UNITED STATES
INTERNATIONAL TRADE COMMISSION

In the Matter of:	)	
	)	Investigation Nos.:
LEMON JUICE FROM	)	731-TA-1105-1106
ARGENTINA AND MEXICO	)	(Preliminary)

REVISED AND CORRECTED COPY

Pages: 1 through 206

Place: Washington, D.C.

Date: October 13, 2006

HERITAGE REPORTING CORPORATION
Official Reporters
1220 L Street, N.W., Suite 600
Washington, D.C. 20005
(202) 628-4888

THE UNITED STATES INTERNATIONAL TRADE COMMISSION

In the Matter of:	)	
	)	Investigation Nos.:
LEMON JUICE FROM	)	731-TA-1105-1106
ARGENTINA AND MEXICO	)	(Preliminary)

Friday,
October 13, 2006

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

The preliminary conference commenced, pursuant to Notice, at 9:34 a.m., at the United States International Trade Commission, ROBERT CARPENTER, Director of Investigations, presiding.

APPEARANCES:

On behalf of the International Trade Commission:

Staff:

ROBERT CARPENTER, DIRECTOR OF INVESTIGATIONS
GEORGE DEYMAN, SUPERVISORY INVESTIGATOR
JAMES MCCLURE, INVESTIGATOR
ROBIN TURNER ATTORNEY ADVISOR
PATRICK GALLAGHER, ATTORNEY

NANCY BRYAN, ECONOMIST
CHARLES YOST, AUDITOR
ALFRED DENNIS, INDUSTRY ANALYST
JOANNA BONARRIVA, INDUSTRY ANALYST

APPEARANCES: (cont'd.)

In Support of the Imposition of Antidumping Duties:

On behalf of Sunkist Growers, Inc.:

FRANK BRAGG, Vice President, Sunkist Growers, Inc.
ERIC LARSON, Leader of Sales and Marketing, Sunkist Growers, Inc.
BARBARA RATCHFORD, Leader of Finance, Sunkist Growers, Inc.
WILLIAM BORGERS, President, Ventura Coastal, LLC
AMY WARLICK, Economist, Barnes, Richardson & Colburn

MATTHEW T. MCGRATH, Esquire
STEPHEN W. BROPHY, Esquire
Barnes, Richardson & Colburn
Washington, D.C.

In Opposition to the Imposition of Antidumping Duties:

On behalf of The Coca Cola Company:

DAN CASPER, Strategic Global Procurement Manager, The Coca Cola Company

MATTHEW J. CLARK, Esquire
NANCY A. NOONAN, Esquire
Arent Fox, PLLC
Washington, D.C.

On behalf of Eastcoast Flavors, Inc.:

MICHAEL D. BRADLEY, Professor, Department of Economics, The George Washington University

FREDERICK L. IKENSON, Esquire
EDWARD J. FARRELL, Esquire
ROBERTA KIENAST DAGHIR, Esquire
Blank Rome, LLP
Washington, D.C.

I N D E X

I N D E X

P R O C E E D I N G S

(9:34 a.m.)

MR. CARPENTER: Good morning, and welcome to the United States International Trade Commission's conference in connection with the preliminary phase of antidumping investigation, Nos. 731-TA-1105-1106 (Preliminary), concerning imports of Lemon Juice from Argentina and Mexico.

My name is Robert Carpenter. I'm the Commission's Director of Investigations, and I will preside at this conference. Among those present from the Commission staff are, from my far right, George Deyman, the supervisory investigator; Jim McClure, the investigator; on my left, Robin Turner, the attorney advisor; Nancy Bryan, the economist; Charles Yost, the auditor; Joanna Bonarriva, the industry analyst; Patrick Gallagher, the attorney from General Counsel's Office, and Alfred Dennis, another industry analyst.

I understand that parties are aware of the time allocations. I would remind speakers not to refer in your remarks to business proprietary information and to speak directly into the microphone. We also ask you to state your name and affiliation for the record before beginning your presentation.

Are there any questions?

(No response.)

MR. CARPENTER: If not, welcome, Mr. McGrath. Please proceed with your opening statement.

MR. MCGRATH: Thank you, Mr. Chairman. Good morning. My name is Matt McGrath of the firm Barnes, Richardson & Colburn, and I'm appearing today on behalf of the Petitioner, Sunkist Growers, Inc., which is one of the world's best known marketers of citrus fruit and processed citrus products.

Sunkist, along with Ventura Coastal, who is also appearing today in support of the petition, constitute almost the entire U.S. lemon juice industry. This is an industry with which you have some familiarity since the Commission did look at it not too long ago in connection with the GSP petition and found that duty free treatment would likely have negative ramifications for the industry.

The lemon juice business is facing a difficult challenge at this time due to unprecedented growth of foreign supplies, declining profitability, depressed prices and excessive inventory buildup. There's simply too much juice in the world market, and it has been sold at less than cost in the United States by foreign producers whose only major markets are in processed products with very little alternative

in fresh fruit markets.

Now, because Sunkist accounts for the vast majority of domestic juice production, we'll only be able to discuss limited financial and sales data, but we will discuss trends in pricing as specifically as possible.

You'll hear today about the background of the industry's growth in the subject countries, its direct impact on U.S. producers about the demand by global buyers for the co-product, lemon oil, and how that's helped to encourage overproduction of lemons that will plague the juice market well into the future.

You'll also hear about how juice prices have fallen to half of what they used to be, a price decline of a magnitude you seldom see. The price cuts have now pushed the company into the red and have forced it to have to reconsider this business.

As noted in the petition, an Argentine industry official commented on the situation for *Food News* in 2005, "Last year we faced the lowest international lemon juice prices in a long time. They were extremely low, and that was mainly Argentina's fault because we produced too much juice concentrate and we flooded the market."

That's a more direct characterization of the market than we can offer. We will show what the effects of that have been for the U.S. industry and the threat for the future if the continuing clearance pricing is not halted.

Thank you.

MR. CARPENTER: Thank you, Mr. McGrath.

Mr. Clark?

MR. CLARK: For the record, my name is Matthew Clark of Arent Fox appearing today as counsel for The Coca Cola Company.

Coca Cola Company is an interested party in its capacity as a major purchaser of lemon juice in the United States. The Coca Cola Company, through its affiliate in Mexico, is also a foreign producer of lemon juice.

Our testimony today will be in many unfortunate respects somewhat constrained for the reasons Mr. McGrath alluded to; that so much of the information here pertains to what is really fairly characterized as a monopolistic domestic industry, so much of the information that we would like to discuss we're not able to discuss, and that includes, unfortunately, material components of Sunkist's various lost sales allegations which are so heavily

bracketed that to the extent they might even, for example, pertain to my client I'm not at liberty to discuss it with my client.

Nevertheless, we will be providing testimony today. Our testimony will begin with Professor Michael Bradley of George Washington University. Professor Bradley will be describing to you an analytical framework in which we think this case must be analyzed.

Based on our research, this case presents a profile that is unique, one that you have actually not looked at before. It's certainly true there's no shortage of cases involving raw and processed agricultural products, but there is certainly a shortage of cases that present the facts that this case presents for a Petitioner like Sunkist. Dr. Bradley is going to talk about that structure and the structure of the lemon growing and processing industry in the United States.

Our second witness will be Mr. Dan Casper. He is the strategic global procurement manager for citrus for The Coca Cola Company. Mr. Casper is going to describe for you the nature and operation of the lemon juice market in the United States, the purchasing practices and patterns for The Coca Cola

Company, who we purchase from, why we purchase, what our history and experience has been with the Sunkist Company as a supplier and with foreign producers.

I will speak briefly to what we consider to be one of the critical issues here, which is the need for the Commission to not accept, as it seems to be accepting, the proposition that the only entity to be analyzed here is a small component of Sunkist Growers, Inc., and, after all, Sunkist Growers, Inc., is the Petitioner here.

They are trying very hard to make sure that you look only into their version of the domestic industry. We feel that under the circumstances you must look at the totality of the Sunkist operation, which means you must bring the growers into this analysis.

Our testimony will speak to all of these issues today. Thank you.

MR. CARPENTER: Thank you, Mr. Clark.

Mr. McGrath, would you please bring your panel forward at this time?

MR. MCGRATH: Thank you, Mr. Chairman. Once again, I'm Matt McGrath of Barnes, Richardson & Colburn. Also, my colleague, Stephen Brophy, of Barnes Richardson accompanies me today.

First I would like to introduce our witnesses in the order of their appearance and offer a few introductory comments on some legal issues that commonly arise and likely are to be asked, so I want to at least give you the initial framework to consider.

First, on my left, our first witness will be Mr. Frank Bragg, the vice president of Sunkist's Citrus Juice and Oils business. He'll describe the Sunkist co-op, the products that are involved and the company's recent business performance.

Next, on my right, will be Eric Larson, leader of Sales and Marketing for Citrus Juice and Oils, and he'll discuss pricing in the market, competition from Argentina and Mexico, also the financial condition of the company and the effect of dumping on investment and labor.

The third witness will be Mr. William Borgers. He's the president of Ventura Coastal, another processor of lemon juice. He'll testify how the subject imports have affected his business.

Ms. Barbara Ratchford is also with us today. She's the leader of Finance for Citrus Juice and Oils. She'll be available to respond to questions, but not providing direct testimony.

Then the last witness will be our economist, Amy Warlick, who will discuss the development of the foreign industries, global market and pricing trends and other issues.

Finally, also with us today is Mr. Mike Wooten. He's the vice president for Corporate Relations for Sunkist in Sherman Oaks. He'll be available if you would like him to answer questions as well.

Now, at the outset I'd like to briefly summarize our positions on some of the main legal issues, and then we'll just turn to the witnesses one-by-one.

First, we represent only the industry which extracts juice from lemons and converts them into lemon juice. As with respect to the orange juice industry which you looked at, we do not argue that reprocessing, reconstituting, blending or packaging or later processing of lemon juice products or beverages that contain lemon juice is part of the relevant domestic industry. Those activities are performed by our customers.

Second, as in orange juice, we submit that concentrated lemon juice and not-from-concentrated lemon juice are the same like product for legal

purposes here and produced by that industry in bulk form for further processing. Concentrate and NFC are used in interchangeable ways, as Mr. Bragg will testify.

Third, it's our position that organic and nonorganic juice is the same like product. You've looked at that in other cases, including Orange Juice. We have no different position than what's been laid out in the past.

Fourth, it is our position that lemon juice and lemon oil are not the same like product, and they are not in the same industry that produces the like product. As you will hear, they share a common raw material in their production process, but they are produced differently. They have different characteristics. They're seen differently by customers, different pricing structures, all very different.

Fifth, unlike the Orange Juice case, legally our position is, and I think that it's required by the lemon growers, lemon growers in the United States are not part of the domestic industry producing the like product.

I see that Coke is likely to be focusing on growers as being a major consideration in this kind of

case, but I don't think that they will be arguing that under the law growers are part of the domestic industry producing like product because the provisions in the law don't permit it.

Most U.S. lemons are directed to the fresh fruit market, and the juice and the oil producers consume fruit which does not meet the fresh fruit standards. We'll talk some more about that.

Sixth, we submit that the imports from Argentina and Mexico should be cumulated in your consideration. They compete in the same mostly commodity-type markets with the domestic juice and with each other, and the conditions are there for cumulating.

I'll be happy to respond to those questions and others on legal issues as we proceed, but I want to turn now to Mr. Bragg.

MR. BRAGG: Thank you. Good morning. My name is Frank Bragg. I'm the vice president of the Citrus Juice and Oils business unit for Sunkist Growers. I've been with Sunkist about four years. Prior to joining Sunkist I was the president of Moana Loa Macadamia Nut Company.

I've had about 30 years of international trade experience. I've received a congressional

Distinguished Service Award for promoting export trade. That was about 20 years ago, so I've been very active in making sure that we are as a country very committed to international trade.

We are here on a very serious matter when it comes to Sunkist and our lemon growers. We've had a situation where over the last four year we've been flooded in the U.S. market with a massive oversupply of product coming in from Argentina and Mexico.

Sunkist and a few small processors used to produce and sell lemon juice and oil on a pricing basis that was more closely tied to supply and demand, but when a global purchaser of both juice and oil encouraged massive plantings in both Argentina and Mexico those lemon groves were put in in the 1990s. We've seen at the end of the 1990s a huge increase in supply of juice coming into this market. This juice has been sold at disastrously low prices.

First let me explain how Sunkist works. Sunkist is a 113-year-old grower-owned cooperative, so the growers own us. We have 6,000 members in California and Arizona, and we're also a processor of lemon juice with about 100 employees at our Ontario, California, plant.

Under Sunkist's cooperative structure, the

fruit growers join a packinghouse that is affiliated with Sunkist. Essentially under this arrangement the grower dedicates all fruit from certain acreage to be handled by a Sunkist packinghouse, which is then in turn sold by Sunkist Marketing and Sales Group.

As far as lemon juice operations are concerned, Sunkist pays the growers on a pool basis. The grower is paid about half of the expected return at 180 days and the balance at the end of the pool. Due to the very low prices of lemon juice caused by dumped imports, the amount we pay our members is less than the growing, harvesting and processing cost for those lemons.

This background is important since even though the growers of the lemons may not constitute part of the affected domestic lemon industry under dumping laws, they have been and will continue to be adversely impacted by dumped foreign juice that undercuts their overall returns.

Sunkist Growers members account for most of the lemons grown in the United States, the majority of which are destined for the fresh market. Lemons that do not meet the cosmetic standards for the fresh market or size will be sent to the Ontario plant for processing into juice, oils and various byproducts.

There are currently six processors of lemon juice in the United States. Sunkist is by far the largest. The others are Ventura Coastal, VitaPak, Sun Orchard, Perriconi and California Citrus Products.

High Country Foods Corporation used to be a processor in the U.S., but they went out of business in 2003. As you will hear from Bill Borgers from Ventura Coastal, they've also suffered damages as a result of many factors, but including dumped juice. They've had to close one of their plants.

Sunkist and other U.S. processors make two main products from lemons, juice and oil. Historically about half the revenue comes from the juice side. Half the revenue comes from oil. Lemon juice is primarily used in the beverage industry where it's sold in the form of lemonade or bottled lemon juice.

Lemon oil, on the other hand, is primarily used as a flavoring ingredient in carbonated beverages and some nonfood consumer products. Lemon oil is a very potent flavor ingredient, unlike lemon juice. Therefore, their applications are totally separate, and they are not interchangeable.

Lemon juice is made with both concentrated and not-from-concentrate forms. The extraction and

manufacturing processes are identical until the point where the juice is diverted either to an evaporator or pasteurization. These are the same steps that occur in the production of concentrate and NFC orange juice, which you've reviewed here in the last couple years.

Concentrated lemon juice may be used in lemonade or reconstituted form as lemon juice sold to the consumer. NFC is generally used in premium lemonades which advertise a more natural taste and have a higher percentage of lemon juice.

Examples of these products are here for your inspection. I'll give you an example. These are two reconstituted lemonade products. This is a premium product with 15 percent juice. This product is a lemonade with about 10 percent juice. This product is reconstituted from concentrate, but it's pure lemon so that's 100 percent lemon juice. You'll see if you look at the labels. They'll indicate the percentage of lemon juice in each of these products.

Since there's no minimum required juice level, a beverage producer can control cost by either switching to cheaper bulk concentrate or by decreasing the overall percentage of the juice in its product. In short, concentrate and NFC are the same product. They're just at different concentration levels.

Sunkist produces lemon concentrate in both cloudy and clear forms, depending on the demands of the customer. The difference between cloudy and clear is the amount of natural pulp content which can be filtered out to achieve a more transparent appearance. Both products are used in the beverage industry. Clarified juice typically goes into a shelf stable product, where a cloudy juice like what's used in this product will go into a refrigerated product.

I joined Sunkist nearly four years ago with one goal in mind: To save a business that was under attack from low-priced imports from Argentina and Mexico. During the past three years we've cut costs, we've improved productivity, we've sold off assets and we've reinvested most of that money back into the plants.

We have a loyal and hard-working group of employees, most of which have over 20 years with the company, and they expect us to protect their jobs from unfair competition. However, the price of imports coming in from Argentina and Mexico keeps getting lower and lower, making it very difficult for us to give our people assurances that they're going to get their retirement.

We've been forced to cut our prices to

maintain some of the business that we've had. We've lost some business simply due to unfairly traded imports. Our production and shipments have been falling, and inventories have been rising to a current historic level.

Unless something can be done to assure fair pricing of the largest volume of dumped juice arriving in this market, Sunkist will need to reassess whether it needs to keep this business or shutter it. That's how critical this decision is to us is whether we keep this business going, and we've been at this business for 80 years.

Thank you.

MR. LARSON: Good morning. My name is Eric Larson. I have been the leader of Sales and Marketing for Sunkist's Citrus Juice and Oils business unit for nearly three years in this capacity, and I've been in all aspects of sales, marketing and procurement in the lemon juice business of Sunkist.

I have also traveled to Argentina and visited the processing facilities of two Argentine processors. Prior to my employment with Sunkist, I was employed for nine years at the Sabroso Company, a global supplier of processed fruit and fruit-based products, most recently as their director of Sales and

Marketing.

In addition, Frank Bragg and I represent Sunkist in the Juice Processors Association, the JPA, and I was a member of the USDA Agricultural Trade Advisory Committee in 2001 through 2004. These experiences have afforded me significant knowledge of the global production and sale of lemon juice.

I joined Sunkist's Citrus Juice and Oils business unit in 2004 when the company was seeking to address new challenges in the global market that had already begun to have an impact on sales and returns. The U.S. lemon juice industry was facing low lemon juice prices, a global oversupply of lemon juice and economic turmoil created by the impending bankruptcy and liquidation of Citrico, a lemon juice distributor.

We did not know at that time that the planned offshore growth in lemon production would result in juice supplies that far exceeded U.S. demand for some time to come and that foreign processors would simply move that excess supply to the United States at any price. Despite our steadfast efforts and the recognized brand support, we now see that the dumping of lemon juice from Argentina and Mexico poses an insurmountable challenge.

While the quality and consistency of Sunkist

lemon juice is excellent, lemon juice is largely a commodity product for which price is the most decisive purchasing factor. During the late 1990s, Sunkist received approximately $8 per gallon at 400 GPL for its lemon juice, while the price of lemons for processing that we were able to give back to our lemon growers was about $3 per box delivered in to the packinghouse doors.

By 2005, imports from Argentina and Mexico had forced Sunkist lemon juice prices down to about $5 per gallon at 400 GPL. That's a long-term price slide of 45 percent. This decline in juice prices eliminated our profits and reduced the revenue that we are able to return to our growers to a level that no longer covers the cost of shipping from the packinghouse to our plants, never mind the cost of growing, harvesting and hauling the lemons from the grove to the packinghouse. Those costs remain uncovered.

The production of lemon juice has become so unprofitable that Sunkist would probably not be processing lemons at this time if the disposal of lemons unsuitable for the fresh market did not present environmental disposal issues. Extraction processing is the only viable alternative for the recovery of

growers' costs on fruit that is culled from lemons that are deemed acceptable for the fresh market.

The expansion of lemon groves in both Argentina and Mexico was encouraged by soft drink manufacturers' forecast expanded need of lemon oil and their desire for alternative lemon oil sources. In addition, the World Bank provided low-interest loans for Argentina's expansion in anticipation of this increased global demand for lemon oil.

In response, Citrico was created for the express purpose of marketing the nonlemon oil products such as the juice that are co-products to lemon oil. Citrico was not successful in this endeavor, and the unsold juice that was responsive to marketing just accumulated year-after-year in Mexico, Argentina and the U.S.

Finally, when Citrico went bankrupt in August 2004 these high inventories of lemon juice needed to be released to make room for the upcoming crop. Not wanting to damage their EU market where the majority of Argentine lemon juice sales are made, Citrusville and other Argentine processors in early 2005 began dumping this juice in high concentrations at very low prices in the U.S. market.

Imports from Mexico followed suit and

increased in volume. In 2005, Sunkist was offered a multiple year agreement of more than one million gallons per year of subject concentrate at the extremely low price of $1.50 per gallon at 400 GPL. Sunkist turned down this opportunity since the prospect of buying dumped juice runs counter to Sunkist's marketing strategy.

Sunkist has always built U.S. market share through the quality of its products and strong product and brand advertising efforts. Argentina and Mexico have bought U.S. market share through sales that are well below their cost of production.

As a result, Sunkist has lost large sales to important customers, and we hold large inventories in cold storage. Our own storage capacity limitations have forced us to reduce prices significantly and extend payment terms to our customers in order to survive.

However, we cannot continue selling juice at these prices and remain in the business much longer, nor can our smaller competitors here in the U.S. We have seen only minimal returns the last two years and a net loss in the 2005 and current marketing years. I'm not able to get into more specific information about our financial data in this public forum, so our

numbers will have to speak for themselves.

If we cannot profitably sell lemon juice then we cannot process and sell lemon oil, lemon pulp or any other lemon products. The loss of the entire U.S. lemon processing industry would not only represent several hundred lost jobs, but it would have a highly destabilizing impact on the beverage industry in the United States.

Furthermore, such vast quantities of unprocessed lemons are highly acidic and would pose environmental disposal problems. Neutralizing the acid from lemons that would have otherwise been processed into useful and helpful products would be a costly proposition.

We are here to ask the Commission to consider the data before you, the high volumes of low-priced imports, the underselling, the use of the U.S. market as a dumping grounds for aged lemon juice inventories and the profound impact all of this has had on Sunkist and other U.S. processors.

There is clear threat of future injury as well with the continued growth in Argentine and Mexican production, the lack of growth in lemon juice demand and the continued demand for lemon oil. The loss of this industry will be devastating to Sunkist

and its employees.

Thank you for your attention, and we'll be pleased to answer any questions.

MR. MCGRATH: Mr. Borgers?

MR. BORGERS: Good morning, members of the Commission staff. My name is Bill Borgers. I'm the president of Ventura Coastal, a citrus processing company headquartered in Ventura, California.

I've been with Ventura for 24 years, an owner of the company for 20 years and the company's president for almost two years now. Ventura Coastal processes lemons, which it buys on the cash market, into lemon juice, lemon oil and various lemon byproducts, including dried lemon peel for pectin.

Ventura currently has two processing plants located in Ventura and Visalia, California, employing roughly 100 workers. We used to have a third plant in Indio, California, but were forced to close that plant in 2003 at least partially due to low lemon juice prices caused by unfairly priced imports from Argentina and Mexico.

