UNITED STATES
INTERNATIONAL TRADE COMMISSION

In the Matter of:	)	
	)	Investigation No.:
CERTAIN FROZEN FISH	)	731-TA-1012 (Review)
FILLETS FROM VIETNAM	)	

Pages: 1 through 157

Place: Washington, D.C.

Date: May 6, 2009

HERITAGE REPORTING CORPORATION
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Wednesday,
May 6, 2009

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

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

APPEARANCES:

On behalf of the International Trade Commission:

Commissioners:

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

APPEARANCES: (Cont'd.)

Staff:

MARILYN R. ABBOTT, SECRETARY TO THE COMMISSION
BILL BISHOP, HEARINGS AND MEETINGS COORDINATOR
SHARON BELLAMY, HEARINGS AND MEETINGS ASSISTANT
BETSY HAINES, INVESTIGATOR
JOANNA BONARRIVA, INTERNATIONAL TRADE ANALYST
GERRY BENEDICK, ECONOMIST
DAVID BOYLAND, ACCOUNTANT/AUDITOR
MICHAEL HALDENSTEIN, ATTORNEY
DOUGLAS CORKRAN, SUPERVISORY INVESTIGATOR

In Support of Continuation of Antidumping Duty Orders:

On behalf of Catfish Farmers of America, America's Catch, Consolidated Catfish Companies, LLS d/b/a Country Select Catfish, Delta Pride Catfish, Inc., Harvest Select Catfish, Inc., Heartland Catfish Company, Pride of the Pond and Simmons Farm Raised Catfish, Inc.:

DANNY WALKER, Chief Executive Officer, Heartland Catfish Company
RANDY RHODES, President, Harvest Select Catfish, Inc.
RAY RENFROE, National Accounts and Southern Regional Manager, Harvest Select Catfish, Inc.
JOEY LOWERY, President, Catfish Farmers of America
DANIEL W. KLETT, Economist, Capital Trade, Inc.
THOMAS ROGERS, Economist, Capital Trade, Inc.
BRIAN WESTENBROEK, Economist, Capital Trade, Inc.

VALERIE A. SLATER, Esquire
J. DAVID PARK, Esquire
JARROD M. GOLDFEDER, Esquire
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Washington, D.C.

I N D E X

P R O C E E D I N G S

(9:30 a.m.)

CHAIRMAN ARANOFF: Good morning. On behalf of the U.S. International Trade Commission I welcome you to this hearing in Investigation No. 731-TA-1012 (Review) involving Certain Frozen Fish Fillets From Vietnam.

The purpose of this five-year review investigation is to determine whether revocation of the antidumping duty order covering certain frozen fish fillets from Vietnam would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

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

All witnesses must be sworn in by the Secretary before presenting testimony. I understand that parties are aware of the time allocations. Any questions regarding the time allocations should be directed to the Secretary.

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

Madam Secretary, are there any preliminary matters?

MS. ABBOTT: Madam Chairman, no. I note, though, that the first panel or the panel is seated and all witnesses have been sworn.

(Witnesses sworn.)

CHAIRMAN ARANOFF: Thank you. Then we're ready to proceed with opening remarks.

MS. ABBOTT: Opening remarks in support of continuation of orders will be by Valerie A. Slater of Akin Gump Strauss Hauer & Feld.

MS. SLATER: Good morning, Chairman Aranoff and members of the Commission. It's a pleasure to be here with you this morning on behalf of the Catfish Farmers of America and the catfish processors who account for the large majority of production of frozen catfish fillets.

You know, there's an old joke which asks what's the difference between a catfish and a lawyer. The answer of course is that one is a bottom-dwelling, scum-sucking scavenger and the other is a fish.

Well, today you're not going to be hearing a great deal from either the fish or the lawyers, but you will be hearing from catfish farmers and processors who have traveled here from Mississippi, Arkansas and Alabama to provide you the industry's views of the current market and to answer whatever questions you may have.

This sunset review is the first five year review of the dumping order covering frozen basa and tra fillets from Vietnam. When this order was issued in 2003, imports from Vietnam had increased from 2.5 million pounds in calendar year 2000 to just over 36 million pounds in 2002. The prices of the imports had declined more than 20 percent and were consistently underselling the domestic catfish fillets by very large margins.

By the time the petition was filed, the industry had lost 10 percent of its market and virtually all of its profitability. The injury to the industry was clearly evidenced, and this Commission's unanimous determination allowing the order to go into effect has been a critical factor in the preservation of this unique and very innovative domestic industry.

The events that have transpired since the Commission's 2003 determination have demonstrated not only the wisdom of the Commission's decision but the continuing need for the order. The increase in exports to the United States that led the industry to seek relief in 2002 was a mere foreshadowing of what was to come.

The Vietnamese Government has targeted and supported the pangasius industry in Vietnam. As a result, Vietnam's exports of basa and tra grew from 36 million pounds in 2003 to 1.4 billion pounds with a B by 2008, a growth of more than 1.3 billion pounds in a five-year span.

The rate of expansion has been highest in recent periods. Between 2007 and 2008, Vietnam increased its non U.S. exports by 560 million pounds, with an increase to Russia alone of 153 million pounds. This figure is remarkable, especially when you consider that during the original investigation period the Commission found an increase here of 23.5 million pounds to be significant.

It's also remarkable when you recognize that in 2008 the U.S. industry shipped only about 115 million pounds of frozen fillets. Not only has the Vietnamese industry become a behemoth by any measure, but it has grown its export volumes as it did originally in our market by slashing prices to whatever level it has had to slash to to move the volumes.

You're going to hear a couple of key facts addressed today in some detail. First, frozen pangasius fillets from Vietnam continue to compete with U.S. farm-raised catfish, just as they did in 2003. The labeling laws have not and were not intended to eliminate this competition, and Vietnamese frozen basa and tra fillets have not developed a distinct market of any significance.

Second, while there has been a significant increase in the volume of frozen basa and tra fillets imported into the U.S. since 2003 even with the order in place, this increase in volume pales in comparison to the volume exported elsewhere.

More importantly, unlike in every other export market, the prices here have increased with increasing volumes rather than been substantially slashed, and the reason of course is that the antidumping order has meant the only way for exporters to increase their volumes is to increase those prices and get the dumping margins reduced.

Finally, without the dumping order, we think it's going to be clear for you to see that the market would be subject to the same tactics that we saw here preorder and that we're seeing in every other market where Vietnam is exporting.

Finally, you're going to hear today about why the industry is vulnerable to resumed or continued industry from Vietnamese imports. The industry is facing tremendous cost side pressures and also pricing pressures both from Vietnam and now from China.

The testimony you'll hear today combined with the data and information that's already been placed on the record in this review we are confident will confirm the imperative of an affirmative determination in this review. Thank you.

I will proceed directly if I may to the main presentation. Good morning again. I am Valerie Slater from Akin Gump. We have with us today a number of industry witnesses that I want to introduce briefly.

Mr. Joey Lowery, sitting behind me, is the president of the Catfish Farmers of America and a large catfish farmer from the State of Arkansas. Mr. Randy Rhodes is the president of Harvest Select Catfish, and with him is Ray Renfroe, a marketing director from Harvest Select. We also have Danny Walker, who is the CEO of Heartland Catfish in Itta Bena, Mississippi. I should say Randy and Ray's company, Harvest Select, is in Alabama. We also have Mr. Dan Klett, who will be presenting some economic testimony, and I will do the cleanup when they're done.

