in excess of 700,000
3 metric tons of pasta. This represents over 33 million
4 bushels of durum.

5 Barilla has an integrated mill and pasta
6 plant in Ames, Iowa and we have a nationwide branded
7 past, the Blue Box.

8 Barilla makes some of the highest quality
9 pasta in the world. We view durum wheat not as a
10 commodity, but as a specialty crop. We have
11 characteristical specifications for wheat and very
12 tight characteristical specifications for semolina.
13 Our specifications for semolina stay consistent year
14 to year.

15 For business proprietary reasons, I can't
16 divulge characteristical information at this hearing,
17 but the point is this: because our specifications for
18 semolina do not change, we must procure and monitor
19 durum wheat production and quality at varietal levels.
20 This is the only way to ensure Barilla quality pasta
21 year after year, even in years where durum quality in
22 a given area is low.

23 I hold in my hand a manual titled "Prairie
24 Registration Recommending Committee for Grain,
25 Subcommittee on Wheat, Rye, and Triticale Operating

1 Procedures." These are procedures that must be
2 followed in order to register wheat in western Canada.
3 Registration must be obtained in order for wheat,
4 durum, in this case, to be considered a milling grade.
5 All non-registered varieties must be sold as feed
6 wheat.

7 This registration process not only measures
8 agronomic trades, but also takes into consideration
9 how the wheat will perform in the mill: consistency
10 of kernel size, cleanliness of grain, extraction rate
11 and how milled wheat will perform as a finished
12 product, pasta.

13 Barilla performs analysis beyond the typical
14 analysis to assess milling characteristics. We do
15 purchase non-IP durum from Montana and North Dakota,
16 but I can tell you there are Canadian varieties
17 registered that we feel have higher milling and
18 non-milling characteristical values than U.S. northern
19 plains durum.

20 The Canadian registration system capitalizes
21 on the specialty grain side of the durum breeding
22 industry. To our knowledge, there's no
23 all-encompassing system in the U.S. which monitors and
24 dictates varietal improvements in regards to agronomic
25 and finished product analysis. The result is the U.S.

1 commercializes more durum varieties and U.S. producers
2 have more durum varieties to choose from than their
3 Canadian neighbors, but some of these varieties which
4 are widely grown are grown for agronomic yield
5 reasons, not finished product reasons.

6 Technology has changed the way Barilla
7 purchases wheat. We purchase durum based off of
8 characteristical value, not commodity value. We have
9 paid a premium for identity preserved durum varieties
10 that have a higher characteristical value from Canada.
11 Since we are buying identity preserved durum from
12 Canada that we cannot obtain from the U.S. norther
13 plain states, we feel durum Barilla has purchased from
14 Canada has no impact on the U.S. durum industry.

15 Ultimately, while we do not buy directly
16 from farmers, all the industry people here today are
17 end users. Any time you are producing a product for
18 sale, whether it's cars or wheat, the producer must
19 know what end users need. When I look at the two
20 systems, the Canadians are doing a better job of
21 providing what the end users needs are. If customers'
22 needs are addressed more adequately in the U.S.,
23 demand will follow.

24 Thank you very much for your time.

25 MR. MEYER: Good afternoon. My name is

Heritage Reporting Corporation
(202) 628-4888

1 Jim Meyer and I represent Italgrani USA, which is a
2 privately-owned grain milling and grain trading firm
3 based in St. Louis, Missouri.

4 We operate a durum wheat mill in St. Louis
5 which uses over 10 million bushels of durum wheat per
6 year. In addition, our company also operates four
7 grain elevators in North Dakota and a grain trading
8 firm in Minneapolis, Minnesota.

9 I would like to talk to you today about the
10 way that durum wheat is marketed in the United States
11 and how this impacts our company's operation.

12 In the durum growing areas of North Dakota,
13 the farmer grows and harvests the durum wheat and has
14 the ultimate decision as to when they sell their
15 grain. When they decide to sell, they will sell and
16 deliver the grain to a nearby grain elevator. For
17 example, every day our elevators will post the current
18 market price for all of the different commodities that
19 are grown and harvested in that area. Our goal in
20 operating these facilities and, indeed, any elevator
21 operator's objective, is to purchase and ship as much
22 grain as possible.

23 Our posted prices are based on overall
24 market conditions and Canadian wheat has no impact on
25 those prices.

1 Now, the grain elevators will accumulate
2 large amounts of durum wheat from a number of farmers
3 to assemble trainload quantities. The elevator
4 operators will determine what markets to sell the
5 grain into based upon the quality of the grain that
6 they've purchased. For example, some grain will be
7 sold to milling companies, while other grain will be
8 sold for export or to the feed grain market.

9 The grain elevators generally will not sell
10 grain into the market until they have acquired the
11 grain from the farmers. Keep in mind that there is no
12 futures market for durum wheat. Therefore, the grain
13 elevators are unwilling to sell grain that they have
14 not yet purchased, so clearly the durum wheat
15 marketing process in North Dakota starts with the
16 farmer.

17 In the durum milling business, durum milling
18 business, our customers, the pasta companies,
19 sometimes demand that the milling companies offer
20 fixed priced semolina contracts for long periods of
21 time. For example, it could be three months, six
22 months, or even longer. The reason for this demand is
23 that they want the price of semolina to be locked in
24 for a long period of time.

25 When our customers require long-term fixed

1 pricing, we will try to source the grain we need from
2 all possible sources. However, we are unable to get
3 quotes from North Dakota sources for deferred delivery
4 of durum wheat. In essence, the farmers are generally
5 unwilling to sell their grain at fixed prices for
6 deferred delivery and, in turn, the grain elevators
7 are unwilling to expose themselves to price risk by
8 selling the grain and hoping they can buy the grain in
9 the future at a reasonable price.

10 In my opinion, one reason the farmers are
11 unwilling to sell grain into the future is the way the
12 United States farm program works.

13 On the other hand, durum millers in the U.S.
14 have historically been able to source Canadian durum
15 wheat for deferred delivery at fixed prices. Bear in
16 mind that the Canadians charge a premium for this
17 deferred delivery feature and our company has agreed
18 to pay this premium in order to cover part of the
19 price volatility risk that we face.

20 Without the opportunity to purchase Canadian
21 durum wheat, our company will be forced to take
22 substantial price risks in selling our semolina into
23 the market.

24 Now, there are a number of other reasons our
25 company purchases Canadian durum wheat, including the

1 quality of the grain and the consistency of the
2 delivered product. I would like to echo the comments
3 of my colleagues earlier in this discussion on those
4 issues.

5 Thank you very much.

6 MR. HILLMAN: Madam Chairman, members of the
7 committee, my name is John Hillman and I'm the
8 executive vice president of Bay State Milling Company
9 based in Quincy, Massachusetts.

10 Bay State Milling has supplied the U.S.
11 baking industry with high quality flours for over 100
12 years. We've got six flour mills scattered across the
13 United States and we supply flour into all regions of
14 the country.

15 We use primarily hard wheats and make flours
16 for many varieties of bakery products and ethnic
17 tastes, such as for regular white bread, whole wheat,
18 bagels, tortillas, pita breads, pizza, frozen doughs
19 and the like.

20 All of these different products require
21 differing blends of hard red spring and hard red
22 winter wheat and each crop year we're involved in
23 considerable market research in order to identify the
24 most appropriate drawing areas, both in the U.S. and
25 Canada, that can give us the wheat that we need in

1 respect to quality, availability and, of course,
2 economic value.

3 Annually, we grind well over 40 million
4 bushels of wheat a year. At least 50 percent is hard
5 red spring wheat and close to 40 percent is hard red
6 winter wheat. These proportions can vary from year to
7 year and it's usually based upon crop conditions and
8 availability. These are affected primarily by
9 variable weather conditions in different parts of the
10 country that cause these differences.

11 But it's not just a question of finding
12 quality wheat, but we also need to find quality wheat
13 that can give us consistency of product from one
14 delivery to the next because each year we plan to
15 provide our customers with uniform product
16 specifications so that we can maintain consistency
17 over a long period of time.

18 In many years since the early 1990s, we've
19 seen deteriorating conditions in the U.S. spring wheat
20 growing areas, mainly caused by poor growing
21 conditions weatherwise, and, as a result, higher
22 incidences of disease and damage to those crops.
23 Consequently, there's been more substitution of winter
24 wheat for spring wheat. Today, we are using
25 proportionately much more winter wheat in our product

1 mixes than we were, say, 10 to 15 years ago because of
2 this.

3 The lower quality of U.S. spring wheat has
4 also resulted in poorer yield performance, thereby
5 increasing millers' operating costs, as well as
6 reducing the spring wheat premiums available to the
7 growers. An example, the Red River Valley area of
8 North Dakota was traditionally a favorite sourcing
9 area for hard red spring wheat for us and for many
10 milling companies. Because of damaging wet weather in
11 the mid 1990s, there were years when we totally
12 withdrew our purchasing programs from this region.
13 Wheat invariably exceeded FDA guidelines for scab and
14 vomitoxin levels, causing us to purchase wheat from
15 other areas, including Canada.

16 In the last few years, we've also seen
17 continuing declines in U.S. spring wheat stock. When
18 this happens, this raises concern as to the continuing
19 availability of uniform supplies of quality wheat for
20 our needs.

21 For these kinds of reasons, Canadian hard
22 red spring wheats are needed to support and supplement
23 the U.S. hard red spring supplies in order to ensure
24 the milling industry has a quality wheat in the
25 supplies needed to feed our country.

1 Canadian wheat is more uniform and more
2 predictable than its U.S. counterpart, as well as
3 being a cleaner wheat as it's shipped to an end user.
4 Therefore, when we purchase wheat from Canadian
5 sources, we usually receive what we expect. This
6 enhances our ability to blend it into mixes with U.S.
7 wheats and therefore extend the useful life of U.S.
8 wheats.

9 Even so, Canadian spring wheat has never
10 been a major component in our purchasing plan and
11 strategically we've preferred to purchase wheats from
12 domestic sources. Another reason for this is that
13 Canadian wheat has not been priced competitively with
14 U.S. wheat. In fact, in 2001, when we purchased
15 Canadian hard red spring wheat, we bought at an
16 average of \$139.13 per metric ton, when our U.S.
17 average purchasing price was \$137.76 per metric ton.

18 Nevertheless, we need to have competitive
19 access to Canadian wheat to supplement our purchasing
20 program so that we can purchase that kind of wheat of
21 that quality and availability when U.S. supplies are
22 restricted, which we know will happen.

23 Restrictions on Canadian wheat imports will
24 only serve to encourage more imports of Canadian flour
25 coming into northern U.S. cities to the detriment of

1 the U.S. agribusiness industries.

2 Thank you for your consideration.

3 MR. MARTIN: Good afternoon. My name is
4 Randy Martin and I'm a vice president with Miller
5 Milling Company, where I have responsibilities for
6 durum and hard wheat purchasing, flour sales and flour
7 quality.

8 Before joining Miller Milling, I purchased
9 flour for over ten years for a baking company that
10 operated more than 50 wholesale bakeries in the United
11 States, so I bring both a milling and a baking
12 perspective.

13 Miller Milling is a privately-owned
14 Minneapolis-based company that serves one of the
15 largest manufacturers of pasta in the United States
16 and Mexico and some of the largest bread, bun,
17 tortilla and English muffin bakers in this country.

18 As you have already heard from other durum
19 millers, I will focus my comments on the hard wheat
20 side of our business.

21 First, millers readily substitute and
22 alternate between wheat blends to meet bakers'
23 requirements. At the beginning of each crop year, the
24 miller and baker cooperate to evaluate the
25 characteristics of new crop wheat and make a

1 determination of the blend that best combines quality
2 and value.

3 Following this evaluation in 2001 and 2002,
4 for example, the bread and bun baker decided the best
5 blend was generally a 70 percent winter/30 percent
6 spring. In the marketing year that ended this past
7 May, 2003, the blend was 100 percent winter in many
8 baker applications. The point is this: bakers of
9 many bread and bun products can and do readily alter
10 the blend relationships between hard red spring and
11 hard red winter wheats.

12 In a flour sales capacity, I meet with
13 bakers frequently. I am asked when Canadian wheat
14 will again be available and among our customers today
15 I am told that Canadian spring wheat has favorable
16 qualities and the baker would gain like to have to
17 access to this wheat.

18 The baker tells us that Canadian spring
19 wheat produces flours with greater absorption and this
20 means the baker can get more loaves of bread from the
21 same amount of flour.

22 Also, Canadian wheat is cleaner than U.S.
23 wheat. This means that U.S. millers are not paying
24 for transportation on weed, seeds and chaff and we
25 transport more usable wheat.

1 Another benefit is that logistics is easier
2 to manage on wheat shipped from Canada. When we buy
3 Canadian wheat, we can specify a week for shipment.
4 With U.S., shipment is more uncertain.

5 Canadian wheat is also more consistent and
6 has better baking qualities. The reason may be that
7 47 varieties are planted in North Dakota, while 80
8 percent of the acres in Canada are represented by only
9 seven varieties. This point was discussed this
10 morning, but in North Dakota of the 10 most widely
11 planted varieties, just one was rated good by North
12 Dakota State University, while six of these 10
13 varieties were rated below average.

14 The most commonly planted variety in North
15 Dakota, Alsen, representing 37 percent of the planted
16 acres, was rejected for release in Canada because it
17 did not meet their standards for milling and baking
18 quality.

19 Finally, I see the Canadian Wheat Board as a
20 follower of prices traded on the Minneapolis Grain
21 Exchange in the case of spring wheat or as quoted in
22 the marketplace in the case of durum. I have
23 absolutely experienced no price discounting by the
24 CWB. In fact, our company has on occasion paid a
25 premium for Canadian wheat to obtain some specific

1 quality or logistic characteristics that are essential
2 to produce quality semolina and the hard wheat flour
3 demanded by our customers.

4 Thank you.

5 MR. KOENIG: My name is Alan Koenig. I am
6 the director of grain for Milner Milling and Pendleton
7 Flour Mill.

8 Milner Milling and its sister company,
9 Southeastern Mill, have a total of six mills with a
10 daily milling capacity of 135,000 bushels. These
11 mills are located in Georgia, Alabama, Idaho, Oregon
12 and Hawaii. Our customer base includes regional and
13 national baking companies, as well as the retail
14 business. We supply flour for cookies, crackers,
15 pretzels, pan breads, specialty breads, pizzas and a
16 variety of different mixes. Our broad customer base
17 uses various blends of flour for their wide range of
18 products.

19 I would concur with Randy Martin that bread
20 can be made with both hard red winter and hard red
21 spring wheat, with the blend changing from year to
22 year. Last year, for example, the bulk of the bread
23 customers were using 100 percent hard red winter
24 wheat.

25 The Canadian crop is typically a more

1 consistent crop when compares to spring wheat grown in
2 the U.S. This is accomplished through better control
3 of varieties. In Canada, a new variety must be equal
4 to or be an improvement to an existing variety before
5 it can be released.

6 Not only are the agronomic factors checked,
7 that is, test weight and yield, but so are the milling
8 and baking characteristics. This allows a more
9 homogenous product to be delivered to the flour mill
10 or other end user.

11 U.S. plant breeders seem to breed for
12 factors important to growers with little or no regard
13 for milling or baking characteristics. Just recently,
14 the Japanese Ministry of Agriculture made a formal
15 request that certain varieties of wheat be excluded in
16 future U.S. purchases. I am afraid this trend will
17 continue in other countries until the U.S. plant
18 breeders start breeding for quality, not just
19 quantity.

20 The Canadians also clean their wheat before
21 shipping. This takes out excessive dockage, which
22 helps lower freight costs. That way you are not
23 paying freight on something you cannot use. It also
24 helps reduce time and energy to clean the wheat once
25 it arrives to the flour mill. A cleaner wheat allows

1 the mill to get a higher yield of flour.

2 In all my years in the grain industry, I
3 have never seen Canadian wheat priced cheaper than
4 U.S. wheat. Most of the time, Canadian wheat carries
5 a premium.

6 The wheat board also gives us the
7 opportunity to purchase deferred shipped wheat to
8 hedge risk. This option is not always available with
9 U.S. wheat. If a U.S. grain co is not buying wheat,
10 they may not have any to offer.

11 Most of the companies we supply flour sell
12 their products not only in the United States, but
13 globally. These companies must have access to the
14 best quality inputs available to them. They count on
15 us to originate, process and ship the most consistent
16 flour available. To do this, we must have open
17 borders with no tariffs. Otherwise, we will only be
18 able to purchase wheat from an area that focuses on
19 breeding for high test weight and yield with no
20 concern for milling or baking quality.

21 Thank you.

22 MR. LINVILLE: Good afternoon.
23 commissioners. My name is Randy Linville. I am the
24 president and CEO of the Scoular Company in Overland
25 Park, Kansas.

1 Scoular is a medium-sized private firm which
2 merchandises substantial amounts of all classes of
3 milling wheat. Scoular is a member of the National
4 Grain Trade Council. The council represents a broad
5 cross-section of the grain industry, including grain
6 exchanges, boards of trade, and individual grain
7 companies. I serve as vice chairman of the National
8 Grain Trade Council currently.

9 It is my honor to be accompanied today on my
10 left by Kent Horsager, president of the Minneapolis
11 Grain Exchange.

12 I appreciate the opportunity to testify on
13 behalf of the National Grain Trade Council in this
14 investigation. Our comments will focus on market
15 forces.

16 The role of Canadian wheat imports in the
17 United States is overshadowed by global market
18 factors. Although the U.S. remains the world's
19 largest wheat exporter, our share of world wheat
20 exports has been declining in recent years, as current
21 farm programs favor cotton, corn and soybean
22 production at the expense of wheat.

23 As the U.S. share declines, U.S. producers
24 are more vulnerable to the price effects of supply
25 conditions in other parts of the world. Global market

1 conditions for wheat are a major factor that affects
2 U.S. farm prices.

3 Grain supplies flow to the best market with
4 the least amount of freight. Markets are very dynamic
5 and conditions shift with each growing season.
6 Ultimately, the time, place and quality of each grain
7 is valued to find its best market. Government
8 intervention such as the duties being sought in these
9 cases only distorts the course of the market. It
10 neither reduces nor eliminates its strengths.

11 The key point is that it makes little
12 difference where the United States competes with
13 Canadian wheat. In a world market, at some point, all
14 bushels find a buyer. It simply does not matter
15 whether Canadian wheat competes with the U.S. wheat in
16 the United States or elsewhere outside its borders.

17 It is our belief that supply and demand
18 considerations have been a major factor behind any
19 increase in the flow of wheat shipments from Canada to
20 the United States. As U.S. growers continue to
21 produce an insufficient supply of milling quality
22 wheat, U.S. processors will continue to pursue imports
23 and substitutions to satisfy their demand.

24 Restricting shipments of grain to the United States
25 would propel even more Canadian grain into third

1 country markets and even more Canadian wheat flour
2 into the U.S. In either case, U.S. producers would
3 inevitably be forced to compete.

4 In closing, I thank the commission for the
5 opportunity to offer these comments.

6 MS. ANDERSON: With our remaining minute,
7 I'd like to ask the other members of the panel just to
8 introduce themselves and their affiliation so that
9 they can be questioned when the time comes.

10 MR. MILLER: I'm John Miller from Miller
11 Milling Company.

12 MR. GRIFFITH: John Griffith from American
13 Italian Pasta Company, previously from CENEX/Harvest
14 States Cooperative.

15 MR. VERMYLEN: Mark Vermylen from A.
16 Zergea's Sons, a dry pasta manufacturer.

17 MR. BAIR: Jim Bair, North American Millers'
18 Association.

19 MR. ZEARFOSS: Glenn Zearfoss, New World
20 Pasta Company.

21 MR. WILMES: Bay State Milling Company.

22 MR. HORSAGER: Kent Horsager, president,
23 Minneapolis Grain Exchange.

24 CHAIRMAN OKUN: And that completes the
25 testimony for this panel.

1 MS. ANDERSON: Correct.

2 CHAIRMAN OKUN: Before we begin our
3 questioning this afternoon, let me extend my thanks on
4 behalf of the commission to all the witnesses for
5 being here today and for the submissions that you have
6 sent in thus far and your willingness to answer our
7 questions this afternoon. We very much appreciate it.

8 I will remind all witnesses, there are a lot
9 of you there, we can't see all your names, but if you
10 answer any question, if you can just identify
11 yourself, both for us and for our court reporter, it
12 will be very helpful.

13 Commissioner Miller is going to start our
14 questioning this afternoon.

15 COMMISSIONER MILLER: Thank you, Madam
16 Chairman.

17 Let me also thank the many, many of you for
18 being here and being willing to share your story and
19 help us understand your industry. It's very helpful.

20 There is a lot of information here, we spent
21 a lot of time this morning and afternoon with the
22 other side, so I still feel like I have lot to plow
23 through here.

24 Let me begin with kind of simple data
25 questions, the same ones I started with this morning.

1 Mr. Cunningham, perhaps for you, I don't
2 know if the representatives of the millers, Ms.
3 Anderson, wants to comment on it as well, but do you
4 have any comment on the USDA end use certificate data
5 which I think has now been made available to you on
6 its reliability, whether you think that is the data
7 that we should be looking to in being sure that we
8 have good numbers on the import volumes that are
9 subject here?