Since our plant closing, the situation in the lemon juice industry has only gotten worse with prices from Argentina and Mexico continuing to decline. Ventura experienced ever-worsening profit

margins through 2005 when we decided that we had no choice but to change our business strategy.

In the face of unfair competition from subject imports, Ventura decided that it simply could not compete with imports from Argentina and Mexico based on price. Instead of lowering our prices to a level where we couldn't even recover our cost, we abandoned most of the market. Mainly we put our emphasis on the sale of value-added lemon juice products such as ultra low pulp and clarified lemon juice where the margins are higher, but the customers are fewer and there's less volume available.

We also tried to maintain some accounts for nonvalue-added products, but in order to compete with import prices we were forced to cut our cost by importing cheap juice from Argentina and Mexico and blending it with our own production. While we've been able to retain some customers using this strategy, we've lost many others.

Furthermore, while we've been able to make a profit on our sales on value-added product, our overall shipment of lemon juice has fallen by approximately two-thirds in the last year, and our inventories have more than doubled.

Unless imports from Argentina and Mexico are

prevented from selling at unfairly traded prices, this situation will only get worse. Without relief from dumped imports, we will be forced to sell our inventory at a substantial loss, further harming the financial condition of my company.

Thank you. I'll be happy to answer any questions you might have.

MR. MCGRATH: Our final witness is Amy Warlick, our economist.

MS. WARLICK: Good morning, members of the Commission staff. My name is Amy Warlick, and I'm an international trade economist with Barnes, Richardson & Colburn.

It was not long ago that I sat in this very room presenting to you data on the orange juice industry, a cousin to the lemon juice industry that I'm here to tell you about today.

The Orange Juice investigation was so recent that it is useful to examine some of the important similarities and distinctions between the two industries and the two investigations. In both cases, the foreign juice processors are highly concentrated and have tremendous market power. In both cases, major multinational beverage companies account for a large percentage of global purchases.

In both cases, recent global output of juice has exceeded global demand and resulted in unprecedented inventory buildup. In both cases, the juice market has traditionally been dominated by concentrate, but with NFC occupying a growing share. In both cases, organic juice is produced by different processors than nonorganic, but is sold for the same end uses as nonorganic juice.

However, there are many important differences as well. Firstly, the orange juice industry is much larger than lemon juice. Orange juice is sold on the futures market, and there are a lot of industry data published by government and academic institutions.

Lemon juice is a small industry with few published data available. Therefore, we're extremely limited in what we can say in a public forum such as this.

Another difference is that juice oranges are grown specifically to be processed with fresh fruit sales being residual. Thus, the value of the oranges is about 80 to 85 percent of the value of domestic orange juice.

In contrast, lemons grown in the United States are primarily intended for the fresh market,

while eliminations from that market, generally somewhere around 40 percent of the crop, are processed. Processing is an important secondary source for the recovery of the growers' costs. Therefore, the value of the lemons is a small percentage of the value of the lemon juice.

For this and other reasons, U.S. orange growers are legally part of the domestic industry producing orange juice, while U.S. lemon growers are not legally part of the lemon juice industry.

In the orange juice industry, oil is a byproduct of orange juice production. While sales of orange oil help to offset orange processing costs, you don't have to produce orange oil in order to make orange juice processing profitable.

With respect to lemon juice, oil and juice are extracted from lemons simultaneously. They are co-products, each independently important in offsetting the cost of producing the other.

The U.S. lemon juice industry, which I've just differentiated from orange juice, has experienced injurious dumping of subject merchandise and is threatened with further injury.

Chart 1, which I hope you all can see from where you are, illustrates the extent of import

penetration by subject merchandise. The U.S. industry's share of consumption has fallen from about 47 percent to 41 percent, while the share of imports of subject merchandise has grown from 45 percent to 50 percent over the last three years.

This reduction in U.S. market share is not the result of declining U.S. lemon production. While the acreage of lemon groves in California and Arizona have declined somewhat over the last five years, state-of-the-art cultural methods have allowed lemon yields per acre to grow considerably, causing overall U.S. lemon production to continue to rise as shown in Charts 2 and 3.

Steve, back up to Chart 2. I just want to point out here that the zigzag yield, there's a black line running through it. That's the trend line. The bars are bearing acreage. It's a little bit confusing there, and then on to Chart 3 showing lemon production increasing just, you know, slightly, up and down fluctuations just based on weather.

While bumper U.S. crops have historically led to increased domestic availability of lemons for processing -- for instance in crop years '00-'01 and '02-'03 -- even short crop years have not caused supply issues. Chart 4 demonstrates that imports are

not responding to short U.S. lemon crops.

Our two smallest crops during the past nine years, '01-'02 and '03-'04, did not coincide with higher imports of subject merchandise. Subject merchandise is exported to this country because excess supplies and high inventories abroad push imports in, not because short U.S. supplies pull them in.

Excess volumes of lemon juice have been produced in Argentina as the result of over seven years of grove expansion in Argentina. Charts 5, 6 and 7 show the extent of expansion in acreage, tree population and lemon production. Some of this expansion was encouraged by low-interest World Bank loans.

Very few data are available on the Mexican industry. Our petition contains some important confidential figures. Chart 8 shows what little public information we could glean from research recently conducted by the International Trade Commission and by a private consultant. Obviously Mexican lemon production is sharply on the rise.

During the mid to late 1990s, The Coca Cola Company encouraged lemon production in Argentina and Mexico and created Citrico to market nonoil lemon products. Citrico began forming lemon juice purchase

agreements with processors in Argentina and Mexico during this period. Over the next five years, increases in lemon production capacity in both Argentina and Mexico led to an abundance of lemons, hence an abundance of lemon juice.

In early 2002, Argentina floated its currency, which effectively devalued the Argentine peso by 75 percent, providing a clear incentive for exports. During late summer and early fall 2002, unusually large volumes of Argentine lemon juice entered in bond in the United States, largely in response to this devaluation. During January through March 2003, this juice was withdrawn from bonded storage and entered into the United States for consumption.

In April 2003, Coke purchased Unimarc's lemon juice processing assets in Mexico and began processing Mexican lemons for export of juice and oil to the United States. Imports from Mexico rose steadily, and the excess juice in the U.S. market caused Sunkist and other U.S. processors to build costly lemon juice inventories throughout 2003.

Then during November '03 through February '04, even larger volumes of Mexican lemon juice entered the United States. This put additional strain

on U.S. lemon juice inventories and prices. In the midst of this, Citrico declared bankruptcy in August '04 and liquidated its lemon juice assets, including large volumes of lemon juice held in inventory in Argentina and Mexico. This set the stage for a literal collapse in prices.

The average unit values of Argentine lemon juice exported to the United States began a dramatic fall in January '05 as seen in Chart 9. In March '05, *Food News* reported that huge volumes of aged Argentine lemon stocks had been exported to the United States at very low prices. In fact, one Argentine processor was quoting $250 per metric ton at 400 GPL FOB Argentina for sales to the United States and $500 per metric ton, same terms, to the EU. Both are low prices, but the price to the U.S. is exceptionally low.

Chart 10 illustrates the extent to which Argentine exports to the United States underpriced their exports to all other markets during '05 and '06. By May 2005, the prices of Mexican lemon juice exported to the United States began a dramatic fall as well.

Chart 11 shows the average landed duty paid value of U.S. FCLJ imports from Mexico dropping to about eight cents per liter single strength

equivalent, which is equal to about $500 per metric ton at 400 GPL during December 2005.

Unwilling to accept the below cost prices forced on the U.S. market by dumped imports, Sunkist has lost many large sales to important customers. Sunkist has continued to accumulate so much lemon juice inventory that, as Chart 12 shows, it is now carrying approximately four times as much lemon juice in inventory as at the end of fiscal '02, which is equivalent to a full year's production.

These large inventories are very costly, and Sunkist has on occasion reduced prices and extended payment terms just to move some juice in this depressed market as detailed in Sunkist's questionnaire response. Sunkist's questionnaire response provides evidence of the devastating effects of these prolonged low prices and burdensome inventories.

Chart 13 depicts U.S. returns to lemon growers as reported to USDA by the packinghouses for lemons for processing at the level of the packinghouse door. As you can see, these returns have now sunk below zero. This means that the growers are receiving a price delivered into the processing plant that does not even cover the cost of delivery from the

packinghouse to the plant and certainly does not cover the cost of growing, harvesting or hauling the lemons to the packinghouse.

Sunkist reports that it costs roughly $12 per short ton to haul lemons from nearby packinghouses to their Ontario plant. The International Trade Commission's recent investigation on Fresh Citrus found that the cost of growing, picking and hauling lemons to the packinghouse is $261 per metric ton, which would be equivalent to $237 per short ton. However, current returns to growers on lemons for processing often do not exceed the $12 per short ton packinghouse to plant freight cost.

Long-term supplier agreements that are well known industry-wide indicate that Mexican and Argentine lemon juice production are expected to grow. The fact that lemon oil prices are now increasing will only contribute to the increase in juice production.

In addition, if the phytosanitary ban on fresh lemons that the EU has been threatening Argentina with over the past few years is actually implemented, those fresh lemons locked out of the EU would likely be processed and exported to the United States. This would only confound the overwhelming inventory situation Sunkist is faced with today.

In the handout of this presentation, which I hope you all have -- if you don't, there are plenty of copies there -- you'll find a Chart 14, which is just a timeline that organizes and recaps the events that I've just described.

Thank you for your attention. This concludes my comments, and I'll be happy to answer any questions you may have.

MR. MCGRATH: Thank you, Mr. Chairman. I think that concludes our direct testimony.

We did bring some refreshment here today. I think it's almost a tradition now if juice is involved we have to bring something you can all drink. Don't drink the Real Lemon juice unless you really, really like lemon juice flavor.

If you do have a chance, we invite you to take a look just to see the distinctions. For almost every lemonade product you buy out there you can find different levels of juice, unlike orange juice, which has to be 100 percent juice by product identity standards.

One of the differences that is important is the content of juice that's in it. There's a lot less lemon juice in a lemonade than there is orange juice in orange juice. Orange juice is 100 percent. Other

elements can be added.

The cost of producing those different types of lemon juice can really be controlled by calibrating the either blends or amount of juice that's in it.

We're all available for your questions now. Thank you.

MR. CARPENTER: Thank you, Mr. McGrath, and thank you, panel, for your presentations.

We'll turn now to the staff questions and begin with Jim McClure, the investigator.

MR. MCCLURE: Jim McClure, Office of Investigations.

I am going to limit my questions at this point until the rest of the staff has had a chance at you, but I do want to ask or understand a little bit more about the environmental disposal issues. It sort of ties with Citrico's collapse and, as you indicate or suggest, that they were selling at distressed prices or something there too.

Does the environmental requirement -- I mean, you cannot dispose of the lemons any way other than by processing? Doesn't that somewhat drive your ability to react to prices?

MR. LARSON: Our division, we looked at one of our options was closing the business, and what we

have looked at is that this is the least cost alternative.

The other options would be essentially with our peel now after the juice is extracted we sell to cattle feed, but there are not enough cattle that can consume and utilize lemon peel, so we would end up we would have to be dumping that in landfills. It's not a viable alternative to send fruit that direction.

MR. MCCLURE: But you can dump in landfills? Is that what I understand?

MR. LARSON: Yes. It's the quantity that's the issue.

MR. MCCLURE: The quantity is the issue.

MR. LARSON: Yes. You can dump in there, but disposal issues are -- it is an issue, yes.

MS. WARLICK: Eric, what about the juice, in addition to the peel?

MR. MCCLURE: Yes.

MR. LARSON: If you don't extract? If you just send the whole fruit through the --

MR. MCCLURE: Right.

MS. WARLICK: After you've extracted the lemon juice.

MR. BRAGG: To dispose of the juice?

MS. WARLICK: Yes.

MR. MCCLURE: Yes.

MR. BRAGG: Well, we have just installed a modern wastewater treatment facility. I can't imagine one that would be large enough to handle the volume of juice. That was a $7 million project.

I would have to say probably to build a wastewater system to handle juice -- good Lord. It would be a $150 million investment or something like that just to handle the juice disposal, well beyond our ability. My business is not even near that much in annual sales.

MR. MCCLURE: Are there state regs, environmental regs, in addition to the federal?

MR. BRAGG: Yes. I guess the best way to say that is we're in the worst air district and water district in the country, so we have both local district requirements, state district requirements and federal district requirements.

MR. MCCLURE: Okay. Thank you. I think I'll pass on to my colleagues at this juncture.

MR. CARPENTER: Robin Turner, the attorney advisor?

MS. TURNER: Good morning. I have a number of questions, and I'm going to start off at the beginning with actually like product, which is where

of course we start off with.

My first question, I understand that you have proposed a finding of single like product that includes all forms and doesn't include lemon oil. Is that correct?

MR. MCGRATH: Yes, that's correct.

MS. TURNER: Okay. Now, in terms of that I guess I'd like to know a little bit more of an understanding about the production process here.

That's something that, please, I'm not just asking Matthew. Anybody else, please chime in who knows something about the process.

First of all, do the producers in Argentina and Mexico use the same production processing?

MR. LARSON: Yes, they do. There's two primary technologies. There's Brown and FMC. It's the same extraction technology as orange juice.

MS. TURNER: Okay. Actually, why don't you describe that just a little bit?

MR. LARSON: The two differences in them?

MS. TURNER: Yes, please.

MR. LARSON: Okay.

MS. TURNER: For us who don't know this and haven't done orange juice as well.

MR. LARSON: I will try and give you a

simple version of it.

The Brown extraction technology, and, Frank, you can help if I need it, but first it will go across a series of we'll call them rollers with thousands of needles on them, you know, little pins that will go, and that will extract the oil out.

Then when it goes into the Brown extractor it'll essentially slice the fruit in half. Kind of like your old, homemade reamer, it will ream the juice out of it, so you'll have that.

The FMC extractor will take the fruit, and it will put them in these cups. Essentially the fruit is in here, and a tube will go up into the fruit. It will squeeze down, and it will extract the juice through the tube and extract the juice out there. The oil will come out on the opposite side of it, so you'll have some separation of the juice and the oil there.

MR. BRAGG: We use the FMC process for our lemons. We use the Brown process for our orange processing.

MR. LARSON: During the POI we've used both Brown and FMC.

MS. TURNER: For lemon juice?

MR. LARSON: For lemon juice production.

MS. TURNER: Okay. It sounded like, and maybe I'm wrong, but in the first process you can actually produce the juice without producing the oil?

MR. LARSON: I think you would have some quality issues because you would be getting more oil into your juice than usually is acceptable in a customer's specification. It would give you some off flavors.

MS. TURNER: And that's because -- I guess maybe I didn't understand -- the needles have basically extracted the oil?

MR. LARSON: Correct.

MS. TURNER: And so if you just didn't do that some of that oil from the peel would actually get into the juice?

MR. LARSON: Correct.

MR. BRAGG: Yes. The oils in part, they're again a very powerful -- both orange, all citrus oils, very powerful flavoring.

Well, you can imagine if you're trying to make a premium juice if those oils go into the juice it's going to make it a very bitter juice to drink so it's important to extract the oil at the same time that you're extracting juice.

If you want a high quality specialty orange

juice, since it's 100 percent juice, to make a high quality juice you need to control the oil content that gets into the juice.

MS. TURNER: Okay. What about conversely? Can you produce the oil and not have any effect on the oil without producing the juice?

MR. LARSON: You would have disposal issues then.

MR. BRAGG: Yes.

MS. TURNER: Well, the disposal issues that you've indicated are a volume issue because you wouldn't have produced the juice yet. You'd really just have fruit without the peel or with the peel sort of -- that can be dumped in landfills, but in fact there are issues with the amount of volume of it?

MR. BRAGG: Let me answer this one. This is something I've approached both of these companies with.

Today there is no separation process between juice and oil. It is because of the dumped product and the juices, orange juice that's now finally a good market. The lemon juice market is a horrible market. We're losing money.

I guess can you guys build a separate oil extraction system, and again we'll worry about

disposing of the lemons second as a secondary consideration. I don't think that we'll ever get away from completely eliminating the juice component as part of that, but to help with this situation can we stop that? It's a very technical question, and these companies are working to come up with an answer to that.

If nothing happens here, we've got to come up with a better answer. We've been searching for that. I think the answer is we don't have one. Neither do the two major citrus extraction technology companies today to be able to do what you're asking.

MS. TURNER: I'm getting actually a little ahead of the questioning I was going to ask, but you basically led into the fact.

So when you've got demand for lemon juice or demand for lemon oil, which one is actually controlling? You're going to produce both, so you're going to have supply of both.

MR. BRAGG: Right.

MS. TURNER: Which one controls how much you process of fresh lemons into --

MR. BRAGG: Neither. You process it all. When you get the lemon, you get both product streams. You get oil, and you get juice.

Like in any manufacturing process, it's all about yield. You get as high a yield as you can out of both to be efficient so your costs go down on final products that you produce.

The game is once you start that extraction process to get as high a yield of both out of that so you can sell them on the other side.

MS. TURNER: Okay. Go back a step.

MR. BRAGG: Yes.

MS. TURNER: Before you start the extraction process, the fact is you've got lemons. You've produced lemons.

Now, is it the lemons themselves, the fresh lemons and not being able to sell them in the market that is what is making the decision as to whether you start processing those lemons, or is it demand for lemon juice that is making you decide to process a certain amount of lemons, or is it demand for lemon oil?

MR. BRAGG: Okay. All lemons go through a packing operation in California and Arizona. From our packinghouses, the product is about 40 percent on average that doesn't make a size or a cosmetic grade standard for the fresh then is sent to make juice.

MS. TURNER: So the amount of juice you're

going to produce in any year and/or oil by fact that you produce both from it has to do with how many lemons you've produced that don't meet the quality standards for the fresh? It's not the demand of the lemon juice market?

MR. BRAGG: I think it's fair to say that, yes. Correct.

MR. MCGRATH: I think one of the points and distinctions we're trying to make here is that had been the traditional approach to these markets for some time.

As with an orange, all of the fruit that's harvested gets dealt with somehow. It either goes to the fresh market, or the stuff that doesn't meet the standards goes to the processed market. The stuff that goes to the processed side, all of it gets processed.

That's the way things had happened for some time. In recent years with the buildup of foreign industries, what we've seen, and that's Sunkist's experience in the U.S. market. What we've seen with the foreign industries is situations in which there are long-term commitments to produce X number of pounds of oil and to supply a certain amount of oil to customers at a certain price.

That I guess is where you're headed with demand. Is there demand of one driving the amount that's produced of the other? In that case, with that commitment being looked at down the road the supplier is undoubtedly going to be making the other product to recover as much cost as possible because they're made on the same line. They're done at the same time.

Whether the foreign producers have the same sorts of concerns about, you know, the environmental implications of dumping the juice, that's a different question. We're looking at it from the standpoint of the U.S. industry and what the drivers are. It's not a particular amount of demand for oil or demand for juice.

What they're doing is, as they have traditionally, recovering the costs on those products. What doesn't meet the standards for fresh is being handled in the processed side. The two products are made together.

MS. TURNER: Okay. I understand the two products made together. I guess I'm just still grappling a little bit with the issue as to the fact that your lemon juice production is not something that -- you've got commitments obviously to Newman's Own or whatever to produce lemon juice for them. What

happens then in a year when you don't have enough lemons that are not good enough to be fresh lemons? Then you don't have enough juice. I guess that's the question.

I'm sure you've got or I imagine you've got contractual arrangements for both Real Lemon and Newman's Own and others that you're required to produce lemon juice for. Foreign imports aside, I'm just saying in terms of your business if you're trying to meet those contracts demand for lemon juice doesn't play a part in actually how much you process of fresh lemons?

MR. BRAGG: I'm going to turn that around. Probably 30 years ago the California/Arizona lemon growers had probably 90 percent of the world's lemons. We were always in balance with the supply and demand of the juice market in the U.S.

It wasn't until the last 20 years with the growth of the lemon trees for not the fresh market, but the juice market. Not juice, but really oil. That was the main component that they were getting.

We've always had, and you look at the charts that you've seen. We've always had more demand in the U.S. than we produced in juice and oil in California and Arizona so it didn't matter at some points that

there were some imports always going to come into the country. We expected that we would have a domestic market that would consume all of the juice and oil we produced in California and Arizona.

It's only to the point in the last four years where the market went upside-down, and there's more juice that's flooded into this market that creates not a home for the juice that's being produced in Argentina and Mexico. It's just coming into the market and going at any price.

We've got warehouses and customers full of inventories, including a year's worth of inventory of our own product. That's the issue. We've never had to worry about this issue about fair pricing until we've seen the last five years of destructive imports coming into this country that we had to worry about the supply and demand.

We built this market over 50 years, and it's been destroyed as a result of these guys. We just want to be treated fairly.

MS. TURNER: Let me change questions here a little bit and basically ask about another question that has to do with interchangeability.

Mr. Bragg, you noted in your testimony that there is no interchangeability. I believe it was on

page 3 of your testimony; that there's really no interchangeability because lemon oil is so potent with lemon juice, yet there's also been statements -- they were in the petition; I believe it's actually in this as well -- that both are used in carbonated beverages, that both lemon oil and lemon juice can be used in carbonated beverages.

I believe that they're interchangeable. I mean, you use one. You don't use both. When I'm saying both can be used, I'm saying you could use one or the other as a flavoring in carbonated beverages.

Go ahead.

MS. WARLICK: They are both used in beverages, but not for the same reasons.

I don't know if these ones, but you will find in a lot of lemonade that they have lemon juice and lemon oil.

MS. TURNER: Okay.

MS. WARLICK: If they were truly interchangeable, you'd just use more juice or all lemon oil.

You use both because the oil generally imparts more of the fragrances and some flavor, but more of a bitter flavor. It's very strong, very potent. It's half of the story. The other part is

just a different type of flavor and the fragrance also used in a lot of cosmetics for that same reason and detergents and things.

The lemon juice is really used in much higher quantity in the beverages and for different reasons.

MS. TURNER: Just to carry on from that, and thank you for the explanation in terms of the lemon juice.

MS. WARLICK: Yes.

MS. TURNER: That's very helpful, but in terms of carbonated beverages where in fact you're not necessarily getting a taste that's a lemon taste is why you're using -- I mean, it's not lemonade basically. It's got another taste to it.

Is that something that you're using both or that they're interchangeable for?

MR. BRAGG: For the most part.