I'd like to turn first to Mr. Lowery, who is going to give a few comments from the perspective of catfish farmers.

MR. LOWERY: Good morning. My name is Joey Lowery. I've been a catfish farmer for better than 25 years. I own a 500-acre catfish farm in a rural area near Newport, Arkansas. Earlier this year I was elected president of the Catfish Farmers of America.

I appreciate the opportunity to talk to you this morning about the effect of this order from the perspective of a catfish farmer. I realize that farmers were not included within the definition of the industry. The catfish farmers and processors are very closely linked. Our destinies are highly dependent on each other.

I believe that the antidumping order has been beneficial for the entire U.S. catfish industry, and if the order is not continued, the industry may lose everything it's worked so hard to build.

I'd like to start this morning by giving you some background on our industry. Catfish farming is the largest aquaculture industry in the United States. Our catfish are raised in manmade ponds and are fed a diet of high-protein feed derived primarily from corn and soybean. Feed floats on the surface, and the catfish swim to the top to eat. Our catfish are not bottom feeders like their wild cousins.

It takes one and a half to two and a half years to grow a catfish from fingerling to food size. Normally farmers will add fingerlings each year so that there will be a constant supply of food-sized fish to harvest throughout the year.

The largest cost components of catfish farming are feed expenditures and the capital needed to build and maintain the farm. Fuel and energy have been increasingly larger cost components over the last few years. Today there are some 1,300 catfish farms in the United States, principally in Mississippi, Arkansas, Alabama and Texas. A year ago we had 1,600 farms.

When I began catfish farming 25 years ago, the catfish industry was relatively new and the market for farm-raised catfish was a fraction of what it is today. Over the years, U.S. catfish farmers have built an industry pond by pond and have worked hard to build a market for the catfish produced in our ponds.

I know processors have similarly invested a lot in their production facilities and marketing to grow the industry.

The result of all of this effort has been broader name recognition for catfish and a largely expanded market outside the traditional catfish base in the south. Prior to 2001 and 2002 and the increase of imports from Vietnam, the industry experienced growth in demand for our product and made the necessary investments to support that growth.

Like all other catfish farmers, I sell the vast majority of my fish to processors, who move the fish to market. Processors, most of whom are wholly or partially owned by farmers, perform solely to produce high-quality processed products from the fish we are raising. These processors typically do not process any product other than catfish.

Financially viable processors are essential to farmers. Without them, there is nowhere to move our fish. When processors cannot sell their product to the market, they stop buying our fish. This is especially true for frozen fillets, which are the most economically significant processed product in our industry.

When processors receive less money for

frozen catfish fillets, we farmers receive a lower pond bank price. When processors lose sales to imports, we move less product. All of these occurrences trickle down to the farm level.

When I took over the family farm in 1985, we were growing mostly row crops, rice and soybeans, with only a small-scale aquaculture operation. However, a decision made was to diversify our operations, and we began to invest more resources in catfish aquaculture. The end result is what you see today, a 500-pond acre farm devoted to raising catfish.

This farm is the primary means by which I make a living. Unfortunately, since 2003 I've taken approximately 25 percent of my water acres out of production. These ponds are currently dried and remain unused for any purpose.

When imports of frozen basa and tra fillets started coming from Vietnam, sales of fish from my farm were cut in half, but my production remained the same. Until the summer of 2001, I averaged 72 cents per pound for my fish. During the period of 2001 to 2003, my prices averaged 55 cents per pound.

Processors were forced to reduce their sales of frozen catfish fillets due to competition from the lower price of the Vietnamese fish. As a result, I had very limited markets to sell my fish that were growing in my ponds. Because of this, I estimate from 2001 to 2003 the gross sales from my farm were cut in excess of $1 million.

Imports from Vietnam continue to compete in the market, but because of the antidumping order, frozen catfish fillets have increased, and pond bank prices for fish have risen to 77 cents per pound. I'm aware of the huge increases in pangasius farming operations and processing facilities in Vietnam and the significant increase in their exports of frozen fish fillets to other markets.

I am convinced and I am a firm believer that if the order had not been in effect, the U.S. catfish industry, including catfish farming, would have been wiped out. The 55 cent per pound pond bank price we had been driven to in 2002 was simply unsustainable.

Things definitely improved once the order was in place, although many farmers never fully recovered their losses from that period. Over the past few years, the industry has again been severely strained. Feed and fuel costs have risen significantly. Feed accounts for approximately 50 percent of my direct production cost.

In 2008, feed costs were up by approximately

50 percent. Diesel and gasoline costs for trucks and electricity costs for pumps and aerators has also increased since 2007. When the cost of growing fish increases, we seek higher prices for sales to processors. However, processors can only pay this higher price if the market for the end product, principally frozen fillets, will support it.

Although continued pressure from the Vietnamese imports and now China have kept prices in check, we have been able to maintain average pond bank prices of 77 cents per pound or more over the last three years.

However, with increasing production costs, catfish farmers are under tremendous pressure even at these price levels. Credit lines are strained or unavailable, making it hard to obtain the cashflow needed to maintain production.

Many farmers have not been able to reinvest in their farms by improving farming techniques and technology, buying new equipment. In 2008, our industry lost 18,900 pond acres that had been in production in 2007, and an additional loss of 16,200 acres in the four largest catfish-producing states is projected for calendar year 2009.

Before Vietnamese imports began flooding the

U.S. market, the U.S. catfish industry was on a steady growth path of seven percent annually. Since 2001, the industry's growth has been on a steady decline. Overall, the industry's production has declined by about 152 million pounds from 2003 to 2008. This represents a decline of 23 percent.

Because Vietnamese basa and tra originally came into the United States under the false label of farm-raised catfish, importers got used to buying so-called Vietnamese catfish at lower prices. Ever since, the U.S. catfish industry has been fighting to rebound from that low price point and the expectation of imports.

Although we lost tremendous market share to the Vietnamese and continue to compete with imports today, the order has allowed us to survive. I hope the Commission will recognize how important it is that this order remains in place. We have invested our entire livelihoods into our farms. We would just like to continue to make a reasonable return on our investment. Thank you.

MS. SLATER: I'd like to turn now to Mr. Rhodes of Harvest Select Catfish.

MR. RHODES: Good morning. My name is Randy Rhodes. I'm the president of Harvest Select Catfish, a processor located in Uniontown, Alabama.

Six years ago I had the opportunity to speak before the Commission about the remarkable changes that I had observed during my tenure in the catfish industry, which at that point had been about 20 years. I asked the Commission to impose an antidumping duty to help address the unfair pricing of the Vietnamese basa and tra frozen fillet imports that had been severely impacting the market for catfish that the U.S. industry had worked so hard to develop.

When I last spoke here, I was senior vice president of sales and marketing and an officer of American Pride Seafoods, which was the owner and marketing arm of another Alabama processor, Southern Pride Catfish Company. I left Southern Pride in 2006 for other opportunities, including two years of experience with Inland Seafood, a seafood importer and distributor based in Atlanta and operating throughout the southeast.

I returned to the U.S. catfish industry in May 2008 as the president of Harvest Select. I returned to the catfish industry because it is an innovative and exciting industry on the cutting edge of sustainable food sources, which is so important in the world today.

In an effort to assist the Commission, I'd like to briefly describe what happened after the order was put in place and the changes that have occurred in the composition of the U.S. industry in recent years.