10 And if you want to say you haven't had a
11 chance to look at it, that's fine.

12 MR. CUNNINGHAM: I don't think we have.

13 COMMISSIONER MILLER: I can understand you
14 haven't had a chance to see the data itself. The fact
15 that these end use certificates are out there in terms
16 of USDA monitoring of the trade, that you may have a
17 comment on in terms of how reliable you think those
18 should be. Anybody?

19 And if the Canadian Wheat Board would like
20 to speak to the issue, you guys are the ones that have
21 to fill out -- well, let's see. Are you the ones that
22 fill out the end use certificates?

23 MR. CUNNINGHAM: We haven't really had a
24 chance to look it. Let us get back to you in the
25 post-hearing brief.

1 COMMISSIONER MILLER: All right.

2 Mr. Cunningham, you heard Mr. Wechsler's
3 characterization of your idea of taking out the
4 exports from the apparent domestic consumption data.

5 I know you've used, as you did a moment ago,
6 the example of the steel service centers and I'm sort
7 of saying, well, you know, is that really a fair
8 comparison? I mean, the steel service centers, it
9 seems to me, don't play exactly the same role as the
10 grain elevators, which struck me as more of almost a
11 pass through for the product from the farmers to the
12 export markets. The service centers arguably are, in
13 some cases, at least doing more, perhaps. And they
14 perform more of a role. Plus, I mean, just
15 fundamentally, I think the volumes that we're talking
16 about --

17 If the steel service centers were exporting
18 as much as we see in terms of U.S. exports of wheat,
19 frankly, we might evaluate the question a little more
20 carefully. I don't think the volumes are anywhere
21 near comparable.

22 MR. CUNNINGHAM: Well, one quick correction.
23 It's not the grain elevators, it's the grain trading
24 companies that are in the middle of this.

25 COMMISSIONER MILLER: Okay.

1 MR. CUNNINGHAM: And it is -- they are not
2 producers of grain, they are not part of the domestic
3 industry, they are trading companies. If you had
4 Mitsui set up in the United States as a trading
5 company that would trade U.S. steel going out, you
6 wouldn't consider Mitsui a U.S. producer. A sale to
7 them gives them something that they have dominion
8 over, that they have title to, that they make all the
9 decisions on. But the real point of this is whether
10 we talk about it in terms of how you do the
11 computations of the U.S. producer shipments or
12 apparent domestic consumption or market shares or
13 something like that, that's not the issue.

14 There are really two issues. One is you
15 have to take into account the role of exports in the
16 market because the role of exports dwarf the role of
17 Canadian imports, by multiples, by big multiples. And
18 the change in the volume of exports is much more in
19 effect on the supply and demand relationship than the
20 change in imports.

21 The second thing is you have to understand
22 how the petitioners play with the issue here. It's
23 important for them to say that we produce more than
24 enough to satisfy the entire U.S. market because
25 that's the only way they can avoid trend analysis.

1 That's the only way they can try to persuade you to
2 say it's simply the presence of the imports in the
3 market that is the injury, even whether they've gone
4 up or they've gone down. They say that in the brief,
5 it doesn't matter whether they're going up or going
6 down. That's nonsense. You shouldn't listen to that.

7 The point is that from the standpoint of
8 what hurts or doesn't hurt this domestic industry the
9 question is what is the market that they sell to? The
10 market that they sell to is represented by all of
11 these purchasers, that is, purchasers for domestic
12 milling and purchases for exports. And it is that
13 market which you need to consider as to whether there
14 is a deficit or shortage or shortfall or whatever you
15 want to call it and that affects how you consider the
16 effect of imports.

17 You can't do this case without looking at
18 the trend of imports. If the trend of imports is
19 down, the trend of prices is up, you shouldn't find
20 injury here just because imports have 15 or 18 percent
21 of the market or something like that.

22 COMMISSIONER MILLER: I actually, I was
23 going to let Mr. Sumner speak to the question about
24 the role of exports because I was looking to your
25 characterization of what farmers see as the

1 marketplace price and I wasn't sure that that was
2 actually what I was hearing this morning. I mean
3 frankly when I was listening to the farmers speak
4 about how they approached the export market what I was
5 hearing more was well, you know, we try to command a
6 premium. We listen to what the demand -- If we can
7 get a premium price in a particular market here, we're
8 going to try to grow wheat that satisfies that need
9 and gets that premium price as though they were
10 actually looking toward different export markets even
11 in terms of price and what that meant for their sale.

12 MR. SUMNER: There's no question farmers, no
13 matter what they're going to grow, if they have the
14 opportunity, the economics make sense, are going to
15 focus on a quality and a high quality if that makes
16 economic sense for them. So there's no question, they
17 will try to hit a premium price if they can.

18 What they see from their elevator is a
19 price. In fact the farmer, there's no traceability on
20 this wheat. He doesn't know that it's his wheat that
21 ends up in sourdough bread in San Francisco. There's
22 no way he can know that. He doesn't know that. He
23 knows that he's gotten a high price because he had the
24 high quality.

25 Any good business person will think about

1 what's two or three steps down the marketing chain
2 from their business. They'll think about what's
3 happening out there so they'll follow some trends in
4 the market, and the newsletters and the farm magazines
5 are full of what's the trade agreement saying between
6 Japan and Argentina because it's going to affect the
7 overall world market conditions for particular
8 qualities.

9 But the issue is what do they see? They see
10 price. Looking to the future they're going to try to
11 predict what's going to happen to price, where are
12 prices going to move, but they don't control or have
13 any access to data about whether or not their
14 particular product, their wheat is exported or stays
15 domestic. It's not as though they're marketing for
16 one thing or the other. They're marketing to get a
17 higher price.

18 MR. CUNNINGHAM: Jim Meyer runs elevators.
19 He might be a good one to have comment on this.

20 COMMISSIONER MILLER: Sure. Mr. Meyer?

21 MR. MEYER: Jim Meyer.

22 In fact that is very true. If you look at
23 the typical grain elevator operation in offering a
24 price to a farmer you'll have the stated board price,
25 if you will, and that will be for the top quality

1 let's say durum wheat based upon the market prices.

2 You may have Farmer A come in today and he
3 has top quality durum wheat. That's wonderful. You
4 could pay him a top price. Another farmer comes in
5 and he brings in a grain sample from his field which
6 has some defects. It could have lower protein, it
7 could have a lower hard vitreous count or any one of a
8 number of other grading factors that we look at. As a
9 result that farmer will get a lower price.

10 But it is absolutely true, every farmer is
11 going to look at the cost of his inputs and the cost
12 of production and he's going to make a judgment. He'll
13 always try to produce the highest quality grain
14 because he has the best chance of getting the top
15 price when he does that.

16 COMMISSIONER MILLER: Mr. Boltuck I know you
17 were wanting to respond to the question.

18 MR. BOLTUCK: Thank you.

19 I think really Chart 1 says something about
20 this. If you look at hard red spring, 72 percent of
21 U.S. production of hard red spring is exported so
22 naturally the farmers are aware that the dominant
23 share, that it's more than likely what they're
24 producing will end up out of the country and they're
25 aware of what foreign consumers in general value in

1 the products they're producing. Every single bushel
2 of that 72 percent of this industry's production does
3 not compete at all with imports from Canada and the
4 U.S..

5 Think of other cases where you voted
6 negative because chunks of the U.S. industry were
7 demonstrably insulated from direct competition with
8 imports, you or prior Commissions. Well 72 percent of
9 the hard red spring industry has found purchasers who
10 can't buy imports from Canada in the United States.

11 COMMISSIONER MILLER: All right, I didn't
12 get past that second question. I appreciate your
13 answers, though. They were helpful. I'll hold others
14 until the next round.

15 Thank you.

16 CHAIRMAN OKUN: Commissioner Koplan?

17 COMMISSIONER KOPLAN: Thank you, Madame
18 Chairman.

19 First just a housekeeping question as a
20 followup to one I asked this morning with respect to
21 alsen. Do millers buy any alsen from Canada, and if
22 so, how much?

23 MR. CUNNINGHAM: Mr. Steinke will take care
24 of that.

25 MR. STEINKE: My name is Rich Steinke. I'm

1 marketing manager for the United States so I'm
2 responsible for trading into that market.

3 The answer to your question is they don't
4 buy alsen from Canada. It is not a registered product
5 of ours. It wasn't registered because of its inferior
6 baking and milling performance qualities. You heard
7 earlier testimony that it had to do with our KVD
8 system, kernel visual distinguishability, but it does
9 not. So the answer is they do not purchase it.

10 COMMISSIONER KOPLAN: Thank you

11 MR. HILLMAN: John Hillman on behalf of the
12 spring wheat. Bay State Milling has never bought any
13 alsen.

14 COMMISSIONER KOPLAN: Could you speak up? I
15 couldn't hear you.

16 MR. HILLMAN: I'm sorry. Bay State Milling
17 Company has never bought any alsen variety
18 specifically.

19 COMMISSIONER KOPLAN: Thank you.

20 If I could turn to Mr. Boltuck. I'm
21 referencing Exhibit 24 to the pre-hearing brief, the
22 CRA/VAR analysis of the effect of imports from Canada
23 on HRS farm prices.

24 Staff has had, agency staff has had a rather
25 thorough look at your vector auto regression analysis

1 and they formulated a couple of pages, actually, of
2 technical questions. More than I will pose here. But
3 in the interest of time it's been consolidated for me
4 into four major concerns and I would term those
5 technical concerns as well. Those all four focus on
6 how adequately your model is specified.

7 I realize that inadequate specifications of
8 a statistical model can result in biased estimates and
9 hence unreliable results.

10 You formulate a VAR model, as I understand
11 it, to try and discern whether increased imports of
12 Canadian wheat and other global shocks affect U.S.
13 wheat prices of HRS. And generally you conclude that
14 global shocks which really are not for me at least
15 adequately defined, affect U.S. wheat price and
16 increases in imports of Canadian wheat. Your
17 conclusion is that they have not had such an effect.

18 Before asking the four major areas of
19 questions I note that the CRA analysis was hard to
20 follow because we need more explanation on exactly
21 what variables are in the model, which shocks
22 constitute what you term global shocks, and better
23 define sources for your data right down to the page
24 and table numbers that the data are found in. So
25 that's all preparatory to the four areas I'm going to

1 take up with you now.

2 Number one, mis-specification of the model
3 from exclusion of important U.S. wheat quantity
4 variables. The question under this particular topic
5 is are not your VAR models estimates potentially
6 biased and your results questionable because you have
7 left out important U.S. wheat market quantities needed
8 to fully and theoretically specify U.S. wheat price
9 whose movements or decreases you were trying to model?
10 That's number one.

11 MR. BOLTUCK: Okay. I would certainly like
12 to also respond in greater detail in the spirit of the
13 technical nature of the questions in our post-
14 conference brief, but I will give you a --

15 COMMISSIONER KOPLAN: Believe me, that would
16 be acceptable to me and I'm sure to the staff, but I'd
17 like to hear as much from you on it as I can.

18 MR. BOLTUCK: Let me give you a brief
19 response.

20 The Petitioner's fundamental hypothesis is
21 that imports from Canada are causing depression in
22 prices and consequently in income, incentives for
23 production and so on, but through prices in the U.S.
24 market. So we have a major U.S. price series. This
25 is a vector. It's a vector over time. There's a

1 dimensionality problem. You've got a lot of time
2 observations so we have three variables.

3 We have a world price that is defined within
4 the data section of this. We can give you more
5 details and page numbers of course. That is a product
6 not sold within the U.S. market, so that is as outside
7 of the U.S. marketing area as we can get.

8 We have a U.S. price because that's the
9 mediating variable in the Petitioner's major theory.
10 They are linking it to imports so we have imports from
11 Canada.

12 Now this is not a structural model. That
13 was one criticism that was leveled at it that you
14 can't solve simultaneous equations like simultaneous -
15 -

16 COMMISSIONER KOPLAN: If I can just break in
17 for a second.

18 MR. BOLTUCK: Yes.

19 COMMISSIONER KOPLAN: But you're not
20 disputing that there are important U.S. wheat market
21 quantities that we would need in order to --

22 MR. BOLTUCK: Yes, I am. Actually, I am.
23 Because the point is, do volumes of imports from
24 Canada affect prices in the United States? And if
25 that's the question then we have prices in the United

1 States and we have volumes of imports from Canada.

2 I just want to emphasize the following.

3 That although we are not making structural assumptions
4 we have not precluded a relationship. We've looked
5 for correlation between changes in price in the United
6 States and changes in imports throughout the entire
7 evolution of the three variable time series, and any
8 time we find it between U.S. prices and imports from
9 Canada we attribute it to a bilateral shock. That
10 means we're being conservative because we're saying it
11 may have originated with Canada, even though it also
12 may have originated purely within the United States
13 and have drawn in imports from Canada.

14 So the point that we don't have enough
15 structure to distinguish between U.S. shock that draws
16 in imports and a purely Canadian shock, if that's the
17 point that's true, but our response to it in the
18 spirit of what we're trying to investigate was to be
19 conservative and assume that all of that correlation
20 is attributable to a Canadian shock, in essence. And
21 that nonetheless as it turned out anyhow, the
22 proportion of variation in U.S. prices explained by
23 that kind of shock is trivial.

24 COMMISSIONER KOPLAN: I appreciate your
25 characterization of that. If I was able to go through

1 the whole list with you I think you'd see that you
2 probably are giving me a response that's at variance
3 with the way in which staff has analyzed your model.

4 MR. BOLTUCK: We'd love to see the list.

5 COMMISSIONER KOPLAN: That can be taken care
6 of. Not a problem.

7 But for purposes of the post-hearing I'd
8 like you to think about our concern here and see
9 whether or not it can be addressed more fully.

10 MR. BOLTUCK: Absolutely, Commissioner.

11 COMMISSIONER KOPLAN: Thank you.

12 Let me move to number two, and I'd ask you
13 this. Why did you first difference your VAR models
14 clearly cointegrated theoretically interrelated data?
15 I assumed you differenced because of non-stationary
16 data. Is it not well known that differencing non-
17 stationary but cointegrated data purges the data of
18 all necessary long run and theoretical relationships
19 that are necessary for adequate VAR specification?
20 Does this not also bias your estimates and render
21 questionable price responses?

22 MR. BOLTUCK: That question I will
23 definitely respond to in the post-conference brief --

24 COMMISSIONER KOPLAN: Now I feel I might be
25 going down the right road.

1 (Laughter)

2 COMMISSIONER KOPLAN: I've got more of them.
3 Let's see if I can get this one in.

4 A lot has happened over your sample period
5 which dates back to 1990. You did not account for
6 each of the following very important events with a
7 separate binary dummy variable. First of all, parts
8 of periods for three separate farm bills -- 1990,
9 1996, and current farm bills. I'm talking about a
10 second binary dummy for each of the three.

11 Next, two North American Free Trade
12 Agreements -- Custer in 1989, NAFTA in 1994. Again,
13 staff feels that a separate binary dummy for both of
14 those would be necessary.

15 Finally, temporary U.S. tariff rate quotas
16 on certain Canadian durum and non-durum wheat for year
17 ending September 11, 1995. A similar problem there.

18 I see my red light has come on, so you can
19 think about that response before we get to my next
20 round.

21 Thank you.

22 CHAIRMAN OKUN: Thank you.

23 Again, thank you to all the witnesses.

24 I think I'd like to start with, is it Mr.
25 Horsager from the Minnesota Grain Exchange?

1 MR. HORSAGER: Yes.

2 CHAIRMAN OKUN: Since you're here, I have a
3 lot of questions about the exchanges so I'm glad
4 you're here to try to help.

5 The question I ask to the extent that many
6 of you are purchasing or looking at Minnesota Grain
7 Exchange and are trading, it would be helpful to get
8 your responses too, but let me just go back to a
9 couple of lines that I was talking to the Petitioners
10 about this morning.

11 I guess a fundamental one is how do you, the
12 Minnesota Grain Exchange, do you think of that as a,
13 would we be looking at that as a world price? Or do
14 you think you have a regional price? How do you look
15 at it based on the information you have?

16 MR. HORSAGER: You're talking about the
17 spring wheat price?

18 CHAIRMAN OKUN: Yes, spring.

19 MR. HORSAGER: I would characterize it as a
20 benchmark price. By that what I mean is the
21 contracts that trade on the exchange have a specific
22 designation, location, grade and so on too. What they
23 provide to the industry is sort of a benchmark for
24 that commodity -- not too different than the Dow
25 provides a benchmark for the stock index.

1 Now your portfolio may deviate from that one
2 way or another. So do, when these millers buy grain,
3 if they have a certain quality that they're looking
4 at, or there's locational differences such as backing
5 it off to North Dakota or out to the PNW or wherever,
6 then they look at the Minneapolis Grain Exchange as a
7 benchmark and then factor in the other issues that
8 sort of go with a particular purchase or sale.

9 CHAIRMAN OKUN: One thing that I just want
10 to make sure that I'm clear on as I think about these
11 is when we're talking about prices at the Minnesota
12 Grain Exchange and then talking about benchmark for
13 what a trader is buying, transportation costs come in
14 after, I mean they're looking at Minnesota Grain
15 Exchange and then adding in transportation? It all
16 relates to how we have this underfilling analysis. So
17 if you can give me an answer and then let me turn to
18 the other folks to talk about transportation and how
19 we should look at it.

20 MR. HORSAGER: The delivery specifications
21 for the Exchange product is Duluth and Minneapolis.
22 So if you're producers are likely subtracting from
23 there to get to the production regions; and if you're
24 somewhere in the other end then you're adding. So it
25 can be either way.

1 CHAIRMAN OKUN: I'm going to go to the
2 transportation in one minute but let me just stay with
3 you on one other question which I asked this morning.

4 Talking about hard red spring, what about
5 for the durum market? And specifically maybe your
6 comments on why the futures market in durum fell
7 apart, I guess, is how it's been described.

8 MR. HORSAGER: We've actually introduced
9 durum twice, and it's fallen apart twice,

10 CHAIRMAN OKUN: What were the two time
11 periods?

12 MR. HORSAGER: It was first introduced
13 October 31, 1973 and traded through November 30, 1977.
14 That actually pre-dates me so I don't know a lot about
15 what happened then.

16 More recently it was introduced the 12th of
17 February '98 and traded through the 20th of March,
18 '03.

19 The second time what prompted the discussion
20 or the introduction, frankly the Exchange's mission,
21 and we're a non-profit organization made up of
22 producers, elevators, the whole kind of gamut of the
23 industry, is to provide price discovery and risk
24 transfer. So we routinely look at what commodities,
25 where we as an organization might provide some value

1 to the industry by providing this sort of
2 informational price discovery and the ability to
3 transfer risk.

4 It was suggested to us by elevators,
5 millers, pasta manufacturers, that we should look at
6 durum. And we did and when we examine those we look
7 at crop size, we look at crop volatility, value,
8 alternative hedges, a variety of things to determine
9 if we can come up with a contract. We did, and
10 introduced one. We actually had decent support
11 initially, especially from the people who had made the
12 suggestion, the manufacturers of pasta and the millers
13 and some of the country elevators that are obviously
14 exposed to some of the risk in that market.

15 We had a hard time engaging the producers,
16 and at one time in fact modified the specifications to
17 try to get some more support from that side of the
18 equation. Because frankly, to have a successful
19 futures contract it does take buyers and it takes
20 sellers. And it never developed enough momentum, so
21 actually recently then we declared that contract
22 dormant.

23 Having said that, there are a lot of other
24 contracts that we've tried and declared dormant too.
25 White wheat is an example that we recently declared

1 dormant, and that's actually about two, two and a half
2 size in terms of crops of durum. So it's hard to say
3 exactly what it takes to make it successful, but it's
4 really unlikely to point the finger at any one
5 participant. Frankly, we found the CWB to be
6 supportive and interested in public futures markets.

7 So there are a lot of factors that go into
8 making a successful contract.

9 MR. CUNNINGHAM: I'd like to have Mr.
10 Steinke comment on that last point.

11 CHAIRMAN OKUN: Yes.

12 MR. STEINKE: As a trader for the region --
13 Rick Steinke. I just want to point out there was some
14 discussion this morning that we're not an active
15 participant. We in fact are an active participant in
16 both the spring wheat futures contract and the durum
17 futures contract. We had an interest in that futures
18 contract working.

19 The reality was for us commercially, though,
20 there wasn't enough volume. We can't participate with
21 ourselves. So this notion that Canada or the Canadian
22 Wheat Board doesn't participate is wrong and it is not
23 true. We do participate and did participate in both
24 of those contracts and we still participate in wheat.

25 CHAIRMAN OKUN: And I may have misheard some

1 of what the testimony was from this morning. I
2 thought one of the points they were making was that
3 with durum, because the CWB, because you had this one
4 big seller, that the futures market couldn't operate,
5 doesn't operate well I guess going back to your point,
6 you need an active, and if you just had this one big,
7 if CWB didn't help the futures market, if you care,
8 because they were doing other things. I don't want to
9 put words back in the mouth of Petitioners. They said
10 it much better than I did.

11 I'm trying to understand both what you're
12 saying there but then go back to you Mr. Horsager
13 about does it matter, the differences between durum
14 and hard red spring and whether that's reflected in
15 other things.