MS. TURNER: Let me also explain here. I mean, these sound like stupid questions or things that you don't --

MR. BRAGG: No. No.

MS. TURNER: We don't understand this. We have absolutely no idea about this. We are just trying to ask questions to get an understanding of

this, so that's why these questions seem like why would we ask something like that.

MS. WARLICK: They're not. I asked the same ones.

MR. BRAGG: Yes. Maybe the best way, and I'll give you an estimate, is that probably 98 percent or better of carbonated beverages will use oil and not a juice.

It's such a small -- I think somebody is looking for a label claim that says that it has natural juice in it in order to make that claim. It's more of a marketing issue I think than anything else because the flavor component again delivered by oil is much more powerful, and that's why it's there because it imparts that flavor.

If you tried to do the same thing with juice, you're still going to need the oil.

MS. TURNER: Okay.

MR. BRAGG: So it's going to be there, but these are a very small fraction of the carbonated beverage business.

MR. LARSON: I would tend to think that most beverages, carbonated beverages, that would use lemon juice probably have some sort of a lemon --

MS. TURNER: Flavor to it?

MR. LARSON: -- flavored product, yes.

MS. TURNER: Coca-Cola with lemon or with lime or Pepsi. Sorry. I don't mean to say one over the other.

MR. LARSON: Yes, whatever it is. I would say somehow it would be something with lemon added to it.

MS. TURNER: If we see on the side of a label that it says citric acid, is that potentially something that it's a lemon, or would it have to be classified as actually saying lemon oil or lemon peel?

MR. LARSON: I don't know food labeling laws that well.

MR. BRAGG: Well, citric acid, yes, is a substitute to try to deliver that obvious citrus flavor, and it's very cheap compared to using juice or oil.

MS. TURNER: Okay. That actually was another question I had.

I believe, Mr. Larson, you talked about there were other products in addition to, in your testimony. There's lemon juice, lemon oil and lemon peel and other products in processing.

MR. LARSON: It would be like lemon aroma, lemon essence oil. They're typically used. You can

make like a lemon emulsion where you'll add an aroma, an essence oil, which is all part of the process through the evaporation process.

Basically you're making an emulsion type product that you can put into a beverage to enhance it, so you'll see a lemon juice concentrate and natural flavors or something into a lemonade.

MS. TURNER: Okay.

MR. LARSON: That lemon emulsion is to help enhance the flavor and the fragrance of the product.

MS. TURNER: Thank you. Thank you.

MR. LARSON: That's what I was meaning.

MR. MCGRATH: Further on that, the citric acid I believe is not made in the plant that produces juice and oil, if that's where your question was coming from.

MS. TURNER: No. Actually, my question was more reading. Whenever we get one of these cases we try to, and reading it on there when I suspected there maybe should be some lemon in something I just saw citric acid.

What products, and this is something I know we've asked in our questionnaires, but if you can just actually give a brief description of whether in fact on your processing plants whether you produce anything

other than lemon juice on them, meaning lime juice, grapefruit juice, orange juice, and what kind of transfer? How long does it take, if you do, to shift between one production or the other?

MR. LARSON: During the POI, we only ran lemons in Ontario.

MR. BRAGG: Yes. Prior to that period, maybe six or seven years ago we ran grapefruit and oranges, but this plant has been converted in the last four years.

These were the reinvestment in order to focus on lemons and do it at again the highest possible yield, the most efficiency, because obviously you can see where the prices have gone. We've had to become much more efficient. It's a lemon only processing plant. That's the only thing we do there.

MS. TURNER: Mr. Borgers?

MR. BORGERS: I'm in a slightly different situation. I have two plants, and we process lemons, oranges and grapefruits at both of our facilities.

It's about a four hour clean-up between running one varietal fruit to the other. During that time you're washing down the extraction lines, you're cleaning the evaporators, the concentrators and all the affiliated equipment. It's about a four hour

conversion time.

MS. TURNER: And you can just do that at any point in time, depending on which crop you have? I mean, you just have the four hours or so changeover, so you go from one to the other on a regular basis?

MR. BORGERS: Yes. We run different size fruit on different machines, so we would have some grapefruit machines in the same line that we would also have machines configured to run small lemons.

Obviously when we're running lemons we wouldn't be using the grapefruit extractors and vice versa, but again the plants can be changed over in about four hours.

MS. TURNER: Okay. That's very helpful. A question, and this also is going to be something that please bear with me. I may be less knowledgeable than some of my other colleagues on the team here.

In terms of producing lemons in terms of the amount of time, we deal with products that have product cycles or life cycles in a sense to it. Lemon bearing trees. Is there a lifespan basically for them? What would that be? Do you know that?

MR. BRAGG: Sure. Citrus trees, and you can apply this for orange and all really citrus. They have a lifespan, if you treat them well, that'll go

over 100 years. It takes typically about five to seven years to reach maturity. They really reach their peak of production about 14 years after you plant them, and they just keep going.

I've seen personally a navel orange tree that's 130 years old in California. It's still around. It doesn't produce a lot of fruit, but it's the rootstock for the original California navel orange.

MS. TURNER: What though in terms of a timeframe in terms of an industry? I mean, is there a timeframe where they are more fruitful that you would say it's a 20 year timeframe, or is it just the 100 years?

MR. BRAGG: The commercial life of a tree, and we've got fourth and fifth generation growers --

MS. TURNER: And they use the same?

MR. BRAGG: -- with the same granddaddy's, and great-granddaddy's and great-great-granddaddy's trees that are still in production today.

MS. TURNER: So it's not like they have to replant, you know, keep basically planting new?

MR. BRAGG: Right.

MS. TURNER: Planting new means increasing capacity is what I'm getting at.

MR. BRAGG: Amy has pointed out some interesting facts for you. We've had some declining acreage, but we've got better horticultural and cultural practices.

That means we're moving from say 30 years ago you'd put 100 trees on an acre. Today it's more like 130 trees per acre. It's the planning, the whole science of growing in all industries, but citrus as well. You're just getting better at being more efficient.

Frankly, if you're looking at international trade for U.S. growers period as just a flat statement, if you don't outproduce the other guys that have cheaper land and cheaper labor, you have no chance.

We are a very efficient industry, and when you look at fresh, where that market is just as an example, the Argentineans at best get 25 or 30 percent of their product to the fresh market. We get 60 percent because that's how good we are at growing lemons and oranges for the fresh market.

MS. TURNER: A question. Mr. Bragg, in your testimony I believe on page 2, as well as also page 2 of the petition, you discuss the marketing relationship between the Sunkist Growers and the

packers.

Basically in a nutshell the commitment or the arrangement is for the grower to dedicate all fruit from certain acreage to be handled by the Sunkist packinghouse. Now, does the Sunkist packinghouse determine whether that's going and is that only by quality going to be sold for fresh fruit?

MR. BRAGG: Sunkist. You've got to understand we're a grower owned co-op. I'm sure you're familiar with cooperatives.

MS. TURNER: Yes.

MR. BRAGG: The structure, there are actually two differences. We're a little bit different than most co-ops. We're a federated co-op, so we have a co-op typically that is a packinghouse. That packinghouse then is affiliated as a cooperative among 47 other packinghouses in citrus for Sunkist.

We at Sunkist then set all the standards, including it's called the Sunkist grade. It's the highest premium grade in citrus in the world. It's well above any USDA grades. We set those standards for what will fit these grades.

Then what doesn't fit those grades all the way down to what's called a standard grade, which would be your lowest fresh grade, then that citrus --

oranges, lemons, whatever, grapefruit -- then have to be eliminated. That's when the lemons come to Ontario.

MS. TURNER: So that's how it's decided basically?

MR. BRAGG: Right.

MS. TURNER: Okay. You indicated I believe Sunkist is not importing any lemon juice or lemons.

MR. BRAGG: We are not.

MS. TURNER: Mr. Borgers, you indicated that you do import lemon juice, I believe?

MR. BORGERS: That's correct.

MS. TURNER: And you've done that for purposes --

MR. BORGERS: Simply to cut costs. There was juice in the market that was so cheap that our strategy became one of acquiring it at those prices, blending it with our own and then being able to offer pricing that could compete in our home market.

MS. TURNER: Actually maybe Joanna will get to this more in terms of the blending aspect of it. Why would you blend, I guess?

MR. BORGERS: Strictly on cost.

MS. TURNER: Okay.

MR. BRAGG: Let me jump in here too. We've

had very attractive offers to buy Argentine and Mexican juice.

Now, if we follow that same strategy, and we're the largest obviously. We have about 80 percent of the growers in California and Arizona. Then we would blend that obviously to make money, but when the market is glutted for us it doesn't make sense.

Bill is more of a niche player, and he can play in and out of the market a lot easier than somebody with 80 percent share of the U.S. market.

MS. TURNER: I guess the question though also gets to the blended product. I mean, is that something you typically do?

I guess I'm trying to understand why that juice that comes in would not just be sold to be used for -- why it would be blended. I mean, is one more of a premium product? Is your lemon juice you're blending with the imports a premium product? Why are you blending?

MR. BORGERS: No. In these cases I had the ability to source product at maybe 50 percent of my cost.

I was getting pressure from a customer that if I didn't lower my price I would lose the volume, so we acquired the juice strictly on a cost basis,

blended the two pieces together, sold the product as a blend of juice from the USA and Argentina and came close to meeting the customer's cost objectives, so we were able to hold onto the market share.

MS. TURNER: Okay. Thank you.

MR. MCGRATH: There's also discussion of blending and purposes of blending juice in the Orange Juice case.

You may recall there were some claims that foreign product had to be imported at certain times of the year for blending to meet certain consistency standards and arguments that it was blended for that purpose.

Some producers apparently did that. Others did not. There is a difference here in that the only blending that we're aware of that goes on is not for some kind of seasonal consistency or making up for a brix level or acid level ratio at some time of the year.

It's purely for the sake of if somebody is producing juice and they want to lower the overall cost of what they're going to sell it at and compete with the imported product they can buy some of it, blend it together and lower their overall unit cost.

MS. TURNER: Okay Thank you. Two last

questions.

Ms. Warlick, you noted that the prices being offered from I believe it was Argentina to the EU were almost twice as much at different points in time than what was being offered for sale for lemon juice to the United States.

What are your thoughts as to why is that product not being sold in the European Union for a similar cost to the United States?

MS. WARLICK: I'll give it my best shot, although that's probably a question for Respondent.

MS. TURNER: I agree.

MS. WARLICK: Well, the EU is their largest market for lemon juice, and I think that the price in the EU market is more important to them than the price in the U.S. market.

This is their dumping ground. You know, they can probably get rid of a lot of inventory here and still maintain -- of course, the price in the EU is going to be affected by what they're selling at here, but it's not as direct. That would be our guess.

We saw the same thing in Orange Juice. Obviously different companies, but --

MS. TURNER: Well, it's not that hard to

transport that, so I just was wondering why you could have such a global difference in pricing and why it wouldn't be in both places.

MR. LARSON: I believe they were already serving that market fairly well, so it was probably pretty well covered. When they had more juice than they needed there --

MS. TURNER: The excess? Okay.

MR. LARSON: -- then they had to go somewhere with it, right? As the product ages there's also the urgency to get that off the market. I think those are two impacts.

MS. TURNER: It was the marginal amount?

MR. LARSON: Yes.

MS. TURNER: My last question, Mr. McGrath, is just a standard question regarding whether you, and this will be something to provide in the postconference brief, but whether you know of any dumping findings or antidumping remedies imposed on lemon juice in other countries. If so, please provide us information regarding those in your postconference brief.

MR. MCGRATH: No. We'll check again, but we're not aware of any.

MS. TURNER: Okay. Thank you very much.

MR. CARPENTER: Next we'll turn to Nancy Bryan, the economist.

MS. BRYAN: Hello. Nancy Bryan, Office of Economics. Nice to meet you all this morning.

My first question is hopefully fairly simple. It's just could you list the different end users -- the bottled lemon juice, the lemonades -- and what share of total lemon juice production they each go into?

MR. LARSON: I'm not sure I can help you too much with the lemon share, but the lemon juice is used in the lemon juice like what we show there. There's the Real Lemon. There's a lot of private label business out there that's used in cooking applications, baking applications.

Lemon juice is also used in lemonade beverages, or it can also be used in beverages as a component, you know, like a mixed beverage. Typically if they're using it in a mixed beverage they're using it for the acid content into it.

Lemon juice is used in some baking applications too, whether it's a Real Lemon type of product or whether it's straight.

I would say the main ones are the straight lemon juice, the lemonade and then other smaller ones

like a baking application.

MS. BRYAN: Okay. And the largest one is lemonade?

MR. LARSON: Yes, I would say it's lemonade. Lemonade and lemon juice I would think. Lemonade and lemon juice are fairly similar, but I would say lemonade is a larger component.

MS. WARLICK: We can put together a pie chart of sorts for the postconference brief.

MS. BRYAN: Okay. That would be good. Thanks.

MS. WARLICK: Okay.

MS. BRYAN: In your experience, the subject imports go into the same exact end uses in the same general proportions?

MR. LARSON: Yes.

MS. BRYAN: Okay. My next question is about the seasonality, in particular the different crop seasons of the United States and the subject countries and how that might affect our pricing data or how we should look at it.

MR. BRAGG: Okay. Let me try this. We have three different distinct growing regions in California and Arizona that provides lemons year-round. I'll start with maybe just a calendar perspective so you

can understand the seasonality.

Eighty percent of the lemons are grown around Ventura County, so that's a coastal area. That fruit comes on about January, and it'll move all the way through to the summer months, maybe into July, August, sometimes as late as September.

We have a desert crop that starts in the California desert and moves down into the Arizona desert. That crops begins about October typically, and that will stretch all the way through until about February.

We have the Central Valley crop, which is pretty small. It kind of fits in between the desert and the coastal area, so we're able to provide fresh lemons year-round to our customers worldwide.

Now, the Argentines are a little different cycle. They don't have the same kind of growing areas that we have, so their season typically gets started about April, and it ends about October.

MS. BRYAN: Okay. And the pricing data, do you know, have a feeling how that's going to be affected by seasons?

MS. WARLICK: No. For the different types of lemons probably when they first start the harvest there is a cold storage for lemons that can go for

months so they're not all hitting the market right away. I haven't seen, and I've actually looked for it, a lot of seasonality. It's not as clear cut as orange juice.

Then you have different seasons of course in the southern hemisphere. Those are more like calendar years, but Frank can tell you more about that.

MS. BRYAN: Eric? Yes?

MR. LARSON: I don't think you'll find a lot of seasonality because a lot of the business that we do is under an annual contract. It just depends at the time that we do a contract. If we're doing a contract, and then once that price is set then we typically will set it for a period of time.

MS. BRYAN: Okay. That actually leads me to my next question about how long the contract prices are set for and can they be renegotiated over the contract?

MR. LARSON: The majority of our contracts are one year contracts. There are some that are less. We have a couple that are a little longer than a year. Typically it's a set volume, set price with no room for -- well, there's not a fluctuation in price.

MS. BRYAN: Now, I understand that there's no futures market for lemon juice. Is that true even

informally? Customers don't come to you and say can I lower the price or bid lower?

MR. LARSON: It's similar to apple juice, or pear juice or any of the berry products. Essentially it's a market price. Pretty much people know what the prices are out there, so I don't know if you want to say what a futures price, but pricing should be pretty standard.

MS. BRYAN: Okay.

MR. BRAGG: Most commodities don't have a commodity market, just the very big ones do. Coming from the nut industry there are no commodity markets as well.

MS. BRYAN: Great. About the substitutes. Besides citric acid are there any other close substitutes to lemon juice?

MR. BRAGG: Lemon grass as a flavoring component.

MS. BRYAN: Okay.

MR. BRAGG: Now you're talking about somebody that doesn't know what they're talking about, so I'll just admit that. Yes, there are not a lot of substitutes.

MS. WARLICK: What about lime juice? Is there any substitution? Yes?

MR. LARSON: Maybe only as a component for acidity in a mixed beverage or something like that, but no. Not a lot of substitute at all.

MS. BRYAN: What about substitutes for lemon oil? Citric acid, again?

MR. LARSON: Yes. Citric acid is the primary one.

MS. BRYAN: That's the only one?

MR. LARSON: I would say that's the primary one. Yes.

MS. BRYAN: Okay. So in the petition you said that supply is highly inelastic. Do you want to comment on demand? How you want to characterize that?

MS. WARLICK: I think maybe we'll put together an explanation in the post-conference based on demand elasticities.

MS. BRYAN: Okay. Could you also kind of give a list or a description of how you determine the quality of lemon juice? Maybe if you want to break it down between concentrate and NFC, or cloudy, or clarified that would be helpful.

MR. LARSON: Quality can go, it depends on the end use and a customer's perception. Different customers are going to look at different quality attributes. Let's say primary ones are flavor, so

you'll have a flavoring component of it. If you process products incorrectly you can get some burnt notes into it and pretty much everyone wants to avoid that.

Color can be an issue also at that point in time where it can get dark. As the product ages, too, it can darken, too. That can have an impact on the final product. There are a lot of differences as far as customer perception, as far as what's quality, as far as percentage of pulp. Some people want a higher percentage of pulp in their product, some people want a low percentage, or some people want a clarified.

So it's really dependent upon the customer. You're evaporating essentially not on a brick funnel, but you're evaporating an on acid basis and acid is typically the most important component.

MS. BRYAN: Would you say these qualities, the color and other things, are more important depending on whether it's lemonade versus soda or something else?

MR. LARSON: I wouldn't think there's a big difference.

MS. BRYAN: Not really. Okay.

MR. LARSON: NFC I think you can say retains more of its flavor characteristics. That is a reason

why it's a growing industry. So it's a preferred flavor.

MS. BRYAN: Okay. For the GPL levels I understand you can produce it on different levels. It can be at 400 GPL, or 500 I guess, or 600.

MR. LARSON: Yes.

MS. BRYAN: Do you all manufacture every GPL level or what is the difference in those?

MR. LARSON: We produce a wide range of GPL levels and, again, that's on customer specifications. Our most common is 400 GPL, but some people have higher than that and some people have lower than that, so we'll do those basically on customer orders.

MS. BRYAN: Okay.

MS. WARLICK: We've found that the imports are generally half and half between 400 and then anywhere from 430 to up to 600. It's possible that this is kind of resulting out of the inventory problem, just having so little storage space left, so you concentrate to a higher degree and it takes up less space.

MS. BRYAN: Okay. My next question is on supply. Like you've been saying you've been seeing historically high inventory levels, so at this point in time even in the absence let's say there were no

subject imports would there still be an oversupply of lemon juice just because of the high domestic inventories?

MR. BRAGG: I have enough juice to satisfy the U.S. market for the coming year.

MS. WARLICK: In inventory, right?

MR. BRAGG: Without the imports. Yes. We can pretty well supply this market because I'm going to produce another year's worth of production by the time this would go, so you've got about a 50/50 split with imports and domestic. By the time I shipped all my juice, I made new juice, we wouldn't need imports. That's how flooded this market is.

MS. BRYAN: Okay. You don't think these oversupply conditions would still exist?

MR. BRAGG: Would they? Maybe I'm not following that.

MS. BRYAN: Because of your high inventories right now you're saying that because of the subject imports there's this oversupply of lemon juice right now, but even in the absence of those imports your inventories would still possibly be oversupplying?

MR. LARSON: I believe it would be more in balance.

MR. BRAGG: In balance. Yes.

MS. BRYAN: Okay.

MR. MCCLURE: I think there's obviously going to be some period of time for imports to draw down. In fact we're not seeking and nor do we expect if there is relief in this case that it's likely to stop imports. The goal is to try to get pricing at a level where the company can return a profit even though it's expected that there will probably continue to be high inventories for some time, but at a higher return at least there will be ability to try to cover costs.

So if there were to be no imports whatsoever, I mean, I think it's purely hypothetical, but it's not a situation where there would be a shortage and suddenly the inventory would disappear, but likewise it's not a situation where you would magically have no affect of having a large supply.

I think the market would be affected by the sudden unavailability of imports, and so the price would go up. It's somewhat hypothetical.

MS. BRYAN: Right. Thanks. Also, nonsubject supply, is that not really a big factor here?

MS. WARLICK: Most of what you're talking about with nonsubject supply is South Africa. There's

been a very recent, just in the last year, a little blip from South Africa. From what we can tell it doesn't look like it's going to be growing into any significance, but yes, that's primarily what you see.

MS. BRYAN: Okay. One last question. In one of the exhibits in the petition there were some news clips I think from *Food News* and in one of the articles an Argentine producer of lemon juice was quoted as saying that in 2005 they're going to cut output by some astronomical percentage in order to stabilize prices. Have you witnessed that at all?

MS. WARLICK: I think what they're talking about, you can't stop a tree from producing lemons, but they leave them on the trees. In some cases they'll leave, what was it, 200,000 metric tons?

MR. BRAGG: Two hundred thousand metric tons were left unharvested just because the growers were paid nothing. This is how bad the price is for Argentina as well is that they weren't able to give the growers any money at all, so rather than paying for harvesting costs they just left the lemons in the trees.

MS. BRYAN: Okay. So leaving lemons on the trees, is that a way to control supply or --

MR. BRAGG: You can get away with that for

probably one season and then the fruit's going to eventually grow and then drop, and when it drops in an orchard then you've got all the diseases that come as a result of having fruit that's in your orchards begin to decay and your second year you're now going to be affecting long-term production yields out of that orchard as a result of leaving it in the trees.

MS. BRYAN: Okay. All right. That's all I have for now. Thanks.

MR. CARPENTER: Charles Yost, the auditor.

MR. YOST: Good morning. Thank you very much. I'm Charles Yost, the Commission's auditor assigned on this investigation. Just as a first statement I'd like to thank each of you for coming here today, and I'd also like to thank the various industry witnesses who have answered some of my questions that have been posed before prior to this conference.

I've got a couple of questions or rather I do have some questions and if you feel you can't answer them in this public session I would welcome your answers in the post-conference brief. Several questions. I'd like to follow-up on some of the ones that my colleagues have asked and the first one is with regard to the co-products, oil peel and juice,

can you vary the ratio or the percentage of oil versus juice for example that you get out of a lemon?

I mean, if for example the end market is bad for juice can you produce more oil or is that set by the nature of the fruit?

MR. BRAGG: The fruit will produce -- I'm trying to not use any technical terms. The fruit has a potential for so much juice and you'll test for that. If you're running your efficiencies where you ought to it's going to produce that amount of juice, so the fruit determines that. The same for oil.