At the outset, it's important to understand that the U.S. industry has invested over 40 years in standards, quality and infrastructure that allow us to produce one of the best aquaculture products in the world. The U.S. industry provides sustainable products using best practices that follow U.S. Government rules and regulations.

For example, Harvest Select was recently certified as having the best aquaculture practices as part of the Global Aquaculture Alliance, demonstrating our commitment to produce a safe and sustainable product.

But these certifications and compliance with government regulations come at a significant cost, making it difficult for Harvest Select and other processors to lower their selling prices much further and continue to cover their costs.

The antidumping order has been a tremendous help to us. Immediately after the order was put in place, import volumes fell off dramatically and our prices and profitability rebounded. But those benefits proved to be short-lived as exporters and importers quickly began to circumvent the order.

They brought large volumes by misdeclaring the basa and tra at the border as other species, other fish like sole or grouper, in order to avoid payments of duties. More recently they have been transshipping their products through third countries.

In the past two years, some of the Vietnamese exporters are going through the process at the Commerce Department to get reduced duty rates. As they have done so, Vietnamese imports have resumed at record levels and at prices well below our own.

Although these prices are well above where we would be without the order, these Vietnamese imports have continued to grab significant market share and continue to pressure frozen fillet prices paid to catfish processors and consequently pond bank prices paid to our farmers.

Even though there are labeling laws on the books, the basa and tra from Vietnam continue to compete with catfish. Vietnamese product was imported into the U.S. market during the investigation period in significant volumes, was marketed as catfish and was substituted for U.S. produced catfish. The biggest buyers, particularly the food service distributors, came to be familiar with basa and tra on that basis.

In addition, the labeling laws do not prevent the importers and food service companies from selling this product as a catfish substitute, and they do so. During my two years in the seafood distribution business at Inland, I can tell you that that is exactly what occurs. A distributor offers a customer interested in catfish a choice of products, typically U.S. farm-raised catfish, basa, tra and even Chinese catfish now.

Since 2003, our industry has continued to experience pressure from these low-priced imports. Several processors that were in operation during the initial investigation have ceased production. Southern Pride, my former employer, exited the catfish processing business and sold its assets to Heartland Catfish. Aquafarms, Prairie Lands, Pride of the South and Seacat exited the industry as well.

There is no major processing left in Arkansas. Delta Pride and Consolidated Catfish Company combined their operations in 2008 to form a new entity, Consolidated Catfish Producers. Only the most efficient farmers and processors can remain in this environment.

As a result of some processors consolidating and others going out of business entirely, U.S. production capacity for frozen catfish fillets has fallen from 145 million pounds in 2003 to 136 million in 2008, as your own data will show.

There has been a significant reduction in pond acreage and live fish supply. Nonetheless, since the order was imposed, there have been increases in frozen catfish fillet prices and industry profitability, even with the new challenges such as increasing cost and new competition from frozen catfish fillets, imports from China as well.

It is my firm belief that the antidumping order has enabled the industry to maintain some level of profitability even while facing these challenges. Vietnamese basa and tra capacity and production have grown at an astonishing pace. Our industry has watched in disbelief at what the Vietnamese have done in targeting other markets.

Although imports from Vietnam have increased into the United States, the levels would have been several times greater and at far lower price without this order. If we had experienced the import volume increases experienced in many other countries since 2002, this U.S. industry likely would be a fraction of what it is today.

If the Commission removes the duties on the basa and tra imports from Vietnam, there would be an almost immediate and huge influx of Vietnamese frozen fish fillets into the U.S. market that would effectively eviscerate this industry.

Imports from Vietnam will be so much cheaper than U.S. farm-raised catfish that U.S. producers and farmers will face impossible competition, causing both pond bank prices and frozen fillet prices to decrease to unsustainable levels no matter what marketing efforts or improvements the industry undertakes.

U.S. produced frozen catfish fillet sales volumes would drop as Vietnamese imports continue to increase their market share. This would cause the U.S. industry to contract even further as more catfish processors and farmers go out of business or drastically reduce their capacity and pond acreage and lay off a substantial number of workers.

Therefore, I respectfully urge the Commission to keep the order against Vietnam in place so that the U.S. farm-raised catfish industry can continue to grow and develop. And I'd be happy to answer any questions. Thank you.

MS. SLATER: We're now going to hear from

Mr. Walker, the CEO of Heartland Catfish.

MR. WALKER: Good morning. My name is Danny Walker. I am the CEO of Heartland Catfish Company, a catfish processor located in Itta Bena, Mississippi. I've been in the catfish industry for 24 years and have been the CEO of Heartland Catfish Company since we started our operations in 1996.

When I testified before this Commission six years ago, I explained that despite being one of the largest, most modern and most efficient processors in the industry, we could no longer maintain our profit margin due to the flood of low-priced Vietnamese imports. I truly feared that Heartland Catfish and other processors would not survive without an antidumping order.

I have come to Washington today to let you know that without a doubt the order has played a significant role in our industry's health and survival over the last six years. Our prices, profitability and the pond bank prices paid to our farmers all increased as a result of the order. The price of Vietnamese imports also increased somewhat.

As critical to us as it was then, the order is even more important to us today. During the investigation period, imports from Vietnam crippled our industry even though the industry in Vietnam was in its infancy.

Since the investigation, the Vietnamese industry has grown exponentially with its overall export volume exploding from 68 million pounds in 2002 to over 1.4 billion pounds in 2008. This growth rate has been stunning.

Without the order, the U.S. would have been the first market targeted with this volume. Instead, the order was successful in limiting the growth of Vietnamese exports to the United States from 20 million pounds in 2003 to 53 million pounds in 2008.

While this is a huge increase, it is a fraction of the over 3,000 percent increase in Vietnamese exports to the European Union during this same period where exports grew from 15 million pounds in 2003 to 495 million pounds in 2008.

Now I understand that there are some concerns that the order is not necessary because Vietnamese imports no longer compete with U.S. frozen catfish fillets. This is simply not true. We continue to face competition from Vietnamese imports every day. The labeling laws have not changed that.

First, it is important to keep in mind that the first successful introduction of the Vietnamese product into the United States was as catfish. Therefore, the market got to know the product as catfish and continues to associate it with catfish regardless of how it is now labeled.

There has been no significant marketing of basa and tra as a species that would make it recognizable to the consumer as a menu item. Think about how often you have seen basa, tra, swai or any other name for this fish on a menu over the last five years.

In fact, quite recently one of our salespeople brought back some marketing materials from a major U.S. importer and distributor of seafood at a trade show. It was part of their brand new campaign for Vietnamese basa and tra, and the catch phrase was: Pangasius. Never heard of it? Well, soon it will be on the tip of everyone's tongue.

They're just now starting this campaign. This was in the last few weeks. This fish does not currently have its own market and is unlikely to for some time to come.

Second, the labeling laws restrict how basa and tra may be labeled as it is imported and sold to distributors, but they do not prohibit the product from being marketed and sold as a substitute for U.S.

catfish.

Most U.S. frozen catfish fillets and Vietnamese frozen basa and tra fillets are sold through the food service distribution. When these food service distributors sell to their customers, such as restaurants, they may not label the Vietnamese product as catfish, but in their sales discussions and promotional materials, they often characterize the product as catfish or, more often than not, Chinese catfish even if it is basa.