16 Mr. Steinke, you wanted to say something
17 about --

18 MR. STEINKE: I guess my point is only that
19 when there's volume trading we participated in the
20 contract, we heard from our customers that Mr. Kent
21 heard from, and we tried to support the contract. You
22 need active participation from more than just us,
23 though. We can't participate on our own. So you need
24 buyers and sellers.

25 My point only was this notion that we

1 weren't supportive, we were and we tried using the
2 contract and have tried using the contract throughout
3 its existence.

4 CHAIRMAN OKUN: Mr. Horsager?

5 MR. HORSAGER: Any futures market that is
6 successful has broad participation and let me just
7 jump back to spring wheat and give you a sense here.
8 We just completed our fiscal year. We trade about 1.2
9 million contracts, 5,000 bushels per contract. That's
10 about six billion bushels roughly traded, about 25
11 million bushels traded a day. And I think what we're
12 talking about on the spring wheat side in terms of
13 Canadian imports, it's 50 million bushels a year or
14 something on that order, two days of what we trade.

15 So the point is that any one participant
16 tends to be in a futures market, in a successful
17 futures market, relatively insignificant and that's
18 certainly the case.

19 MR. MILLER: Commissioner, can I just say
20 something else about the durum futures?

21 CHAIRMAN OKUN: Yes, if you can identify
22 yourself so I can even see you. Okay, I see you over
23 there.

24 MR. MILLER: I'm John Miller from Miller
25 Milling.

1 I was Chairman of the Minneapolis Grain
2 Exchange the last time we tried to introduce the durum
3 futures contract and the push to introduce, a lot of
4 demand for a futures contract really came from the
5 consumer side, from durum mills and pasta
6 manufacturers that are continually wrestling with this
7 problem of how to establish firm pricing in the
8 deferred periods. The hope was among the consumers
9 that an active futures contract in durum would make it
10 easier for us to establish firm pricing on domestic
11 U.S. production and provide an alternative to the
12 Wheat Board in looking at deferred purchases.

13 The difficulty that we had was that, it's my
14 opinion, the incentive for producers to participate in
15 the futures market was somewhat depressed by U.S. farm
16 policy which to some degree by price supports takes
17 out some of the risk that they might have of price
18 volatility in which there's no corresponding mechanism
19 that reduces the price volatility for the consumer
20 side.

21 The result was that I think the lack of
22 liquidity was largely by our failure to get the
23 production side of the durum industry engaged in the
24 contract. Consequently liquidity was less than we had
25 hoped and eventually declined to the point that the

1 contract wasn't effective.

2 CHAIRMAN OKUN: It's interesting the way you
3 put it, because I guess one of the things that I heard
4 this morning that I wanted to explore, and we probably
5 won't have time in this round but I'll come back to
6 it, and Mr. Meyer, you had talked about the
7 unwillingness of the durum producers to sell on a long
8 term contract. And I think what I heard very clearly
9 both today and have heard both on the 332 and in the
10 briefs is that that is what the domestic producers
11 would complain is the problem with the CWB is that you
12 are assuming risks that they can't do, which is a
13 little bit different than what you're arguing in terms
14 of the crop payments. But it's something that I want
15 to explore a little bit further which I'll have an
16 opportunity to do on another round since my red
17 light's on.

18 Let me turn to Vice Chairman Hillman.

19 VICE CHAIRMAN HILLMAN: Thank you, and I too
20 would join my colleagues in welcoming you all to this
21 afternoon's hearing and thanking you for your
22 presentation.

23 Dr. Sumner, if I could start with you, just
24 to make sure I understand these charts. Obviously
25 these are a lot of this whole issue about the role

1 that exports play was something that was obviously
2 very central to Mr. Cunningham's statements, as well
3 as to your testimony. First I want to make sure I
4 understand it, because I'm trying to look at these
5 charts and then look at the data that we have and make
6 sure I'm square in what you've done here.

7 Basically what these charts are representing
8 as I would read them is in essence what we're showing
9 as U.S. production in essence divided with U.S.
10 exports, divided by U.S. exports to get in essence a
11 percentage figure. Exports over production.

12 MR. SUMNER: That's exactly right.

13 VICE CHAIRMAN HILLMAN: And presumably the
14 same data source, we're all using USDA data.

15 MR. SUMNER: That's right, and this is
16 explicit. It's the wheat outlook, August 14th
17 release. So it's the most recent data we've been able
18 to find.

19 VICE CHAIRMAN HILLMAN: Part of the reason
20 I'm asking this is that as I look at the data you've
21 obviously chosen on the one hand the most recent year,
22 which I can understand, and on the other hand I think
23 it's somewhat aberrational. In other words if I do
24 those same calculations that you did to do these
25 charts for the previous two years the number would be

1 significantly less than half. In other words, you're
2 showing me a number that's saying exports are the
3 preponderance of the market, et cetera, et cetera.
4 Yet if I do the same numbers for the '00-'01 or '01-
5 '02, I'm coming up with in the 40s, as a number.

6 So I'm just trying to make sure, and the
7 reason being was that the production numbers were so
8 much lower in the most recent crop year than they were
9 in the previous year. So you have this major decline
10 in production whereas exports stayed at a relatively
11 steady state number, so you're lowering your
12 denominator, if you will, very significantly in that
13 one year.

14 Does that change this? And I guess, Mr.
15 Cunningham, to some extent to you. I mean to the
16 extent that this argument is focused on this huge
17 magnitude of exports. If the real magnitude, the more
18 traditional magnitude is in the order of 40 percent,
19 not in the order of 70 percent?

20 MR. CUNNINGHAM: No, it doesn't. Of course
21 we've presented the data in the brief for all the
22 relevant years. You're right, I just picked one. In
23 fact we could have given you 2001-2002 except why not
24 give you the most recent data?

25 If you'll notice in Chart 2, I gave you two

1 years there. This isn't the U.S.. But you'll notice
2 that in particular the share exported by Canada has
3 fallen a lot in 2002.

4 So you're right, those vary a bit from year
5 to year, these vary a bit from year to year, and
6 obviously I didn't have time to even go through all of
7 this. I could have given you the whole stack. But
8 the data is in the brief.

9 VICE CHAIRMAN HILLMAN: Mr. Cunningham,
10 you're asking us to do something that at least my
11 understanding is the Commission has never done, which
12 is to take our apparent consumption, U.S. apparent
13 consumption, but to leave in that number exports. And
14 we always calculate U.S. consumption of a product as
15 production plus imports minus exports.

16 MR. CUNNINGHAM: By the U.S. producers.

17 VICE CHAIRMAN HILLMAN: That's what we
18 always do. That is -- I understand. But to some
19 degree you're asking us to treat this case fairly
20 differently because of this issue of who's doing it.
21 But I think also because of the size of the number.
22 That's what I'm trying to --

23 MR. CUNNINGHAM: It's the size, yeah.

24 VICE CHAIRMAN HILLMAN: How much does it
25 matter that the size of the number might more

1 historically be 40 percent rather than over 70?

2 MR. CUNNINGHAM: Well, you might look at the
3 durum chart that we showed as No. 1 there. If you
4 look back, it's actually a higher number in '01-'02
5 than it is in '02-'03. It's U.S. production 84, U.S.
6 exports 50 in '01-'02, and then '02-'03, U.S.
7 production 79, U.S. exports 37.

8 There are very high years in here. Whether
9 it's 40 percent, 50 percent, 60 percent or 70 percent,
10 they're all of them in that magnitude.

11 What that says is that you've got to figure
12 out how to do something with them. Because obviously
13 they are a major change in the supply/demand
14 relationship here, and they're a major change not at
15 the level of sales by the U.S. industry. I don't know
16 of any case where you have ever subtracted from
17 production by the U.S. industry, which is what you're
18 doing here. You have ever subtracted exports at a
19 level of trade downstream. Nor can I imagine why you
20 would ever do that.

21 MR. SUMNER: Two or three steps down.

22 MR. CUNNINGHAM: Two or three steps
23 downstream. Elevator to grain company to exports.

24 VICE CHAIRMAN HILLMAN: Obviously your point
25 to me raises the question of sort of how significant

1 are these steps? As Commissioner Miller was trying to
2 get at, I mean normally something happens to the
3 product in those steps. In other words it gets
4 packaged up with other things, it gets treated
5 differently, it gets further processed, it gets lots
6 of things.

7 In this instance, as I understand it, there
8 really isn't a significant physical change to the
9 product. We're not talking about exporting milled
10 product. We're talking about the same grain that's
11 been in the same elevator. It is almost as though the
12 elevator is acting as a collecting point and from that
13 out go either shipments domestically or shipments in
14 terms of exports.

15 MR. CUNNINGHAM: Let me tell you why I think
16 you need to do something with exports. Because what
17 you are doing is you are asking what is the effect of
18 certain different causal factors on the operating
19 results of the domestic industry. The domestic
20 industry is the farmers.

21 The farmers' sales are sales made in the
22 United States in which they don't know, they have no
23 idea -- and Mr. Fisher was quite candid about that
24 today. They have no idea when they make a sale if it's
25 going to be for an export or for domestic use.

1 To say that you're going to ignore a huge
2 portion of those domestic sales, thus diminishing the
3 denominator in all of your calculations of effect, in
4 all of your ratio calculations, when the denominator
5 is this large leads you to a huge distortion.

6 VICE CHAIRMAN HILLMAN: I see the point.

7 MR. CUNNINGHAM: You don't necessarily have
8 to do it the way I suggested, but you do have to take
9 into -- Whatever, particularly when you're looking at
10 the effect on their sales volume or the effect on
11 prices, you have to find some way to take the exports
12 into account. You can do it a couple of ways. You
13 don't have to do it the way I suggested, but it does
14 seem to me logical that you do it that way because
15 after all, their total sales shouldn't be diminished
16 by somebody else's, what somebody else does, what one
17 of their purchasers does with it. It's their total
18 production and their total sales, undifferentiated for
19 them.

20 Okay?

21 VICE CHAIRMAN HILLMAN: I understand. On
22 the other hand --

23 MR. CUNNINGHAM: It's a problem, isn't it?

24 VICE CHAIRMAN HILLMAN: Part of it is we
25 know they're exporting. I think there would be a lot

1 of cases in which it is not clear that we know what
2 service centers have done or whether the product from
3 the service center, to use your example, has gone
4 somewhere else. Here we know the volume of exports.
5 It isn't as though we don't have that data.

6 You're in essence asking us to --

7 MR. CUNNINGHAM: If you know --

8 VICE CHAIRMAN HILLMAN: I guess I would ask
9 post-hearing if there's any precedent from other cases
10 that you think would suggest --

11 MR. CUNNINGHAM: For deducting some --

12 VICE CHAIRMAN HILLMAN: -- we have done --

13 MR. CUNNINGHAM: A precedent for deducting
14 somebody else's downstream sales from U.S. producers -
15 -

16 VICE CHAIRMAN HILLMAN: Again, the question
17 is how much you are making of this who's doing it.
18 How much of a legal significance there is in terms of
19 who had title to that product at the day that it was
20 exported. Whether that is a legally sort of
21 significant effect that it's not the farmer directly
22 selling.

23 MR. CUNNINGHAM: Let me plead with you,
24 don't let that run the issue.

25 VICE CHAIRMAN HILLMAN: Yes, but it is

1 product categories. In this kind of a product you
2 cannot expect a farmer to be the direct exporter. I
3 think that --

4 MR. CUNNINGHAM: Sure.

5 VICE CHAIRMAN HILLMAN: -- suggest that the
6 only time we could appropriately take out exports is
7 if the farmer himself was the direct exporter of
8 record, I think is also equally not getting at the
9 reality of the picture.

10 MR. CUNNINGHAM: No problem. That's why I
11 say I don't think the legal nicety should be the
12 determinant here. What should be the determinant is
13 what affects the farmer. And an export sale has the
14 same effect on the farmer in every respect -- that is
15 what you call different exports, not his export. Same
16 effect on the farmer in every possible respect as a
17 sale that ends up in domestic consumption.

18 VICE CHAIRMAN HILLMAN: Let me try to go
19 quickly onto the miller side.

20 I've heard what the Canadian Wheat Board has
21 said on this issue of is the domestic industry
22 injured. I guess I would like to hear from any of the
23 millers, because obviously you follow what is going on
24 in the world of the farmers that are producing the
25 grain that you're purchasing.

1 What would you have us learn about the
2 relative health of the U.S. durum wheat or hard red
3 spring wheat farming industry? Have they been doing
4 well in the last year or two? Or how would you
5 describe the health, the sort of financial or other
6 health of the industry from your perspective?

7 Actually, I'm sorry -- Given that the red
8 light has come on I will come back to this question.
9 I'll let you all ponder that for a few moments and
10 we'll come back to that on the next round.

11 Thank you.

12 COMMISSIONER MILLER: I'll be interested in
13 the answer as well, but I guess I'll let you ponder
14 and you can respond when Vice Chairman Hillman comes
15 back.

16 I just want to say one thing about this last
17 exchange. When you're looking at those precedents on
18 exports, look particularly to agricultural products,
19 may I ask. Okay?

20 MR. CUNNINGHAM: Might I just make one quick
21 point on that, and that is the stuff is changed before
22 it's exported. It's blended, it's changed to fit the
23 customer's specifications. It's not the same stuff
24 that the farmer sells that gets exported.

25 COMMISSIONER MILLER: All right.

1 Let me go to sort of a different -- We'll
2 think about that.

3 I think it is only appropriate, given the
4 fact that I suspect it's the first time that
5 representatives of the Canadian Wheat Board have been
6 before the Commission, and I have often enough heard
7 about your absence. We appreciate your presence and I
8 want to take advantage of it to ask you a few
9 questions since there are several of you here. I'm
10 tempted to ask the man who monitors the weather and
11 crop surveillance what's really going on on our
12 continent these days. The Washington Post tried to
13 tell us a little bit of it this morning.

14 But first, just on this issue of, staying
15 with the issue of exports because the Canadian Wheat
16 Board does export so much both to the United States,
17 but broadly. World markets. I can look at the trade
18 flows here between the numbers we have on the Canadian
19 exports to the U.S. and the world and U.S. exports and
20 see, you can just ask yourself the simple question
21 well okay, we're exporting this large amount out and
22 Canada is exporting a relatively small amount in, but
23 then a lot --

24 I guess I'd just like to hear you, Mr.
25 Steinke, talk a little bit about how those decisions

1 about where you will export occur. To the rest of the
2 world, to the United States? We've all been
3 interested in how the Canadian Wheat Board operates
4 and this is our opportunity to hear from you a little
5 bit more about how that happens.

6 MR. STEINKE: Sure. Thank you, Commissioner
7 Miller.

8 The important thing to understand, and I'll
9 try and do this from a high level. We certainly
10 approach things from a long term perspective as well
11 as a short term, but I'll explain the short term
12 because it's quicker.

13 You have a region of our country that is
14 located, some parts of our production area are located
15 with transportation economics that are more favorable
16 to that wheat moving offshore, some of it's located in
17 areas that is more favorable to moving to the United
18 States.

19 So if we're looking, for example, at exports
20 into the United States and if you look at our exports
21 you'll find that they're coming out of a region in our
22 country that has a logistical advantage, has a
23 transportation advantage in moving that grain. It's
24 more efficient for us to move that grain. And there's
25 a limited amount of that grain available to move into

1 the U.S. market. And the U.S. market is a market
2 that's looking for quality wheat. Every day those
3 prices change. The U.S. price is the same, when we're
4 looking at a price it's a price that's there every
5 day, and we judge whether we're going to sell to the
6 United States or offshore by the availability of the
7 quality of wheat that we have in a position that's
8 logistically feasible to move it into the United
9 States.

10 Now the long term story of our marketing is
11 that we try to develop customer relations, quality
12 markets, sell products for what I call premium prices
13 and premium prices would be something of the U.S. plus
14 something. That's what we defined, or the global
15 price plus something as the premium price.

16 Does that help you understand?

17 COMMISSIONER MILLER: That helps. If we had
18 a map of the continent here, we heard Senator Conrad
19 and Senator Dorgan talking a lot about the trucks
20 moving down through North Dakota -- Mr. Cunningham?

21 MR. CUNNINGHAM: No trucks.

22 MR. STEINKE: Just so you know, it's not
23 logistically efficient for us to move trucks so we
24 move it by train or boat usually.

25 COMMISSIONER MILLER: We've all heard those

1 stories for a long time.

2 MR. STEINKE: I know.

3 COMMISSIONER MILLER: I don't think they're
4 imagining things. There's something that they're
5 seeing --

6 MR. STEINKE: There was, if you go back in
7 time there was a period in time when there was some
8 trucking, but if you're talking about the period of
9 investigation or how we behave today, it moves by
10 train. The majority of it moves by train.

11 COMMISSIONER MILLER: Okay.

12 Still give me the sort of area of the
13 continent, of North America that we're talking about
14 would be that same area?

15 MR. STEINKE: Yes.

16 COMMISSIONER MILLER: I know, Mr.
17 Cunningham, you talked about the transportation
18 economics. This is probably in our record and I'm
19 sorry if I missed it or if I haven't gotten to the
20 questionnaires that would answer this for me. But
21 just in terms of those logistics, tell me what area
22 specifically into what area? If you're shipping by
23 train is it going to the southern United States as
24 well?

25 MR. STEINKE: Typically the area that we

1 have seen success in is the eastern part of our
2 growing region which is Manitoba, eastern Manitoba for
3 wheat, and in durum you're talking more about eastern
4 or central and at times western Saskatchewan, and it's
5 moving to the eastern seaboard. It has to do with the
6 efficiency and our ability to move that wheat into the
7 eastern seaboard, so we're moving that wheat into
8 eastern markets predominantly. So it's the eastern
9 part of our growing region in the central part of our
10 country.

11 Some people have looked at this. There's a
12 paper called Intersection of Geography and Economics.
13 We didn't write it. I think it was written,
14 referenced in our brief by, jointly written by some
15 people in USDA. So it's not a new thing but that's
16 the region that we're talking about.

17 Does that help?

18 COMMISSIONER MILLER: Yes, I'm just trying
19 to get a good picture of it.

20 I know Mr. Cunningham at one point you, I
21 think it was you who corrected a statement made
22 earlier in the day. You say that the Wheat Board is
23 not shipping to the elevators but shipping directly to
24 mills, correct?

25 MR. CUNNINGHAM: Correct.

1 MR. STEINKE: I would negotiate directly
2 with milling customers. It wouldn't be efficient for
3 us to sell to U.S. elevators and incur additional
4 costs.

5 MR. CUNNINGHAM: That's another reason why
6 you don't do trucks. You have the larger quantities
7 that go to mills so you wouldn't have the typical
8 destination of a truckload shipment which would be an
9 elevator.

10 MR. STEINKE: One of the things we emphasize
11 is consistency, and in order to do that you need some
12 -- I heard this notion that we're just taking, and I'm
13 from a farm, by the way. And farmers grow, in any
14 given region you grow vastly different protein levels
15 and different qualities. It's the job of that
16 elevator to bring all those qualities together to meet
17 the requirements for the market or for the sale. So
18 they're blending all that wheat together and we're
19 putting it together in trains.

20 A train, to give you an idea, a train is
21 85,000 bushels. That's a small train of wheat.
22 85,000 bushels, that would take a lot of farmers to
23 put together 85,000 bushels. That's their job, is to
24 bring all that wheat together and process it and get
25 it ready for the train.

1 MR. CUNNINGHAM: That's why I say there are
2 a lot of differences in not just the level of trade,
3 but the type of competition that the Wheat Board
4 engages in from the type of competition that the
5 farmers engage in. There are size differences,
6 blending differences. The Wheat Board does what the
7 elevators do. It blends the stuff. Or what in some
8 cases the grain companies do. It blends the stuff and
9 assures that what the customer wants is what it gets.
10 Whereas the farmer just takes the wheat off the farm
11 and takes it to the elevator.

12 COMMISSIONER MILLER: I recognize this and I
13 see this in our record. I haven't quite figured out
14 what it means for my consideration of the case, in all
15 honesty, and I can't recall -- This I think is a new
16 situation. If you can find a precedent for us in this
17 kind of circumstance, Mr. Cunningham, more power to
18 you. And I'm just trying to figure out how --

19 MR. HILLMAN: If I may, Commissioner Miller.

20 COMMISSIONER MILLER: Yes.

21 MR. HILLMAN: Speaking on behalf of the
22 flour millers who do business -- My name is John
23 Hillman, I'm sorry.

24 We as a flour miller and a buyer of wheat
25 from grain trading companies view the Canadian Wheat

1 Board as another grain trading company. We approach
2 them with the same opportunities, the same bids, the
3 same kinds of questions that we would direct to a
4 grain trading company in the U.S.. They speak to us
5 in the same way. No different. I realize it's a
6 different kind of organization, it's a different
7 country, but that's how we view them from a purchasing
8 standpoint.

9 Incidentally when we do buy wheat from
10 Canada it always comes across the border in unit
11 trains of rail cars.

12 COMMISSIONER MILLER: Thank you, I
13 appreciate it.

14 CHAIRMAN OKUN: Commissioner Koplan?

15 COMMISSIONER KOPLAN: Thank you, Madame
16 Chairman.

17 Mr. Boltuck, if I could resume with you.

18 First, before we go back to that third one
19 that I had listed at the end let me just make this
20 request of you with regard to the first issue I raised
21 which was U.S. wheat quantity variables.