I'll give you an example. Our desert oil that we extract is a little bit less than our coastal oil. I'm sorry. I got that reversed. Our desert fruit actually produces a little bit more oil than our coastal fruit and it's just the nature of where it's grown. Whatever the propensity is of the fruit to produce oil and juice that's how it's determined. It's the fruit.

MR. YOST: Does this tend to vary greatly over time?

MR. BRAGG: No. No. It's very consistent.

MR. YOST: Basically how would you describe it, 50/50, 45/55, in terms of juice versus oil?

MR. BRAGG: Well, for a standard ton of

fruit you'll get about 10 gallons of concentrated juice and you'll get about 10 pounds of oil. That's about the way to look at that.

MR. YOST: Okay. In terms of the blending I believe, Mr. Borgers, you talked to blending. Do you have any costs other than simply mixing it?

MR. BORGERS: There's a conversion cost that includes things like withdrawing the juice from the warehouse, staging it, dumping of the containers, labor costs and then there's an overhead factor applied to it on a per gallon throughput basis.

MR. YOST: You don't have the evaporation and other cleaning costs that you might have with fruit that you buy? In other words you're basically taking a tank of purchased juice and mixing it with a tank of juice that you've produced?

MR. BORGERS: That's correct.

MR. YOST: Okay. Plus those other items that you named. Okay.

Now, Mr. Bragg, you testified and the petition also speaks to Sunkist organization reform. If I understand it correctly it's a federated co-op, an agricultural cooperative, and looking at the financial statements that are available on Sunkist's website it describes the types of accounting that you

go through. Your members own Sunkist if I understand that correctly. Who owns the fruit that you process?

MR. BRAGG: The same owners.

MR. YOST: So the owners own the fruit?

MR. BRAGG: The growers are the owners and they own all the processing assets. Most of the packing houses are owned by the growers as well.

MR. YOST: Okay. How is the payment to those growers established?

MR. BRAGG: I'll just walk you through simple -- and it took me about three years when I started working for co-ops to figure this out. There's a simple answer to that. You take a pool of revenue from all sources of revenue, you deduct your cost and whatever the residual is -- because you're nonprofit -- on a prorata share basis for whatever a grower's contribution to that pool is in fruit you deliver that back as proceeds. There is no profit.

It's just revenue, less cost, goes back to the grower. It's a great model if things are working well for the growers because what you're trying to do is obviously get them the most money for the fruit as you possibly can.

MR. YOST: Okay. So it's kind of a net proceeds?

MR. BRAGG: It is. It's just a netting of everything.

MR. YOST: Revenue minus the full end cost?

MR. BRAGG: Yes.

MR. YOST: Does the payment differ juice versus fresh lemons?

MR. BRAGG: Yes. Yes.

MR. YOST: So a separate pool is set up for processed lemons?

MR. BRAGG: Yes. Pooling for processed is a year long pool, lemon pooling for the fresh markets is a weekly pool, so it's all what's called an FOB. It's a per carton value. All the FOB prices' collected average that week for all the houses that have shipped into that week, our average revenue, we deduct our assessments for selling and marketing the fruit and then the net proceeds go back to those packing houses that participated in that week's shipments.

You can imagine, we've got three different growing regions and that's why it's important to have not a year long pool, but something that's very timely like a week.

MR. YOST: Okay. Then if I can belabor the point a little bit. If a grower's particular batch of lemons are selected not for the fresh market, but for

the processed market then that becomes a separate pool?

MR. BRAGG: It does.

MR. YOST: So payments back to that grower would reflect the processing of that?

MR. BRAGG: Right.

MR. MCCLURE: To the extent they are net proceeds after the processing and sale of the juice the net proceeds go back to the grower. That's what I think Mr. Bragg means by saying there's no profit.

MR. YOST: Right.

MR. MCCLURE: The goal is to return as much as possible after the processing business produces and sells the product and deducts the cost. The point of I think some of the presentation that we've been making earlier is that under this structure when you're in the red you're in a negative situation. Not only is the processor not recovering all their costs, but neither is the grower that they took the fruit from.

So the amount that's being returned as proceeds is not really covering processing and the cost of fruit.

MR. BRAGG: Yes. Let me make it clear what's happened the last five years. In the pool we

start with a packing house's door and all the way through to my customer's door, okay? All the cost and revenue. The cost of taking it from a packing house to the processing plant, we're not even covering that cost in the pools.

So when we return back to the packing house you look at the last five years about less than $10 a standard ton. Ten dollars a ton. Do the math on a per pound basis. What you find is we're not even covering the transportation costs from a packing house door to the processing plant. We historically have covered all the pick, pack and haul cost prior to this period of dumping.

If there's some emotion in there I'm telling you it's genuine. It's just I'm mad as hell at these guys.

MR. YOST: Okay. Then I guess the question is if as a co-op Sunkist is expected to remit back the net proceeds to its members you would theoretically have no profit, you have no operating experience?

MR. BRAGG: You're right. You've got to look at we're owned by the growers, the growers own the fruit, they look at all the costs, they're taking a loss. Now, I'll give you a comment from our largest lemon packing house. We're in the peak of the season,

we're running seven days a week, 24 hours a day, so lots of truckloads are coming into Ontario and he feels like crying because from his perspective every truckload that's going out of his door to my door is costing his growers $1,800.

Now, I'll give you some math. We handle 10,000 truckloads.

MR. YOST: Okay, but this is a product that you would have to process anyway, so this is theoretically you're trying to cover your contribution margin for processing. My question is if you have no operating profit because of the fact that you're a co-op how would you tell the Commission to evaluate your financial performance which is one of the statutory factors?

Maybe Mr. McGrath would?

MR. MCGRATH: Yes. I think it is a little different from a regular corporate type of structure that you look at.

What you'll find is, and I guess I can't use the numbers that we have in the financials, but what Sunkist keeps in their division as their net returns, what you would calculate to be operating profit really reflects a number that indicates whether or not the processing part of the business has recovered its cost

on processing and how much is left to be returned after that to the grower, to be distributed back to the grower.

That doesn't necessarily mean all of the grower's investment has been recovered. In many cases that return, it may be in the black, but it doesn't always cover and that's why we tried to deal somewhat here with grower cost. It doesn't totally cover the grower's investment, the grower's input, which is the cost of growing that fruit and having it delivered.

When it goes into the red side in fact I think that this is a situation where to evaluate the co-op's return and its financial information you have to look at it a little more stringently than even a corporate situation.

If you have a 10 percent operating profit for an operation like this that's taking fruit and paying proceeds back to the grower that may indicate that the operating portion is recovering its cost and it's 10 percent above and returning that amount to the grower, but it doesn't necessarily cover the grower's investment which is their fruit.

Now, we're not claiming here that the grower part of the industry is part of the industry. The growers are the investors who are the owners. What

they're doing, their investment instead of being represented by dollars is represented by the fruit that they produce and deliver. Are they getting a return on that investment?

That's really what the bottom line is here that we're looking at and that count probably may be the best way to look at this. Now, Mr. Borgers has a corporate structure and his is going to be operated differently and probably more in the traditional line of what you look at for your operating profit figures and how you calculate your margins.

You're going to have regular input costs and all the other things. For a co-op that very front of it, the input costs, starts off somewhat differently. I know I heard this morning the suggestion that really it's a grower owned co-op and the grower owned structure means that it's a grower industry.

It would be very difficult I think to set up an industry that consisted of the production of processed lemon juice and the industry that produces lemons entirely for that processing industry. That would mean that you'd have to look at the financial performance, costs and operating expenses of the growers who produced below standard lemons that were delivered into this processing industry.

You couldn't be looking at their overall picture. How you would segregate out which of the lemons on the trees are going to end up going into processing, that poses some pretty difficult issues.

So yes, the grower's performance, and actions and the returns are an integral part of the investment in this industry, but I think the way for you to look at it is look at the net return and see whether or not that operating profit figure is both returning something to the grower -- and if it's below that line, I mean, I don't think there is a problem with figuring out whether there's injury there.

You've got even the processing part alone isn't recovering its costs.

MR. YOST: Okay. I don't want to belabor the point, but in terms of the raw material inputs I know Mr. Borgers purchases lemons for processing. If you look at it similarly to Sunkist wouldn't your margin actually increase as the price of lemons went down?

Mr. Borgers?

MR. BORGERS: Your selling prices have deteriorated more than you can reduce the fruit cost. The grower's expense, on my side at least they use an industry benchmark of about $40 is what it costs for

them to transport the lemons to the packing house and some portion of the picking cost. So as we take our pay price for the lemons below $40 essentially we're asking the growers to sell us those lemons below the cost that they've incurred up to that point in the process.

What we've seen in the last three years is the deterioration in the fruit price where it's dropped by more than half and we're now in a position where with our key growers we're almost sharing the loss with them. Our pay price on the lemons this year will be somewhere in the low $20 range which is really not covering their picking and hauling costs.

MR. YOST: Okay, but I guess your answer was that the revenue that you gain from those lemons has decreased more than the cost of the input?

MR. BORGERS: Correct. I can't reduce the fruit cost enough to reflect the loss in the revenues due to the pricing deterioration.

MR. YOST: Okay. One last question, please, on the co-products. Have the margins changed juice versus oil? In other words is the value of the oil that you produce going up?

MR. BORGERS: Yes. Margins have changed significantly. The juice pricing is falling

dramatically and the oil market is firming.

MR. YOST: Okay. Thank you very much. That concludes my questions.

MR. BRAGG: Yes. Just another comment for you. The oil prices have just within the last year gotten to a point where they've increased where prior to that it's been a very depressed market as well. Prices quoted now out of Argentina have doubled between last year and this year for oil. That's where the comment Amy made that we're really concerned that the oil market, they may chase that price and then produce more juice again than what's necessary for the market.

MR. CARPENTER: Joanna Bonarriva, the industry analyst.

MS. BONARRIVA: Good morning. Joanna Bonarriva from the Office of Industries. Most of my questions have been handled so far at least partially. I just wanted to follow-up on a few of them. In terms of the production process you mentioned that at least some point in time Sunkist was using both the FMC machinery extraction and the brown method, but mostly FMC during the period.

Are you aware of the industry's subject or nonsubject that are using either one, or the other, or

is everyone pretty much moving towards the FMC extraction?

MR. BRAGG: Well, Argentina, they use various forms of technology. The largest processor is on a brown system. There's an FMC processor that uses FMC technology and then there's a copy is the way I'll put that of that technology somebody else made in Italy and they're using that process, so they have more than just the two forms of processing in Argentina, but basically they're essentially the same kind of technology and there's only two types of basic technologies that are used down there.

MS. BONARRIVA: For both of those types of technology then juice extraction and oil extraction is simultaneous? Is that correct?

MR. BRAGG: They occur in sequence. Yes.

MS. BONARRIVA: They occur in sequence. You alluded to maybe a possibility of a type of extraction technology that could possibly extract oil and not juice --

MR. BRAGG: Right.

MS. BONARRIVA: -- and you indicated that might be desirable to U.S. industry at some point? How would the economics work on that exactly?

MR. BRAGG: Right now they look pretty bad

we're just saying. We're playing defense obviously with this kind of a strategy to say is there anything from a technology point of view can you design for us that would prevent us from making juice?

The idea would be not to stop making juice because I don't think we'll ever get to the point we can do that, but if we could have some of the lemons, just extract their oil and you can sell some of the lemons to the dairies that are in California and feed those to cows up to the point you can't feed anymore cows. There's a limit on number of cows out there that you can feed lemons to. So that's the idea.

It's in a very early stage just to say, again, it's a defensive move, is there some other economic structure we can get to to avoid these losses on the juice?

MS. BONARRIVA: Okay. That kind of takes me into my next question and the disposal issue.

You I think, Mr. Larson, mentioned earlier that on the disposal if you were to dispose of an unjuiced lemon that the volumes would be such that it would just be not workable from a business standpoint, but besides that perspective are there actual environmental regulations that prohibit the disposal of an entire unjuiced lemon or is it just the

environmental impact on your operation the same way maybe if you left fruit on the trees, and they would fall and there would be negative consequences then for your future production?

MR. BRAGG: Well, you've got all this acid in the lemon, right, and that's primarily where you're getting the flavor notes.

You can imagine that if over the years you no longer extracted the juice and you were just putting it into a landfill you would have migration of these kinds of acids and chemicals that would get into the water stream, so you'd have to go into a landfill that was completely enclosed and sealed and now you can imagine the cost of just trying to control the environmental part of this, so that's really not a practical way of going.

Again, you'd probably have to put in an investment of $150 million wastewater system to clean up the water, put a huge digester in that would naturally digest the material. Again, it's just a huge difference in cost.

MS. BONARRIVA: Okay. Then if you do juice a lemon in terms of volume of what remains you're talking about you might feed this leftover rind to cattle. Is any portion of that does need to be

landfilled?

MR. BRAGG: Not today.

MS. BONARRIVA: Okay. So you're able to sell --

MR. BRAGG: About 35 to 40 percent of what's left of the lemon after you extract the juice and oil, basically the peel and the pulping materials that you filtered out of the process if you will to make clean juices, that goes to dairy cows today.

MS. BONARRIVA: Then you mentioned that there's only so many cows. Is that just because of the size of the dairy herd in the United States or do you mean that certain cows only eat citrus peel?

MR. BRAGG: Yes. It's the room and then the cow. There's just so much of this material that they can put into a cow's room and there are only so many cows.

MS. BONARRIVA: So that the citric feed component can only be so high? Is that what you're saying, that the citrus component of their feed can only be so high?

MR. BRAGG: Right. Right.

MS. BONARRIVA: Okay. Sounds good.

MS. WARLICK: Frank, you may just want to elaborate because it's not totally clear in my mind

and may not be in there is if you were to just take the oil out of a lemon, you've got a lemon with a disrupted rind and you have juice inside, can you feed that to a cow?

MR. BRAGG: You can, but not the whole lemon. You'd have to somehow macerate the lemon and that's another cost of course that we're looking at. You'd have to chop it up basically in order for the cow to be able to chew it, consume it.

MS. WARLICK: The juice can be involved? The juice can still remain in it?

MR. BRAGG: The juice can remain in, but then you're starting to -- what you're really after is dry matter. I didn't want to get into this. This is another area that's not my expertise is feeding cows. From the people that are experts that buy this stuff they're after the dry matter that's within the peel, so if you're giving them juice it would be a lower quality feed to the cows and you'd sell that at a much lower discount as a result of giving them water which they consume without needing to have juice.

MS. BONARRIVA: Okay. Are you aware of any disposal issues? Are you under the impression that your foreign competitors have the same types of disposal issues that you have?

MR. BRAGG: I've seen press reports in Argentina where they've had problems, where they've tried to dispose of some of the juice and some of the product down there that didn't go to cattle feed as our model is and they've had environmental issues. I've read it in the *International Press*. Yes.

MS. BONARRIVA: Okay. You're not aware of what the regulations might be there versus the United States?

MR. BRAGG: No, but I'd say that probably the standards we have at our plant are a little bit higher than theirs and they're struggling with this issue.

MS. BONARRIVA: Okay. Thank you. Just wanted to clarify one more issue on the blending. I know you mentioned that the major reason for blending imported product with domestic product would be for the price benefit.

I know, Mr. Borgers, you serve niche markets. Does it have anything to do with cloudy versus clarified or GPL levels?

MR. BORGERS: Strictly cost.

MS. BONARRIVA: Okay. I think those are all my questions. Thank you.

MR. CARPENTER: We'll turn next to George

Deyman, the supervisor and investigator.

MR. DEYMAN: Good morning.

Could you go over, Mr. McGrath, the legal and factual reasons why you believe that growers should not be included in the domestic industry?

MR. MCGRATH: Certainly. The statute provides that for processed agricultural products to include growers in the industry basically a couple of conditions have to be met. One of them is that the raw agricultural product -- and I don't have the statute in front of me I'm afraid, so I do want to refer to that -- has to be directed primarily or entirely to the finished processed agricultural product.

The other requirement is that they have a coincidence of economic interest. I apologize for not having this. We'll certainly do it with more precision in the post-hearing brief. Clearly there is some coincidence of economic interest, but only for a portion of what the growers produce.

The economic interest is not as clearly directed as in the case of say orange juice where the grower is certainly directing as much as possible of their output to the processed product and maybe making a little bit extra on what they sell into the fresh

market. Here it's a different pattern.

That also addresses the other factor. Is most of the product directed into that processed agricultural product? It's not. It's well less than 50 percent, it's around 40 percent or so and it's going to vary from year to year depending on whether or not the fruit is acceptable for the fresh fruit market.

Those are the main factual legal points that I would direct you to. I think we did cover it in the petition, but we'll try to explain it perhaps in more detail in post-hearing.

MR. DEYMAN: All right. Thank you. When did you first experience the low priced and increasing imports from Argentina and Mexico? When did you first notice what you perceived to be a problem from them?

MR. BRAGG: You can see that in the graphs that we've presented. Up through about the end of the 1990s pricing had been somewhat stable in the price range for lemon juice from anywhere from about $7 to $9 per gallon and then you could see that price decline very dramatically, that's the best way, beginning in the year 2000 and then you can see it just -- I don't know what's this period.

Then you can see that at some point, well,

you don't have the period I guess back prior in the 1990s.

MR. CARPENTER: Excuse me. We're going to have to get that on the transcript, so if you could speak into a microphone, please?

MS. WARLICK: We can provide in our post-conference brief a little more of the history of the import levels and the prices. This, what I was trying to show here, is the most dramatic decline which is the recent end of 2004/2005 into 2006.

MR. DEYMAN: So I guess what I'm trying to establish is what you see as the problem from the imports from Argentina and Mexico began actually before our period of investigation, which our period begins in 2003 I suppose, the period for which we collected data.

MR. MCGRATH: Yes. I think that in terms of the pricing going down it was first noticed earlier on. There was as you can see from our chart some hiatus there and then the price dropped again to levels which are even lower. That's the point at which the industry really started to feel I think the direct domestic effect to the impact of that lower pricing in terms of declining returns and build up of inventories that we're trying to address in the

petition.

We're not making an argument with respect to the earlier period, 2000 and 2001. It is with respect to the last three years.

MR. DEYMAN: With regard to the exhibits the special commerce statistics in Exhibit No. 9 of the petition I noticed that the imports from Argentina and Mexico during the period that we're looking at on which we collected data are actually down a little bit. However, I notice in 2004 they were way down and then they went way up again in 2005. What happened in 2004 with the imports from Argentina? Why were they down so much from 2003?

MR. BRAGG: You look at this chart and you look at the numbers you're looking at for 2004, it was during Citrico's collapse. So while they went into collapse the banks froze all their assets being their inventory. So those inventories that were in bond were not being sold.

So you had this build up if you will because everybody is still making juice while this bonding, this freezing of assets occurred, then once the liquidation of their assets became available then you saw the dumping occur into the market and you can see the prices. You just tie it right to Citrico's

collapse.

MS. WARLICK: 2004 also graphically looks a lot lower compared to 2003. 2003 was you can say artificially higher because of the peso devaluation which occurred in 2002, but when it first occurred a lot went into bond. You really need to look at general versus imports for consumption. It came out of bond then in 2003, so 2003 is quite high and it makes 2004 look lower by comparison.

MR. DEYMAN: If you were to win these investigations and the anti-dumping duties were imposed and if the duties were sufficiently high as to keep out virtually all the imports from Argentina and Mexico to what extent would nonsubject countries such as South Africa that you mentioned earlier be able to supply the U.S. market? Do they have the capacity to simply take over the imports from Argentina and Mexico?

MR. BRAGG: They're so insignificant -- it's primarily South Africa -- that it won't really matter. I mean, they could double their production, which they don't have the capacity to do, and it just would not be that significant on our market.

MR. DEYMAN: Okay. When you noticed what you perceived to be the problem from the imports in

Argentina Mr. Bragg mentioned that your company cut costs, you sold off assets to modernize the plant and improve productivity. Could you in your post-conference brief simply lay out some of the specific steps, specific measures that you took in response to the imports, and also, Mr. Borgers, if you did the same thing?

MR. MCGRATH: Yes. We'd be happy to do so. One of the big steps that was taken was improving productivity by changing equipment I think as we've talked about to what was felt to be a better yield product without reducing capacity, but to do so to produce it more efficiently. So that was a major and there were other expenses, too, that we'll detail.

MR. DEYMAN: All right. During the period of investigation were you ever unable to supply your major customers for lemon juice in the United States, or did you have quality problems, or is there any reason other than price why a customer might have switched away from you?

MR. BRAGG: No.

MR. LARSON: We're --

MR. DEYMAN: Okay. Two more questions. In Mr. Larson's testimony he stated that the expansion of lemon growth in both Argentina and Mexico was

encouraged by soft drink manufacturers forecasted expanded need for lemon oil and their desire for low cost lemon juice alternatives. By that statement are you saying that lemon juice and lemon oil are indeed interchangeable?

MR. LARSON: Your Honor, you are reading that one and my actual testimony is based on an alternative lemon oil sources.

MR. MCGRATH: I think what we were getting at, in that testimony there Mr. Larson was trying to get at the fact that there was an effort by large purchasers to establish alternative suppliers other than relying on Sunkist. It was to grow alternative suppliers. Oil is important, juice is important, both were important and both have been established, grown and committed.

I think the word alternative is a little misleading. Alternative suppliers.

MR. CARPENTER: Turn on your microphone, please?

MS. WARLICK: I'm having a problem with that.

MR. DEYMAN: I just wanted to clarify that statement because this document may end up going into the record, too, so thank you.

MS. WARLICK: Okay. Well, just for the transcript it should be alternative oil sources.

MR. DEYMAN: My last question pertains to something in Ms. Warlick's testimony. She said that organic juice is produced by different processors than nonorganic. Is there a complete split in the United States, that is do organic juice processors only produce organic juice and do you only produce nonorganic juice?

MR. BRAGG: Yes. It's very specific. If you're going to process organics you have to have a certified organic process and it's in citrus in general there aren't that many groves that are organic, so it ends up being you can imagine now the eliminations from the fresh market, again, that would be the fresh organic side, then you'd have organic fruit going for processing is so small there are only a couple of processors that are specialized at making organic juices, that extract that juice, so no, Bill and I, neither are organic, right?

MR. BORGERS: Actually, I've been certified, but that's 30 days ago we received our certification on it. What happens as Frank says it's a very, very small percentage. We have a clean up procedure and we have to prep the plant to prepare to run the organic.