The result is that our catfish is ultimately displaced at the restaurant or institutional level by the Vietnamese product regardless of how it is labeled when sold to the restaurant or institution. In many cases, we may not know which food service distributors' customers, such as restaurants and institutions, choose the Vietnamese product over our product. All we see is that our volumes to the food service distributors themselves are declining.

It is also important to keep in mind that frozen catfish fillets and frozen basa and tra fillets are highly price-sensitive products. As long as certain quality standards are met, for most customers, the issue will be price. The fact that the Vietnamese product continues to be sold at prices so far below ours means that customers who might not otherwise be tempted to move away from catfish will be inclined to do so. The bigger the spread, the larger the segment of customers who will switch.

Third, with the exception of a few states, the labeling laws do not effectively operate at the restaurant level. Vietnamese product continues to be used in place of catfish in dishes that were traditionally made only with catfish. This substitution has taken place at large restaurant chains such as Piccadilly's and Golden Corral where the Vietnamese product may appear as southern fried fish as well as at casinos and cafeterias.

It has mostly occurred in nontraditional catfish states, resulting in reduced sales of catfish to food service distributors in those areas. For example, when comparing sales to Sysco in Jackson, Mississippi, versus Sysco in Louisville, Kentucky, a greater percentage of the Sysco Kentucky purchases will be of Vietnamese product compared to that of Sysco Mississippi.

Because we can't continue to compete with the Vietnamese product, the huge increase in Vietnam's production and exports are very troubling to us. As it is, the 53 million pounds that entered the U.S. in

2008 is pressuring our prices, limiting our growth and costing us market share. Our operations have been curtailed, and our employees are getting fewer hours.

Since last November, we stopped processing fish on Wednesdays because of high inventory levels. Production levels at Heartland Catfish are still not at previous levels as the Vietnamese basa and tra imports and the new influx of Chinese catfish continue to affect our production and sales.

Vietnamese imports are setting the market price, and the only way for any processor to move excess inventory levels is to bring our prices down to the same level as the Vietnamese product. This is extremely difficult given our rising costs, but at least the order has placed a floor on the prices for the Vietnamese product.

Without the order, not only will prices fall, but we will also be faced with the same onslaught of basa and tra that has hit the EU, Russia and other markets.

I also want to mention that in September of 2008 we acquired the operations of Southern Pride, which was another U.S. catfish processor, located in Alabama. We purchased it when American Seafood, which had no previous experience with the processing of aquaculture products, exited the business.

Our board of directors has been considering significant capital improvements to the new Heartland Alabama assets but has put the decision on hold pending the outcome of this sunset review and the resolution of economic and other market conditions. If the order is revoked, it simply will not make sense to make those capital investments.

It is also important to note that Heartland Catfish is highly dependent upon and affected by the condition of U.S. catfish farmers. As I told the Commission six years ago, U.S. catfish farmers and processors are essentially two sides of the same coin, and each depends on the other.

Indeed, like most processors, Heartland is owned by farmers and we purchase a large percentage of our live fish from our related farm. Unfortunately, times continue to be tough for catfish farmers. As Mr. Lowery already testified today, U.S. catfish pond acreage has continued to decline over the last few years and feed costs have significantly increased, requiring a higher pond bank price.

Some of the farmers have reacted to these higher feed costs by simply feeding their fish less, resulting in thinner fish. This in turn has negatively impacted processors because our yields have declined, resulting in higher production costs.

The order has, however, helped us set higher prices for our catfish fillets even in the face of imports from Vietnam. In our experience, some customers are willing to pay a premium for our product over Vietnamese imports. However, the price of Vietnamese fillets is setting the base price.

With the order in place, the price that we can charge for our product, which includes this premium, is higher than it would have been without the order, which in turn allows us to pay the farmers the higher pond bank price.

If the order is revoked, Vietnamese prices would fall dramatically to move volumes, and our prices would fall, leading to a drop in the corresponding pond bank price. If the pond bank price falls too low, the farmers will not be able to survive. Without the farmers, there will be no processors.

Overall our industry continues to be negatively impacted by Vietnamese imports, but the order has helped to significantly mitigate these effects. Given the exponential growth of the Vietnamese industry over the last few years, however, I believe that revocation of the order will have a devastating effect on our industry.

Therefore, on behalf of Heartland Catfish and the U.S. catfish processors and farmers as a whole, I ask you to please keep this antidumping order in place. Thank you for your time.

MS. SLATER: We're now going to hear from Mr. Renfroe, who is going to prove that not everybody from Alabama speaks very quickly.

MR. RENFROE: Good morning. My name is Ray Renfroe, and I'm national accounts and sales manager of Harvest Select Catfish, a large processor with operations in Uniontown, Alabama, and Eudora, Arkansas.

I've been with Harvest Select since October of 2008 but have spent some 17 years in the seafood industry selling not only catfish while at Southern Pride and later at American Seafoods but a variety of seafoods from many other sources. I'm responsible for calls on food service distributors and national and regional multi-unit restaurant chains.

I'm very pleased to be here today because I wanted to briefly explain to the Commission some of the ways that we continue to compete with Vietnamese basa and tra imports. Even though labeling laws prevent the boxes from being labeled as catfish when they are sold to importers or food service companies, I want to make just a couple of brief points as they apply at the operator or restaurant level.

First, Vietnamese basa and tra does not have its own identity in the marketplace at the restaurant level. That means when this fish is put on the menu it's usually identified as something the consumer recognizes such as catfish or with some generic type identifier suggestive of catfish such as southern fried fish. There are many examples of restaurants offering basa and tra in these ways, both of which directly compete with catfish. I'll give you just a few.

Recently a member of our marketing team went into a restaurant chain that operates in Texas to make a catfish call. The restaurant had previously been buying 600 to 675 pounds of catfish per week or somewhere around 34,000 pounds a year. The restaurant had a banner out front that read in large letters All-You-Can-Eat Catfish.

When our salesman asked about the product being served and was shown what was stored in the freezer, the boxes were correctly labeled as basa and Product of Vietnam. Texas is one of the largest catfish-consuming states in the U.S., and here you find basa being held up to the public as catfish. Of course, our salesman did not make the sale.

Another type of common situation is found in the large, multi-unit restaurant chains which serve all-you-can-eat buffets or specialize in inexpensive meals. These restaurants have increasingly moved away from U.S. farm-raised catfish while leaving the menu offering intact, labeling it again something like southern fried fish or similar.

One large chain we have sold catfish to for years in as large as truckload quantities recently cut back substantially on its purchases. We learned that it had swapped out catfish for basa. The generic southern style menu description they used allowed them to purchase a cheaper alternative, and from what I've seen, basa and tra from Vietnam have consistently been the cheapest alternative, less expensive than U.S. farm-raised catfish, even less expensive than Chinese catfish.

This may be tougher in Mississippi or Arkansas where there are labeling laws that are enforced at the restaurant level, but outside these states, there's no hesitation to substitute basa, tra or Chinese catfish for our domestic product.

In the case of other national chains, many of them have opted to switch all their locations outside the key catfish-producing states to basa while maintaining only a small amount of domestic use in states like Mississippi, Arkansas, Alabama and Louisiana. The use of generic names, while suggestive of traditional catfish dishes, permits this easy substitution.

Second, we as domestic processors don't always know precisely how or when our sales were lost. Much of the frozen fillet volume that we sell goes to food service distributors. Those distributors will often carry our catfish as well as basa, tra and sometimes Chinese catfish. The distributors will offer both, but for customers who will not take the higher end, perhaps better product, the distributor will push a lower cost substitute.