22 Frankly, I still don't understand how you
23 can give a U.S. price without using U.S. quantity as
24 an explanatory variable. I note that in 1994 when we
25 had the Section 22 case here our agency staff in fact

1 did include full quantity data in their VAR model.

2 So my request with regard to that first
3 issue that I raised with you is for the purposes of
4 the post-hearing if you would respecify U.S. price by
5 using U.S. quantity as an explanatory variable. Will
6 you do that for me for the post-hearing?

7 MR. BOLTUCK: I'd be pleased to. I can also
8 tell you that what we are doing is in essence saying
9 yes. If something happens to U.S. quantities, say
10 there's bad weather, the price goes up. If that
11 generates corresponding effect on imports from Canada
12 we count that. This is all a matter of
13 classification, but we count that as a correlated, a
14 shock correlated with bilateral trade.

15 So of course that could be the source of a
16 movement in price which then in turn corresponds with
17 a movement in imports. What we're really trying to do
18 is have a conservative way of bounding or putting an
19 upper bound on the role that imports might be playing
20 in influencing price in the United States. So really
21 the specification was motivated by the purpose of the
22 analysis. And that, as in any modeling exercise,
23 involves some judgments about abstracting from certain
24 features of the world that are not relevant to that
25 purpose. And since our purposes included or allowed

1 for being conservative by not distinguishing effects
2 that obviously, you're absolutely right, might arise
3 from domestic quantity impacts, that's why we did it.

4 So we're not trying to develop a theory that
5 will tell you determinantly what the U.S. prices is in
6 terms of underlying variables like the weather and
7 other drives. What we're trying to do is we're trying
8 to answer the question what's the maximum possible
9 contribution to price variation in the United States
10 that's originating from variations in imports. So
11 it's the purpose that drives the specification.

12 COMMISSIONER KOPLAN: I appreciate all that,
13 and as I say I look forward to your respecifying in
14 the post-hearing. I also note for the record that
15 when I asked that question Mr. Sumner immediately
16 nodded yes, that it would be done. So I find that
17 that would be very helpful and I appreciate your
18 expanding on your response.

19 Thank you.

20 With regard to the third one, when I talked
21 about separate binary dummy for each of the events,
22 I'm making the same request, same type of request.
23 Will you provide that information in response to that
24 question post-hearing?

25 MR. BOLTUCK: Yes. We would like the

1 staff's proposal as to how to date these things. For
2 instance, NAFTA, did the effects of NAFTA begin when
3 it was legally ratified? Did it begin when it was
4 expected to be ratified or when it was under
5 negotiation? Did it kick in with some lag after it
6 was ratified? It's very hard to sometimes place a
7 date on the effects that should be associated with an
8 event and I'm not sure I know how to do that.

9 COMMISSIONER KOPLAN: There's a member of
10 our staff, a gentleman named Mr. Ron Babula, and if
11 you would get in touch with him I'm sure he can help
12 you with that.

13 The reason I mentioned those particular
14 events if that you start, your sample period goes back
15 to 1990 and the events I'm talking about occurred
16 within your sample period. Okay?

17 MR. BOLTUCK: Yes.

18 COMMISSIONER KOPLAN: If you get in touch
19 with him I'm sure he can help you with that. We'll
20 provide you with the additional detail on the
21 questions that --

22 MR. CUNNINGHAM: Commissioner, I would like
23 to note for the record I've already been called a
24 clown in this hearing so I'm kind of sensitive to use
25 of terms like dummies.

1 (Laughter)

2 COMMISSIONER KOPLAN: Sometimes just like
3 the clown, dummies give us the very best information.

4 (Laughter)

5 MR. CUNNINGHAM: And amen to that.

6 (Laughter)

7 COMMISSIONER KOPLAN: But thank you for
8 that. Thank you for giving me that opening.

9 Now I'm trying to remember --

10 (Laughter)

11 COMMISSIONER KOPLAN: I'll get you for that.

12 A related and even more serious concern is
13 that you did not statistically test for structural
14 change. Would structural change not render your
15 estimates in prices responses invalid and time variant
16 over the sample? Again, I'm saying that since your
17 sample period dates back to 1990.

18 MR. BOLTUCK: We'll look at the comments
19 that you provide us and give that further thought.

20 COMMISSIONER KOPLAN: Okay.

21 Here's number four. That deals with model
22 diagnostics.

23 As I understand it there's a standard
24 procedure to submit statistical diagnostics to see how
25 reliable and well specified a VAR model is, and to

1 indicate if the above potential problems are real
2 ones.

3 Why did you not submit any of the following?
4 Portmanteau and Dicky Fuller stationarity test results
5 on your VAR residuals?

6 MR. BOLTUCK: We will provide those.

7 The only thing I'd like to add is that our
8 presentation of this VAR resembles the presentations
9 of many published VARs as well. They typically do not
10 or often do not present a lot of intermediate detail.
11 But since it's been requested and in the event it
12 would be requested of any author it's certainly a fair
13 question and obviously we have that detail and we'd be
14 very pleased to provide it.

15 CHAIRMAN OKUN: I think that winds it up on
16 this one but I would just toss this out as well.

17 You also had a CAR cointegration analysis of
18 (LAR) of one price in international wheat markets.
19 That's your Exhibit No. 20.

20 MR. BOLTUCK: Yes.

21 COMMISSIONER KOPLAN: If you have not
22 included all the specifications and all the type of
23 data that I've already referred to, if you can include
24 that with your cointegration model as well for
25 purposes of the post-hearing.

1 MR. BOLTUCK: Yes, absolutely. And
2 Commissioner, if I might take just one second with
3 respect to I'd like to clarify an important aspect of
4 our analysis in reference to comments that were made
5 this morning by the other side. It's your call. I'm
6 happy to do it later, but I'm also pleased to do it
7 now.

8 COMMISSIONER KOPLAN: Go ahead.

9 MR. BOLTUCK: Thank you.

10 One of the principal comments that Mr.
11 Wechsler made with respect to our modeling effort is
12 that we found, or we failed to reject the hypothesis
13 that several international price series for wheat were
14 cointegrated with the United States as reported in
15 Table 4.

16 I'd like to point out that I regard this as
17 somewhat of a disingenuous observation because it just
18 simply ignored the discussion in the text on page 12
19 that indicates that since the cointegration tests
20 generally lack sufficient power to reject the nal-
21 hypothesis of no cointegration for small sample sizes,
22 we also applied the cointegration tests to a longer
23 time series going back to July 1980. Using the longer
24 pricing time series the cointegration tests are able
25 to reject the nal-hypothesis that U.S. and Australia

1 prices are not cointegrated as well as the nal-
2 hypothesis that U.S. and EU prices are not
3 cointegrated.

4 So actually we feel the results we obtained
5 in some cases through using 20-some years of data,
6 because of the power of the test which is quite weak.
7 It takes a lot of data to give it a fair opportunity
8 to test the nal-hypothesis, is extremely strong
9 evidence time after time after time rejecting the nal-
10 hypothesis for every combination we could look at. Of
11 course in wheat, with a little effort there is a lot
12 of data out there. On the other hand we could have
13 used 100 years of data. If the pricing series were
14 not cointegrated it would have failed to reject that
15 nal-hypothesis.

16 So we simply gave it an opportunity and
17 reported what we found.

18 Finally, we also looked at the cointegration
19 of U.S. home market prices with FOB export prices at
20 various ports. So this is what grain merchants are
21 actually getting when they export to other countries,
22 net of forward insurance and freight, and the strong
23 version of the price clearly held for 14 out of 15 of
24 the port prices that we obtained from U.S. export
25 data, meaning that, I'll wrap up. I'm very sorry.

1 But meaning that actually U.S. grain merchants get the
2 same price when they export to those countries that we
3 examined as they get in the U.S. market.

4 COMMISSIONER KOPLAN: Thank you for covering
5 that in the hearing at this time. Thank you.

6 Thank you, Madame Chairman.

7 CHAIRMAN OKUN: Thank you.

8 There have been a number of questions posed
9 by my colleagues that I want to hear more about but I
10 guess I'll start where I was at the end of my
11 questions and go back if I could to Mr. Meyer and Mr.
12 Miller and others on the panel who would like to
13 respond to that. It has to do with the forward
14 contracting and what that means in this market.

15 One of the questions I spent a lot of time
16 with the producers this morning was Mr. Lee's
17 statement that the market signals had been distorted
18 and his testimony, that they were distorted by the
19 presence of imports. And one of the things that has
20 been raised several times is this ability of the CWB
21 to forward contract, which others have testified to as
22 seen as an advantage, and Mr. Miller, you just talked
23 about that.

24 My question is what I heard the producers
25 say is yes it's an unfair advantage in their view of

1 the CWB because of its marketing power, but from my
2 perspective what I'm asking about is what does that
3 mean for prices?

4 What I thought I heard them saying is that
5 when you have the ability to forward contract it put I
6 think it was a blanket, Mr. Fisher may have used that
7 word, a blanket on the prices so that the market
8 signals when a price should be moving up because of
9 all the other little factors that are in this
10 commodity market, the prices don't move up because you
11 have this long forward contract from the millers and
12 that's where the farmers feel the influence of the
13 Canadians through the Canadian Wheat Board.

14 Mr. Miller, you look like you want to start.

15 MR. MILLER: My observation would be that
16 cash term prices are not always responsive to
17 immediate events because all of us as durum millers
18 have some degree of forward contracting done and a
19 logistics pipeline full of durum that's either 60 or
20 90 days long just because of logistics requirements of
21 keeping these mills full in uncertain transportation,
22 weather, all those sorts of things.

23 Additionally, there may be a catastrophic
24 event in wheat that doesn't affect our company because
25 we may in fact have already purchased for some time in

1 the future durum supplies, either domestically or from
2 Canada, and therefore we're not going to immediately
3 go into the market in response to an early frost that
4 damages the crop or rain during harvest or some other
5 event like that.

6 Additionally, there may be no event
7 occurring for some periods of months and our coverage
8 may run out and we may have been waiting for a
9 predicted drop in the market and we may be forced to
10 go into the market and in effect create an event when
11 in fact the fundamentals wouldn't predict one.

12 So it's not really possible to make a direct
13 correlation between the pricing that we pay for durum
14 and some of the causal factors that he might observe,
15 whether it's weather or logistics or even government
16 intervention.

17 CHAIRMAN OKUN: Mr. Meyer?

18 MR. MEYER: To follow up on that.

19 Forward pricing of wheat is not a constant
20 thing in the industry. What I'm getting at is there
21 are times when our customers, the pasta companies,
22 would rather go literally hand to mouth in terms of
23 pricing semolina because they believe in the near term
24 the price of wheat may actually decrease. And in
25 those periods of time you may not have significant

1 forward pricing on your books.

2 I would echo John's comments about sort of
3 pushing inventory. In our elevator in St. Louis as we
4 speak today I have nearly a million bushels of durum
5 wheat that is positioned physically ready to go into
6 the mill, and I do that because I want to be protected
7 against any kind of huge shocks that may occur into
8 the near future.

9 MR. CUNNINGHAM: Madame Chairman, I wonder
10 if you could ask Mr. Miller about the desert durum
11 producers' practices on forward contracting.

12 CHAIRMAN OKUN: Mr. Miller, did you want to
13 comment on that?

14 MR. MILLER: I'll speak for our company. We
15 can produce or purchase a significant amount of desert
16 durum both for our mill in Mexico and our mill in
17 California and we do it in a similar manner. Contract
18 acres in the fall during planting, specify the
19 varieties that have to be planted, and then we receive
20 that wheat at harvest time in the spring. It's a
21 different system than that which occurs in the
22 northern tier.

23 So for example today we are not too far from
24 the harvest completion that occurs in the San Joaquin
25 Valley in June and July, so we effectively have got

1 almost a year's worth of durum in storage at our flour
2 mill in Fresno, three, three and a half million
3 bushels that we will consume over the next 12 months.

4 I don't know why he wanted me to answer the
5 question, but it's a distinctively different marketing
6 mechanism.

7 Again, irrespective of what happens in the
8 northern tier or weather or something, we're not going
9 to have to respond to those events at least for that
10 portion of our production that occurs in Mexico or
11 California.

12 CHAIRMAN OKUN: Yes?

13 MR. GRIFFITH: John Griffith of American
14 Italian Pasta Company.

15 I've been employed with AIPC for about 30
16 days now. Prior to that I worked in the grain
17 marketing division of Senecarva States for 12 years,
18 seven of which I was the senior durum merchandiser and
19 the largest originator and trader of durum wheat in
20 the United States. I was a competitor of the Canadian
21 Wheat Board as well as a customer.

22 I'd like to make a comment in regards to the
23 distorted signals comment that was made this morning,
24 particularly to the fall of 2002's crop and the
25 drought conditions that subsequently increased the

1 price of durum, and then there was a subsequent
2 decrease. I think the distorted signal comment was
3 just isolated to the crop conditions within Canada and
4 the United States.

5 The signal that was missing in that analysis
6 was that there was an extremely large European
7 production that year of over nine million tons, and a
8 good portion of that crop was flowing out of Spain
9 into the large importing region of Algeria. Algeria
10 imports three, three and a half million tons of durum
11 wheat in a year. When the Europeans started moving
12 more durum wheat into there, the North American prices
13 were completely uncompetitive because we had increased
14 the price a dollar and a half a bushel.

15 So there was a missed signal there, I think,
16 and it was implied this morning that the reason the
17 millers didn't step forward and buy at that particular
18 time was because they had these contracts with CWB
19 when in fact that was not the case. The signal was
20 missed that the market was over-priced, number one.
21 And I think as you look at that situation the drought
22 certainly had an impact but it was an overall global
23 production and demand situation that influenced the
24 price which is good evidence that it really truly is a
25 globally priced commodity.

1 CHAIRMAN OKUN: Other comments from millers,
2 bakers on that forward contracting?

3 Okay.

4 MR. CUNNINGHAM: I would suggest you look at
5 your staff report which says as to durum in Table 2-11
6 that three U.S. purchasers regarded U.S. suppliers as
7 comparable, and four U.S. suppliers inferior on the
8 availability of forward contracts.

9 Then in your Table Z-3, there's not any
10 really qualitative difference. There's a little more
11 long-term contracting for Canadian durum and western
12 red spring but not massively more than for U.S. durum
13 and red spring.

14 CHAIRMAN OKUN: Thank you for those
15 comments.

16 Actually I guess it's related to probably
17 what Mr. Griffith was talking about but maybe I'd ask
18 you, Mr. Steinke, to respond to an allegation that was
19 made this morning when we were looking at this period
20 of the '02-'03, that I guess again what they were
21 saying was the signal in the market was that the
22 Canadian Wheat Board had accepted contracts for only
23 two grades of durum wheat to avoid a pool deficit.

24 If you could respond to that?

25 MR. STEINKE: You know actually we didn't --

1 We accepted all the durum wheat. I think they're
2 pointing to a grade of wheat that we don't market into
3 the United States.

4 The Canadian Wheat Board, what we do as an
5 organization, we're trying to maximize the return for
6 the farmer globally. At times we will tell farmers
7 that we can't market all their wheat because we don't
8 see enough demand. So we'll tell them that we're
9 going to have to store some wheat, we're going to have
10 to hold some inventory over.

11 I'm not sure how that comment actually
12 relates to the case, only because the wheat that was
13 held back was very poor quality. We had the worst
14 volume and quality production event in Canada on
15 record that we can find, so the wheat that's out there
16 is of poor quality that's not suitable for this
17 market. So I'm not sure I follow --

18 CHAIRMAN OKUN: Is the fact that what's
19 being held, I think if I understood the argument it
20 said when you have these drought conditions you would
21 have expected the prices to have stayed up and they
22 didn't, and one of the reasons they didn't stay up was
23 because of the actions of the Canadian Wheat Board
24 which indicate that there are more stocks being held
25 than you would have expected, and that therefore was

1 being taken into account in the pricing.

2 MR. STEINKE: I can come back to this gladly
3 and tell you why I think prices fell off globally, but
4 just for the record our stocks are the lowest they've
5 been in 40 years. They're projected to be the lowest
6 they've been in 40 years. I don't understand this
7 notion that we have high inventories. We have very
8 low inventories, particularly on spring wheat in
9 Canada this year, so I'm a bit puzzled by that. But I
10 will gladly come back to the other. I see the red
11 light on, so --

12 CHAIRMAN OKUN: I appreciate that. I will
13 also look back at which information they were looking
14 at. But I will come back to that and I'll turn to
15 Vice Chairman Hillman.

16 VICE CHAIRMAN HILLMAN: Thank you.

17 Just so I'm very clear about it, because
18 they did state that the Canadian Wheat Board refused
19 to buy all the wheat offered to it by the Canadian
20 farmers in crop year 2002-2003. You're stating that
21 you did buy all of the wheat offered to you? You
22 didn't then go on and sell it. You bought it but some
23 of it you held in stock? Is that --

24 MR. STEINKE: No, sorry. What I was stating
25 was that in the case of durum, sorry, I apologize.

1 Commissioner Okun had made the comment relative to
2 durum. In the case of durum we accepted it all. In
3 the case of spring wheat there were some grades and
4 some qualities that we didn't accept to sell. That
5 happens. It's not unique to this particular crop
6 year. That event has happened throughout our history
7 and it does happen.

8 My point was that that quality that we
9 didn't accept is something that we wouldn't market to
10 the U.S..

11 VICE CHAIRMAN HILLMAN: What happens to it?
12 If there is wheat that the Canadian Wheat Board has
13 refused to buy, so the farmers somewhere out there in
14 Canada have that wheat. That then happens to it?

15 MR. STEINKE: They store it. They store it
16 in bins. It's common in Canada to have, at least on
17 our farm we'll have capacity to store one crop. So we
18 have it in bins.

19 VICE CHAIRMAN HILLMAN: You're saying you
20 have it. Again, I'm just --

21 MR. STEINKE: The farmer has it. Sorry, I'm
22 slipping back and forth there. But as a farmer you
23 would have storage for one crop typically. So he's
24 holding it.

25 The crop year ends in July and then the new

1 crop year will start in August in which he'll offer it
2 again to us for sale. And we'll look at marketing it.
3 But sometimes there's not markets available.

4 VICE CHAIRMAN HILLMAN: But those are his
5 only options is to sell it to the Canadian Wheat Board
6 or to hold it? That's the only thing he can do with
7 it?

8 MR. STEINKE: No. Sorry. No, he can
9 actually sell it if he wishes. And particular this
10 type of quality that he's holding because the harvest
11 was so poor, it rained on us at harvest time
12 downgrading our quality so we didn't have the quality
13 wheat that we would normally have last season. He can
14 sell it to the domestic market. I can sell it to, and
15 typically with that quality I would.

16 If you watched Canada last year, our cattle
17 industry was in a lot of trouble for feed. So on our
18 farm, for example, we could sell it, we'd sell it to
19 livestock producers, or we can sell it to other people
20 within Canada.

21 Now in terms of export --

22 VICE CHAIRMAN HILLMAN: Could it come to the
23 United States?

24 MR. STEINKE: No. In terms of exports, we
25 are responsible for exporting the wheat. But as a

1 farmer, you have more options than just selling it to
2 the Canadian Wheat Board or marketing it through the
3 Canadian Wheat Board or storing it. You can also sell
4 it domestically.

5 MR. CUNNINGHAM: And even if you had bought
6 that particular wheat you would not have sold it in
7 the United States because it's not --

8 MR. STEINKE: Yeah, it's not the right
9 quality.

10 VICE CHAIRMAN HILLMAN: I understand that.
11 Thank you.

12 If I can come back to the question I was
13 hoping the millers were pondering which is this issue
14 of your take on the relative health of the domestic
15 durum and/or red hard spring wheat industry.

16 Obviously we have a lot of data in our
17 record, a lot of it very mixed in terms of what we
18 should be looking at. I would be curious from your
19 perspective as purchasers whether you can comment on
20 how healthy or not healthy do you think the wheat
21 industry has been over the period of investigation and
22 what would you say the trend has been? Have they been
23 getting healthier more recently? Or less healthy?

24 MS. MALONEY: Commissioner Hillman, if I
25 could just note, as was testified to earlier the

1 millers here normally wouldn't be buying directly from
2 farmers.

3 VICE CHAIRMAN HILLMAN: I understand that,
4 but I'm just trying to get a sense of what's the kind
5 of buzz in the industry or whatever general
6 information they may have.

7 MS. MALONEY: With that caveat I think we
8 could turn maybe first to Mr. Meyer and maybe others
9 want to chime in.

10 MR. MEYER: Jim Meyer.

11 Again, being somewhat removed from the
12 actual incomes that the farmers receive, the last
13 three or four years I would imagine have not been the
14 greatest years for specifically North Dakota durum
15 wheat farmers. But why is that?

16 If you look at the quality characteristics
17 of the grain that's been harvested in North Dakota,
18 there are some significant quality problems that exist
19 over those years. High vomatoxin levels and low
20 falling numbers among the issues.

21 Keep in mind as a grain elevator operator in
22 North Dakota, take just one of my locations for
23 example. We may handle two million bushels, purchase
24 two million bushels of durum wheat from farmers over
25 the course of a calendar year. The quality of that

1 durum wheat is going to vary from very high quality to
2 very low quality, depending on the circumstances,
3 where it was grown, the types of inputs the farmer
4 utilized as he grew his crop, the harvest conditions,
5 and all of these factors that are a part of things.