The actual extraction process is the same, but there's a sanitation and a clean up method required prior to running the organics.

Then of course we can run the conventional after the organics, but the streams are very separate and they have to be run separately. There's requirements established by the certifying agency.

MR. MCGRATH: Our understanding is it's very similar to the orange juice situation where the growers are either organic or nonorganic, but the processor can be either, they have to go through a cleaning process. In orange juice I know some processors did both organic and nonorganic. For the most part because of the effort involved the organic producers are not the same as the nonorganic producers.

The nonorganic juice and the organic juice are used for the same uses and there is some interchangeability one direction between them, but they're not generally the actual same producer squeezing the juice at the same time, one organic line, one nonorganic.

MR. DEYMAN: You mentioned two producers of organic juice in the United States. Could you give us their names, make sure we've covered them or you could

do it later.

MR. MCGRATH: Yes. We'll provide it and anymore information that we have about them. I think we probably do have a little bit more.

MR. DEYMAN: Along the lines of organic juice are there imports of organic juice from Mexico and Argentina, and if there are do they compete against your sales of nonorganic juice?

MS. WARLICK: In the manifest state I've seen imports of organic juice.

Have you noticed them in the market?

MR. BRAGG: I guess you'd have to say for the size of operation we are, we're a large processor, and this is such a petite part of the market we really don't see them competing for the same customers.

MR. DEYMAN: You have included those imports in the scope of the investigation?

MR. MCGRATH: Yes. We've included those imports and all of the data we have seeks to include organic/nonorganic both together so that you have the full universes of data.

MR. DEYMAN: All right. I have no further questions. Thank you.

MR. CARPENTER: Were there any other staff questions? Follow-ups?

Mr. McClure?

MR. MCCLURE: One last thing. This relates to a letter that was received yesterday. It's a public document from counsel representing Sagarpa, Mexico, asking the Commission to request all studies within the past three years that were undertaken by outside consultants for the domestic industry regarding lemon juice and/or the lemon oil business.

Specifically we understand from industry sources that such a study was undertaken by the firm of Booz, Allen, Hamilton for Sunkist within the last two years. If this is BPI you don't have to comment on it. If there is something out there, fine. If there isn't and you can say so publicly that's fine as well.

MR. MCGRATH: We're aware of the request and we're checking to see if anyone has -- yesterday we couldn't find anyone with any knowledge of such a study, but the only one we're aware of we attached to the petition. So we will continue to check with other folks at Sunkist and certainly provide it if it exists.

MR. MCCLURE: That was not a Booz, Allen, Hamilton study, was it?

MR. MCGRATH: No. That was not Booz, Allen.

MR. MCCLURE: That was done by?

MS. WARLICK: Condesa Consulting Group.

MR. MCCLURE: Okay. Thank you.

MR. MCGRATH: If I could just add if there is such a study and perhaps it was contracted by someone else, Coca Cola or one of the big purchasers, we would like to request that it be submitted as well so that all parties can see it.

MR. CARPENTER: There's one housekeeping matter. I'd like to accept into the record the charts provided by Ms. Warlick in connection with her testimony. Those will be made part of the transcript of the investigation. Since there are no more staff questions for this panel I want to thank the panel very much for coming here today, and for your testimony and for your very patient responses to our questions.

So we will take about a 10 minute break until about 12:00 on the clock in the back. At that point we'll resume with the Respondent's presentation.

(Whereupon, a short recess was taken.)

MR. CARPENTER: If everyone could take a seat we'll resume the conference.

Mr. Clark, please proceed whenever you're ready.

MR. CLARK: Good afternoon. To introduce our first witness I'm going to turn this over to Mr. Farrell.

MR. FARRELL: Thank you. For the record it's Ed Farrell with the law firm of Blank Rome. We are here on behalf of Eastcoast Flavors, an importer of the subject merchandise from Argentina. Accompanying me is my partner, Fred Ikenson, and Professor Michael Bradley of George Washington University, who I will now turn the microphone over to for his economic testimony on this issue.

MR. BRADLEY: Thank you. My name is Michael Bradley, and I'm a Professor of Economics and International Affairs at George Washington University here in town. Mr. Ikenson and Mr. Farrell asked me to take a look at the lemon juice production process and the supply of lemon juice to the market and to see if I could come up with an organizing structure or an analytical framework which would help the Commission and the staff in interpreting the data that they see.

So what I'm going to present today are really what jumped out at me as the main points of interest in understanding the industry structure and some of the implications of those points. So my very first point really starts at the very beginning of the

process and that is the production of lemons that ultimately end up in the fresh market and ultimately end up in the juice market which is what economists call joint production.

It's a fancy name, but in fact what that means is they're grown on the same tree, they're grown at the same time and in fact you don't know in advance when you grow lemons which are going to be which. They're both grown at the same time. A high quality lemon could, for example, depending upon market conditions, end up in either stream.

Technically if you look at the slide I have up here you will see what economists often do is to take these notions and apply them in mathematics. Mathematically we would view this as what's called a joint production function. On the left-hand side you have the output which economists have cleverly used the letter *Y* for. I don't know where the *Y* comes from, but that's historical.

And we have the lemon that goes to the fruit sector, the lemon going to the processing sector and they're produced jointly, that's what that notation suggests, as a function of the things you've heard about, trees, fertilizer, labor, weather, insects and other factors, which is the theta.

So we have a technical relationship that will have implications for costing relationships down the road. For example our second point is that the decision to process lemons is an incremental decision. I think this little flow chart explains what I mean by that. So the lemon is grown and the very first decision we have is can that lemon be sold in the fresh market?

There's a grading structure, and the experts look at them and the public data at least even suggests that there may be market considerations. There are times where there seems to be a lot of lemons available in a good crop year and in those years the amount going to fresh stay pretty much the same, but you see more flowing into processing.

That's suggestive that both for quality terms and if there's an excess supply in the fresh market, if the answer is yes it definitely goes to fresh because that's where a higher price is, but if the answer is no we go to a second question and that is should that lemon be processed?

This is where the incremental part comes in. Here the question is does the additional revenue associated with processing that lemon exceed the incremental cost? The point I'm trying to make here

is that everything that has happened up to this point is kind of irrelevant to the decision. It's what we call sunk cost, it's done, and the economic decision is forward looking.

If I process this lemon and I make enough money on the outputs of it so that it covers the additional costs of processing. That raises an interesting economic condition.

I just repeated up here on the top of the slide if the additional revenue exceeds the incremental costs then processing the lemon is the right thing to do from an economic value perspective even if the total revenue that I get from the outputs of that processed lemon, the juice, the oil, the peel, is less than the total cost of the processed lemon going into the juice.

So if we start at the very beginning with the tree and take all of the costs forward you have an interesting economic set up where you're going to go ahead and process that lemon even if it doesn't return enough to cover its full cost. That's what I mean by suggesting this is an incremental decision.

You've got the lemon and the question is can you earn enough additional revenue to cover those additional costs even though in some absolute sense

you're not making a profit, in fact you're earning a loss on the whole business end to end. This really appears to be the condition in the U.S. lemon industry.

From public data we've seen in 24 of the last 25 growing seasons the USDA has found what they call a negative equivalent on tree returns for lemons that go to processing, so that's negative prices essentially coming back to the tree level after you've taken all the costs out. Moreover this is not recent, this is a long time phenomenon.

Doing some research I found out that you could really go back -- this quote happens to go back to the 1940s, 1943, and it says the by-product prospects, and that would be your lemon oil, and your lemon juice and your lemon peel, indicate a continued good outlet on a salvage basis, but there appears to be no possibility that the by-product values will ever justify growing lemons for that purpose.

This is from California Fruit Growers Exchange, which my understanding is was the name before Sunkist was adopted as the name of that organization. Going way back for 60 years at least the processing side has not been self-standing or economically viable which brings us to our next point.

Lemon processing as an economic entity is not sustainable.

It just can't support itself. It's never been able to support itself. It looks like that for 50 years. And it's not a three-year phenomenon or a 10-year phenomenon, it's a long-run phenomenon. And, you know, when I look at what does that mean, that the processing side is not self-sustaining, to me, that means for it to exist this long, it must be an integral part of a larger economic entity. It can't exist on its own, so it must be hooked up with informal, legal, or other relationships, a larger situation.

Okay. That, in itself, kind of brings us to where we are today. And I think this is entirely consistent with what we heard this morning, that production of lemon juice and lemon oil is driven primarily by the crop. If we have a large crop, if we have excess supply of lemons, more lemons are headed to the processing side of things, and we're going to increase production of processed products. And, you know, that would suggest that at least the production of lemon juice is price inelastic. It's not responding to demand. It's coming from the supply side. When -- you know, the lemon has been grown and

as long as that incremental revenue is just enough to cover the incremental cost of the process, you go ahead and produce it.

However, we go to our next point, we need to distinguish here between production and supply, because I think there is a little bit more elasticity in the supply of lemon juice than there is in the production of lemon juice and this is how, I think, producers respond to the market. As we know, lemon juice and lemon oil, for that matter, can be held in inventory for an extended period of time. That has implications for pricing. For example, it means that if I'm a lemon juice processor and I'm anticipating lower prices in the future, I'm going to sell out inventory. That's the right economic thing to do. Conversely, if I'm looking in the future and I'm trying to decide should I sell now or should I sell in the future and I anticipate higher prices in the future, then the right economic thing would be to hold it back and sell it when it's worth more. And it's sort of arbitrage through time and it's a rational thing to increase total returns.

So, we have a situation here where we have an interesting cost structure. We have these incremental costs that are being created from the

processing. And we have the ability to somewhat, not completely, but somewhat shift production through inventories, which brings us to point six, which is because the lemon juice creation process, the production process doesn't have to cover all its costs. We have seen that it doesn't. It hasn't for many years. That means that the supplier of lemon juice has a little more flexibility, in terms of pricing and timing. I'm just trying to get here the point that if you have to make payments for your land, you have to make payments for your tree, you have to get that cash flow, that affects your pricing, because you have to generate enough money every period to make those cash flows. If you don't, that gives you some flexibility. You can say, well, I can move my production through time with inventories. I can adjust my pricing to meet the market or to leave the market or whatever you want to do, because I have flexibility. Essentially, we're saying, if I'm getting back more than my incremental costs, I'm still ahead of the game, because I've grown the lemon already.

Okay. So, that's sort of, I think, the economic structure that brings us to the processing part, itself. And my last two points are really to

talk about just the processing, itself. Okay, so now, we've gotten the lemon there and I think from the technological discussions that I heard this morning, it confirms, you know, what I had heard from other people, that we have what's here -- we have here what's known as economies of scope. Lemon oil, lemon juice, lemon peel are produced under condition of economies of scope. And formally -- you know, I'm a professor, so here's some equations -- formally, we describe economies of scope as a condition where the cost of doing them together, lemon juice, lemon oil, and lemon peel, is less than the cost of producing the same amounts in three separate times, lemon juice, oil, and peel. And I think, just think of the lemon cost, itself, right, you have to have three times as many lemons, if you did. So, it's obvious that there are economies of scope here. It's cheaper to do them together than it is independently.

That has two cost implications. The first one is that there are material common costs not caused by any of the products. And what economists define as common costs are costs that are not caused by any individual product. For example, let's suppose that I was making juice, oil, and peel and all of a sudden, hypothetically, I wasn't going to make the juice. The

cost of the lemon has not changed. I still need that lemon to produce the oil. So, that would be an example of a common cost, where I can take one product away and my cost has not changed whatsoever. And there are a variety of common costs: raw materials, machinery costs, energy, all of that come about from the fact that I am creating juice and oil, at least the initial phase, either completely simultaneously or pretty close together in time.

The other cost concept that comes up is one that is not usually taught in regular economics courses, particularly undergraduate, because this is a multi-product firm. We usually almost always do our models on single product firms, one widget. And we've got the average cost, the marginal cost, and all those good cost concepts. They are not -- average cost isn't real meaningful here, because of these common costs. What do I divide by? So, the cost concept that we really need to use here is something called incremental cost. And incremental cost is more than just cost associated with an increment, which it seems like. Incremental costs are all the costs caused, on a causal basis, by adding that product to the mix. So, conceptually, incremental costs arise because I'm already doing two economic activities, and I add a

third. If that third product doesn't cause my total cost to change at all, its incremental cost is zero. If adding that third product is making my total cost go up by $5,000, it's incremental cost is $5,000.

Now, in the real world trying to measure that, of course, you have to go the other way. We say, here are my current total costs of production. And if I take away product, how much do my total costs come down. And that's what our next, and I promise, final equation shows, the incremental cost, in this example of lemon juice, would be equal to the cost of producing all three as it currently exists, minus the cost that would remain, if I got out of the juice part of the business. So, you do the experiment of saying are there any costs that are dedicated solely to juice that I save, you know, maybe packing or shipping or whatever it may be, less any other increases in costs that are associated with getting out of the business. For example, if getting out of processing lemon juice means now I have to dispose of the juice and there's cost associated with that juice, then my cost savings from getting out of the lemon juice process could be very small. I don't know, but when you think about your incremental cost calculation, it is this analysis that you want to do. And when you have a multi-

product firm like this, it's got economies of scope and joint production, to get a sense of what something like lemon oil or lemon juice is adding to the economic value of the entity, it's important, at least, to attempt to assess the relationship between that product's revenues and its incremental costs, how much additional cost does it add.

My very last point just goes to the common costs. I talked about the implications of incremental costs for analyzing it. If we talk about the common costs, here, this is a difficulty that many regulatory agencies have dealt with, whether it's telecommunications or electric utility or postal industry, where you have these common costs and they're not really caused by any individual products, but you're going to do an allocation and that allocation is, in some sense, necessarily arbitrary, because it's not causal. And how you do that can really influence the outcome. And just to demonstrate that, I have a simple numerical example, purely hypothetical, made up all the numbers, but I think it makes the point. So, let's suppose we have a firm with two products, cleverly titled 'product 1" and 'product 2,' okay. I managed to keep economists reputation for boredom going, product 1 and product 2.

One happens to be small volume, high price; one happens to be large volume, low price. Both generate $30,000 in revenue. And let's suppose each one's incremental costs is $10,000. What's the total cost to this firm? Thirty in common, 20 in incremental, total cost to the firm is $50,000. What's the total revenue? Thirty from each product, 60, so its total profit is 10. What does our accounting allocation do? It's essentially going to apportion that 10 across the products.

You've got this bucket of $30,000 you've got to do something with. Suppose we apportion it on a revenue basis? Well, if you look at the revenue numbers, they're 50-50. And so, you can apportion it on a revenue basis giving 15,000 allocated costs to each product and you end up with both products looking equally profitable. On the other hand, if I would allocate those based upon volumes, because one product is extremely high volume, under 1, it's going to get a lot of cost. And as a result, we now would apparently have one product, which is making tremendous profits, and one which is making losses. The point I'm just trying to make here is that when you have this common cost structure, it's really important to begin to think about what's the true contribution of the

product to the economic value, defraying the common costs, and, then, ultimately, ideally make a profit.

So, in closing, I'd like to say this is a very interesting economic structure, as far as I'm concerned, because it's not the textbook model. We don't have simple increasing returns to scale and pricing and marginal cost curves. We've got joint costs and common costs, incremental costs. I think it makes the challenge of understanding the process a little harder and I just hope that some of the points that I make are useful for the Commission and staff, in trying to sort through all the information that they got. That's all I have to say and I'll be glad to try to clarify or answer any questions people might have. Thank you.

MR. CASPER: Good afternoon. My name is Dan Casper. I'm Strategic Global Procurement Manager of Citrus for the Coca Cola Company. I've managed the procurement process to support Coca Cola's citrus business for the past 10 years. Two years ago, I became directly responsible for procuring lemon juice, as well. My primary responsibility with regard to lemon juice, as with all citrus products, is to maintain a reliable source of supply to support the production and marketing of our products. As it

relates to lemon primarily, we're talking about Minute Maid Lemonade and a relatively new product called Simply Lemonade.

Prior to joining Coca Cola, I've spent 11 years with Cargill, the last nine as a senior economist for its North American orange juice business unit. Just under a year ago, I had the privilege to appear at the Commission's hearing in connection with the antidumping investigation of orange juice. That was a novel experience and one that I did not anticipate having again quite so quickly.

From my vantage point, though, I find it very difficult to understand the allegation that imports of lemon juice have caused material injury to Sunkist Growers. Sunkist Growers are the only real source of lemon juice in the United States and Sunkist Growers cannot and never have been able to supply all of the needs of the U.S. market. If Sunkist Growers could sell all of its lemons on the fresh market, it would. This yields the greatest return for the Grower members. By their own admission, lemon juice is a byproduct of the fresh lemon business.

In my testimony today, I hope to accomplish three things: first to give you our perspective on the lemon juice market in the U.S.; second to explain

how we buy lemon juice, what we buy, and including what we buy from Sunkist Growers and why our purchases of imported lemon juice have not caused and do not threaten to cause material injury to Sunkist Growers; finally, I will correct a number of mis-impressions and errors that appear in the petition. It may be that the Petitioner believes these statements to be true and that misconception may be why Sunkist Growers filed the petition.

First, the market. And for that, I'll begin with what lemon juice is used for. We use lemon juice for our Minute Maid and Simply Lemonade brands of lemonade, for other beverages that include juice, and for pure lemon juice products that we sell around the world. We make our lemonade from either frozen concentrated lemon juice or not for concentrated lemon juice. I understand that other purchasers of lemon juice use it in ketchup, mayonnaise, as a meat tenderizer, marinades, a whole host of other products. Lemon juice is a fairly mature market in the U.S. with demand growing basically in line with the population. I should note that there is no FDA requirement that in order to call a product lemonade, it must contain a certain amount of lemon juice in it. Juice is important in the marketing of products that we and

others want to label as containing real juice. Lemon oil can impart flavor, but does not permit labeling a product as containing juice. Citric acid imparts tartness, but, again, does not allow juice labeling.

Now, I'll review how the Coca Cola company, as a market participant, procures lemon juice. Each year, as a part of our business planning process, we estimate the quantity of lemon juice that we will need for all of our products that contain lemon juice. This exercise includes volumes necessary to support the sale of lemon juice containing products outside the U.S., as well.

We purchase lemon juice annually on a global basis and for most all of our bottling and manufacturing locations in the U.S. and Canada, in Europe, in Asia, and Latin America. For our worldwide business, we need both cloudy and clear products at both 400 and 500 GPL. But, we are moving to higher GPL, in order to save transportation costs. Not all lemon processors, including Sunkist Growers, can readily produce clear juice or 500 GPL concentration and higher, particularly with cloudy juices.

Around April, May of every year, we solicit offers from suppliers to supply lemon juice to the Coca Cola Company for the coming year. Those

suppliers report the quantities of lemon juice that they can supply and the corresponding prices. If the supplier has been authorized by us, meaning that they are able to meet our specification, practice good corporate governance, and meet our need to diversify our supply base for lemon juice, we may purchase from them. We must source from different geographic regions to manage continuity of supply.

Lemons, like all agricultural products, are subject to the vagaries of weather, pests, and competition for land use. The supply of whole lemons and the demand for them greatly impact the production of lemon juice. If lemon growers have a bad season due to storms, fires, floods, droughts, quality issues, or even labor shortages, they will not be able to meet the supply commitments to us and we will not be able to supply our customers. It should be noted for this year, I'm actually paying more for frozen concentrated lemon juice than I paid last year and I made those purchases prior to the antidumping petition being filed.

As I mentioned earlier, we purchase both concentrated lemon juice and single strength or not from concentrated lemon juice. For the last four or five years, predating my direct role in buying lemon

juice, the Coca Cola Company has purchased the vast majority of its concentrated lemon juice needs in North America from import sources in Argentina and Mexico. By contrast, we currently purchase all of our single strength needs from Sunkist Growers. We are currently working with Sunkist Growers on the supply of lemon pulp sales and our ingredients group purchases lemon oil from them. We have purchased lemon concentrate from Sunkist Growers in the past, but there were some issues around meeting specifications that led us to seek other sources of supply. On the whole, we purchased just about every form of byproduct that emerges from Sunkist Growers fresh fruit operation.

Our purchases and why we have the sourcing pattern that we do takes me to my second point, as far as the Coca Cola Company is concerned. The domestic lemon industry, let me repeat, the domestic lemon industry is not being injured or threatened with injury by imports of lemon juice from Mexico and Argentina. Note that I said domestic lemon industry, because that's what Sunkist Growers, the Petitioner here, represent.

Sunkist Growers is a cooperative that seeks to maximize the total returns provided to their

growers. Historically and currently, the best returns for the Growers are made from sales of fresh lemons. As a result, Sunkist Growers main focus is on the sale of fresh lemons. They, themselves, characterize their lemon juice, lemon oil, lemon pulp, and lemon peel business as byproducts of their fresh lemon business. What that means is their primary attention is given to their fresh lemon business, while the processing of lemons is secondary and typically reserved for the fruit, which won't meet fresh fruit requirements from an appearance standpoint. That doesn't mean that lemon juice, lemon oil, pulp, and peel are unimportant, but that means that these are not the focal points. Sunkist Growers do not succeed or fail based on the performance of these products. Sunkist Growers succeeds or fails on the strengths of its crop and the share of their crop that goes to fresh market. I think if you would look at Sunkist Growers overall returns to its members, you will very quickly understand why Sunkist Growers wants to avoid any discussion of grower returns, the entire reason for this cooperative's existence.

The Coca Cola Company has had a relationship with Sunkist Growers for more than 40 years and that relationship is ongoing, as I noted a moment ago.

Despite our success with Sunkist Growers on single strength juice, we have had continuity of supply issues in the past with Sunkist Growers, as it concerns frozen concentrated lemon juice and frozen lemon pulp sales. As I mentioned earlier, processing lemons is really secondary for Sunkist Growers, because of their focus on the fresh market. The Coca Cola Company has experienced supply disruptions and deliveries from Sunkist Growers in the past, especially when the demand for fresh lemons was strong.

We have worked with Sunkist Growers to improve the quality of their product through the improvement of their processes and I believe they are currently paying much attention -- much more attention to the byproducts business than ever before. They have also put in place a management team that is much more responsive to customer requirements, as that is would inspire success with not from concentrate lemon juice.

Mexican and Argentina producers have been more than willing to work to meet our specifications and volume requirements to our lemon juice and have been successful at doing so. Although Sunkist Growers asserts in the petition that imported juice bought its

presence in the market by underpricing, not by performance, the experience of the Coca Cola Company is just the opposite.