If a Sysco or U.S. Food Service or other distributor thinks he can sell more volume or make better margin on cheaper product, he'll push that product as a suitable substitute for the higher priced one. This is exactly what is happening with catfish, basa and tra.

When I worked for American Seafoods and earlier for a large seafood importer and distributor called Tai Fong USA, I saw firsthand how seafood products are sold at the distributor level and how they identify substitutes for catfish and move cheaper goods into marketing spaces.

From a sales perspective, it's frustrating because we don't know who is choosing to buy basa from the distributor or how much. This happens with respect to multiple individual restaurants or institutions that may be buying only one or two 15-pound cases a week. All we see is that our sales to the distributor are down.

Sometimes the distributor will come back to us and suggest that our price needs to be lower to help them move more of our fish, and at other times, the volume simply disappears without explanation. We have most definitely seen our sales decline over the last two years as Vietnamese imports have ramped up.

Finally, I want to tell you from my own experience that we are losing market share to basa and tra. I cannot tell you how many times that our other sales personnel and I sit in front of buyers, sometimes big ones, distributors and national restaurant chains alike who tell us that they can no longer use our product because they can buy Vietnamese product for so much less and their customers want a cheaper product, particularly now in this economy.

Recently we were on a call with a very large distributor in Florida. The buyer told us that 85 percent of the domestic catfish product that he used to buy has now been replaced with basa. He went on to say that it would be pointless to continue our conversation unless we were willing to drop the price of our product by at least $10 a case, which is about 67 cents a pound. Needless to say, the conversation didn't continue and I didn't make a sale.

We are competing heavily with Vietnamese imports, and I hope these comments help to explain how this is happening. Thank you very much for the opportunity to speak with you this morning, and I'll be happy to answer any questions that you have.

MS. SLATER: Mr. Klett is now going to dazzle us with some slides on economic discussion.

MR. KLETT: I have slides. I'm not sure about the dazzling, but anyway.

Good morning. My name is Daniel Klett. I'm an economist with Capital Trade, Inc., testifying on behalf of Petitioners in this sunset review. My testimony will address the benefits to the domestic industry as obtained from the order, the condition of the industry and its vulnerability to resumed injury and the impact on the industry should the order be revoked.

Regarding the benefits to the U.S. industry, there are two considerations. First, evaluating pre and postorder industry conditions provides some useful information. Second, however, postorder conditions must be evaluated in the context of what they would have been absent the order.

The second consideration is particularly important in this sunset review given the enormous increase in Vietnam's capacity, production and export volume and its postorder pricing behavior in non U.S. markets.

As shown in Slide 1, U.S. catfish producers' profitability was at its lowest level in the year before the order was imposed, 2002, and this largely reflects adverse price effects as prices were declining even as overall demand was increasing.

U.S. processors' profitability jumped markedly in 2003 after the order was imposed. Although profits have trended down since 2003 for a variety of reasons, profitability has exceeded 2002 levels in every year of the review period.

These profit declines largely reflect increasing costs as nominal prices were higher than in the investigation period and increased during the review period. Thus, the order has allowed processors to retain positive operating margins even while facing the challenges identified by the earlier witnesses.

Positive price effects also are evident from an analysis of what prices likely would have been absent the order based on a review of Vietnam's pricing behavior in non U.S. export markets. As shown in Slide 2, although the magnitude of the relative values have fluctuated, since 2003 Vietnam's average price to the U.S. market has been consistently higher than prices to non U.S. export markets.

In particular, over the last three years, this differential has widened as Vietnam has increased its capacity and production. It is only through the discipline of the order that you can observe increasing prices in the U.S. combined with increasing import volumes into the U.S. while in all other non U.S. export markets Vietnam is increasing its sales volume through aggressive and declining price levels.

Notwithstanding the benefits that the U.S. has received from the order, two factors currently make processors particularly vulnerable to increases in import volumes of frozen fish fillets from Vietnam, China and other countries and higher unit production costs, especially for live fish.

The sustained competitive pressure from imports, both subject and nonsubject, has resulted in a reduction in the number of processing plants from 25 during the investigation to 19 during the review period and reductions in frozen catfish fillet processing capacity, production, shipments and hours worked.

As shown in Slide 3, imports of frozen fillets from China have increased during the review period and in 2008 are estimated to have accounted for 13 percent of the U.S. market. Subject imports from Vietnam also have increased as some exporters have received low rates in annual reviews or new shipper reviews. However, as shown in Slide 4, derived from Urner Barry data, imports from Vietnam are still lower priced than imports from China in the market.

Both catfish farmers and processors have faced price/cost squeezes during the review period. As shown in Slide 5, catfish farmers' selling prices have not kept pace with higher feed costs. The resulting price/cost squeeze has resulted in a reduction in pond acreage for live catfish production as discussed by Mr. Lowery.

Cost pressures for live catfish resulted in higher fish input costs for processors, and their operating profits have declined as their selling price increases have not kept pace with the unit cost increases.

As shown in Slide 6, during the investigation period, depressed prices explain the profit reductions as there was a negative price variance. During the review period, U.S. processors' declines in profitability largely have been the result of higher unit costs as reflected in negative cost variance of the financial data.

Based on the growth in Vietnam's capacity, production and exports and the attractiveness of the U.S. market, it is evident that absent the order export volumes from Vietnam to the U.S. will increase significantly.

There is only a small segment of U.S. processor sales that are not likely to be open to competition from basa imports due to, for example, state labeling laws at the restaurant level in a few states or to devoted U.S. catfish consumers. Conversely, it is inconceivable that the export volume increase that will occur will be absorbed into any new U.S. basa market that does not compete with U.S. produced frozen catfish fillets.

At the restaurant level, subject imports continue to compete with U.S. frozen catfish fillets when sold as more generic southern fried fish, and indeed basa continues to be menued as catfish at restaurants in those states where this is not legally prohibited.

The Commission found during the investigation period that subject import volume increases were significant, and in the last year of the investigation period, this increase was 10 million pounds at the expense of U.S. processor sales volume, yet the U.S. industry is now smaller, and with its increase in capacity and production since that time Vietnam has demonstrated an ability to increase exports to individual markets by levels well in excess of the 10 million pounds in a single year.

As shown in Slide 7, from 2007 to 2008, Vietnam increased exports to Spain by 22.3 million pounds with a seven cent per pound price reduction. Exports to Germany increased by 35.2 million pounds with a 10 cent per pound price reduction. Exports to Mexico increased by 19.4 million pounds with a 10 cent per pound price reduction, and exports to Egypt increased by 44.9 million pounds with a 29 cent price reduction.

Although not depicted on the slide, Vietnam's exports to Russia increased by 153 million pounds from 2007 to 2008 with a 12 cent per pound price reduction.

Each of these economies is much smaller than the U.S., yet a replication of the experience in any one of these markets in the United States would be extremely detrimental to the U.S. industry, which produced only 95.7 million pounds of frozen catfish fillets in 2008.

In fact, given the higher prices in the U.S. compared to virtually all alternative export markets, the diversion in export volume to the U.S. would surely be greater than the experience of any single non U.S. export market destination.

The effects of this volume diversion, combined with the low price levels to move the volume, would be devastating to the U.S. industry, particularly given its current vulnerable state. Thank you.

MS. SLATER: Can I just get a quick time check, please?