6 While we have a stated Board price for top
7 quality million durum, if the first farmer brings in
8 grain that's high quality, he'll get that top price.
9 But we have a discount scale at the elevator based
10 upon the defects associated with the grain that's
11 brought in.

12 So a farmer may have normal yield on his
13 fields, but the actual price he gets at the elevator
14 is decreased because of the quality issues associated
15 with what he's brought to the elevator.

16 Historically I'd say durum wheat prices are
17 historically pretty reasonable right now. I think
18 it's a mistake to put all farmers into one basket.
19 There are farmers in North Dakota that have had
20 numerous good crops in the last three or four years
21 and they've captured a premium for their durum and
22 their yields have been good, and they're being very
23 very successful. There are other farmers that have
24 had quality problems or sold at inopportune times
25 given durum volatility. Or perhaps weren't good

1 farmers, didn't take care of their grain in storage or
2 any of those things and they're having a very bad
3 year. I think it's a mistake to lump them altogether.

4 It's only anecdotal, but I know farmers in
5 both sides of that category -- those that are doing
6 extremely well buying and renting additional land and
7 buying new equipment; and I'm aware of others that are
8 just holding on.

9 VICE CHAIRMAN HILLMAN: How about on the red
10 hard spring side?

11 MR. MARTEN: Commissioner, I'd like to add,
12 just an input --

13 VICE CHAIRMAN HILLMAN: For the record, if
14 you can --

15 MR. MARTEN: This is somewhat of an analogy,
16 but I'm from a family farm in Illinois, still
17 participate not in the operation but of the marketing
18 of that.

19 I know from our economics that if you can
20 control costs and you do a good job of marketing you
21 can do okay.

22 The significant variable is the amount of
23 debt and the amount of leverage. It was brought up
24 this morning as to the significance of land prices.
25 What land prices are doing says a lot for the optimism

1 of the farm community and if in fact land prices are
2 moving up there has to be a tremendous amount of
3 optimism because even in our area in Illinois you
4 cannot go out and purchase land outright even if you -
5 - and borrow money, and necessarily pay for it from
6 cash flow.

7 So to do that you have to have an optimism
8 about what land prices are going to do and the future
9 of farming.

10 VICE CHAIRMAN HILLMAN: And you're saying
11 you think the land prices have been going up over the
12 POI?

13 MR. MARTEN: That's correct.

14 VICE CHAIRMAN HILLMAN: It was sort of
15 implicit, but I wanted to make sure that was your take
16 on it.

17 Anyone else on this issue?

18 MR. HILLMAN: John Hillman, Bay State
19 Milling.

20 To add to what's been said before, obviously
21 supply and demand dictate prices. I think you've seen
22 higher prices for spring wheat, certainly in the last
23 year where it got to over \$5 a bushel. If pricing is
24 the determinant factor as to whether a farmer makes it
25 or not then he's seen higher prices.

1 On the other hand as Mr. Meyer said, we've
2 seen discounts for quality. We see it on the spring
3 wheat area too.

4 As a flour miller buying grain, we would
5 rather not have to take those discounts. We would
6 rather pay the full price and get what we ordered.

7 So as Mr. Miller said, I think you see some
8 good farmers and some bad farmers, or maybe not so
9 good in terms of how they've taken care of their crop
10 and how they have put into their work. Weather
11 factors play a part in that too, probably a major part
12 in it, so maybe it's not just how they perform.

13 But typically in short years the prices will
14 go up, as I said this morning. If prices do go up,
15 then they should get more money for their product.

16 VICE CHAIRMAN HILLMAN: Dr. Sumner, did you
17 want to add something?

18 MR. SUMNER: The point I wanted to make is
19 that you really can't separate the farmers into a
20 durum farm and a spring wheat farm, or for that matter
21 another spring wheat farmer, for that matter, a wheat
22 farm at all. I gave you a Chart 7 which is a visual
23 on some data that I think you have in the Petitioner's
24 brief and in the Respondent's brief as well that shows
25 you, this is a bar chart that shows you the variety of

1 acres recently in North Dakota. And this is something
2 that the Petitioners in fact encouraged you to think
3 about as well. Since 1996 when they relaxed the U.S.
4 farm program, farmers are growing a whole variety of
5 crops. A single farm not only will both rent farm and
6 own their own land, et cetera and be in all those
7 categories, they'll also grow four or five different
8 crops on that farm. So the health of the farm depends
9 on the prices and the quantities and costs of all the
10 crops they grow, not just durum in isolation or hard
11 red spring in isolation. That's really important to
12 understand the economics of the farms here.

13 VICE CHAIRMAN HILLMAN: I appreciate that.
14 Thank you.

15 CHAIRMAN OKUN: Commissioner Miller?

16 COMMISSIONER MILLER: Thank you, Madame
17 Chairman.

18 Mr. Cunningham, I want to just be sure about
19 one thing. When it comes to our underselling
20 analysis, I note in your very useful outline of your
21 testimony you make the point that it's seriously
22 flawed and both sides agree on that. We did hear some
23 comments this morning about the same point. As I
24 understand it, essentially both of you agree we have
25 an issue here in terms of transportation

1 differentials, basically making that underselling
2 analysis less useful to us than it usually would be.
3 You have said that we need to correct it for the
4 spring wheat, and I think the Petitioners are
5 suggesting we need to correct it on durum, and I just
6 want agreement that what you're saying -- We need to
7 correct it as best we can on all the products, right?

8 MR. CUNNINGHAM: That's correct.
9 Transportation is probably the biggest thing. You
10 heard Mr. Steinke say that where their principal
11 market is is up into the eastern and northeastern
12 United States from central Canada. That's where they
13 have their transportation advantage compared to their
14 other uses of the wheat.

15 If you think about that, that's an extended
16 transport cost. Where you find that, as you do in
17 many of your comparisons, compared with the U.S. sale
18 to the same company but to that company's sale in the
19 midwest, the company's facility in the midwest
20 obviously -- and this is what we found much more than
21 going the other way around. You get a distortion to
22 artificially create an underselling situation there.

23 So what we've got here is a situation in
24 which you need to correct for transportation costs and
25 you also need to correct for dates as best you can.

1 That's hard with the data.

2 Remember, prices fluctuate in this market
3 and you need to have contemporaneous sales. So it's
4 probably a big job. I suspect you're going to end up
5 with less viable comparisons than you started out
6 with. Certainly you don't want to do it by an average
7 over time because the average over time will really
8 get messed up by the fluctuations within the time
9 period.

10 COMMISSIONER MILLER: Okay.

11 MR. RYAN: Commissioner Miller, this is John
12 Ryan.

13 I think you do have additional sources of
14 information about underselling analysis. If you talk
15 to any one of the millers that are here, you've got
16 more than half a dozen companies, they can tell you
17 from their experience, as they told us, and as a few
18 of them testified today, those that had time to
19 testify, that in their experience the Canadian wheat
20 does not undersell comparably graded U.S. wheat and
21 that they are most often paying premiums for Canadian
22 wheat. So that's an additional source of information
23 to satisfy your underselling analysis.

24 COMMISSIONER MILLER: I did hear that and
25 that's exactly actually why I want to make sure we

1 have data that answers the question as well, rather
2 than just the sort of anecdotal testimony that we hear
3 from those. It was exactly that testimony and the
4 disagreement on the price competition with the
5 Canadian Wheat Board that makes me -- I hope we'll be
6 able to put the best numbers together and that they
7 will shed some light on the question. I just wanted
8 to --

9 MR. CUNNINGHAM: I was just talking to Mr.
10 Steinke about the best way to go about this and he
11 said the best thing to do is make a head to head
12 comparison between a U.S. sale and a Canadian sale to
13 the same mill, that is the same geographic mill.

14 The problem with that is I think you're
15 going to run into contemporaneity problems. I think
16 where you're going to end up is you're going to be
17 doing transportation cost adjustments of
18 contemporaneous sales to the same customer but to two
19 different mills. I think that's probably where you
20 end up with the best method of equalizing it based on
21 what we've seen of the data. You don't have too many
22 head to head sales to the same mill at the same time.

23 MR. RYAN: John Ryan again. And when you're
24 talking about the same mill, it's not just the same
25 milling company. Many of these milling companies have

1 several mills in disparate locations across the
2 country, so it has to be the same location.

3 COMMISSIONER MILLER: Right.

4 To those who are in the business, do you
5 think we'll be able to find those kind of head to head
6 comparisons? Or do you agree with Mr. Cunningham and
7 Mr. Steinke that that may be very difficult for us to
8 find and we have to sort of make adjustments?

9 MR. HILLMAN: If I may just comment on
10 behalf of the spring wheat millers. We've got a flour
11 mill in Minnesota, we've got another one in New
12 Jersey. We tend to, obviously when we price wheat you
13 can't talk too much about the price of wheat without
14 talking about transportation and where it's going.

15 The Canadian railroads have a straight shot
16 into our mill in Minnesota, for example, and the
17 border's a very thick line. So they can be
18 competitive sometimes into that mill, but they
19 couldn't be competitive into our mill in Phoenix,
20 Arizona, for example, because it's another 2,000 miles
21 further along.

22 So we tend to look at delivered prices using
23 on spring wheat the Minneapolis market values as a
24 basis plus the freight thereon from wherever it's
25 going from there. The Canadian Wheat Board prices

1 have to match those delivered prices into say Winona,
2 Minnesota or to Clifton, New Jersey to be used for a
3 pricing comparative basis. That's exactly what
4 happens in the conversations and the decisionmaking
5 process when we go out and buy wheat. Along with the
6 other quality and factors.

7 MR. MARTEN: Randy Marten, Miller Milling.
8 I'd like to reinforce the point.

9 I participated with other individuals at
10 Miller Milling in putting the survey together, and
11 quite honestly was very afraid of the potential
12 results because the question was so vague.

13 In doing a correct analysis you have to take
14 three things into account -- time, place and quality.
15 So any study that is undertaken has to make sure that
16 those three elements are incorporated. Same time,
17 same place, and same quality of grain.

18 MR. POTTER: Excuse me, Commissioner Miller.
19 To answer that question as well. Dave Potter with
20 American Italian Pasta.

21 Just to elaborate, there are two elements of
22 timing that are critical. One, the contract has to be
23 done at the same time to get your comparable for the
24 same delivery period otherwise market prices change
25 and so forth, different conditions change. So it's

1 critical.

2 So to answer your question specifically, it
3 may be difficult to get all those stars to line up for
4 an exact comparable.

5 MR. CUNNINGHAM: The reason I said what I
6 did is that the one you can make the adjustment for
7 most readily is the transportation cost. Adjustment
8 for difference in grade would depend upon the values
9 attached to that difference in grade which fluctuate,
10 adjustments for differences in time is really tough.
11 That's the reason I made the suggestion I did.

12 COMMISSIONER MILLER: Okay, thank you.

13 MR. RYAN: Could I suggest one other thing
14 as well?

15 COMMISSIONER MILLER: Yes.

16 MR. RYAN: This is John Ryan.

17 Everybody's pricing off the Minneapolis
18 Grain Exchange and perhaps Mr. Horsager could at least
19 explain a bit, he's thought I'm sure a good deal about
20 how prices are established on the Minneapolis Grain
21 Exchange and sort of the role of Canadian wheat there.
22 Although you don't have great underselling data, what
23 you're trying to look at in doing underselling
24 analysis is whether there's price suppression or
25 depression.

1 So another approach is to look at what role
2 is Canadian imports playing in the benchmark price?
3 The Minneapolis Grain Exchange, and we've got the
4 President here and perhaps he could address that.

5 COMMISSIONER MILLER: Sure. Mr. Horsager?

6 MR. HORSAGER: The benchmark and what goes
7 into that has many factors. We've talked about some
8 of them already -- weather, local factors, global
9 factors, overseas supply and demand. We haven't
10 mentioned the currency rate yet. But a lot of
11 different things eventually arriving through kind of
12 an open auction process where buyers and sellers are
13 bidding up and offering down to come to that price.

14 So essentially every day and every minute
15 during the trading day that process is happening where
16 people are considering all these issues and then
17 making decisions based on that.

18 So the benchmark price is pretty broadly
19 established.

20 In terms of commenting on --

21 MR. RYAN: What effect at least volume wise,
22 how would you measure what role the Canadian imports
23 are playing or Canadian trade is playing in
24 establishing that benchmark price?

25 MR. HORSAGER: The Canadians are one set of

1 participants. Actually I think I already mentioned a
2 relatively small factor when you consider the volume
3 that we trade on any given day or throughout the year
4 which is about six billion bushels.

5 So again, I think I mentioned this already,
6 but if you take all of the Canadian imports it's about
7 a day and a half or two days of trade for us, it's
8 relatively insignificant. But in fact that combined
9 with all the other factors, what's going on in the
10 southern hemisphere, Europe, here in the U.S. every
11 day does sort of arrive at the benchmark for that
12 given moment.

13 COMMISSIONER MILLER: I appreciate it. The
14 red light's on. Thank you.

15 CHAIRMAN OKUN: Commissioner Koplan?

16 COMMISSIONER KOPLAN: Thank you, Madame
17 Chairman.

18 I've got some questions for the millers
19 association and perhaps I would direct them to you,
20 Ms. Anderson, and then you could call on your members
21 as you see fit to respond.

22 I'm basically coming back to something that
23 you all referred to in your direct presentation, I
24 believe it was in your direct presentation, and that's
25 the North Dakota Wheat Commission publishes on their

1 web site something called To Tell the Truth, and it's
2 a series of papers that relate to key issues that
3 we're looking at today.

4 Let me start with that because it takes
5 direct aim at a number of your arguments and I've
6 picked several that are published and I'm going to ask
7 you to comment.

8 The first one is headed "Quality also not
9 the reason for imports". On that one they assert that
10 "Production of high quality U.S. hard red spring wheat
11 has exceeded domestic food use in each of the last ten
12 years. In seasons with increased supplies of top
13 grades imports have not declined in a corresponding
14 manner. Durum supplies have been tighter but imports
15 in no way correlate with tighter quality supplies."

16 They conclude by saying, "It is clear that
17 unfair trading activities drives imports not quantity
18 or quality of the U.S. crop."

19 If I could hear a response to that one?

20 MR. MILLER: That's a pretty broad
21 assertion. I would disagree with it but --

22 COMMISSIONER KOPLAN: Could you identify
23 yourself?

24 MR. MILLER: I'm sorry, John Miller from
25 Miller Milling.

1 There's not a fact there that's presented
2 that I can take issue with really, I don't think. I
3 would disagree with that assertion. I would say that
4 --

5 COMMISSIONER KOPLAN: You disagree with the
6 conclusion?

7 MR. MILLER: I would disagree with the
8 conclusion, yes.

9 COMMISSIONER KOPLAN: But not with the
10 assertions leading up to it?

11 MR. MILLER: We'd have to go through them
12 one by one again, but they're pretty general.

13 COMMISSIONER KOPLAN: I can do it. I have
14 it in front of me.

15 MR. MILLER: All right.

16 COMMISSIONER KOPLAN: They assert that
17 production of high quality U.S. hard red spring wheat
18 has exceeded domestic food use in each of the last ten
19 years.

20 MR. MILLER: I'm not the guy to answer that.
21 That would have to be Randy or --

22 MR. RYAN: Maybe one of you guys could
23 address the difference between just meeting food use
24 quality and what you actually need to produce the
25 products that your customers demand.

1 COMMISSIONER KOPLAN: Mr. Ryan. If each of
2 you can identify yourselves --

3 MR. RYAN: Sorry.

4 COMMISSIONER KOPLAN: -- so the reporter
5 picks it up.

6 MR. RYAN: John Ryan.

7 If Dave Potter or somebody else could
8 address the difference between food use grade and what
9 you actually need to produce semolina pasta.

10 MR. MILLER: He's talking about spring wheat
11 though.

12 MR. RYAN: Sorry. Randy?

13 MR. MARTEN: Randy Marten, Miller Milling.

14 There is no doubt that that is correct in
15 terms of sheer volume. However, I think what is
16 missed here is that a significant amount of that wheat
17 is exported and therefore is not necessarily available
18 for the domestic market because of location and that
19 it may be more tributary to the PMW market or to
20 another better economic destination for in fact the
21 producers themselves.

22 COMMISSIONER KOPLAN: Let me stay with you
23 if I could, and walk through the balance of it.

24 It goes on to say, "In seasons with
25 increased supplies of top grades imports have not

1 declined in a corresponding manner." And then "The
2 durum supplies have been tighter but imports in no way
3 correlate with tighter quality supplies."

4 How about those?

5 MR. POTTER: Dave Potter.

6 When it comes to durum, also on that same
7 page they refer to, they're saying the U.S. and Canada
8 grow identical products which you've heard from myself
9 and several of my colleagues that that is not correct.
10 They are very distinguishable, different
11 characteristics that we're looking for from Canada
12 versus the U.S..

13 In terms of the overall supplies, again on
14 the same page it indicates eight out of ten years that
15 North Dakota could not produce enough for the domestic
16 food use. That's what I referred to earlier. I would
17 just say, put this in perspective. It's 12 to 19
18 million bushels a year, call it 16 on the average
19 where you need 70 to 75 at the mills.

20 I don't know about the correlation to
21 certain reactions, its's just not that much
22 regardless. It's only one out of five bushels flowing
23 to the United U.S. mills and we're looking for
24 distinct qualities to help us blend our products to
25 make good pasta.

1 COMMISSIONER KOPLAN: Thank you.

2 MR. BAIR: Commissioner, Jim Bair. Could I
3 add to that?

4 COMMISSIONER KOPLAN: Sure.

5 MR. BAIR: On top of that you will find
6 elsewhere on the North Dakota Wheat Commission web
7 site that last year for example only 54 percent of the
8 North Dakota durum crop was milling grades one or two.

9 And further, in the case of hard wood spring
10 wheat as has already been testified earlier today,
11 grown in the Red River Valley area because of the risk
12 of vomitoxen, that wheat is largely unuseable.

13 So it's not enough to merely say that
14 production was X number of bushels, you have to look
15 at what portion of that quantity was actually of
16 milling quality or was useable. And vomitoxen is not
17 just something that millers have created a concern
18 about, the United States Food and Drug Administration
19 has a very strict policy about vomitoxen. So that
20 wheat is largely unuseable by the marketplace.

21 COMMISSIONER KOPLAN: Thank you.

22 Let me turn to --

23 MR. CUNNINGHAM: Could I just add one quick
24 thing on that?

25 COMMISSIONER KOPLAN: Sure.

1 MR. CUNNINGHAM: All those types of analyses
2 you're doing there show how important it is to take
3 into account that portion of the durum sales or hard
4 red spring sales by the farmers which the grain
5 companies chose to export. Because those aren't
6 available for the domestic market. They affect both
7 of those two correlations that he talked about there.
8 If there was an increase in exports at a time when the
9 U.S. crop quality increased then that would explain
10 the second thing that they found to have a lack of
11 correlation.

12 So somehow the Commission has to find a way
13 to deal with the export issue or you can't do just the
14 type analysis that you're trying to do there. Which
15 is a perfectly valid analysis but can't be done
16 without taking into account the grain companies'
17 exports.

18 COMMISSIONER KOPLAN: Thank you for adding
19 that.

20 Ms. Anderson?

21 Ms. ANDERSON: I'd like to just make sure
22 one point is very clear.

23 Mr. Bair was talking about both the low
24 level of durum that met milling quality grades, and
25 also this problem of vomitoxen, for example, in the

1 HRS.

2 What I think is important for the Commission
3 to keep in mind is that you could have milling grades
4 of HRS, for example, but vomitoxen levels are not a
5 grade factor. So that within the supposedly milling
6 level grades of wheat there would be portions of that
7 wheat that would not be useable by Millers because of
8 vomitoxen which is a very different issue. It's not
9 taken into account on grades.

10 Is that right?

11 MR. MARTEN: That is absolutely the case. I
12 was going to make precisely that point. Well said.

13 COMMISSIONER KOPLAN: Thank you, Ms.
14 Anderson. Thank you, Mr. Marten.

15 Let me turn to the next one.

16 That one is headed "Importers don't buy what
17 they say they do."

18 "The NDWC asserts that U.S. Census Bureau
19 Data show that a majority of Canadian imports are not
20 'top quality'. Two-thirds of spring wheat imports
21 purchased during the last four years are less than
22 number one grade and only half of the durum imports
23 meet standards for a combination of number 1 grade and
24 minimum 85 percent vitriousness.

25 "Census Bureau statistics are further

1 evidence that unfair prices are the motivation behind
2 Canadian imports, not the quality or quality of the
3 U.S. crop."

4 MR. POTTER: Dave Potter.

5 COMMISSIONER KOPLAN: Yes, Mr. Potter.

6 MR. POTTER: I'd like to comment on that.

7 The North Dakota Wheat Commission is taking
8 advantage of general ignorance on the topic, that
9 being that the grading systems are quite a bit
10 different in the U.S. and Canada.

11 For example, the color score they're
12 referring to on this hardness and vitriousness, this
13 85 minimum is kind of the cutoff, that's not even in
14 the grading system. Okay?