As some final and concluding points, I'd like to address a few of the many misstatements in the petition that relate directly to the Coca Cola Company. Citrico was a wholly-owned subsidiary of Coca Cola. The statement is misleading, but is likely a result of misinformation. Citrico was not a subsidiary of the Coca Cola Company at any time. When Citrico entered into bankruptcy, the Coca Cola Company obtained the essentially worthless equity in Citrico, in satisfaction of obligations to Coca Cola. Sunkist Growers assertion is simply wrong.

On pages 46 and 47, Sunkist Growers asserts that Coca Cola FMSA, an independent bottler in Mexico, purchases lemon and processes them. This is incorrect. Coca Cola FMSA has nothing to do with the purchase of lemons or processing or selling lemon juice in Mexico or elsewhere. Lemon juice is processed in Mexico pursuant to a tolling arrangement entered into by the Coca Cola Export Corporation, Mexico branch, which purchases lemons and arranges for their processing to obtain oil, juice, peel, and pulp, which it then sells. The bulk of those sales are to

Coca Cola North America. This limited vertical integration in Mexico predates the Commission's period of review.

The petition asserts that lemon acreage in Mexico is increasing, page 48. We believe this to be incorrect and we've been advised that lemon acreage in Mexico is actually being converted to other citrus fruits.

Finally and most importantly, we understand that the petition contains certain allegations that pertain to the Coca Cola Company and what Sunkist Growers would characterize as an effort by the Coca Cola Company to sell Mexican origin juice at very low prices in the U.S. We will deal with this allegation most thoroughly in our post-conference brief.

In the end, we hope that you will not be led into too narrow of a focus in your investigation and that you, instead, will recognize one of Dr. Bradley's key points, that lemon juice production and supply is just part of a single larger economic entity. On behalf of the Coca Cola Company, I thank you for the kind attention. I will attempt to answer any questions that you may have. And by the way, you should know that although I enjoy Washington, D.C. immensely, I will not be offended if you don't invite

me back.

MR. CLARK: Thank you, Dan. For the record, Matt Clark of Arent Fox, counsel to the Coca Cola Company. I'm going to be the last of our direct witnesses this afternoon. What I want to do is speak to a couple of legal issues and one point on causation related to comments we've heard this morning and also a comment that Mr. Casper made.

First, anticipating questions that will come on the subject of like product, we have no dispute, in fact, we agree with the Petitioner that lemon oil and lemon juice are not like products. They are, as was accurately described, two production processes for the extraction of oil and then for juice. One is a sequential process that involves somewhat different machinery and equipment. One is a slightly more integrated. So, there could be an argument about the commonality of equipment. There is no argument, there can be no debate about end uses, customer applications, and expectations for the two products or the prices for the two products. They are completely different and we are in accord with the Petitioner that lemon oil and lemon juice are different products. They are not one like product.

Second like product question that will come

up and has come up, not from concentrate and from concentrate. We do not contest the position take by Sunkist for purposes of this preliminary investigation that NFC and frozen concentrate constitute a single like product. We are accepting of that position for purposes of this preliminary investigation.

But there's another legal issue where we are very much at odds with Sunkist Growers and that is on the definition of the domestic industry and precisely how the Commission is to analyze the impact of imports on the domestic industry. And, after all, that is your statutory charge, to analyze the impact of imports on the domestic industry. Sunkist has proposed a domestic industry definition that is limited to its single processing facility in Ontario, California. We think that the appropriate domestic industry and the only way by which the statutory imperative to analyze the effect of imports on the industry is to look at the totality of the lemon operation that is Sunkist Growers, Inc. And I will say again, as I said this morning, the Petitioner here is Sunkist Growers, Inc. It is not Sunkist Processors, Inc. It has not been described as the separately incorporated processing division or enterprise of Sunkist Growers. Instead what they have

asked that the Commission look at is a processing facility that was absorbed into a cooperative structure. Based on all the research we have done, looking at all the Commission's prior cases that we could find involving an agricultural product, including those that predate the amendment of the statute in response to the swine and pork cases, there are no cases, none, not a single one, in which the petitioning entity, or you could use the word 'industry,' is, itself, a cooperative, including both growers and a processing arm, or is an industry, in which such a structure is the dominant one.

To be sure there have been cases where you have cooperatives, as a component of the domestic industry. Most recently, you had orange juice. In the orange juice case, you had a number of grower cooperatives and to the best of our ability to discern, a single coop that included also a processing component. But in that case, the product that was subject to investigation, orange juice, was the rational for the existence of the cooperative, the production of round oranges for juicing with no other concern. So that case does not represent an instance where the Commission was being asked by a cooperative structure to investigate a secondary or, in this case,

a tertiary product. There, you were looking at an industry that included some coops, but also the majority of the processors were not in a cooperative structure. You had cooperative growers and you were being asked to look at the central product that was being processed or processed by those independent processors, by one cooperative processor, and grown by the cooperative growers.

If we look at the sugar cases, where you would probably have the closest to this case, highest concentration of cooperatives, similar thing. In sugar, you had an industry, both in beet and in cane, dominated by a cooperative structure. The product that was under investigation was raw and refined sugar. So, you were looking at the core or central product that is the rational for the existence of the cooperatives, both the growing cooperatives and the inclusion with the grower cooperatives of a processing arm. In those coops, you had cooperative structure owned by the growers, just like Sunkist, bringing into it a processing arm. But, you were looking there at the core central product, the reason for the coops existence.

Here, we have something that you have never looked at before. Here, you are looking at a

situation where you have nothing but a coop in the form of your Petitioner until Ventura comes. Ventura changes the analysis, but only marginally. Sunkist, by its testimony, still accounts for 80-85 percent of production.

Sunkist makes a decision production here of lemon juice. Sunkist, in the formation of that cooperative, which is grower owned, makes a decision to bring into the cooperative structure a processing component. It did not have to bring in that processing component. If it had not brought in the processing component, that would be the Ventura structure. Instead, you would have a separate processing arm that would be purchasing raw material on the market in a cash transaction. That would be the situation that you're quite familiar with from a long line of cases. You had that situation when you were looking at, for example, red raspberries. You had that case in apple juice. That was also the situation in table wine, both of the table wine cases. There, you had a situation where you were not looking at fundamentally a cooperative structure or if there was a coop, there was a single one that was grower only. There, you had a separation of processing.

Here, we have the unique situation where you

have the cooperative growers bringing into the coop a processing component and that coop is structured, and this was the testimony we heard this morning, in such a way that the return to the growers is based on the total economic value delivered from the bundle of value retrieved from the lemon. Mr. Yost asked a question, unfortunately he's not here right now, that was not fully answered this morning. But, we got enough of an answer to confirm one of our suspicions. The nature of the Sunkist operation, and we hope that the Commission staff will pursue this, is such that an individual grower's net return is not correlated to that particular grower's delivery of lemons that qualify for fresh market or lemons that go to processing. What we heard is that the Sunkist structure is a pooling arrangement, in which growers are associated with particular packing houses. Growers deliver their lemons to those packaging houses. The packing houses make a -- they make a discrimination, which lemons will we pack for fresh, which lemons will we direct to processing. The returns from those choices are then distributed to the growers associated with that packing house, in proportion to the volume of lemons that they deliver; not the volume of lemons that they deliver fresh and

the volume of lemons for processing, but the volume of lemons delivered from their grove.

So, we have a situation where for an individual grower, when that grower is shipping his or her lemons to the packing house, they do not know whether they are selling into the fresh market at a high ratio or into processing at a high ratio. Mr. Bragg correctly identified almost that the ratio of processing to fresh is 40 percent. If you look at the exhibit to the petition, where the Petitioner does their calculation, they said it was 30 percent of lemons that went into processing. You actually see that the ratio is 45 percent over the entire period, from 1980 up to 2005.

At a 45 percent ratio of delivery into processing, if that is the average for the entire Sunkist coop, it would be a statistical anomaly for every single grower's experience to also be 45 percent. Unless you have a completely homogenous pool and each lemon or each harvest of lemons produces exactly the same proportion of fresh, lemons destined for fresh and lemons destined for processing, individual growers will routinely have more than 50 percent of their lemons destined for processing. But, the grower will not make that discrimination. That

discrimination will be made by the coop. It will be made by the packing house.

This is very different than the situation that confronts, for example, the growers that sell to Ventura. Ventura is purchasing lemons that a grower has already determined he or she will send to processing. So the grower in that situation is making the discrimination how many lemons and what proportion will be shipped to the fresh market, a different situation than you have with Sunkist, where the cooperative is making the discrimination test. Because of the unique circumstance of a grower-owned cooperative, inclusive of processing, petition, or you can characterize is as complaining about a tertiary product coming out of its completely vertically integrated operation, none of your prior cases are analogous to this one.

The decisions the Commission have made in the past do not represent any of them, the same coincidence of economic concern that is present in this case. And you actually heard this from the earlier testimony, the comment was made by Mr. Bragg and Mr. McGrath, our growers are hurting, but you can't see it because we're doing our analysis at the door of the processing plant. That's the reason the

statute was amended. When you have a relationship, a structure -- and this is a structure created by Sunkist. It was voluntary. There was no necessity. There's not a requirement of the cooperative statute to bring processing in. The majority of coops in the United States are grower coops. They made the decision to bring processing in to capture the processing arm and that creates precisely the type of coincidence of economic interest that Congress was concerned about.

You will recall that Congress was quite concerned with the decision that came out in swine and pork, because they felt there was a coincidence of economic interest not recognized by the Commission, because of the absence of what the Commission felt was a necessary legal relationship. Here, the legal relationship is created by Sunkist, by wrapping into a single economic entity the grower and the processor and reporting out to the grower a net return that is inclusive of all returns with no discrimination, by the way, for whether an individual grower is disproportionately producing lemons destined for the fresh market or that are chosen for the fresh market or lemons that are selected for processing.

Another analogy to show the difference,

we'll go back to sugar. If we take sugar beets, the assumption in the sugar beet industry is that each beet has a fixed ratio of sugar in it in proportion to its size and weight. When growers deliver sugar beets to the plant, the beets are weighed and the growers paid based on the weight of the beets, because the volume of sugar in the beet is constant. Everything you've heard today, everything you saw in the petition showed that in a truck of lemons, you have some proportion of those lemons that will be selected for the fresh market, some proportion that will be going to processing. No two trucks will have exactly the same ratio. But, yet, for purposes of determining the return to the grower, all growers will be homogenized. They will all get the same return based on the packing house performance.

So, here, we have a situation where the Sunkist cooperative structurally has made a decision that it will return performance to its growers based on a homogenized performance inclusive of processing. To the best of our ability to read through all of the Commission's rationale and prior decisions, there is no case that presents that situation, certainly no case that presents that situation for a product that is not the reason the cooperative was created.

Professor Bradley showed, as far back as 1943, the predecessor to Sunkist was saying, we're in business to produce lemons for fresh. It is not economically viable to grow lemons and destine them for secondary, tertiary, quartinary products. But, that's what this case is on, it's on a tertiary product. It's on juice.

When the Commission receives the post-conference briefs here, you're going to see coming from Sunkist a series of citations that say, continuous line of production, as required in the statute, requires that more than 50 percent of the raw agricultural product be dedicated to. At different points in time, again if you go back to Exhibit -- I believe it's Exhibit 8 in the petition, where you can see the ratio, the production of processing and lemons delivered to fresh, at various points in time, the ratios delivered for processing are 50 percent, 55 percent, one year it's up to 67 percent. On average over all those years, it's 45 percent. As a consequence of that, again, for any individual growers, their experience will, from year to year, invariably have them delivering, although they don't know it, more than 50 percent to processing.

Because of that continuing of -- because of

the overarching continuity of economic interest, our position is that when you read the statute and you look at the provision dealing with continuous production and you look at it in light of its legislative history, you will see that the direction of that statute is a positive imperative. It says that if a raw agricultural product is destined, then you will include those growers in the domestic industry. It does not say if and only if the raw agricultural product is destined, will you include the processors.

We read the language of the statute in combination with the legislative history, especially the legislative history that says, that instructs this is not a rote test. The Commission is to look at the economic facts in each case and consider how to assess the overall economic impact of imports on the domestic industry, as an expression on the part of Congress that the test is not to be a mechanical test; that, instead, the test might have what could be fairly characterized as a presumption and the presumption is to search for an overwhelming preponderance of product going into the processed agricultural product. But that is an imperative that you must follow. If you have less than that, but the economic interest that's

been created and been created by the action of the domestic industry is such that it overwhelms that and it also permits and in some years requires, in fact, that more than the majority of lemons are destined for processing, that you can focus on the commonality of economic interest. And you can see that the ratio is higher enough and for any individual grower would exceed 50 percent, that it is appropriate here to bring the growers into the domestic industry.

Two other points. First on the question of causation, there was a discussion earlier and reference was made to, I believe it was Chart No. 9 in Any Warlick's presentation, the discussion concerned Citrico. You heard Mr. Casper make reference to Citrico, as well. The discussion that took place with the earlier panel was correctly described by Mr. Bragg as one, in which Citrico was bringing lemon juice into the United States. But, Citrico failed as a business operation and went into bankruptcy. He correctly described that banks froze the assets of Citrico until the bankruptcy process could proceed. And then in one fell swoop, all the assets of Citrico, including the inventories in the United States, came onto the market as liquidators sought to reduce those inventories to cash, which, after all, is what you do when you're a

liquidator in bankruptcy. Those inventories were already in the United States. The sales that took place, the transactions coming out of bankruptcy on the part of the liquidators were not sales that were made by producers in Mexico or Argentina. They were not sales that were being made by the importer. They were sales being made by a liquidator in bankruptcy.

If you return to Chart 9 on Ms. Warlick's chart and you look also at her testimony and Mr. Braggs, you will see that they say here's the point in time where the Citrico inventories hit the market and you will see the price fall. If you look a little bit to the right, you will see a new trend emerging and that trend is a trend of rising prices. So, we have a situation where, by their testimony, inventories that were frozen in bankruptcy, and literally frozen in storage, came on to the market, not in the hands of the importers, not in the hands of the foreign producers, but in the hands of liquidators. The liquidators, doing what liquidators do, sought to convert those stocks to cash as quickly as possible.

If there is a causal relationship here, the causal relationship is between the prices that Mr. Bragg and Ms. Warlick refer to and the liquidation in bankruptcy, the decisions that were made by bankruptcy

liquidators to extinguish those stocks. These do not represent choices that were made by foreign producers. They do not represent choices made by importers. So, to the extent that Citrico -- the more you hear about Citrico, Citrico appears to be the tipping point for this case, you must understand, exactly as Mr. Bragg described it, that Citrico represents a one off circumstance. There's nothing like Citrico in the market now, where juice was brought into the United States. It was not flooding the market. That's why Citrico was building inventories. Those inventories were frozen by bankruptcy liquidators and then brought onto the market by the liquidators, not by the vendors.

Just a couple of other minor points, but these are quite important. They run to some of the questions Mr. Yost had earlier. They run, also, to comments made by Professor Bradley and also by Mr. Casper. The information, to the best that we're aware of it and that's been disclosed to us that the Commission has collected, raises a number of questions about the methods used to present financial data on the part of Sunkist. Professor Bradley explained to you, quite simply and quite directly, an analytical framework to look at the costing of lemon juice, in an

environment where you have a cooperative structure. The cooperative structure has made a decision, voluntary decision to bring processing under the umbrella of the coop. In that situation, you need to look very carefully at how costs are allocated, how costs are allocated in the normal course of business and whether the allocations and the charges that have been reported to you are consistent with the charges and the allocations that occur in the normal course of business.

You are not, again, in a situation which you had before, where the cost revenues, the performance you're looking at is for a product that is not the principle product on which the coop is structured. In our experience, you've actually never had occasion to look at a cost structure like the one that Sunkist is presenting to you here, where you have a -- the producer exists to produce product A. By their characterization -- product A being fresh lemons. By their characterization, all other products are byproducts. Where you to apply standard accounting rules, you would cost those byproducts at their net realizable value or you would look for another value. We cannot tell on the information in the petition or that's been disclosed to us how those costings have

occurred. These are some of the questions Mr. Yost raised. They've been raised by some of my colleagues. And we consider it very important that the Commission staff penetrate this, because we do view this case as being unique.

That concludes my testimony.

MR. CARPENTER: Thank you. Once again, thank the panel for your testimony this morning, for appearing here. I do want to note, since you had raised it a couple of times, that Mr. Yost is not here at the moment, but that's because he is meeting with the financial staff of Sunkist. And I can assure that we will be -- our financial staff will be examining the cost structure and the accounting methodologies and allocation methodologies very carefully in this case.

MR. CLARK: Thank you.

MR. CARPENTER: Also, as a housekeeping matter, I just wanted to note that we will be accepting Professor Bradley's charts and incorporating those into the record and they will made a part of the transcript.

Just to start off, Professor Bradley, I was wondering, referring to your -- on page nine, point eight, the hypothetical discussion of allocation of

cost, first of all, I'm not sure, are you on the APO in this case?

MR. BRADLEY: I am.

MR. CARPENTER: You are, okay. I was noting that the differences in volume and price between product one and two in your hypothetical are on the order of 100 to one. I was wondering if it would be feasible or useful to substitute for that, plug in the more -- the actual volumes and prices that are present in this particular case; or if that would -- would that be a meaningful exercise, do you think?

MR. BRADLEY: Yes, I think it would.

MR. CARPENTER: Okay. If you have time to do that in your post-conference brief, I think that might be useful.

MR. BRADLEY: I will.

MR. CARPENTER: Thank you. At this point, we will begin the questions with Mr. McClure, the investigator.

MR. MCCLURE: Jim McClure, Office of Investigations. First of all, I would like to thank all of you. I would like to say to Professor Bradley, what a courageous man you are to put something up there that just says, 'George Washington University.' Does Steven Trachtenburg know you're putting something

out there that doesn't say, 'The George Washington University?' I say this, having just finished four years of writing large tuition checks to 'The George Washington University.'

MR. BRADLEY: Well, you may also know that Steven Trachtenburg is retiring as president, so I can get away with it. But, as it turns out, either for good or bad, I actually precede Mr. Trachtenburg at the University and so when I started there, it was 'the George Washington University,' and I just stuck with tradition. I know he thinks that's the right way to go and I respect his opinion.

MR. MCCLURE: It was 't' when I first came to town and my daughter is quite pleased that Mr. Trachtenburg is leaving. Now --

MR. BRADLEY: That, I won't comment on.

MR. MCCLURE: Let's see, Mr. Casper, with regard to Coca Cola Export Corporation, Mexico branch, you said that you have product tolled down there and then it's shipped to the United States.

MR. CASPER: It's an understanding that there is a delineation between divisions here and so my understanding of the internal workings of that group is somewhat limited.

MR. MCCLURE: Okay.

MR. CASPER: But, my understanding is that there is an entity Coca Cola Export out of Mexico that is arranged for tolling of lemons to take place and then they sell the products from that toll.

MR. MCCLURE: Okay. What I would like to ask you or Mr. Clark can provide, and if you can provide it before the post-conference brief, the names of the tollers that Coke Export used.

MR. CLARK: We will be happy to provide that.

MR. MCCLURE: Okay. And just one other question and then I'll let my colleagues go. Are there phyosanitary problems with the Mexican lemons, as I know in the petition, Argentina specifically was mentioned? Is that an issue for the Mexican product, as well?

MR. CASPER: Once again, that's a forestry question and I really -- we would have to research that.

MR. MCCLURE: Okay.

MR. CASPER: I'd be glad to find the answer out, though.

MR. CLARK: We'll ask the question of our colleagues in Mexico and they have to answer that.

MR. MCCLURE: Okay. That's fine. I'll pass

onto --

MR. CARPENTER: Robin Turner, Office of the General Counsel.

MS. TURNER: Robin Turner, Office of the General Counsel. I was going to say good morning, but it is good afternoon, at this point. I guess the first way to start this, because I'm going to start off with some legal questions here and, of course, that has to do with the domestic like product of the domestic industry definition. And my understanding is, is the domestic like product, that you agree with actually the definition that's been proposed by the petition.

MR. CLARK: We do, yes.

MS. TURNER: Okay. Now, I will say this, I understand that you understand this, but I'm not sure that everybody else does. The way the domestic like product is defined is you take the scope and the scope only includes lemon juice in this case, and then the Commission must define a domestic like product that is like or most similar to that. It can make it broader and include other products in it, such as lemon oil. It could include lemons in it, if it thought that was appropriate, in that method. But, that's not the method that you're talking about including the growers

in; right?

MR. CLARK: That's correct. We're not asking that the scope or the like product --

MS. TURNER: Be broader than the scope --

MR. CLARK: -- be defined as including lemon juice and lemons.

MS. TURNER: Okay. So, you're saying that the domestic like product -- so what we start out with is we start out with lemon juice. We move to lemon juice, as the -- we start out with lemon juice as the scope, the subject imports. We move to the domestic like product, as lemon juice. The standard would be the standard case. And then what you would have is you would define the domestic industry as the producers of the domestic like product, which means you're defining it as the producers of lemon juice.

Now, there is another provision and I think that's where you're going to on this and it's the agricultural provision that deals with processors, an industry producing processed agricultural products; right?

MR. CLARK: That is correct. But, also, in your characterization of the producers of, here, it is really not contestable in the case of Sunkist. It was Mr. Bragg's testimony that the producers are the

growers, because the growers own all aspects and all assets of that cooperative. So -- and it is not -- and, here, recall, also, the characterization that he correctly put on it. This is not a stock cooperative. He correctly said that the growers' interest in the cooperative is not an investment of dollars. Their participation, their investment is the fruit that they deliver and they deliver that fruit, as they deliver it, undifferentiated as between destined for the fresh market and destined for processing.

MS. TURNER: Well, but statutorily, that is actually not something that, in fact -- statutorily, you're looking at scope, domestic like product, defining the domestic industry as the producers of the domestic like product and the domestic like product does not include lemons.

MR. CLARK: That's correct.

MS. TURNER: Okay. So, you are then talking about possibly including the growers of the raw material under the agricultural provision. Because, I think what you're -- what you're talking about, in terms of an investment, really doesn't seem to me to be any different than any corporation, which is an integrated corporation, that you're only looking at the product. That is one subset of that whole

company's operations. They have investments. So, maybe, first, you should explain to me how you see that as being different.