MS. ABBOTT: Forty-one minutes elapsed.

MS. SLATER: Thank you. Members of the Commission, you've heard the testimony today. We've presented you with what we believe is a very thorough prehearing brief, and I'm not going to review all of the arguments there. I know you've been studying it carefully.

I do want to emphasize a few key points here today before we turn to your questions. First, although I know that the Commission is well aware of this, the Commission did decide last October to conduct a full sunset review based on the representation of the Vietnamese Association to participate, that its members would participate in this review.

That full review decision was made in October, but sometime in February after the staff had sent draft comments, draft questionnaires for comments and in fact received such comments, VASEP, the Vietnam Association, withdrew its appearance.

Now that happens, and we understand that happens, and we recognize the Commission of course always has the ability to conduct a full review even if no one shows up, but having made that decision to conduct this full review, to undertake the administrative burdens itself and to have the industry go through all of this, the Commission needs to take into account what the Vietnamese industry, how it has participated or not participated in this review and to make use of your statutory authority to use best available information and indeed to draw adverse inferences.

This is a serious process for this industry. It's a serious process for this Commission, and representations concerning intended participation need to be taken very seriously. You rely on them when you make your decisions about how to proceed, and I would urge you to have your decision reflect the Commission's view of this kind of behavior.

I want to just turn briefly to some of the key points. You've heard about them a bit today, but in looking at the impact of revocation, you need to look at the volume, the likely volume impact, the likely price effect of revocation and of course the impact.

One of the things you heard quite a bit about today and you will see a great deal of data and support for in our prehearing brief is Vietnam's capacity, production, exports and capacity utilization.

Now, as I mentioned, we don't have information on all of those points from the Vietnamese industry since we've had virtually no participation on that score. However, there is a great deal of information that is in the public record which we've pulled together for you. Much of it is actually sourced from the Vietnamese Association itself, which did provide you a limited amount of data.

Looking at that data, which I would refer you to Exhibit 15 of our prehearing brief, it's very clear what has happened. Now much of that is confidential for certain periods, so I have to be a little bit careful here, but the export data, which is all public, is highly indicative of what has happened. This is a highly export-oriented industry, so that looking at the public export data will give you a pretty good view.

As has been mentioned a few times, the exports of basa and tra have increased from about 25 million pounds in calendar year 2000 to over 1.4 billion pounds in 2008. These are VASEP, the Vietnamese Association's own figures.

This tremendous growth, as we've also documented in our brief, is the result of targeting of the sector by the Vietnamese Government, which plans further expansion, and you'll see an article in Exhibit 14 of the brief, a very recent article talking about the targeting for further growth of this sector.

Now in Exhibit 15 is the data on capacity, production and utilization, which we've had to estimate and we think we've estimated conservatively and supported with information available about particular Vietnamese processors and their capacity utilization, which is public, estimates from all kinds of sources, including the FAO. The U.S. Department of Agriculture has written reports on this.

You've got a good amount of documentation there for a best information available finding as to Vietnamese capacity and production, but the capacity you can see, looking at those numbers without getting into the specifics, capacity has outstripped even the tremendous growth in production and in exports.

You can see that Vietnamese excess capacity, and again I can't mention the numbers, but keep in mind it represents multiples of total U.S. production in 2008, which is reported in your staff report.

Now not only has Vietnam's capacity, production and exports grown, but the underutilized capacity is substantial. In fact, as shown at page 34 of our prehearing brief, public information available concerning Nam Viet, which is one of the largest Vietnamese processors and was the largest exporter to the United States during the period of investigation, indicates that that company's excess capacity alone, one company, far exceeds total U.S. shipments in 2008. So we're not talking about a lot of guesswork here when we say there is a tremendous amount of unutilized capacity in Vietnam.

Not only is there tremendous capacity and underutilized capacity, but this market remains extremely attractive to Vietnamese exporters. How do we know that? These arguments are all laid out in the brief, but let me review some of the key ones. The United States is one of the largest seafood consuming markets in the world. We rank fourth if you count the EU as one market. We rank fourth according to the FAO data in terms of seafood consumption. There is a big market here for seafood.

Our prices at least for basa are higher here than anywhere else so that even if Vietnamese exporters do what we know they will do, which is slash their prices to move volume, they can slash prices and still stay above where they are in other markets.

We've had restrictions placed in other markets such as Russia, although those have been modified recently, and the most telling two factors that make us absolutely certain this market would be absolutely top in terms of targets for Vietnamese exporters are a couple of things.

Look what they've done since the order has been in place. Right out of the box we faced tremendous problems with circumvention. The Vietnamese exporters began mislabeling this fish. So it came to the border. It's a frozen fish fillet. It's not a tractor. It's not something that's readily identifiable. It's not a shrimp. You can't call a shrimp too many other things. Maybe a langostino.

These frozen fish fillets came to the border, and the importer said these are not basa. These are sole. They are grouper. These are not covered by the order. This didn't happen in a small way. It happened in a massive way. A number of those folks were apprehended and went to jail, but this went on for something like two years.

In the brief, we've given you some data that gives you some order of magnitude that it was tremendous. They were not going to be stopped from shipping into this market. It's very attractive to them.

That circumvention has continued in a variety of ways. Today we have a more traditional problem, which is transshipment. Much of the volume that we believe you see coming from some of the other

Asian countries such as Malaysia and Thailand is not native to those countries but is being transshipped.

As we've pointed out in the confidential version of our brief, we even see references to that in some of the questionnaire responses that you received from purchasers. It's a big problem. It's a little bit tougher to get at, as you know, than the mislabeling because we can test for species identification at the border.

We've also seen some duty absorption. The Commerce Department made a duty absorption finding in this case. We've seen values that are being underdeclared, which has led the Commerce Department to change the way that duties are collected under this order. There are just numerous things that are happening to work around and through the order to get product into the market.

In addition, we have a few, a handful, of Vietnamese exporters and processors who have gone through the Commerce Department's review process and obtained reduced duty margins. The impact in terms of the volumes that have come when you look at that 53 million pounds, getting those rates down to reasonable levels, to little or nothing, has resulted in a tremendous increase in volume.

If you think about revocation as setting everybody at zero, that will be replicated many times over. There are about six Vietnamese exporters and processors who have reduced their duty rates. We think there are something like 168 exporters and processors in Vietnam, so it is just a very small group, and they've been able to achieve this volume very quickly. This market is extremely attractive to them.

Not only have the volumes gone up, but we've heard reference today to what's happened to the pricing in other countries. In our brief, we've given you detailed data. It's actually data that VASEP itself publishes as to the export prices to various markets. The data is stunning. To move volumes into these other markets, and we've talked about Russia. We talked about Egypt. We talked about the EU and the tremendous volumes of fish that have moved.

Not only did we see the cent declines -- Mr. Klett talked about 12 cents here and 10 cents there -- but we had very low prices to start, and these prices have moved down to the point where this fish is being sold for $1 a pound, under $1 a pound in some of these markets to move the volume.

In every one of these cases -- and, Brian, we have some slides on this maybe that will help you -- you can take a look and see the volume. This is overall. If you look at this slide, these are the overall increase of volumes of frozen basa and tra into non U.S. markets.

Look what's happened to the prices. There has been a tremendous drop in the prices to move the volumes. In our brief, you've got copies of articles discussing the impact that's had on the seafood markets there and concern that's been raised by some of the countries. It's not a reflection, as we've documented, of the seafood market in those particular countries. It's underselling everything else that's there.