15 But in Canada a one quad, Canadian western
16 amber durum can be a minimum of HNV, or hardness and
17 vitriousness. That 80 up in Canada, the Canadian
18 Grain Commission is extremely critical in the way they
19 evaluate their grain. Much more so than the Federal
20 Grain Inspection Service in the U.S.. You're not
21 comparing apples to apples whatsoever. Our millers
22 would much rather take an 82 Canadian than an 88 U.S.
23 grade for example.

24 So they've done a nice job of kind of
25 slicing right at a level where the numbers will show

1 what they want it to but there's an awful lot of good
2 Canadian durum that flows to the U.S. wills.

3 CHAIRMAN OKUN: Thank you.

4 MR. CUNNINGHAM: When we come back Mr.
5 Steinke would like to add to that too, at some point.

6 COMMISSIONER KOPLAN: Certainly. My red
7 light is on, though. I'll let you start off on the
8 next round.

9 Thank you. Thank you, Madame Chairman.

10 CHAIRMAN OKUN: Thank you.

11 I want to return for a moment to the export
12 question. I know there's been already a lively
13 exchange. I'm going to have to go back over that. I
14 heard all those points and I understand them and I'm
15 thinking about them.

16 But the one thing that I want to go back to
17 was something I heard you say, Mr. Boltuck which was I
18 think as part of your argument you were saying when
19 you're evaluating this large amount of exports,
20 whatever number we're using, for whatever year, that
21 we should view it as we have in some other cases as a
22 protected market. You can't have injury because of
23 these exports.

24 It struck me that that is not really
25 consistent with a world price case that you're trying

1 to make, but it's not the farmer deciding I'm going to
2 go to the export market and get a premium, if your
3 argument is it is down the stream, therefore, and he's
4 getting the price and it's this world price, then why
5 is that a protected market? If he could sell more, I
6 think they're saying if there weren't the Canadian
7 imports they'd be selling more of the U.S. market and
8 keeping the exports.

9 So I wanted to go back to that and hear your
10 explanation for why this would be a protected sell for
11 the farmers.

12 MR. BOLTUCK: I think that's actually a very
13 good point. What I think is that the existence of
14 efficient trading opportunities for U.S. producers who
15 obviously through the grain merchants the United
16 States is the largest exporting country, and the
17 flexibility of all of the marketing and distribution
18 infrastructure to adjust to market conditions very
19 readily really does lock down the price.

20 This is really Chart 6 that Dr. Sumner had
21 prepared which shows imports or Canadian exports to
22 the United States as a share of total world
23 production. Our point is that all of this is competing
24 because exports go everywhere, imports in importing
25 countries come from everywhere, home production around

1 the world competes with traded products. There's a
2 huge amount of fungibility. In fact U.S. and Canadian
3 wheat competing in third country markets, the effect
4 of which on price doesn't count because it isn't by
5 reason of imports.

6 That competition between U.S. and Canadian
7 wheat, in those markets the products are even more
8 substitutable than they are in the United States where
9 a U.S. product has the home field advantage, but
10 overseas, U.S. and Canadian products are viewed as
11 just North American wheat.

12 So I think your point is a fair point. I
13 think that's the preferable way of viewing it.

14 If, however, one were to take the
15 Petitioners' perspective and think of a U.S. market, I
16 think you're making a good point. What I should have
17 said, elaborating, is well even under their theory
18 that there's competition specifically within the
19 United States, you would then have to say in terms of
20 present injury, what's going on in the current year
21 and so on, 72 percent of U.S. production is insulated
22 from that competition.

23 So I think you're absolutely right that that
24 is not really the point of the exports. The point of
25 the exports is that it's part of the integration into

1 the world market which means that prices are
2 determined by the overall balance of supply and demand
3 in the world market in which it's just, it's not even
4 the tail wagging the dog. It's the flea wagging the
5 hair wagging the tail wagging the dog in terms of the
6 volume of exports.

7 If you read the Petitioners' brief, they
8 propose a syllogism that in essence says well, we all
9 know that North America is the most important cost
10 contributor to wheat in the world, and the United
11 States is the most important contributor to wheat
12 within North America. And Canada is driving the price
13 in the United States through its imports, therefore
14 this little sliver is driving the price in the world.
15 This is, for want of a nail the kingdom was lost.

16 I would just suggest that is flawed
17 reasoning. The correct reasoning is to look at the
18 share of contribution. This is why, done perfectly or
19 not done perfectly, the VAR results made a lot of
20 sense to me, that the shock that was arising from
21 Canada was relatively small compared to the shock
22 arising from the rest of the world.

23 And I think that is our theory and our point
24 an my only point is even if you adopted their theory
25 or wanted to adopt their theory you'd have to

1 reconcile it with the fact then that 72 percent of
2 U.S. production under their theory is just simply
3 insulated from direct competition with imports, even
4 if it's competing with Canadian grain in third
5 countries. The effect of that on price is not by
6 reason. And on the U.S. producers indirectly through
7 drive of demand is not by reason of competition with
8 imports. So there's just no way of getting there from
9 here in my view.

10 CHAIRMAN OKUN: I understand those points.
11 I appreciate that.

12 Let me turn, Mr. Cunningham, to you on this
13 other one. It's a little bit related to the argument
14 Mr. Boltuck made which is in your outline and in your
15 argument one of the things you said, why there was not
16 evidence of injury to U.S. durum hard red spring
17 farmers was that farmers can sell all their production
18 each year.

19 I've got to tell you, I have a hard time
20 thinking that has anything to do with whether they're
21 injured or not.

22 A, just a factual matter, most farmers I
23 think lose money on the, you hold an inventory and you
24 wait too long. So there's stock. So they're not
25 selling it --

1 MR. CUNNINGHAM: But remember the stocks are
2 declining.

3 CHAIRMAN OKUN: Let me finish my point.

4 MR. CUNNINGHAM: Okay.

5 CHAIRMAN OKUN: On the other one, assuming
6 they're selling everything. If their price is being
7 impacted by import, why isn't there injury? Even if
8 they're selling everything.

9 MR. CUNNINGHAM: What I like to do whenever
10 I argue to the Commission is deal with both of the
11 ways in which injury from imports can manifest itself.
12 One of two things. It can take volume away from the
13 domestic producers or it can hurt them by adverse
14 effects on prices.

15 I'm saying you're quite right, The fact
16 that they don't have and can't possibly have any loss
17 of volume injury doesn't mean per se that they can't
18 have a price injury.

19 They don't have a price injury and all the
20 evidence whose they don't have a price injury. The
21 prices are up and there's no causal relationship
22 between imports and price, and it's hard to get around
23 those two facts when you try to argue a price injury.

24 CHAIRMAN OKUN: I see.

25 MR. CUNNINGHAM: The only reason I keep

1 saying that, remember that the inventories are down, I
2 keep saying that because they don't want them coming
3 in arguing and saying oh, but there is a volume injury
4 because we've had to hold back more and more
5 production and inventory. The fact is, they haven't.

6 CHAIRMAN OKUN: I understand what you're
7 saying.

8 MR. CUNNINGHAM: By the way, on inventories
9 when we talked about their inventories before, all
10 those inventories that are on the farm level are
11 reported to you by the Canadian Wheat Board and are
12 figured in your inventories so that the Canadian Wheat
13 Board is never hiding inventories from you in any way.
14 They're all reported.

15 CHAIRMAN OKUN: I'll come back to that.

16 The other things which I don't think I've
17 had an opportunity to ask this set of witnesses, but
18 something you raised Mr. Cunningham with your charts.
19 Your Chart 3 which is this tracking of hard red
20 winter, the 13 percent protein; and number 1, DNS 13
21 percent, in specific ports. I may want to see it as
22 something else.

23 But I think it goes to the point I was
24 asking the panel this morning --

25 MR. CUNNINGHAM: I know what it is.

1 CHAIRMAN OKUN: This one. But this chart I
2 would like the millers to comment on because it's the
3 thing I was interested in this morning which is for
4 those of you who are buying more than one product out
5 there, and again I'm not at this point looking at the
6 like product, whether this means like product or not.
7 It's the, what is the tracking that this close
8 tracking, does this make sense with what you see in
9 the market? You were all talking about the blending
10 and it changes each year. People may not have it, I
11 guess, is what Ms. Anderson is doing right here. So
12 this may not be maybe useful.

13 But as a general matter, when you're looking
14 at the market and you're buying different types of
15 wheat. Let's go hard red spring, hard red winter,
16 because that's what I was focused on.

17 Is there anything different other than
18 protein content -- I mean there are all differences.
19 I've heard you talk about differences. But why do
20 these track so closely? This goes back to what the
21 exchange is made up of I think, and a number of
22 things.

23 I just wanted to hear the purchasers'
24 comments on tracking.

25 MR. HILLMAN: John Hillman at Bay State

1 Milling.

2 If I can start to answer that question.

3 There are a lot of factors that determine
4 whether you buy a winter wheat or a spring wheat for a
5 product. In our earlier presentation I tried to talk
6 about all the different varieties of products that
7 there are available in the bakery marketplace. I'm
8 talking about spring wheat, winter wheat here.

9 Some of those are made of blends, some are
10 made with winter wheat, some are made with spring
11 wheat. Quite often it's an economic choice depending
12 on where your milling location is, to where your
13 marketplace is, and to where the wheat originates
14 from.

15 It can also be timing factors in relation to
16 availability. Hard red winter wheats are generally
17 available earlier in the year, end of May onward. In
18 some parts of the country where spring wheats are not
19 available until August/September, later in the year.

20 So there are choices to make which we do as
21 millers each year.

22 CHAIRMAN OKUN: Mr. Hillman, my red light's
23 come on and I realize actually maybe there should be
24 another way I should ask this question. So let me let
25 you all look at this and let me turn to my colleagues

1 and I will come back because I do want to ask about
2 that.

3 Vice Chairman Hillman?

4 VICE CHAIRMAN HILLMAN: Thank you.

5 I guess I wanted to put to you a question
6 that I also put to the panel this morning which is to
7 get your take on this issue of what our data says
8 happened between 2001-2002 and the following marketing
9 year for hard red spring wheat. Because again, if I
10 look at just our data in terms of what it says to me,
11 it says that the consumption in the United States went
12 down by almost 100 million bushels.

13 A 30 percent decline from one year to the
14 next in the amount of consumption of red spring wheat.

15 I'm just curious whether those of you that
16 are out there in the marketplace felt that that
17 happened at that level of a change in U.S. demand for
18 U.S. consumption of hard red spring wheat and what its
19 implications were. Did it seem like there was this
20 traumatic change from one market year to the other?
21 And how did you all react to that?

22 You are referencing the year that I believe
23 there was a rather severe drought. Production was
24 significantly influenced. We, obviously, cannot
25 consume more than as produced, plus what is in store.

1 So, we had a situation where, if there was instead of
2 400 million produced in a normal year, only 300 that
3 was consumed, the stocks were drawn down.

4 What took place in that year was, as a
5 miller, because of the quality/availability of spring
6 wheat, we did, in fact, make a significant transition
7 to using 100 percent winter wheat in those products
8 where it makes an acceptable product.

9 And I will add, at this point, that there
10 are a minority of products that require 100 percent
11 winter. An example might be a noodle that goes in a
12 can of soup. There are products that require 100
13 percent spring; for example, in the York style bagel.
14 In between, there are a huge number of products that
15 have a high degree of flexibility as to what that
16 blend is. And our job, as millers, is to provide that
17 to the baker.

18 VICE CHAIRMAN HILLMAN: I hear your answer
19 and I appreciate that. Part of the reason I'm asking
20 is, like I said, these numbers look to me very
21 dramatic; and, yet, I haven't heard a lot of comment
22 that suggests to me that there was this dramatic event
23 happening in the wheat market. And part of it, Mr.
24 Marten, in listening to your testimony, I then
25 immediately go to our data and say, okay, what does

1 our data say happened with respect to hard red winter
2 wheat.

3 I mean, you're saying, okay, there wasn't a
4 good availability of spring wheat, so everybody
5 shifted into hard red winter wheat. And, yet, again,
6 our data would suggest that consumption of winter
7 wheat was also down; production also down.

8 So, if you look at the whole picture, it,
9 again, looks like this huge decline between one
10 marketing year and another. So, I'm wondering if
11 there's anybody else that can help me. It may be the
12 way our data is characterizing it, that it wasn't as
13 dramatic as our numbers would suggest, because of
14 other things going on. There may be something else.
15 Or, it may be -- again, I'm just trying to get a
16 better sense from those of you out there that are
17 using these products, whether you felt like there was
18 something that significant going on that affected
19 total consumption to this significant of a degree.

20 MR. LINVILLE: Commissioner Randy Linville
21 at the Scoular Company. I can help you with part of
22 that. One of the first things that happens in a
23 drought market is the price spikes up and we eliminate
24 feeding demand of wheat. So, that's the big piece
25 that comes out for demand.

1 VICE CHAIRMAN HILLMAN: Say that again. You
2 eliminate --

3 MR. LINVILLE: You eliminate wheat as an
4 animal feed. It only goes for food.

5 VICE CHAIRMAN HILLMAN: Okay, now, I
6 understand. I just didn't hear the word. Okay.

7 MR. LINVILLE: So, you need to look at the
8 feed demand on the balance sheet in that particular
9 year.

10 VICE CHAIRMAN HILLMAN: Okay.

11 MR. LINVILLE: I think you'll find it.

12 VICE CHAIRMAN HILLMAN: Okay. Others?
13 Anyone else want to comment on this?

14 MR. WILMES: Jim Wilmes from Bay State
15 Milling. The only comment I would have, there was an
16 extraordinarily high protein content of the winter
17 wheat crop that enabled probably a greater usage of
18 hard red winter wheat --

19 VICE CHAIRMAN HILLMAN: Okay.

20 MR. WILMES: -- in the market, as opposed to
21 having to buy spring wheat to meet requirements.

22 VICE CHAIRMAN HILLMAN: Okay; all right.
23 Dr. Sumner?

24 MR. SUMNER: But, Commissioner Hillman, what
25 this speaks to is something we've talked a lot about

1 and that is the artificialness, in fact, of thinking
2 of what you're calling consumption of hard red spring
3 wheat, itself -- U.S. consumption of hard red spring
4 wheat. In fact, what the market does is add hard red
5 winter wheat and add exports. The real market
6 includes all of those; and then the percentage decline
7 of that bigger pile, if you will, of wheat is much
8 smaller. It's in the order of magnitude of a few
9 percentage points, not the 16 for food use or the 30
10 percent for total.

11 And it really -- I mean, it very
12 dramatically illustrates the point that we've been
13 talking about a lot here, is that the pool of
14 substitutable wheat and the relevant market is not
15 this narrow picture of consumption of hard red spring
16 in the United States.

17 VICE CHAIRMAN HILLMAN: No, I appreciate
18 that. But, on the other hand, these folks are
19 operating, to some extent, in the U.S. market. I was
20 just trying to get their perspective on what they were
21 facing, in terms of trying to get product that they
22 needed in order to -- again, part of me has a hard
23 time accepting the fact that the consumption of, in
24 essence, flour or baked goods all of a sudden took
25 this 30 percent decline from one year to another.

1 That did not happen.

2 So, again, I'm just trying to get a sense
3 from the miller side of it, of kind of what the
4 reaction was; whether our data accurately reflect how
5 the market perceived what was happening in that
6 particular crop year.

7 MR. SUMNER: And so, at least what I heard,
8 was, in fact, there's substantial substitution between
9 hard red winter and hard red spring and this was a
10 perfect year where that came into play.

11 VICE CHAIRMAN HILLMAN: Again, I heard it.
12 I tell you, it doesn't square with our data. I mean,
13 I heard Mr. Marten's testimony and I now heard the
14 further embellishment that it had a slightly higher
15 protein content, which, to me, means, therefore,
16 lesser volume still produces the same level of
17 protein. But, I have to tell you, adding up the
18 numbers, it doesn't add. So, there's still a huge
19 decline in the total number.

20 MR. CUNNINGHAM: There's another data
21 problem here, because, remember, you're not doing
22 apparent domestic consumption the way you usually do
23 it. You're starting with U.S. production and then to
24 get U.S. shipments, you're subtracting export
25 shipments, which increased 35 million in that year.

1 So, 35 million of what you see is a decline in people
2 eating wheat, eating cakes and bread; is, in fact,
3 just an increase in exports.

4 VICE CHAIRMAN HILLMAN: I understand.

5 MR. CUNNINGHAM: That's why you've got to do
6 something about the exports.

7 VICE CHAIRMAN HILLMAN: I understand that.
8 I've heard it before.

9 MR. HILLMAN: John Hillman from Bay State
10 Milling.

11 VICE CHAIRMAN HILLMAN: Sure, go ahead.

12 MR. HILLMAN: Can I suggest you check those
13 figures, because --

14 (Laughter.)

15 VICE CHAIRMAN HILLMAN: I mean, the only
16 reason I'm asking this question is I am trying to get
17 some sort of market reality check on whether or not
18 these numbers seem to everybody to be in the right
19 ballpark. Do you know that you all out there, like
20 there was a 100 million bushels left of hard red
21 spring wheat. I mean, does that feel right?

22 MR. HILLMAN: They don't appear to be
23 correct, because I can tell you from our experience
24 that production didn't change that significantly from
25 2002 to 2003 -- or 2001 and 2002 and 2003, which I

1 think is the year you're talking about. The only
2 thing I can say is that, obviously, 2002-2003 was an
3 aberration, because of the drought. But, that
4 affected all regions.

5 But, the usage of products was the same and
6 the usage of wheat was very similar in those two
7 years. There was a higher incidence, in terms of hard
8 red winter wheat usage versus spring wheat for other
9 reasons, higher protein, et cetera; but, not to the
10 extent that those figures show.

11 VICE CHAIRMAN HILLMAN: And part of it is,
12 our numbers clearly may be missing something and
13 that's what I'm trying to understand, because I guess
14 that's -- I mean, there's no question, our data is --
15 I mean, it's public data, in terms of what they
16 showed. It showed, again, total of consumption of 328
17 million bushels in one year and the following year,
18 2002-2003, 230 million bushels; so, 98 million bushels
19 left of product consumed.

20 And, again, I'm just trying to get a sense
21 from the market, if you will, out there from you all
22 whether those numbers seem right and whether we're
23 missing something. And maybe it is -- are stock held
24 by the millers? I mean, is there data out there that
25 is not adding into it? Mr. Marten?

1 MR. MARTEN: Commissioner, are those numbers
2 referring to spring wheat only or --

3 VICE CHAIRMAN HILLMAN: The numbers I just
4 read to you were spring wheat only. I mean, I can
5 give you the numbers for the others, and they're all
6 showing a decline is all I'm saying. If you add those
7 together, you're still showing a very significant
8 decline in what our numbers are suggesting. I'm just
9 trying to do a little reality check.

10 MR. MARTEN: A comment, first, if I may, and
11 then I think this fits into one of those categories of
12 the post-brief. The actual consumption of wheat in
13 this country is more like 950 million bushels of all
14 classes. I think the number of 200 and some refers to
15 spring wheat. And, if that's the case, then that goes
16 precisely to our point of having a bad crop that
17 particular year, less production. We made switches.
18 But, I think if you look at the total wheat
19 consumption number for domestic use was pretty flat.

20 VICE CHAIRMAN HILLMAN: Again, as soon as
21 you started saying that you all switched into hard red
22 wheat, I then looked at the numbers for hard red wheat
23 -- I'm sorry, winter wheat, and, again, they, also,
24 show a decline; nowhere near as much, but another 27
25 million bushels decline in consumption of winter what.

1 MR. CUNNINGHAM: But, they all reconcile, if
2 you don't do the exports.

3 VICE CHAIRMAN HILLMAN: In other words, our
4 numbers are suggesting that you could not have made up
5 for this 100 million bushel decline in spring wheat by
6 simply switching over into winter wheat, because it
7 appears that there was also a decline in winter wheat.

8 MR. CUNNINGHAM: The exports do cure the
9 volume. You have 110 million bushel decline in hard
10 red spring wheat production, okay. Then, you have a
11 \$70 million decline in inventories, which is a plus
12 for you. So, you're down to 40 million bushels. And
13 then the fact -- the only thing that makes it a mess
14 for you is that you subtract out -- that you have \$35
15 million of exports artificially treated there. That
16 \$35 million in exports takes care of almost all of the
17 discrepancy, because you're mistreating it.

18 MR. BOLTUCK: Commissioner Hillman, if you
19 think of food use demand in the U.S. market, which is
20 what the Petitioners' economist this morning said was
21 very inelastic, I would submit to you that if you look
22 at this data, together with the price changes within
23 that year, the fact this was a supply shock from the
24 drought that affected multiple grades of wheat, price
25 went up, consumption went down along the demand curve,

1 I would submit to you, this suggests demand for HRF as
2 a single grade or class of wheat is actually much more
3 elastic than Petitioners have tried to persuade you.
4 It is maybe even, then, reported by the staff in the
5 staff report.

6 VICE CHAIRMAN HILLMAN: I appreciate that.
7 My red light has come on.

8 CHAIRMAN OKUN: Commissioner Miller?

9 COMMISSIONER MILLER: Well, I appreciate
10 that last exchange by Vice Chairman Hillman. I was
11 puzzled by the same thing. But, it may be that you
12 have actually come to some point on it and I think
13 it's something we'll look at after the proposed
14 hearing.