MR. CLARK: The difference is in the nature. For your ability to analyze the impact that imports have on the performance of the domestic industry here, our position is that you must follow the stream of economic performance from the sale of lemon juice, all the way back to the place where the net result of that stream of commerce ends. And that stream of commerce, because of the cooperative structure, requires that you pursue it all the way back to the net grower return, looking at the aggregate performance of the cooperative and, in particular, looking at the nature of the accounting charges that are made in getting to the cost performance of the processing, which is one component of a continuous economic stream that starts with growing lemon.

MS. TURNER: Okay. You're talking about it because of the agricultural provision.

MR. CLARK: Yes.

MS. TURNER: And I'm basically not there yet, in terms of asking about that --

MR. CLARK: Okay.

MS. TURNER: -- because I don't understand

how this is, in a sense -- because how you've described this and if this wasn't an agricultural product and you didn't have that provision there, you're basing, I think, your argument all on the fact of the cooperative structure, as opposed to, in fact, it truly being an agricultural product and that being something unique and something we've never dealt with before. And I don't see how that is any different from something like, and we'll be dealing with this next week, corrosion resistant steel, where there is, in fact, a product that is actually -- the same company, who makes corrosion resistant steel, makes all of the products that proceed the corrosion resistant, meaning carbon flat-rolled steel and integrated producer and you deal with the transfer costs. So, I'm not entirely sure that the basis of it being something different of -- accounting structure being something different, which might cause some issues as to how you figure that out, but how that is any legal basis for determining that it is a different -- it's something we've never dealt with before or something that you have to include the upstream product into the downstream product, an upstream product that is not part of the scope and not part of the domestic like product.

MR. CLARK: Before the statute was amended, the Commission recognized that agricultural cases are different and can be different. The statute was amended to reflect that. In an agricultural case, you do have this question of whether, based on the nature of the economic relationships and the integration of the industries there, it is appropriate or necessary to include someone that in the steel mill you might not include. For example --

MS. TURNER: Well, you can't, by statute, include.

MR. CLARK: Right. But imagine if you had an industrial products case, where there was a provision that said -- looks at the extent of economic co-integration between, say, iron-ore producers and steel mills. That's not in the mill. There is something in the law and there was something in the body of the law prior to its actual amendment that made agricultural cases different. So, agricultural cases are different than industrial cases by law.

Within the universe of agricultural cases that the Commission has looked at, there have been a handful of cases that involved some cooperatives. There's actually only been one that we could find before this case that was dominated by a cooperative

structure. That was sugar. In all of those cases, whether the cooperative structure dominated the industry or was simply one part, and if it was one part, the Commission was very careful to say, we have to look at coop separately from the corporate model. None of those cases involved a product like this product, which is at least two levels down the food chain from the reason that the cooperative was created. So, what we have said is when you go into the universe of agriculture cases and you're asking what is the level of economic co-dependency between the raw agricultural product and the process to agricultural product and in that cooperative structure, you insert a processing arm that is not associated with the rationale for the creation of the coop, which is what you would have for the processor coop in orange juice, you have a different economic model that you have not confronted before. The statute and the legislative history, the legislative history in particular, tell the Commission to take into account in considering whether to bring in the producers of the agricultural product the total economic circumstances.

MS. TURNER: Well, let me stop here, because I've got some very specific questions --

MR. CLARK: Sure.

MS. TURNER: -- actually about that with the statute. So the basis of basically your argument of including the growers in, that you start out with is the agriculture provision.

MR. CLARK: Yes.

MS. TURNER: It is not because of the difference, in terms of an accounting process and that this is a cooperative, which is what would -- I mean, it's because of the agricultural provision.

MR. CLARK: Sure.

MR. FARRELL: For the record, it's Ed Farrell. If I could just add a point. One of the issues that Professor Bradley pointed out and we'll address more carefully in our brief is the fact that the -- for the moment, let's call it industry producing lemon juice, is not a self-sustaining industry. It is an industry that wouldn't exist. Do you see?

MS. TURNER: Well, if actually, if you could hold off on that --

MR. FARRELL: Okay.

MS. TURNER: -- for one moment, because I actually have some very direct questions about that portion of his -- goes to Coca Cola, as well.

MR. FARRELL: Okay.

MS. TURNER: And I'd like to ask that. Let me just finish up with the agricultural --

MR. FARRELL: But, that does also go to the question of whether there's a broader rationale than the agricultural industry rationale for including the growers. That was my point.

MS. TURNER: Okay. I'm trying to just work through the statute of how we have to, in a sense, look at this. So, basically, you're saying that the agricultural provision comes into play. And the agricultural provision does indicate that -- let's see, here, the producers are growers are -- in an investigation involving a processed agricultural product produced from any raw agricultural product, the producers or growers of the raw agricultural product may be considered part of the industry producing the processed product, if it meets two different criteria. One of those is that it's produced through a single continuous line of production and the other one deals with a substantial coincidence of economic interest between the producers or growers of the raw agricultural product.

And we've got to deal with the first one first here. And the first one is dealing with the

fact that there's a single continuous line of production. And we don't have that in an abstract. We actually have that defined for us. A single line of production is defined as the raw agricultural product is substantially or completely devoted to the production of the processed agricultural product and the processed agricultural product is produced substantially or completely from the raw product.

Now, we need to first deal with the single continuous line of production and that, by definition, is substantially or completely devoted to the production of the product. We have to meet that criteria, in addition to the coincidence of -- substantial coincidence of economic interest. This case involves -- you've indicated it's anywhere from 30 to 45 percent of the industry as a whole.

MR. CLARK: It's 45 percent of the industry on average over 25 years. In any given, it's as high as 67 percent.

MS. TURNER: The industry as a whole?

MR. CLARK: The industry as a whole.

MS. TURNER: Okay. We'll be asking for that information from you in the post-conference brief, as well as from Petitioners, their information and what it's based on.

MR. CLARK: We'll provide it. It's from the USDA statistics.

MS. TURNER: Okay. Because the fact is, is the Commission has not found that single continuous line of production in other cases, where it is even at 55 percent. In fact, orange juice was what, 95, I believe, and there's a whole listing of different cases.

MR. CLARK: Yes.

MS. TURNER: So, is your argument on this one, that there is, in fact -- 65 percent is the amount and that that meets a single continuous line of production?

MR. CLARK: Our argument is to not -- just to ask the Commission to not simplistically apply a ratio, because we do not think that that is what the statute or its history require. The language of the statute does say 'substantially.' It doesn't say 'predominantly.' It doesn't say 'the majority.'

MS. TURNER: Well, it says 'substantially' or 'completely.'

MR. CLARK: Yes, that's correct. But let's talk --

MS. TURNER: Okay.

MR. CLARK: -- here about the word

'substantially,' because we know that if Sunkist could do anything completely, it would completely ship lemons to fresh. But what we, also, know is not for its entire history, but for the history that's already on the record, going back 25 years, there have been years, in which it has shipped as high as 67 percent and over 50 percent or the U.S. history total, the total lemons. We consider that to be substantial.

MR. CLARK: In addition and perhaps more relevantly, we certainly think it's more relevant, and it is where this particular cooperative structure comes into play.

If you were any individual grower in any particular year, Sunkist uses a pooling arrangement that they have described; and in the pooling arrangement, you harvest your lemons and you send them to your associated packing house.

The lemons you send, you've done your best job growing lemons that season and you send all your lemons to the packing house. The packing house, which is the co-op, will make a decision, based on the quality of the lemons, how many will go to the fresh market, and how many will go to the process market.

You, as a grower, will get paid not on your individual ratio of production, whether your lemons

were substantially less or substantially processed. You will get your return based on the aggregate performance of that entire packing house and then the entire cooperative.

So in an environment where the industry is on average at 45 percent, and in individual years has been upwards of 60 percent sending lemons to process, any individual grower over a sequence of time, given the vagaries of agriculture, will certainly have had much more than 50 percent, and in some years more than 70 percent, of lemons going for processing.

MS. TURNER: But we have to look at the three year time period that we're looking at as maybe a little bit longer. But we're not looking at basically what it might possibly be. I mean, we have to look at data.

MR. CLARK: No, no, this is historical. It would be an odd interpretation of the statute to say that a raw agricultural product and a processed agricultural product can have differing relationships, a differing sense of whether something is substantially destined for one application when the products we're talking about have existed coincidentally at least since the 1940s.

So I don't really think that you can say,

we're only going to ask whether this raw agricultural product went into this processed agricultural product greater than some fixed ratio, which isn't fixed in the law in your regs, during a specifically defined three year period.

In fact, the legislative history is very much to the effect of, this is an exercise on the part of the Commission. But the Commission is supposed to look at the circumstances and the totality of the relationships. These relationships are not relationships between fresh lemons and processed lemons, between fresh lemons, lemon oil, lemon juice, pump, and peel, that were created in the last three years.

Sunkist, itself, in its previous incarnations, said in 1943, we're never going to be in the lemon business to get to oil and juice. We're in the lemon business to get to lemons, but these other products are important to us.

MS. TURNER: Okay, then actually another question I was going to ask you is, then isn't there an inconsistency in your argument? Because the statute is telling you to bring the growers in when, in fact, it's substantially completely devoted and there's a substantial coincidence of economic

interest; meaning, this is the primary product for this.

But you're actually then arguing as well that this is a by-product and that this isn't the primary reason for that. So isn't that inconsistent from arguing that, in fact, the agricultural provision applies by the legislative history?

MR. CLARK: We don't think so, and the reason that I don't think it does is because the test is not one purely of intent.

There's no question, Sunkist would tell you, and they say so. You can read their annual report and their history. Their objective is to produce lemons for the fresh market.

Mr. Bragg said today that if there were a good way, and they're looking for a way, so that they don't have to be in the juice and if that was economic, that they would pursue it. So they're plainly oriented towards the fresh market.

But the reality is, over history, that notwithstanding that desire, the performance is actually to the contrary. So what we know is that notwithstanding that growers of lemons would like send those lemons predominantly to fresh, routinely they're not able to do that. Routinely, they have to send

them elsewhere.

But what Sunkist has done, unlike the growers who aren't part of the Sunkist cooperative and other cooperatives, is make a specific economic and legal choice. The specific economic and legal choice they made is to, within their cooperative, include a processing arm. That is not a choice that others have made.

We think that decision is relevant to the application of this test; that an environment where the producer of the raw agricultural product has itself decided to capture a process that is not the process associated with the reason d'etra of the co-op, which would be orange juice; but instead has made a decision to capture the processing for, by their phrase, by-products, secondary tertiary products downstream.

They have made a very conscientious decision to create a very strict coincidence of economic identity through the range of the raw and the processed agricultural product, and that that is relevant in this test and on the facts of this case.

It is not possible to say that it will always be the case for one grower, or the growers in the aggregate, that they will always go majority

fresh. Because there have been periods of time when they have gone majority processing, and in the pooled system, no individual grower has the ability to discriminate or does discriminate.

MS. TURNER: But you've argued that their primary purpose is fresh lemons; and now what you're arguing, to make your argument for this test, you're arguing that that might not be the case at some point in time, that they might actually push more into processing, which you've actually indicated is not a sustainable business on the economic analysis that we heard. So I don't understand entirely what consistency --

MR. CLARK: What we're distinguishing is actual. We're distinguishing intent or desire. Because we don't read the statute as having an intent or desire component. It's more objective than that.

MS. TURNER: If Sunkist did not have the structure that it has, meaning that there were growers -- it was done on the Ventura; that there were two separate operations and Sunkist had two separate divisions that they paid basically something for, and it could be a subsidiary of theirs, and the subsidiary, they paid something for the lemons, rather than through the cooperative. Would you still argue

that, in fact, the growers would be included? Would they meet this criteria?

MR. CLARK: On the same set of facts as to historical performance, they would meet the same criteria. But there would not be the same continuity or continuous production argument would be made. But the coincidence of economic interest would not be there. We haven't gotten to your second prong, yet. But, in fact, it wouldn't be there. In the corporate setting, exactly the Ventura model, you have lots of cases where that's come up.

MS. TURNER: Well, but I mean even something a little different than the Ventura model where, in fact, in Ventura, the model is, you've still got growers, the large corporation includes growers and includes the processing. They're just separate subsidiaries that there's a transfer cost that goes between, from one to the other. There's something paid to them. Would that mean that the growers should be included under your analysis, or would it meet this criteria? That's basically what I'm asking, or would that be a model? Is it solely because they return the profits from the whole operation back to the growers?

MR. CLARK: That's what creates here, we think, without serious argument, continuity of

economic interest. To the extent that you separate out the performance of the processing arm, it's net yield flows back; as opposed to the situation where there is a transaction in advance of processing.

That transaction has a definite economic value. There's an exchange of value for a material at that point in time. Processing occurs later, and there's no flow-back to, in that instance, the grower. Now you will have severed the coincidence of economic relationship.

So your question is really on the continuous production. We still maintain that as you look at the statute, in a situation where you have the variability that you have had in the lemon industry of lemons going fresh or going processing, that that test is satisfied. What is more important is the coincidence of economic interest.

MS. TURNER: Well, not according to the statute. There's an "and" there, so they're both important. It's just as important that they be met.

MR. CLARK: I understand. That's correct. Both need to be met. But the analogy that we take away, or that we suggest to you is, for example, the test that applies in an preliminary injunction versus, for example, a permanent injunction. The likelihood

of success on the merits is inversed to the injury likely to be caused if the injunction is issued or not issued.

The legislative history to this provision suggests that the economic co-integration is the more critical of the two factors. Here, we have had a Petitioner, through its own act, decide to take economic integration to the highest possible level. It is not possible for a grower to have a more direct economic interest in the production of a by-product than exists in the Sunkist structure.

There are lots of other choices that could be made that would either attenuate or serve that integration. Those weren't made here. So the facts are that we think there is a continuous line of production, and there is a community of economic interest that is as high as it can possibly be, between the growers and the processed agricultural products.

Here, that relationship is more acute than you, as a Commission, have had occasion to deal with before, because you're dealing with a decision that was made for a product that is way down the food chain, pardon the pun, for this co-op; and no Petitioner has come to you in that structure before.

MS. TURNER: Okay, well, I'm sure in your post-conference brief, you'll go into detail on this, so I'm not going to belabor this anymore, other than I want to get to the point about the sustainability; that this is not the primary business, producing lemon juice, and that it would not be sustainable. This is something that Professor Bradley and I will also indicate that I probably preceded all of you, having had three degrees from GW, well before probably any of you were involved with them, for the first one at least.

(Laughter.)

MS. TURNER: But you know, where you have indicated here that, in fact, you know, the by-product prospects indicate a continued good outlet on a salvage basis. But there appears to be no possibility that by-product values will ever justify growing lemons for that purpose.

You say this about lemon juice, in a sense here, but lemon oil, I would imagine that the same applies to. Coca Cola -- there are allegations that Coca Cola helped with the investment in Argentina in the petition; that they helped with the investment of trees in Argentina for the expressed purpose of not producing lemons, but producing lemon oil.

So I question though the economics might not suggest that, in fact, you would produce lemons purely for the by-product of one of the by-products of lemons, meaning lemon oil or lemon juice. It appears though that that is exactly what Coca Cola did, or at least that's the allegation that that's what Coca Cola was doing in its investment in Argentina for more lemon trees. So I ask you to please address that. Tell me, what have I missed in terms of that analysis?

MR. BRADLEY: First of all, I would suggest that what I really have been talking about here is U.S. lemon juice production, based upon its technology and its cost structure; its cost for land; its environmental costs; its cost for labor and that sort of relationship.

We don't necessarily intend that it's worldwide applicable. You know, one would have to look at Argentina and say, is it feasible for them to make a go of it on the juice side? They have different land costs, different labor costs. There are other things that go into it. I think that's an open question. I don't think it's immediately applicable to other countries. It could be.

You know, we see around the world, in a variety of products, different agricultural economic

models in different countries, based upon the culture of agriculture and the way it's done.

MS. TURNER: You might see in different countries the way it's been done. But this is actually a bigger operation than a mom and pop farm that somebody has been farming and ends up having products.

I mean, this was a major investment to actually produce for a product. So I mean, I guess the question is, your underlying premise here is that you would not produce lemons for the purpose of a by-product. You're saying that's just in the United Stats.

MR. BRADLEY: First of all, it's not my premise. That is not my quote. That's a quote from industry experts. I didn't make that up. What my, what do you call it, presumption -- there is a legal term here. My conclusion or whatever --

MS. TURNER: Presumption.

MR. BRADLEY: Presumption, okay -- my presumption was really, I think more of just a conclusion. If you go back to the previous two slides, if you look at the data from USDA, it showed that in 24 out of 25 years, the on tree equivalent for processed lemon was negative. That was one piece of

information.

The second was, this quotation and similar discussion in other people's research that indicated that this was not self-sustaining. So I didn't really sort of presume it. That's the facts that I used to come to that conclusion for the U.S. I don't know. I haven't done a similar analysis for Argentina, whether or not similar facts hold or not.

You make a very good point. On the face of it, the fact that if a high percentage of their output goes to -- and I agree with you; it's all the processed products, juice and oil, and it does so over a sustained period of time -- it would suggest a different economic structure in one place than the other. I would agree.

MS. TURNER: Or the fact that it does have some sustainability to it and that the reasoning is not for lemons. Because I guess in Mexico, there's actually no home market for lemons. At least, that's the allegations that we've heard. In Argentina, I guess there is a very small home market for fresh lemons. So actually, it is actually the by-product, it sounds like. But I would please ask you to address that further in the specifics.

MR. CLARK: Sure.

MS. TURNER: I mean, you're not dealing with the specifics of that investment.

MR. CLARK: There are lots of allegations concerning the Coca Cola Company in the petition and in the testimony earlier. We'll be dealing with them in the post-conference brief. Our preference is, because Mr. Casper isn't the expert in investments, we think that's a mis-characterization.

But on the subject of Mexico, our information is that actually there is a growing market in Mexico for fresh lemons and for lemon juice. To the extent that we can develop information on that in time for the post-conference brief, we will include it.

MS. TURNER: Okay, thank you; to just cover a few of my other questions -- and these are things that are probably many of the questions I asked this morning about the production process -- since you're not necessarily involved in the production processing of lemon juice, it's something that might be more appropriate for post-conference briefs. But I'm going to just ask, as well, and just repeat these briefly, so that it's not just what I had asked this morning, that you just address it, because frankly, that might not be addressed.

The production processing, the manufacturing process, we had described there's at least two different methods that are used. Are those similar in Argentina and in Mexico to the ones in the United States for processing lemon juice?

MR. CASPER: The processes are similar, and I think Mr. Larson did a good job of explaining how the two processes are different and how they operate.

MS. TURNER: Sunkist indicated that they were looking into possibly just producing lemon oil from lemons and not juice. Is that something that is done in Argentina or Mexico?

MR. CASPER: To my knowledge, it's not. I think that if the lemon is put into the process stream, the oil is extracted and then the juice is extracted. That's my understanding. I'm not aware of anybody who only produces oil.

MS. TURNER: If there is anything further that you can add to that in the post-conference brief, in terms of looking into the industry on that -- the same has to do with whether, in fact, do you agree that -- well, you actually indicated that they're interchangeable. They're not used for the same purposes. Coca Cola uses the lemon oil primarily then for its soft drinks?

MR. CASPER: Yes.

MR. TURNER: And the juice is used more for lemonade.

MR. CLARK: And our juice-based drinks.

MS. TURNER: Do you agree that the domestic and U.S. products are inter-changeable?

MR. CASPER: Yes.

MS. TURNER: I mean the domestics and the subject imports are interchangeable. Do you know if there was other production done on the same lines that produce lemon juice, such as orange juice, grapefruit juice, lime juice? In Mexico, lime juice might be.

MR. CASPER: Well, I think this was laid out there. There are facilities that do strictly lemon at facilities. There are other facilities that will do grapefruit or orange during the grapefruit and orange seasons. So they will try to fully utilize the equipment over the course of the year.

MS. TURNER: Does Coca Cola import the subject lemon juice?

MR. CASPER: No, we're not the importer of record, no.

MS. TURNER: You're not the importer of record.

MR. CASPER: We buy strictly delivered,

duty-paid on all purchases.

MS. TURNER: Then you're a purchaser of imported lemon juice. Is that only for further processing, or is that something into products that Coca Cola makes, or is that something that you also then sell?

MR. CASPER: It would be going into finished goods, manufacturing.

MS. TURNER: It would be a further processing.

MR. CASPER: Right.

MS. TURNER: Let's see, let's quickly go through some of these. I guess that my last question -- well, actually, one question, in terms of you're actually not the importer of record. But is that a subsidiary of Coca Cola that is, in fact, the importer? And I guess I should ask the same question to East Coast Flavors, as well, and whether they are the importer of record.

MR. MCCLURE: Jim McClure, Office of Investigation -- Mr. Clark and I have had extensive discussions on this. So we've worked it out.

MS. TURNER: And East Coast Flavors?

MR. MCCLURE: I've also chatted with East Coast Flavors.

MS. TURNER: Okay, well, then I guess my last question here has to do with a standard question about anti-dumping findings.

Please, Mr. Clark, Mr. Farrell, Ms. Noonan, and Mr. Ikenson, when you file the post-conference brief, can you please address whether you know of any dumping findings or anti-dumping remedies imposed on lemon juice in other foreign countries. If there are any, please provide whatever information you do have about those.

MR. CLARK: We will do that.

MS. TURNER: Thank you.

MR. CARPENTER: Nancy Bryan, Economist.

MS. BRYAN: Hello, I'll try to keep these short. My first question, I guess, is for Mr. Casper. When you mentioned that you feel like you have to source from many different sources to get an uninterrupted supply, the interruptions in supply to due to weather, I think you mentioned, and what other reasons may there be?

MR. CASPER: You can have any number of impacts to a production cycle. So it's always imperative that we manage the geographic risk of supply by having alternatives. So we do that by, you know, we're in South America, Central America, and

North America.

MS. BRYAN: Do you feel like you face this possibility of an interrupted supply, even though there's high inventories being held?

MR. CASPER: I think the high inventory today is a short-term event. You know, we have to look at our business. We have to be able to sustain the business over time. So we will make decisions around where we source, based on longer term needs, and we can't really look at the situation today, because today it could change.

So we have to be able to maintain continuity in supply. So we try to keep strategies in mind that allow us to spread the risk, if you will, over greater area, over a greater time period.

MS. BRYAN: Okay, and why do you feel that the high inventories right now is temporary?

MR. CASPER: Well, you say high inventories. I'm not sure, from a global standpoint, that we're looking at high inventories. Sunkist may have high inventories today. Previously, it appears that Citrico had high inventories. I'm not sure, from a global supply and demand standpoint, that we've been in that situation, except for the last short period of time.