The next slide? The other interesting thing you've heard mentioned a few times is that even though our volumes have increased -- they have increased -- even though it's a lot, it looks like nothing compared to what's been sent elsewhere. You can see the increase to the U.S. has been a little under 12 million pounds a year average since the order, since 2000.

Actually what we've got is a comparison here of the preorder period with the postorder period outside the U.S. Look at the average increase in exports that Vietnam has been able to achieve. As I mentioned, that's been done by pricing.

The impact of the order has been that as Vietnam has grown its market so significantly we have gone from absorbing almost half of its exports to absorbing only, I can't read that, but it's less than four percent of the total exports. That 53 million pounds now represents a tiny slice of what Vietnam has to ship, and they have been deflected, if you will, by the antidumping order.

This is something that you saw I believe in Mr. Klett's presentation, but it's a really important slide from my perspective. What this tells us is that while we know that our volumes have increased, although not by much compared to the rest of the world, our prices have also increased. This is the only place where that has happened.

As I mentioned in my opening statement, this is critical to understand. In order for the Vietnam exporters to increase their volumes here, they had to raise prices enough to get their dumping margins down, and they have to keep those prices high enough to keep those dumping margins low. They cannot use the tactics that they have employed in every other export market, which is move volume by charging next to nothing. It's a start, but absolutely correct result.

Finally, this is a really interesting bit of information that we wanted to make sure. It's in the brief, but I wanted to highlight it. In terms of the importance of the U.S. market to the Vietnamese, we are a target market for Vietnamese seafood. There's a big industry there.

The other products that they ship, shrimp being among them, the other products that they ship around the world, for those products we are a substantial portion of their exports. The U.S. is way underrepresented as a portion of total exports for basa. We can expect at a minimum that we would begin to see the U.S. look like all other seafood exports in terms of their market share there.

With that I'd like to wrap up our direct testimony and to make this august group of witnesses available for your questions. We thank you for your attention and your patience this morning. Thank you.

CHAIRMAN ARANOFF: Thank you very much. I want to welcome all of the witnesses here this morning to the Commission. We very much appreciate your taking time away from your businesses and traveling here to Washington to answer our questions.

We have a reputation of asking lots of

questions and to be a particularly tough workout on days when we don't have to come back after lunch and question the second panel, so consider yourself warned. We like to get our time's worth out of the hearing.

We're going to begin the questioning this morning with Vice Chairman Pearson.

VICE CHAIRMAN PEARSON: Thank you, Madam Chairman. I also would like to welcome all of you. It's not quite as warm here as it was in Itta Bena, Mississippi last week. I would like to thank you, Mr. Walker, for the hospitality and the courtesy that you showed the delegation when we were there.

I asked a lot of questions at that time, and I've still got quite a few left, but I would note that at least we had the good fortune to schedule this hearing on a Wednesday when your plant is not running, so you might feel a little more free being here knowing that nothing terribly is likely happening in your absence.

Are the southern U.S. states -- Alabama, Arkansas, Mississippi, Louisiana, Texas. Are those the ideal places for raising catfish in the United States?

MR. WALKER: Yes, they would be. If you

look at the different characteristics that come into play when we look at raising catfish, temperature, water temperature, is going to be very important.

Also a mild winter is going to be very important. The further down south you get, the more growing days you're going to have because in the wintertime the catfish are going to be dormant, so they're not going to be eating. They're not going to be growing during that time.

It's only during the summer months that those fish grow and so while we market and sell our product 12 months out of the year, our product is only grown around six to seven months out of the year.

VICE CHAIRMAN PEARSON: Okay. Well, I grew up on a tributary of the Mississippi that was rather further north from you. I'm from Minnesota. So I have some knowledge of river fish, including catfish in that area and some of the same catfish species, I believe. We have channel cats in Minnesota.

Am I correct to assume that you're unlikely to face a lot of competitive pressure from catfish farming starting in Minnesota or other cooler climates?

MR. RHODES: You're right. The area of the southeast is the best place.

VICE CHAIRMAN PEARSON: So it would take a long time for our Minnesota catfish to grow up to compete with your catfish?

MR. WALKER: You'd be correct, Vice Chairman. You know, also you've got to realize that a good, adequate water supply is very important in the delta regions of the south. That water aquifer is very close to the surface and so that we can get very good, clean water for raising those fish.

That also requires a good soil type that can hold water, so a very good, clay-based soil is important in raising the product, but the primary condition that you've got to have is the number of warm days where your water temperature is over 70 days.

VICE CHAIRMAN PEARSON: Okay. Now, that was an issue that I had no familiarity with until I was down there with you last week.

Thinking about it, I'm wondering would an even warmer climate be more conducive to raising catfish? For instance, think of Ecuador along the coast, so you're close to the equator and you're in a continually warm climate. What would catfish do there?

MR. RHODES: Well, they've been

experimenting in Brazil and South America, but there has to be a small amount of time of a cold snap. There's got to be some for the broodfish to spawn and that kind of thing, so you've got to have some spawning going on, and that means the cold snap helps.

That's why it's been very difficult for the guys outside the southeastern United States and further south, if you get down around Brazil or somewhere like that. They've tried it, and they've failed.

VICE CHAIRMAN PEARSON: Okay. So some dormant period, relatively dormant period, is needed for the fish just biologically just so that the fish will be produced and do the sorts of things that fish do.

MR. WALKER: Yes. I would add, too, when you get closer to the coastline even in the United States other factors come into play, one being sandier soils, the other factor being birds and predators to the catfish that are on the ocean lying areas.

VICE CHAIRMAN PEARSON: Okay. Thank you. Do you have any knowledge of the -- well, I know you have some knowledge as to average feed conversion rates for catfish grown in the United States.

Mr. Lowery, maybe you could comment on this.

How many pounds of feed does it take to get a pound of live catfish?

MR. LOWERY: You know, I can only really speak for my operation. You know, I've heard figures all over the board, but you can be profitable around a two to one conversion.

I think the industry probably overall is doing two and a half to three to one, but your more efficient farmers will get around two to one, in some cases maybe a 1.8, but that's your better farmers will be in that range right there.

VICE CHAIRMAN PEARSON: Okay. It has been a while since I've had direct experience in animal nutrition, but my recollection is that broiler chickens would have a lower feed conversion ratio than two to one. Is that correct?

MR. LOWERY: Say that again. You say chickens?

VICE CHAIRMAN PEARSON: Yes. I'm just trying to get some comparison of the efficiency of feed conversion in the catfish versus the efficiency of feed conversion into other types of animal protein.

MR. LOWERY: I'm not real familiar with chickens. I couldn't answer that correctly. I don't know what chickens are doing.

MR. RHODES: I'm not that familiar as well, but I can say that those guys can grow chickens in four months I think it is or maybe five.

You know, they can get a full bird in just a four or five month period, where we're taking a year and a half to two years, two and a half years.

VICE CHAIRMAN PEARSON: Well, there's been a tremendous amount of research and investment into trying to figure out how to raise chickens extremely efficiently, and of course the same with pigs, so some of the competition out there in terms of the center plate item on the menu.

There may have been more research and development into feed efficiency than we've seen so far in the catfish industry. Could you comment on that, the research efforts or development efforts?

MR. WALKER: Yes. When you look at what Randy was referring to, the grow out period for a chicken or for a pig, it's a relatively short grow out period.