15 And then, frankly, the only other question I
16 have was the same one that the Chairman started down
17 about the prices. So, I'm going to take a pass and
18 let her finish it, because she already started it.
19 And rather than taking it in a different direction,
20 I'm just going to wait and hear that answer. So, I
21 have no further questions, at this point.

22 CHAIRMAN OKUN: Commissioner Koplan?

23 COMMISSIONER KOPLAN: The pressure is on me.
24 Mr. Steinke, I haven't forgotten that my last
25 question, you had your hand up. So, I'll start with

1 letting you respond.

2 MR. STEINKE: Thank you, Commissioner
3 Koplan. Rick Steinke. The point I wanted to make,
4 you've heard about spring wheat -- or you've heard
5 about durum, I believe, from one of the millers, in
6 describing that; but, I just want to comment on the
7 spring wheat issue.

8 It's important to understand, and you've
9 heard one of the millers talk about the Canadian Rain
10 Commission with a more critical eye on quality. In
11 Canada, this notion of Physaria head blight or the
12 vomatoxin, and that comes from that, if we find .25
13 percent in a wheat sample, we downgrade it from a one
14 to a two. As a result, we end up in areas where
15 there's incidents of FHB, of having more twos.

16 Now, on the case of twos, we actually limit
17 vomatoxin or Physaria -- actually, Physaria, and I
18 have to be clear that there's a slight difference
19 there. But, we limit it to one percent. FDA allows
20 us to two ppm. Typically, that's the standard down in
21 the U.S. But, we limit the amount of toxin that we
22 allow in our grain. And so, that's why you're seeing
23 -- they're claiming that our two CWS are inferior
24 milling wheat and why isn't there more ones. We look
25 at some of the issues, like Physaria head blight,

1 different in the Canadian grading system, than they do
2 down here in the United States. So, I just wanted to
3 make that point. Thank you.

4 COMMISSIONER KOPLAN: Thank you. I
5 appreciate it.

6 I have two more of these papers entitled,
7 "to tell the truth." The next one is headed, "CRP
8 assertions ring hollow." You assert that seven
9 million acres enrolled in the conservation reserve
10 program in North Dakota and Montana are behind
11 decreases in hard red spring wheat and durum wheat
12 plantings. The NDWC responds that less than 40
13 percent of acres originally enrolled in CRP were wheat
14 based and that the bulk has been planted to seed
15 grain. Would you comment on that? Ms. Anderson, you
16 have someone?

17 MR. MARTEN: Yes, Randy Marten. I am,
18 again, going to answer it from the perspective of an
19 individual that's involved in a farming operation.
20 The decision to put land into a CRP is purely
21 economic, relative to your next best alternative.
22 And, secondly, usually the land that goes in that
23 direction is what you view as being marginally
24 productive, in that it is not -- you're obviously not
25 putting your best land in the CRP program. And so,

1 you put land that, in fact, the income derived from
2 the CRP program or other alternatives might, in fact,
3 be the best alternative you have. So, you're making
4 purely an economic decision, based on your property.

5 COMMISSIONER KOPLAN: Thank you. Does
6 anybody else want to comment on that? If not, I'll --

7 MR. BAIR: Commissioner, Jim Bair.

8 COMMISSIONER KOPLAN: Yes, Mr. Bair.

9 MR. BAIR: That point was one of several
10 points we made, for example, last fall at the
11 preliminary hearing, merely trying to point out that
12 there are a number of factors that have resulted in
13 decreased production of spring wheat and durum in
14 North Dakota. And I think it would be silly to argue
15 that taking three-and-a-half million acres out of
16 North Dakota, another three-and-a-half million acres
17 out in Montana for this conservation reserve program,
18 putting two-and-a-half million acres into soybeans --
19 in fact, this year, more than three million acres into
20 soybean production in North Dakota, these are all
21 related factors. It cannot be ignored.

22 So, I think that that document you're
23 reading from probably takes one of our points out of
24 context. But, taken in total, new farm land is not
25 being manufactured in North Dakota. There are not

1 vast areas of forests in North Dakota that can be
2 cleared and put into wheat production. So, every acre
3 of potentially arable producible land competes, and
4 the various crops compete for those lands -- those
5 acres, rather.

6 COMMISSIONER KOPLAN: Thank you. Actually,
7 that segues into the last one I had on the list and
8 that one is headed, "U.S. Government support has no
9 bearing." In that one, the NDWC asserts that soybean
10 acres have increased in North Dakota and wheat acres
11 have decreased in recent years, but the market is the
12 major factor behind increased soybean plantings and
13 the Canadian Wheat Board is the major detractor from
14 wheat plantings. Government programs are not to
15 blame.

16 MR. PRZEDNOWEK: Yes, David Przednowek,
17 Canadian Wheat Board. The assertions that the Wheat
18 Commission makes on the -- some of the comments they
19 make, in terms of changes in soybean acres in North
20 Dakota, there's some problems. I guess one of the
21 comments that they make is that in 2002, the
22 proportion of land -- yes, the top 10 soybean counties
23 in the southeastern corner of the State, which is
24 quite true, they are the top 10 in the State, account
25 for roughly 80 percent of the acres devoted to

1 soybeans in North Dakota. The actual number is about
2 77 percent. They assert that 80 percent is roughly
3 similar to the proportion of acres that soybeans
4 occupied in those 10 counties in 1996. And, you know,
5 you would think that "roughly" might mean 82 or 83
6 percent. In fact, 95 percent of the soybean acres
7 were concentrated in those 10 counties in 1996.

8 COMMISSIONER KOPLAN: Thank you.

9 MR. PRZEDNOWEK: And further to that, it's
10 not just soybeans. It seems like a lot of the
11 discussion revolves around soybeans. But, I think an
12 important consideration is that back in 1992, we had
13 all of, I think, about 12,000 acres of canola produced
14 in North Dakota, which is prominently produced in the
15 northern third of the state, as well as flax. I think
16 in 1996, we had 80,000 acres. Well, in 2002, we had
17 seen acres of canola expand from those levels in 1992
18 of a few thousand acres, up to 1.35 million acres.
19 And flax acres since 1996 has increased from 80,000
20 acres to 750,000 acres. And those are two -- Mr.
21 Birdsall pointed out that there's problems of soybean
22 production in his part of the State, around Minot, and
23 in Montana, they can't grow soybeans, and that's quite
24 correct. But, those two crops, as well as sunflowers,
25 are three oil seeds that are very well adapted to the

1 State of North Dakota, and they lead the nation in the
2 production of those three crops.

3 So, it's not just a question of soybeans,
4 but these other crops that occupy millions of acres in
5 North Dakota.

6 COMMISSIONER KOPLAN: Thank you. We noted
7 in the preliminary determination that the parties
8 agree that while HRS wheat generally is higher priced
9 than HRW, certain price series on the record indicated
10 similar pricing. That's footnote 42 on page eight of
11 the views of the Commission. We, also, noted the
12 record suggest that the protein content of HRS wheat
13 can be a distinctive physical characteristic, even
14 where hard red spring wheat and hard red winter wheat
15 are blended for the same use.

16 I'd like you to discuss whether such
17 substitution is technically and commercially feasible;
18 and, if so, whether it occurred during the period
19 examined. I'm particularly interested in any
20 additional data you can provide on the prices of hard
21 red spring wheat and hard red winter wheat. Anyone
22 can take it.

23 MR. HILLMAN: John Hillman, Bay State
24 Milling Company.

25 COMMISSIONER KOPLAN: Yes.

1 MR. HILLMAN: Yes, we substitute hard red
2 spring and hard red winter quite readily, depending on
3 three things: pricing, availability, quality -- those
4 three things. And you can't talk too much about the
5 pricing aspect of it without talking about
6 competition. So, again, it depends where in the
7 country the customers are in relation to where the
8 wheat is grown. Substitutability of winter wheat
9 usually occurs more in the southern parts of the
10 country, simply because of where the winter wheats are
11 grown.

12 But, there are products that can only be
13 made by spring wheat. Spring wheat is a higher
14 protein content. It's stronger. It's high gluten
15 strength. It's generally more than hard red winter.
16 But, those products are few and far between. A New
17 York style bagel, for example, cannot be made well
18 with a hard red winter wheat.

19 But, other products, bread products, which
20 is a predominant uses of hard wheats in this country,
21 can be made with either spring wheat or winter wheat.
22 And we would argue that like proteins compete with
23 each other. A 13 protein winter wheat will compete
24 with a 13 protein spring wheat. So, the fact that one
25 may be more expensive than another really hinges on

1 where it's grown, in relation to where the marketplace
2 is for the product.

3 And we do this readily. It's part of our
4 crop makeup -- part of our product specification
5 makeup, rather. As we go into each crop year, we look
6 at the different values of each of those products.

7 We do have products that are made from 100
8 percent spring wheat that we could make from winter
9 wheat, and that's because we've been in the slow
10 business for 100 years and traditionally and
11 historically, we're known to be a spring wheat miller.
12 We like products from North Dakota. It's part of our
13 history, part of our culture. This mill was built
14 within Minnesota. And so, we develop products that
15 were made totally from spring wheat. Those products
16 still exist today. And from a marketing perspective,
17 we choose to do that. There are other products that
18 we choose to market from 100 percent winter wheat.

19 But, also, over 50 percent of our products
20 are made to customer specifications, where we will
21 work out the details and specifications of those
22 products with the customers, themselves, and that's
23 when economics, availability, long-term consistency of
24 product come into play, to satisfy our customers.

25 MR. CUNNINGHAM: Mr. Steinke might be able

1 to answer that.

2 COMMISSIONER KOPLAN: My red light is on and
3 has been. Thank you, Madam Chairman.

4 CHAIRMAN OKUN: Well, my last question is
5 going to be just to pick up where I was at the end of
6 my last round, which is with regard to this chart,
7 with hard red winter and hard red spring, and have the
8 millers comment on it, in terms of your experience in
9 the marketplace of why these two track so closely and
10 what they're keying off. In other words, is hard red
11 spring keying off hard red wheat? Is it all just off
12 of the Minnesota exchange? And I'm just curious on
13 what the implications of are the numbers we see here.
14 And to the extent, you comment on whether if we were
15 to track another series of a different -- or anything
16 else, whether that would matter, whether that would
17 change what we see here. And Mr. --

18 MR. MARTEN: Randy Marten.

19 CHAIRMAN OKUN: -- Mr. Marten, thank you.

20 MR. MARTEN: I think what you're observing
21 here is exactly the marketplace at work, in that in my
22 experience in trading wheat, there has been an
23 occasion where spring wheat might have been 10 or 20
24 cents under hard wheat and an occasion where it might
25 max out at 50 or 60 or 70 cents over. In each of

1 those cases, the miller baker made a judgment about
2 what was in the best interest of the baker and making
3 products. And so, what you see is, in an example
4 where spring wheat might trade at a significant
5 premium over hard wheat, there will be a conscious
6 decision to move out of spring wheat into winter
7 wheat, which would have the affect of selling spring,
8 buying winter, bringing those prices together. If, in
9 fact, the prices became so close that it became a
10 better value to use spring wheat in the formula or the
11 blend, you would be buying spring, selling winter,
12 spring wheat would widen.

13 But the point is, is there is a natural
14 element at work that keeps those within a given line,
15 as they move on down through time. And I think that's
16 why you see them track very closely.

17 CHAIRMAN OKUN: Okay. Anyone else have any
18 comments on that? Mr. Boltuck?

19 MR. BOLTUCK: All I wanted to say is that
20 Mr. Wechsler has made a very big deal out of his
21 proposition that blending is typically in fixed
22 proportion. And there are two things you have to know
23 about that assertion. One is, you've heard a lot of
24 direct evidence that it's not true and I think you,
25 also, see that in the purchase request, in their

1 response.

2 The second is, even if it were true, it
3 would be entirely consistent with a high degree of
4 substitutability at the aggregate market level between
5 hard red spring and hard red winter, because the
6 millers can shift -- in that event, they would shift
7 not the proportions of the wheat used in particular
8 flours, but they can shift the proportions of the
9 different flours they make with different -- they each
10 have different proportions of wheat that go into them.
11 And, actually, that is where substitutability among
12 products often comes from in aggregate markets. When
13 you think of difference curves, they're reasonably
14 flat.

15 MR. SUMNER: They don't think of that.

16 MR. BOLTUCK: No, I know you don't.

17 MR. SUMNER: That's why I wanted to end on
18 that. But --

19 CHAIRMAN OKUN: Mr. Sumner has gotten very
20 smart on this. He's figured it out.

21 MR. SUMNER: The one point to add -- I've
22 asked that question in class. They don't think of it
23 either. The point about substitution is you don't
24 need -- as we've heard over and over here, you don't
25 need substitution on every product. You really just

1 need substitution on the margins. And what we've
2 heard here is there's a -- if you think of that's the
3 uses for hard red spring, that's the uses for hard red
4 winter, as long as there's a significant set of uses
5 that are combined, it's just a proposition for all
6 products, but it applies to wheat very directly, then
7 that's enough to keep the prices moving together.
8 That amount of substitution is enough to keep these
9 prices from diverging. That keeps the market
10 integrated. That's what we mean by a high degree of
11 substitutability between products.

12 MR. RYAN: Excuse me.

13 CHAIRMAN OKUN: Yes, Mr. Ryan?

14 MR. RYAN: If you look at our pre-hearing
15 brief, you'd find that margin of overlap is not small.
16 It's the vast majority of hard wheat flour produced to
17 80 percent, I guess; somewhere in 80 or above range of
18 hard wheat flour is a blend -- a shifting blend. So,
19 it's not a thin slice or a margin of overlap; it's the
20 vast bulk of hard wheat flour produced is a shifting
21 blend of either hard red spring or hard red winter.
22 So, that's why you find, as Mr. Marten just testified,
23 that's why you find these things so close -- the
24 prices so closely together.

25 CHAIRMAN OKUN: Okay. And then --

1 MR. HILLMAN: Madam Chairman, if I may just

2 --

3 CHAIRMAN OKUN: Yes, Mr. Hillman.

4 MR. HILLMAN: Yes, just one last comment.
5 John Hillman, I'm sorry. Hard red winter wheat has
6 different traits and properties in different areas of
7 the country. And hard red winter is grown in much
8 more weather-related conditions. It's a more broader
9 spectrum than is hard red spring wheat. Spring wheats
10 are fairly narrow focused. It's restricted to three
11 or four states, North Dakota, Montana, South Dakota, a
12 little bit in Minnesota. But, south of the northern
13 parts of South Dakota is winter wheat territory, and
14 it's grown as far south as Texas and Arizona.

15 So, as a result, you get a much broader
16 spectrum of hard red winter and the classifications,
17 if you will, or the properties and traits of hard red
18 winter wheats are very varied. So, if it's
19 generalized, it's very difficult. Even though spring
20 wheat is in a narrower area, the Montana spring wheat
21 is quite often different than the North Dakota spring
22 wheat.

23 And so, as a baker and a miller, we have to
24 look for these different properties, not just within
25 the two classifications, within the different

1 geographic growing regions, all of which, again, are
2 affected by how the farmers treat them and how the
3 weather conditions, et cetera, et cetera.

4 CHAIRMAN OKUN: Okay. Well, let me just --
5 the other point -- I mean, and I understand that about
6 this chart here. So, then, my next question is based
7 on everything we've heard today, if you're looking at
8 the duram prices would not -- if I understand, would
9 not really move in tandem with these products here,
10 because they're not using the same use and so it has
11 its own separate -- it would have its own separate
12 track, if we were to track it here.

13 And would it matter -- I mean, maybe it's
14 for post-hearing, at this point, might be where you
15 can explore this, which is, if I were to look at the
16 grain exchange, I guess, both the Minneapolis and
17 Canada's, would I look at -- for this series, on hard
18 red spring and hard red winter, would I look at the
19 future prices and would that, then, track where these
20 went? Or would I look at -- what would be useful to
21 look at for what happened on the exchanges during this
22 period? What would be instructive?

23 MR. MARTEN: Randy Marten. Actually, you
24 could use any number of sources. The best one would
25 be to use a comparison with Minneapolis grain exchange

1 and Kansas City grain exchange, because, there, you're
2 comparing spring wheat, which is exclusively traded in
3 Minneapolis; winter wheat, which is exclusively traded
4 in Kansas City.

5 CHAIRMAN OKUN: Okay. And your view would
6 be that this would track --

7 MR. MARTEN: Oh, absolutely. The analogy
8 that I drew earlier about the substitution, in many
9 ways, is driven certainly by a basis factor, which is
10 the difference between cash and price. But, the
11 futures play a huge role in that.

12 CHAIRMAN OKUN: Okay. And if I were to look
13 at durum, in the same way, given that it's more thinly
14 traded, the futures market gone, would I expect to see
15 something different?

16 MR. MARTEN: Yes. I can only relate the
17 fact that we have done studies over the years to
18 determine whether using the Minneapolis grain exchange
19 spring wheat would be a viable hedge for durum. It is
20 not. The correlation from a risk manager's
21 perspective is not good and, therefore, we do not use
22 it, because it would assume too much risk on our part.

23 CHAIRMAN OKUN: Okay. Mr. Steinke?

24 MR. STEINKE: Yes, if I may, Commissioner
25 Okun. Rick Steinke. The important thing to remember,

1 I agree whole heartedly with Mr. Marten's comments,
2 that when you look at a price, and we look at these
3 prices -- this was certainly going to be my comment to
4 Commissioner Koplan, as well -- it's very important
5 that you look at the prices at the same location.
6 Location is important.

7 So, you know, looking at a price in Kansas
8 City and a price in Minneapolis, you have to make sure
9 that those prices are the same. And that's why we
10 tend to go to a port and look at prices. And if you
11 do that, you'll see that they track, because that's
12 what the traders are doing. That's what we see
13 happening globally. They're arbitraging the
14 differences.

15 You know, each W13 gets higher than DNF.
16 You know, they're switching and it goes back and
17 forth. So, at a particular protein level, you get the
18 same price. So, it's very important that you look at
19 it, at the same location. So, that was going to be my
20 point. Thank you.

21 CHAIRMAN OKUN: Your comments are very
22 helpful and I will turn to Vice Chairman Hillman.

23 VICE CHAIRMAN HILLMAN: Okay. Given the
24 lateness of the hour, I have just two quick questions
25 for post-hearing briefs, rather than a response now.

1 One to counsel, because it's mostly kind of a legal
2 question, is that I would ask you to comment on or
3 brief the issue of the Petitioners' assertion this
4 morning, that the mere -- in a commodity market, like
5 this market, that the mere presence of subsidized and
6 dumped imports in the U.S. must come at the expense of
7 the domestic industry.

8 Again, we've seen a lot of cases where this
9 argument is made, that in these pure commodity
10 markets, any added volume, if you will, particularly
11 at dumped or subsidized -- dumping and subsidized
12 factors in it -- again, I'm just asking for you to
13 address and/or comment on it, in the post-hearing
14 brief. Ms. Anderson, if I could ask you to join in
15 that endeavor, as well, as Mr. Cunningham.

16 And then for you, Mr. Cunningham, in the
17 post-hearing, if you could comment, you stated, I
18 think it was in your opening remarks, or it could have
19 been in response to one of the questions, that the
20 vast majority of the indicators of health of the
21 industry has been rising. I wondered if you could,
22 then, comment, first of all to make it clear to me,
23 what you think are the most relevant indicators of
24 health in the industry. I, obviously, heard you on
25 the land price issue.

1 Because, I have to say, we obviously have
2 whatever data we have, which is not the same, but the
3 closest proxy to what we would normally look at, in
4 terms of profitability or operating margins, that we
5 would look at in a case, arguably may be this cash,
6 cost, and return. And if I look at those numbers,
7 there's no question that they show a very steady and
8 significant decline over the period of investigation.
9 I mean, if I look at it on their northern great
10 planes, you know, the value of production, less tax
11 expenses, \$27 an acre, going down to \$21, going down
12 to \$10; you now, a sort of similar trend, if you look
13 nationwide.

14 MR. CUNNINGHAM: What table are you looking
15 at, sorry?

16 VICE CHAIRMAN HILLMAN: I'm sorry, table 6-
17 2. So, again, it's more just for the post-hearing
18 brief, if you can kind of comment on or square for me,
19 your statement that all of the health indicators of
20 the industry are rising with the data in table 6-2,
21 that shows an obvious decline in the value of
22 production, less expenses.

23 MR. CUNNINGHAM: But, that is for all wheat,
24 you understand.

25 VICE CHAIRMAN HILLMAN: I understand and

1 maybe that's the point.

2 MR. CUNNINGHAM: And your next three tables

3 --

4 VICE CHAIRMAN HILLMAN: Maybe that's the
5 point, is that you're saying I should discount this.

6 MR. CUNNINGHAM: But, you have the same data
7 or similar data on a product specific basis, in table
8 6-3, 6-4, 6-5, and 6-6 --

9 VICE CHAIRMAN HILLMAN: Correct.

10 MR. CUNNINGHAM: -- which show increases.
11 They show a bulge in one year, but --

12 VICE CHAIRMAN HILLMAN: You say that and,
13 yet, I look at cash rented, you know, value per acre
14 and they are all negative numbers and some of them
15 more than negative in 2001. I would say that,
16 generally --

17 MR. CUNNINGHAM: Well, 2002 is the best on
18 that series. If you look up at owned --

19 VICE CHAIRMAN HILLMAN: All right. All I'm
20 saying is --

21 MR. CUNNINGHAM: All of them up, yes.

22 VICE CHAIRMAN HILLMAN: Well, up from where?

23 MR. CUNNINGHAM: From 1999 to 2002.

24 VICE CHAIRMAN HILLMAN: In any event, I
25 think you can read some of this data differently, but

1 I would ask you to --

2 MR. CUNNINGHAM: Sure.

3 VICE CHAIRMAN HILLMAN: And, again, more
4 particularly, what are the best indicators of health
5 in this industry, in the absence of our traditional
6 questionnaire data. And with that, I have no further
7 questions; but, I thank this panel, very much, for all
8 their answers.