MS. BRYAN: Okay, so currently, do you feel like there is a surplus of lemon juice in the market?

MR. CASPER: I really can't respond to that.

MS. BRYAN: Okay.

MR. CASPER: I mean, we procure our needs; and as long as I get what I need, then there's plenty of supply.

MS. BRYAN: Right.

(Laughter.)

MR. CASPER: As Mr. Clark mentioned, I am paying higher prices for the purchases that I just made in the global round of negotiations than I did last year. So that would lead me to believe that there should be some strengthening or some impact from lower availability.

MS. BRYAN: Okay, does anybody else want to comment on that?

(No response.)

MS. BRYAN: Could you just comment on the demand trends for lemon juice over the POI and into the future?

MR. CASPER: My belief is that the usage of lemon juice is a fairly stable market in the U.S. and in Canada, for that matter. I've only been doing lemon for two years. So I'm only half an expert, if

you will. But what we've seen in our own business plans, there's not been a great deal of growth in the lemonade market.

We do a product, a Simply Lemonade product, which is in a different package. It is a different consumer offering, which has grown significantly, but from a small base. But overall, if you look at pound acids, which is what lemons are sold in, in the juice business, it's fairly stable.

MS. BRYAN: The substitute of citric acid, is there any other reason for using citric acid instead of lemon juice, other than price, or is it just price?

MR. CASPER: I really can't response to that. As I said, part of our marketing is having the juice and the beverage. So we don't even consider citric.

MS. BRYAN: Are there any certain grades or types, including the different GPL levels, that are only available from a certain source, in your experience?

MR. CASPER: Typically, most all of the processors can offer clear and cloudy in different concentrations. The technology and knowledge is increasing throughout the industry, so that they're

pretty much on a level playing field.

MS. BRYAN: Okay, and I feel compelled to ask Dr. Bradley an economics question.

(Laughter.)

MS. BRYAN: So on, I think it's page eight, where you have your equation for the incremental costs --

MR. BRADLEY: Yes.

MS. BRYAN: How is, if it is, the disposal cost incorporated in here?

MR. BRADLEY: The disposal cost would show up in -- if you look at CLO plus LP, I start off with my current actual cost, which is the first expression on the right hand side.

MS. BRYAN: Yes.

MR. BRADLEY: Then that second expression is going to capture all the costs associated with being in business, just doing LO and LP.

MS. BRYAN: Right, Right.

MR. BRADLEY: So if I get the lemon and I'm making the oil, and then I've got to dispose of the juice and that's a cost that will show up in (c) of LO/LP.

MS. BRYAN: If we're going to apply that, like a real world situation, would that really be in

there?

MR. BRADLEY: Yes.

MS. BRYAN: I mean, they're actually going to apply it to financial data? I mean, if we're actually going to try to get to what the actual incremental cost is --

MR. BRADLEY: Right, in terms of doing that kind of calculation?

MS. BRYAN: Yes.

MR. BRADLEY: You're suggesting, in some sense, incremental cost is economic and not accounting.

MS. BRYAN: Right.

MR. BRADLEY: And I quite agree with that.

MS. BRYAN: Right.

(Laughter.)

MR. BRADLEY: Not that accounting is bad -- but, you know, everyone has their strengths.

(Laughter.)

MR. BRADLEY: But it is an economic calculation that does require you to do sort of a counter-factual, right? And this is what regulatory bodies in telecommunications do, for example, they calculate incremental costs associated with just some of the telecommunications product. So it really would

require you to do the sort of analysis that you suggest.

MS. BRYAN: Right.

MR. BRADLEY: It's not something that necessarily you can take straight from the financials.

MS. BRYAN: Right, right, I just wanted to make sure I was getting that.

MS. BRADLEY: Yes.

MS. BRYAN: Okay, that's all my questions.

MS. BRADLEY: Thank you.

MR. CARPENTER: Mr. Yost?

MR. YOST: Good afternoon, and thank you for coming here today. I'm Charles Yost with the Commission's auditor. I apologize for being absent from the room. I was called away to a business meeting during most of your testimony, which I will read with pleasure in the transcript.

I had a follow-up question on demand elasticity. I know, Professor Bradley, you talked about supply elasticity. But we've seen, I suppose, prices come down for lemon juice and, I suppose, also lemon oil. Is demand elastic for either of these products?

MR. BRADLEY: To be honest with you, really, at this point, I've only had time to look at the

supply side of the industry. I really haven't done an analysis of the demand elasticity. But I will submit one by next Wednesday.

(Laughter.)

MR. YOST: Okay.

MR. BRADLEY: You know, in the time I've had to look at it, I just really have not even looked at that issue, yet.

MR. YOST: I understand. I always hear of economists talking about this hand and that hand, and I always assumed that it referred to supply and demand.

MR. BRADLEY: I like your interpretation.

(Laughter.)

MR. YOST: Mr. Casper, what do you think about demand elasticity?

MR. CASPER: It's been 20-some odd years since I had --

(Laughter).

MR. CASPER: -- and I am an Ag economist by training. But like I said, it's been 25 years ago.

But as I look at our usage of lemon juice, I don't think that it tracks; where we have lower lemon prices, we sell more Lemonade. I don't know that there's a connection there. Because the prices of the

two are distinct enough, one doesn't drive another. So I think the demand for lemon juice in the U.S. has been fairly static.

MR. YOST: It's more related to a non-price factor -- I mean, the demand for lemon juice and usage and other things, beverages, et cetera.

MR. CASPER: Right.

MR. YOST: Okay, that was the some extend of my comments; thank you very much.

MR. CARPENTER: Joanna Bonarriva, Industry Analyst.

MS. BONARRIVA: Good afternoon, I just have one question, and I'll direct it to Mr. Casper. But if you don't have the answer in your head today, if you might provide it in your post submission submissions.

The Official Mexican Government estimates of production of Italian lemons in Mexico is quite low. They put it at 15,000 to 20,000 metric tons a year. That seems quite low, even if you just consider the imports of fresh lemons from Mexico into the United Stats.

Industry information, we've heard anecdotal information that it's much higher. Do you have any information on these volumes of lemon production in

Mexico, in recent years?

MR. CASPER: I'm glad you gave me the option to come back. I don't know. But we will try to pull information from our colleagues in Mexico, to see what we can come up with.

MS. BONARRIVA: Okay, thank you very much; that's all my questions.

MR. CARPENTER: George Deyman, Supervisory Investigator?

MR. DEYMAN: I just have two questions. In Exhibit 22 of the Petition, there is a chart that has public data from global trade atlas, and it indicates that the unit value of the product from Argentina is sold at a much lower price than the United States, than in the European Union or Canada or Asian.

I believe the Petitioner is trying to answer why that is, this morning. But why do you think that is? Is there something different about the product that the Argentines sell to the rest of the world, compared to the product they sell in the United States? Is it a product reason, or it there some other reason why the price is lower here?

MR. CASPER: I really can't address the global aspect of the numbers. All I can speak from is Coca Cola's history. If we look at what it is that we

buy, when you take it to like product at the origin, it's the same cost. All we're doing is adding the appropriate freight, packaging -- all of those additional costs, to get it to the European lemon price.

We don't see, in our purchases, that disconnect. That's just not to say it doesn't exist. But from my experience, it doesn't exist in what offers have been made to me. There are reasons for each cost difference -- physical process, specification, whatever.

MR. DEYMAN: All right, but as far as you know, the product that the Argentines sell to the rest of the world is the same product that they sell to the United States, essentially; or is that true?

MR. CASPER: I believe that it is, except that if a customer has a special requirement.

MR. CLARK: Excuse me, Mr. Deyman?

MR. DEYMAN: Yes.

MR. CLARK: I'm certainly a non-expert in this. But we will ask, to the extent that we can get information. Anecdotally, we have heard that a much higher proportion of the material that Argentinean producers ship to Europe is of higher GPLs, 500 and 600, and is much more heavily oriented to clear than

it is in the material that they ship to the U.S.

The European market, we are told -- and this is all hearsay on my part -- is a market that is demanding a greater proportion of these more expensive versions of juice, relative to the U.S. and, therefore, at that level of granularity, GPL and clear versus cloudy, you have a different product mix to Europe, which is at a higher price point.

That may be all part sum. This just what we've heard. We'll ask the question, and to the extent that we have information we can document or corroborate, we'll reflect it in our brief.

MR. DEYMAN: Good, that's helpful. My last question is for Mr. Casper. I believe you mentioned earlier that Sunkist had an inability to meet certain specifications of Coca Cola. Could you expound on that a little bit? You can do it in your post-conference brief, if you'd like.

MR. CASPER: We can do a good job of covering it in the post-hearing brief, I think.

MR. DEYMAN: Is it fair to say though that if, for some reason, regarding specifications, you did not purchase a certain amount of lemon juice from Sunkist, you were able to purchase that same juice in another country because they were able to meet

specifications? Again, maybe you should answer this in your post-conference brief.

MR. CASPER: I think, just as a point of clarification, when we talked about the issues, that happened actually prior to the period of review. So there's some history between the two companies -- in fact, it goes back 40-some years -- in which we did have issues with the deliveries. So at that point, it's about the continuity of supply. It was necessary for us to develop other sources of supply, as well.

MR. DEYMAN: Okay, thank you, I have no further questions.

MR. MCCLURE: Jim McClure, Office of Investigations -- I have just one question and then a couple of administrative matters. Mr. Farrell -- and if this is BPI, you can answer it in the post-conference -- is East Coast Flavors owned or related to any of the producers in Mexico or Argentina?

MR. FARRELL: We'll address that in the post-conference brief.

MR. MCCLURE: Thank you -- now there is an APO release for the parties. It's small. But that will give you everything that I have in hand to this point, unless something came in, in the last hour.

With regard to anything that comes in to you

folks, that you have to serve, please from now until the post-conference briefing, serve it by hand so everybody is working the same materials and we aren't depending on the U.S. mail to get it to us.

Finally, for either Mr. Clark or Mr. Farrell, I asked about the consultant studies that counsel for Sagarpa raised. If you guys are aware of anything, if you could let us know about that, and I think sooner rather than later would be better on that. Other than thanking you, that's all I had.

MR. CARPENTER: Once again, I want to thank this panel for your presentation. Your responses to our questions have been very helpful.

At this point, we will take another 10 minute break, to be followed by closing and rebuttal statements from each side, beginning with the Petitioner. There are 10 minutes allocated to each side. We'll see you in about 10 minutes.

(Whereupon, a short recess was taken.)

MR. CARPENTER: Could we resume the conference at this point, please?

MR. MCGRATH: Thank you, Mr. Chairman, and to all the members of the staff, as usual, we want to let you know how much we appreciate the work that you have put in. We've tried to be as responsive and

helpful as we can.

You've looked at this for awhile and, as usual, have done a very good job in a very short turnaround, which the law says you have to do. So we're all struggling to try to help, and we appreciate the effort that the staff has put in. We have a few brief comments, and Mr. Bragg also would like to make a comment.

It was a very interesting presentation and discussion that we just heard. There was a very detailed economic model and analysis, and a very interesting and well-researched exchange on the agricultural products provision and the law behind that. But it was essentially an exercise in mis-direction.

I think that what we did not hear anything about was the basic core elements of our claim and the reason that we're here. That is that there, and that is that there is a very large volume of very cheap juice that's coming into this country, into this market, at very low prices, and continues to do so; that there's a continuous supply out there that's going to keep growing; and that there are large volumes that there is no reason to expect will disappear any time soon.

Towards the end of the discussion, we heard from Mr. Casper at the very end that, you know, as long as there's enough supply for him, there's enough supply in the market. There's an excess of supply, and he said that he wants to, quite reasonably, spread the risk. What he means there is spread his risk of higher price to other producers around the world, including Sunkist and Argentina and Mexico, so that his risk is spread around.

Before discussing just a couple of points on that legal argument, I'd like to turn to Mr. Bragg to maybe elucidate a bit further, I hope, on the cooperative structure and what his thoughts are on how that fits into what we just heard.

MR. BRAGG: Now I'm not an attorney or an economist, so I'll just declare that when following some of that dialogue, I got a little bit lost in understanding how a cooperative structure would disqualify us, from a legal point of view, and maybe really set us up for being a victim, if you are a co-op.

Now I think that's what I heard, out of the essence. If I just squeezed that lemon and got the juice out of it, it was a little sour for me to take; that I'm a co-op, and I may just be disqualified from

being a victim, as a result of my own structure.

We've been in business as a co-op since 1983. We began the Products Division, that I run today, 90 years ago; and to hear that maybe we just out to exit that, after spending 90 years in developing a juice and oil business, is kind of an interesting argument, as well.

So again, I'm not an attorney or an economist, but I find some of those comments obviously, just a little bit offensive, if I take the stewardship role that I'm suppose to for Sunkist.

I also found very interesting that 1943 quote, in the middle of World War II. This comment was extracted when I know many people were looking for Italian oil in the world, that no longer became available as a result of them being an enemy of the United States. So world trade was just a little bit different, back in 1943, than today. So to find that as one of the quotes, I found very interesting, as well.

Now let me tell you, let's clear up some of the facts and we'll do a better job in our post-hearing comments. We do not co-mingle our books. On revenue or cost, between fresh and products, there are two separate streams altogether, and we'll do a better

job of describing that whole chain, so you can see that there's distinct, separate chains of cost and revenue. We don't share customers. We don't share cost structures. We don't share the same employees.

The only structure that I share with a corporate office is consolidated financials, legal, and HR. To make a claim that somehow we've got this co-mingled results, that's wrong.

Another fact I'd like to clear up is that a grower revolt would occur, if Mr. Clark's comments were true about sending a grower's lot into a packing house, having their quality co-mingled for grades and standards. I'm going to tell you, the grower that produces the Sunkist grade quality for the fresh market, and then a standards grade quality for the fresh market -- that produces about a 20 percent premium, just between those two fresh grades.

Can you imagine if we just took all the growers' qualities, good quality growers, poor quality growers -- co-mingled it and just distributed an even amount of money back? These guys would string up the packing house guys. That's just factually wrong. It's just factually wrong.

It's a separate stream. What doesn't make those two grades then goes to make a products grade

product -- juice, oil, and by-products. I think with that, I'm finished.

MR. MCGRATH: I have just one other or maybe two comments. In the discussion of the applicability of the Agricultural Products Provision, I know there was a discussion of the 50 percent figure, and whether or not more or less than 50 percent were going. Frankly, I had not intended to blizzard you with a bunch of citations to cases that looked at the 50 percent. But since my good friend and esteemed colleague has suggested that I will, I'll think about it more carefully, and probably will.

But we have different numbers, anyway. We've got USDA numbers. We'll put them in. They come nowhere near this kind of 67 percent. As you pointed out, you have to look at the POI, and that's more in the range of 38 percent over that period. The highest one in there was 43 percent.

But the percentage, I'm not saying that, in and of itself, establishes the bright line test. More importantly, I think, is the provision in the statute. It's not there as a mandatory application or as a mandatory directive. It's there, as intended by Congress, to require that in situations where growers who grow a product that goes into a processed product,

who are suffering injury in some fashion from an imported process product, that they don't get lost in the shuffle; that their injury and the effect on them doesn't get tossed aside, because they don't precisely make the finished processed agricultural product.

The Respondents, of course, want to turn that into, you know, a mandatory requirement; and on top of that, say that in a co-op structure, you have to really throw out all of the standard approaches that you use, and look at it completely differently.

The bottom line in all this is, what they're saying is, if you have a co-op structure, then basically you're not -- because you don't have growers in there -- in the petitioning group. It's a free shot. Now the foreign industry can produce that particular by-product; sell as much of it as cheaply as they want in the United States; and there's no opportunity for that independent entity that makes that product to complain about it in any way.

I would just go back to the provision in the statute that you do have to look at; one of the practical questions is, what do you do know? If you were to decide that legally you had to include growers, you couldn't. You don't have a database for that.

What you should do is go back to the statute and the processed agricultural products section is really an exception to the definition of "what is the industry that has to be looked at, for purposes of analyzing the effect of subject imports."

It basically says, as you've heard many times, the effect of dumped imports shall be assessed in relation to the United States production of a domestic like product, if available data permit the separate identification of production in terms of such criteria, as the production process or the producers' profits.

It tells you what to do, in narrowing that industry definition as far as you can. There's not a requirement that, oh, it's a processed agricultural product. You have to shift to the other provision, as an exception. But we'll cover that in more detail in the post-hearing brief.

Our conclusion, I think it's unchallenged. There has been injury to this industry. The data will prove it. We're happy to work with you to show how allocations were made, so that you can feel comfortable about what the financial data are showing, and we ask that the Commission conclude in the affirmative; thank you.

MR. CARPENTER: Thank you, gentlemen -- Mr. Clark?

MR. CLARK: Thank you again, for the record, Matt Clark of Arent, Fox -- let me first join with Mr. McGrath and Mr. Bragg in thanking you all for your attention, for sticking around long into the afternoon. I know that these tasks are not easy. A lot of work goes into it. A lot of work went into it beforehand, and we do appreciate it.

On behalf the Coca Cola Company, we appreciate also that this is going to be a difficult task that we are asking you to engage in a somewhat different analysis than you may have engaged in before. But we do think this case sets up differently. It's helpful to hear Petitioners say that they're going to do a better job now of explaining their case.

We would have appreciated, had that been included in the petition, so that we would have had the opportunity to address the case that they're now going to make, instead of the information that was available.

But notwithstanding whatever descriptions may come, some facts are unchanged. This case still sets up differently than the cases that you have

looked at in the past.

It is not our position, even though they might like to characterize it as our position -- it is not our position that an agricultural by-product is outside the ambit of Title VII. That's not our position at all. It is not our position that a co-op cannot be a Petitioner; or that an industry that is cooperative in its structure down to its roots, can't be a Petitioner.

Our position is different. Our position is that for the International Trade Commission to accurately assess the impact of imports on the industry, when you have this level of economic integration, you cannot allow the petitioning industry to come in and say, look over here, but don't look at the man behind the curtain. It's not fairly part of your analysis to look at all the success we're having in this other market. That's off-limits. We get to create a divide, and you can't even ask to look through it.

We think it is helpful if the Commission asks, and we understand that you have asked for some, and you probably will ask for more information on how things operate at Sunkist. Sunkist has said, we're going to provide that to you; and hopefully, you will

ask to see exactly how their internal accounts are structured; exactly what reports are generated at different levels within the structure.

In order for you to understand whether this industry requires an analysis of the entire bundle of economic activity, you first have to collect the information. What you just heard is, now we'll give you the information that you really need. We would have liked to have had it earlier. We'll be happy to get it when we can finally get it.

The characterization was made that our argument, our presentation today, is really about mis-direction. There was really nothing that was said that would go to core issues. We don't think that's right.

You heard Mr. Caper say, as a purchaser -- the only purchaser who is actually here today -- that he just entered into a series of long-term contracts, as he does every May or June, and his prices are up for the competition that just took place. You also heard us describe the situation, and Mr. Bragg described it, as well.

There was an event, and that event took place in late 2004. That event was a U.S. vendor going into bankruptcy, with inventory present already

in the United States and imported.

The sale of that inventory was not by that vendor; neither was it by foreign producers that originally produced it. It was by liquidators, extinguishing already imported goods, I should say, that were here, into the market in an environment where their responsibility under the bankruptcy code was to convert those assets for distribution to the bankruptcy creditors. That's a one-off event.

Characterization was made that juice continues to come in here and to undercut the market. Why exactly then if the Coca Cola Company's price is up, if juice is coming in, are they are continuing to under-cut the market?

Coca Cola does not have a history of being unaware of what's out there in the market. But our price is up. Citroco situation is done. It's in the past. It's a one off. It involved imported merchandize, but the sales that hit the market were not made by the importers. They were not made by the foreign producers. These were made by a bankruptcy trustee in liquidation.

The last point, we do think that this is a difficult case to analyze. We do think that there are aspects to it that are atypical of the cases that

you've been presented before. We hope and we ask that the Commission staff will collect all of the available information, and will ask to understand better, exactly how Sunkist operates, and what the relationships are with its growers.

You don't have that information, yet. You have not been given the information that would tell you what happens in the daily course of conduct. You need that information in order to understand and to fairly analyze what the impact of imports is and could be, on all of the domestic industry.

We thank you again very much for your attention today, and we appreciate the time and the effort that's going into this case, and we know will continue to go into this case; thank you.

MR. CARPENTER: Thank you, Mr. Clark -- on behalf of the Commission and the Staff, I want to thank the witnesses who came here today, as well as counsel, for sharing their insights with us and helping us develop the record of this investigation.

Before concluding, let me mention a few dates to keep in mind. The deadline for both the submission of corrections to the transcript and for briefs in the investigations is Wednesday, October 18th. If briefs contain business proprietary

information, a public version is due on October 19th.

The Commission has tentatively scheduled its vote on the investigations for November 3rd at 11:00, and will report its determinations to the Secretary of Commerce on November 6th. Commissioner's opinions will be transmitted to Commerce on November 14th. Thank you for coming. This conference is adjourned.

(Whereupon, at 2:27 p.m., the hearing in the above-entitled matter was adjourned.)

//

//

//

//

//

//

//

//

//

//

//

//

//

//

CERTIFICATION OF TRANSCRIPTION

TITLE: Lemon Juice from Argentina

INVESTIGATION NO.: 731-TA-1105-1106

HEARING DATE: October 13, 2006

LOCATION: Washington, D.C.

NATURE OF HEARING: Hearing conference

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

DATE: 10/13/06

SIGNED: LaShonne Robinson
Signature of the Contractor or the Authorized Contractor's Representative
1220 L Street, N.W. - Suite 600
Washington, D.C. 20005

I hereby certify that I am not the Court Reporter and that I have proofread the above-referenced transcript of the proceeding(s) of the U.S. International Trade Commission, against the aforementioned Court Reporter's notes and recordings, for accuracy in transcription in the spelling, hyphenation, punctuation and speaker-identification, and did not make any changes of a substantive nature. The foregoing/attached transcript is a true, correct and complete transcription of the proceeding(s).

SIGNED: Carlos Gamez
Signature of Proofreader

I hereby certify that I reported the above-referenced proceeding(s) of the U.S. International Trade Commission and caused to be prepared from my tapes and notes of the proceedings a true, correct and complete verbatim recording of the proceeding(s).

SIGNED: Christina Chesley
Signature of Court Reporter