9 CHAIRMAN OKUN: Thank you. And I was only
10 looking at you, Commissioner Miller, not to skip Vice
11 Chairman Hillman, but to see if you wanted anything
12 more on that question. That is why I was thinking of
13 you. Okay. Commissioner Koplan?

14 COMMISSIONER KOPLAN: Mr. Steinke, I assume
15 that in responding to the Chairman's question, you
16 covered what you wanted to say to me on price; so, I
17 don't have that question anymore.

18 I just have one thing left. On the degree
19 of flexibility in the blending process between hard
20 red spring and hard red winter wheat, I'm curious as
21 to how easy is it to change the blend. Is a blend
22 established on an annual basis? Do you do it once a
23 year, based on the characteristics, the quality of the
24 wheat, such as the percentage of protein? Or is a
25 blend for a particular product changed, based on

1 price?

2 MR. HILLMAN: John Hillman, Bay State
3 Milling.

4 COMMISSIONER KOPLAN: Yes.

5 MR. HILLMAN: Blends never change on price,
6 purely on price.

7 COMMISSIONER KOPLAN: I couldn't hear that.

8 MR. HILLMAN: Sorry?

9 COMMISSIONER KOPLAN: I couldn't hear you on
10 that.

11 MR. HILLMAN: Blends never change purely on
12 price.

13 COMMISSIONER KOPLAN: Okay.

14 MR. HILLMAN: Economic factors play a role
15 in the setting of the blend; but once that blend is
16 set, assuming it's the best way, and I mean
17 economically, as well as quality wise to make that
18 blend, we hope to maintain it throughout the crop
19 year. And we can only do that by buying consistent
20 products from wherever the sources are that we
21 determine to originate those blends.

22 In a milling process, itself, it's very easy
23 to change from one blend to another. It's just a
24 matter of how you use your inventory and then how you
25 mix your wheats within the milling process. In our

1 mill in Minnesota, for example, we, perhaps it's 100
2 grain bins and we put all different types of wheats
3 into those bins, mainly spring wheats or winter
4 wheats. And then, we can blend from one bin to
5 another, from five bins into one bin. We can blend it
6 several times before we get to the flour milling
7 process.

8 So, the actual operating piece of blending
9 is very simple; but, the strategy and the up front
10 decision-making process is the one that matters, when
11 you're putting your blends together.

12 MR. MARTEN: Randy Marten. I concur. We
13 put a great deal of effort, as I think most millers
14 do, into establishing those blends initially at the
15 beginning of the respective crop year for winter and,
16 again, for spring. We, certainly reevaluate those
17 frequently, but rarely make changes. To the other
18 point, the blend, if it were so decided, could be
19 changed very quickly.

20 COMMISSIONER KOPLAN: Thank you, very much.
21 And with that --

22 MR. KOENIG: Commissioner, our company,
23 also, sets its blends -- Alan Koenig, Milner Milling.
24 We set our blends once a year and stick with them
25 throughout the year.

1 COMMISSIONER KOPLAN: Thank you. I see no -
2 - I'm finished. Thank you all, very much, for your
3 responses to my questions.

4 CHAIRMAN OKUN: See if any of my colleagues
5 have any questions. No further questions up here.
6 Let's turn to staff, to see if staff has questions of
7 this panel.

8 MR. DIEHL: This is Michael Diehl. I'll
9 keep it very short. Just on the blending, apart from
10 the economic factors that you take into account, for a
11 given product that requires a blend, what is the
12 primary factor you're trying to achieve? Is that a
13 certain protein level or is that too simple a way of
14 looking at the problem?

15 MR. MARTEN: Randy Marten. You're
16 absolutely trying to look at the best baking
17 performance for that particular user's application.

18 MR. DIEHL: So would that be protein level
19 or is that just one factor you have to worry about?

20 MR. MARTEN: Protein is certainly a
21 consideration, in that there may be label requirements
22 that would prevent you from going below a certain
23 minimum. But, these analyses on flour are done not so
24 much in an analytical environment, as they are in a
25 bakery laboratory environment, where you're taking a

1 look at what blends produce the best physical product,
2 and that's the determination.

3 MR. HILLMAN: If I could elaborate on that.
4 John Hillman from Bay State. Each of our mills have a
5 laboratory with sophisticated casting equipment.

6 CHAIRMAN OKUN: Can you just pull your
7 microphone a little bit closer, so we can hear you?

8 MR. HILLMAN: I'm sorry. Each of our mills
9 have laboratories, which do the testing of the wheats
10 and, also, the flours in production and, also, monitor
11 the critical control points through the milling
12 process. It's not just protein. Protein is a guide,
13 as is other grading wheat factors. If you saw a graph
14 and mix a graph and althea graph, these are all tools
15 that are used for different products, and they're
16 usually connected with the baking.

17 Each of our labs have experimental baking
18 shops and experimental milling processes. So, we can
19 take a sample of wheat, grind it up into flour, and
20 bake it into a product and see what it looks like.
21 Then, we can test it.

22 So, in addition to protein, there's probably
23 about 14 to 16 other factors that are taken into
24 consideration, all of which are connected to -- or
25 correlated primarily to the functional requirements of

1 the end-use product; i.e., the loaf of bread or the
2 biscuit or the buns. And it's those factors that will
3 determine the best mixes for us to put together. And
4 having said that, those mixes can, then, be put
5 together based on -- we usually use percentages. You
6 might have 10 percent spring wheat, 90 percent winter
7 wheat. You might have 50-50, 35-65.

8 MR. DIEHL: And are you looking to the
9 spring to enhance or to lower various of those factors
10 that you're trying to control for?

11 MR. HILLMAN: Spring, because of its
12 stronger characteristics; but, certainly, the higher
13 protein levels is often used as a supplement to weaker
14 levels of hard red winter. So, quite often, the
15 lowest proteins of hard red winter wheats will be a
16 mellower type of wheat, which will be good for white
17 bread, for example, or for whole wheat.

18 MR. DIEHL: Okay. Something I was having
19 trouble understanding is I think I was taking a view
20 that you need to add a certain amount of hard red
21 spring to achieve maybe an optimal protein level or
22 some other sort of level. But, I think you're also
23 saying that there are other ways to manipulate the
24 blend and still get what you need, because I think you
25 said, it doesn't have to be a certain proportion of

1 spring to wheat, even in one year.

2 MR. HILLMAN: That's correct.

3 MR. DIEHL: And how do you achieve that? I
4 think my understanding is too simplistic. How do you
5 achieve that without -- if it's independent of
6 changing the blend of spring and winter?

7 MR. HILLMAN: Because, there are different
8 levels of winter wheats, also, as well as different
9 levels of spring wheat. And, again, economic factors
10 do play a part in this. If we can make our product
11 from 100 percent spring wheat at 13 protein cheaper
12 than we can make it from 100 percent of winter wheat
13 at 13 protein, we'll do that. But, the quality is the
14 criteria and the uniformity and the predictability of
15 your end-use product is the thing that drives that
16 decision.

17 Once the decision is made as to what is the
18 best way to deal with it, then you look at the pricing
19 factors and determine whether that wheat can be
20 purchased.

21 MR. DIEHL: Right, okay.

22 MR. BAIR: Mr. Diehl, if I could follow-up
23 on that. Jim Bair. The way I look at this is there
24 are products that say, Wonder Bread or Dominoes pizza
25 crust, the different products. You've heard testimony

1 about how the quality of the crop varies widely from
2 year to year, because of drought and so on and so
3 forth. But, you probably didn't notice one bit of
4 different in the look or the appearance or the taste
5 of a loaf of Wonder Bread or the crust on a pizza or a
6 McDonald's hamburger bun. Those are billion dollar
7 brands that have been built based on a consistency and
8 on a consumer expectation that they're going to get
9 exactly the same product every year. And that's the
10 art and science of milling, is shifting those around
11 to make sure. So, that's really the final arbiter, is
12 does it look and taste exactly like it did last year.

13 MR. DIEHL: Right, okay. I think those are
14 all the staff questions. Thank you.

15 CHAIRMAN OKUN: Thank you. Do counsel for
16 the Petitioner industry have questions for this panel
17 of witnesses? Mr. Hunnicutt?

18 MR. HUNNICUTT: No.

19 CHAIRMAN OKUN: No, all right. Mr.
20 Hunnicutt, for the record, says, no. Then, I want to
21 thank all the witnesses here for their testimony and
22 their patience on a long afternoon; not a record,
23 though, as Mr. Cunningham notes. We still have some
24 stuff to do. But, anyway, I do want to thank you,
25 very much, for everything and for -- we'll look

1 forward to the post-hearing submissions, as well.

2 As this panel will be able to go back to the
3 back of the room, let me just go through the time
4 remaining for parties, so they'll know. The
5 Petitioners have a total of eight minutes, which
6 includes five minutes for closing, and the Respondents
7 have a total of six minutes, which includes five
8 minutes for closing. So, as we have a chance to
9 change folks around, we will turn back to the
10 Petitioners. Thank you, again.

11 Would everyone be seated, please. Let's
12 take a minute to get everyone seated in the back of
13 the room and then you may proceed, Mr. Hunnicutt.

14 MR. HUNNICUTT: Thank you, Madam Chairman,
15 members of the Commission. I have said before on
16 another occasion that it's always a good day's work,
17 when I think I hear a concession by Mr. Cunningham.
18 And, perhaps, I'm wrong today -- I don't think so, but
19 perhaps I'm wrong, I think I heard Mr. Cunningham
20 concede that the drought situations in these
21 investigations is not, in fact, equivalent to the 201
22 in cold-rolled steel. Maybe, he can correct me on
23 that; but, I always consider it a good day's work,
24 when I get any concession.

25 On his more serious proposals for sweeping

1 changes to trade law, I think I will reserve my
2 comments on those for the post-hearing submission, in
3 terms of how you're calculating imports and exports
4 into our consumption data.

5 I did want to mention a couple of things
6 related quickly to the Alston variety discussion,
7 because there was a failure on our part to mention
8 that while Neal Fisher mentioned that international
9 buyers have always rated Alston as one of their
10 preferred varieties in wheat evaluations, we did not
11 mention that, additionally, the millers and the CWB,
12 also, have not mentioned that the CGC did not renew
13 Alston's temporary registration, because it
14 incorrectly tested only number three grade samples,
15 which were not even ready for harvesting, since it
16 matures later in the season. If the CGC tested number
17 one and number two grade samples harvested at the
18 appropriate time, it would have obtained different
19 results. And this is in the public record, so it can
20 be cited to.

21 Another issue related to that is the use of
22 Kyle durams. Kyle is a Canadian release and in the
23 2002 crop year, it was 40 percent of Montana's duram
24 makers and about 15 percent of North Dakota's
25 northwest area duram makers. So, I think the variety

1 issue is one that is still a red herring.

2 One thing I want to point the Commission's
3 attention to that we haven't spent a lot of time on
4 today, but is in our pre-hearing brief, is post-
5 petition behavior analysis. I've covered some of it
6 in the chronology of the 2002-2003 forward results.
7 But, I think it needs to be covered. I will call your
8 attention to it.

9 On the issue of the questions on the CRA and
10 the VAR, I would hope if there are written questions
11 from the staff that are different from the questions
12 in the record, we would have access to them, as the
13 same time as the Respondent, because we are already at
14 a disadvantage, having to comment in our post-hearing
15 brief, never actually seeing the work that's been
16 done. So, we need to see the questions.

17 The other would be, if there's a discussion
18 as to the appropriate timing for that analysis with
19 the Commission staff, we would like to be involved in
20 those discussions, so that we're not at a disadvantage
21 of not knowing what's going to be recommended to the
22 Commission.

23 I would like now to turn over to Mr.
24 Wechsler, a discussion of the appropriate economic
25 analytical standards and their applications in these

1 investigations, because I think that's really one of
2 the most serious issues that we actually engaged on
3 today. Thank you.

4 MR. WECHSLER: Okay. I have five points
5 concluding with that, very quickly. First of all, in
6 terms of Professor Sumner's testimony today, without
7 getting into any of the details, his written testimony
8 makes very clear what his oral testimony alluded to,
9 which is, we have two choices for supporting his
10 argument for one world market, a single world market
11 and a single world price. One is, in effect,
12 eyeballing the graphs he offers and the prices and
13 seeing that they sort of move together, which is the
14 same methodology that has worried a lot of people
15 today, about what do we do with the coincidence in the
16 movement -- the apparent coincidence in the movement
17 of HRS and HRW prices. He's doing something else
18 there, prices across market. Or, as he puts in his
19 paper, written testimony, even stronger, the co-
20 integration analysis in -- I believe it's Appendix 24,
21 the brief.

22 So, he's wed himself to those two.
23 Unfortunately, charts two, three, four, and six, that
24 he offers today, are all wheat, not duram, not HRS,
25 all wheat. And, for instance, chart four has huge

1 slices for India and China, who buy none or almost no
2 durum and hard red spring on the world market. So,
3 there's a problem there.

4 And we are very pleased he wed his analysis
5 to the co-integration paper, which is suffering, at
6 this point, and I think will be put out of its misery
7 in the detailed comments and answers to the questions,
8 as we go forward. No more on VAR analysis today.

9 The millers and the MGE offered up two
10 euphemisms for why the durum futures market has
11 failed. One was the lack of liquidity -- they're both
12 correct -- lack of liquidity and the second one is a
13 large player on one side. The core reason that those
14 two refer to, however, is the fact that that large
15 player is the Canadian Wheat Board and the very
16 subsidies found at the Department of Commerce
17 specifically found that the Department of Commerce
18 enabled it to provide long-term contracts, which are
19 perfect substitutes, good substitutes for going on an
20 independent exchange and hedging with futures.

21 And they can provide those without any
22 acquisition risks. Acquisition risk is, basically, if
23 you offer a futures, you face the risk, and you're
24 taking a gamble and you face the risk. If you can't
25 come up with the product, at the time you're supposed

1 to deliver, you've got to go out and buy it, whatever
2 the price is: up, down, or sideways. That's a risk
3 and there's a premium for it, when it's provided in a
4 futures contract.

5 There is no premium in the Canadian Wheat
6 Board. Why? Because, they have no acquisition risk,
7 because they're the only game in Canada for Canadian
8 wheat growers; and (b), if they happened to be loaded
9 up with stuff at prices they overpaid for, they're
10 guaranteed by the Treasury of the Government of
11 Canada.

12 So, that's the reason to sell. That's the
13 reason they can ace out the long-term contracts, much
14 more so than the U.S. wheat farmers.

15 Third point is on substitution. We finally
16 had at 6:00 this evening the bright line. And it was
17 a point I almost got to make this morning, which was,
18 you can't -- they started out with six blends at the
19 preliminary. They went to changing blends according
20 to price conditions. And my point was, changing
21 blends from year to year is like comparing
22 substitution in T.V. sets from 1997 with those made in
23 1999. That isn't substitution. Substitution is what
24 happens day by day, week by week, and month by month,
25 within a crop year, as prices changed, and they have

1 affirmed that they fix their mix on day one and for
2 the next 364 days, it stays the same. That's not
3 substitution; that's fixed proportions. We're across
4 the finish line.

5 The fifth was the mysterious question, which
6 I finally get to answer, about why these indicators
7 are a problem and so different from what we're
8 normally used to encountering in industrial products.
9 Ag is different. There's a seasonality and a length
10 of one year on the production process. There's a time
11 lag between planting and harvest. The harvest takes
12 place in a very short period of time and then you put
13 all this stuff in inventory and you sell it, as the
14 prices come up. That's not done in industry and all
15 of this is dominated by the role of expectations,
16 which is quite different than most other industries
17 you encounter.

18 And, finally, land, a major factor of
19 production, land is not dedicated to durum wheat or
20 hard red spring. It's common to all kinds of crops
21 and, therefore, the value of land can't be considered
22 a factor attributable to the performance of this
23 particular industry. So, it's different. Thank you,
24 very much.

25 MR. HUNNICUTT: Thank you, Madam Chairman.

1 CHAIRMAN OKUN: Thank you. Closing
2 statement by Mr. Cunningham.

3 MR. CUNNINGHAM: At the outset, I want to
4 say that both I and Charley Hunnicutt take some pride
5 at having kept the pact we made with each other at the
6 beginning of this hearing, that even though we knew it
7 was going to run late, and that all of us and all of
8 you would be deprived from seeing Britney Spears on
9 the Mall, that neither of us would bear our navels, at
10 any point, in the course of this hearing.

11 Moving to less significant things, I want to
12 make two points in closing here. The first point has
13 to do with the data problems in this case, and the
14 data problems in this case are severe. They are
15 severe not through any fault of the Commission or its
16 staff, but by the nature of the difficulties of
17 gathering data in this industry.

18 There are lots of ways, in which the
19 Respondents have an uphill fight in dumping cases;
20 most notably, a three-three tie doesn't get it there
21 for us. But, one way, in which, I think, the
22 Commission must recognize that Respondents do have an
23 advantage is the Petitioners must prove their case; or
24 put another way, the Commission must have a positive
25 affirmative basis for making a determination.

1 There are a number of data points in here
2 that Respondents have purported to rely on, which are,
3 in fact, very unsure and I submit just unsupported on
4 the record. And as to any of those points, if a fact
5 is not established on the record, it's not a fact that
6 you can rely on to make an affirmative determination.
7 If you find, for example, again, that the underselling
8 data is either inconclusive or just not good data,
9 then whatever else you base your affirmative
10 determination on, you can't base it on underselling.

11 My second point, I think, is more
12 fundamental here. This case involves a clash of views
13 as to what really determines prices in this
14 marketplace, and this is a price case. This is not
15 for reasons we've discussed before, a case in which
16 the nature of the injury alleged here is that they
17 lost volume to imports. This is a case, in which the
18 guts of the case is, did Canadian imports presence or
19 trends in the U.S. market cause a depression or
20 suppression of prices injurious to the U.S. industry.

21 There are two dramatically different views
22 of what determine prices in this market. Is it a
23 global price or is it stuff that goes on within the
24 market? I would suggest to you in the end, it doesn't
25 make any difference which view you take. And the

1 reason it doesn't make any difference is that you can
2 do one of two things in this case. You can try to
3 decide what really is at the bottom of all of this and
4 what is the real cause and effect and what actually
5 does determine prices. Or, based on the record you
6 have here, you can look at this case and say, we have
7 to find the causal relationship between imports and
8 price changes in the United States industry.

9 If you do that, using any of the methods
10 that you have historically used, you will find no
11 correlations. You won't find prices going down, for
12 one thing. You'll find price trends up over the
13 period. You'll find the only time when prices go down
14 significantly is right at the end of the period, when
15 imports have fallen off the table and gone down
16 precipitously. You will not find any correlation
17 between import trends and any of the possible indicia
18 of injury of price or otherwise that the U.S. industry
19 may claim here.

20 The reason for that, of course, is our view
21 of what goes on is right. You don't need to reach
22 that, if you don't want to. The whole thing hangs
23 together. It's because we are right as to what does
24 affect prices, that you don't find that imports do
25 affect prices.

1 And so, I guess what I would say to you in
2 the end is, if you want to do a comprehensive
3 analysis, explain to the world what really happens in
4 this pure commodity world price market, go do it.
5 But, if you don't want to do that, all you need to do
6 is what you do in any case, which is look for the
7 positive evidence of correlations between something
8 that imports have done and what happened in the U.S.
9 market, and you won't find those correlations, and,
10 therefore, you have to go negative. I submit that the
11 only way that you can go affirmative, in this case, is
12 precisely the legal question we were asked at the end,
13 which is, is it permissible to reach an affirmative
14 determination solely on the basis that imports were
15 dumped and subsidized and they're here, any regard of
16 the trends, any regard of the correlations.

17 You'll get our legal analysis on that.
18 You'll learn that you can't do that. I urge you not
19 to do that. Do your job the way you always do it.
20 You'll reach a negative determination. Thank you.

21 CHAIRMAN OKUN: Thank you. Post-hearing
22 briefs, statements responsive to questions, and
23 requests of the Commission and corrections to the
24 transcript must be filed by September 11, 2003;
25 closing of the record and final release of data to

1 parties is September 26, 2003; and final comments are
2 due September 30, 2003. With no other business to
3 come before the Commission, this hearing is adjourned.

4 (Whereupon, at 7:12 p.m., the hearing was
5 concluded.)

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CERTIFICATION OF TRANSCRIPTION

TITLE: In the Matter of Durum and Hard Red
Spring Wheat from China

INVESTIGATION NO.: 701-TA-430A & 430B

HEARING DATE: September 4, 2003

LOCATION: Washington, D.C.

NATURE OF 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.

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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).

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