So when you look at research and development to be able to grow new strains and to be able to achieve an animal that is going to be a better converter of protein you're able to go through many more generations over a period of time than we are in the catfish industry.

In the catfish industry we're looking at a year and a half to two and a half years to grow out a catfish from the egg to the plate, so it takes us a much longer time in our process to create a more efficient converter of feed to protein.

VICE CHAIRMAN PEARSON: So from the standpoint of the farmer you can get kind of one crop of catfish every two years whereas if the land was still in soybeans you'd be getting one crop every year?

MR. LOWERY: Once you get in the production cycle you have an annual crop. It's just that the first initial crop takes you about 18 months and then you're constantly harvesting fish from your operation.

I'd just like to add catfish is relatively a young industry, and there is constant research going on in the feeding research. We're looking for new types of feed, frequency of feeding.

There's a lot of things going on to try to improve that because it is the most expensive input we have, especially in the last few years, so it's very important that research is done on that and it is ongoing.

VICE CHAIRMAN PEARSON: Okay. Do you have any information regarding feed conversion ratios for producers of basa and tra in Vietnam?

MR. RHODES: Only speculation. I visited Vietnam in 2000. It was more like they can grow out faster with tra. The tra can grow out in like 12 months, 11 to 12 months, and then the feed conversion is like one and a half to 1.75. It's very efficient.

But they can grow it that much faster in the cages especially. I'm not sure about the newer volumes that they're growing in the ponds because I haven't seen so many of the ponds. I saw them in the cages in the river.

VICE CHAIRMAN PEARSON: And in that climate would it be fair to assume that the fish have evolved such that they don't take a dormant period? Do they pretty much grow the same throughout the year?

MR. RHODES: They can grow throughout the year. Yes, they can.

VICE CHAIRMAN PEARSON: So they do have some inherent efficiencies that they could achieve in that climate with those fish Okay.

Well, Madam Chairman, my light is changing so back to you.

CHAIRMAN ARANOFF: Commissioner Okun?

COMMISSIONER OKUN: Thank you, and thank

you. I join my colleagues in welcoming all of you here, welcoming back a couple of you.

I was here for the hearing before and did have the opportunity to visit. I think, Mr. Walker, I didn't visit your plant when I went on there, but some of the other folks that were with me did. I visited America's Catch at that point.

I appreciate you all taking the time away from your business again to come here today, particularly with reference to Ms. Slater's comments earlier. You know, we do recognize that it is time and expense for the domestic industry to do this, but it is very helpful to our determination, which we need the most information or the best information possible, and so your willingness to come here and answer our questions aids us in that process, so we appreciate that.

Let me start with the industry. In your testimony you had talked a lot about what changes you had seen since the order was put in place, and I just wanted to go back and touch on a couple of those and just ask some additional questions.

You had talked about I think and focused on the fact that the labeling laws haven't had much impact for the reasons you said; that the way it's marketed in most states allows them to market it as this other catfish or you're still seeing those sales.

I understand there also were changes made in the '08 Farm Bill. Are any of those changes going to impact imports into the United States? That was a self-reported reference in the '08 Farm Bill, but I didn't hear any of you reference it. I just wanted to see if there was anything important there we should be aware of.

MR. RHODES: The Farm Bill allows us to go to USDA as of January 2010. We're not quite sure what that means yet. They have not given it to us. They were supposed to about two or three months ago. We haven't seen it yet. It's at OPM right now being studied by the lawyers, so we're not sure.

There's a lot of discussion about will it prohibit for a period of time until they get us within certain rules and regulations here in the U.S. and then they go outside and authorize another inspection service. We don't know.

COMMISSIONER OKUN: Okay. That's just all still unclear at this point?

MR. RHODES: Right.

COMMISSIONER OKUN: And will those changes focus mostly on the problems that you talked about that have been going on, the transshipment? Are they focused on that, or are they focused on something else?

MS. SLATER: The '08 Farm Bill, as I understand it, Commissioner, has to do with basically moving the inspection that currently is under the Commerce Department into the FDA, which has inspection for all other agriculture, which aquaculture is much more like.

It doesn't really deal with these issues of mislabeling or circumvention at all. It has to do with health inspections and the nature and jurisdiction and type of health inspections that catfish will be subject to.

COMMISSIONER OKUN: Okay. Okay. That's helpful.

And then in terms of I know there are different state laws, but in terms of Buy American itself do you have an estimate of how much of the product is sold that you sell is in a true Buy American type category?

MR. WALKER: I would say in the southern catfish producing states -- Arkansas, Mississippi and Alabama -- that's predominantly where I think the large Buy American or Buy U.S. farm-raised catfish makes a difference from a marketing standpoint. Outside of those three catfish producing states it is not as significant.

Military purchases. Military purchases probably less than three percent of our sales, so they're not a very large piece of our marketplace.

COMMISSIONER OKUN: Okay. And I don't think I saw it, but if you did provide it, Ms. Slater, reference it for me in terms of the markets in the southern states as you referenced, Mr. Walker. What percentage of your sales would fall into the category of people buying U.S.? How much?

MS. SLATER: Just to be clear, Commissioner, are you talking about situations where the purchases must be U.S. because of legal restrictions on origin, as opposed to consumer preference?

COMMISSIONER OKUN: Whether there's any other laws or anything specific that required that in those states.

MS. SLATER: That's required.

COMMISSIONER OKUN: That would be specific, yes.

MR. WALKER: In the State of Mississippi, I think we have probably the best labeling laws. Outside of there, not very many. Not very many labeling laws or requirements at all.

In Mississippi, the restaurant should be displaying that that is U.S. farm-raised product or that is product from another country.

MR. RHODES: Most of the food service establishments in the southeast, they might talk. The people that are selling it, the waitresses and waiters, are talking about it being U.S. catfish, but sometimes the buyers or the owners will slip in the other fish because it's so much cheaper.

But there are laws in Alabama and Arkansas for the restaurants, and Alabama is about to become. Hopefully we'll pass that law in the next few days. But retail with clear labeling makes it all -- obviously it's coming from Vietnam if it's refreshed, the retail establishments.

COMMISSIONER OKUN: Okay. If for posthearing there's any way to quantify how that impacts what's sold by the U.S. producers, that would be helpful to have.

Then let me turn to the pricing. I think as I heard the testimony today, one of the impacts of the order, one of the beneficial impacts of the order that you see, is that it's placed a floor on pricing, and you also talked a little bit about kind of the increase in feed costs that's happened during our period of review.

I just wanted to have you just give me a little more information in terms of when you're out there marketing now and what impact you feel on your prices from imports of basa and tra and then if you can just separately talk a little bit more about what's been the impact of the Chinese catfish in the market on pricing.

I know you've touched on this, all of you, but if there's anything more specific or anything you could add?

MR. RENFROE: Overall what we've seen, as I spoke about before, is any supplies, whether they be at the distributor level or whether worked on on national accounts, especially in this environment, they're looking for a less expensive alternative. Basa being such a close match and a similar product to domestic catfish, it's the easiest product for them to switch to when it comes down to how it's plated, how it's prepared and what it looks like to the customer. It's the easiest fit for them to make a switch to.

The fact that it is consistently lower priced than us, anywhere from 50 to 80 plus cents a pound, it's a very easy decision for them to make all the way through the process. We talked, too, about it may be labeled correctly as it comes into the distributor, but even when processors or importers are calling on the distributor base trying to make sales of product, they will talk in terms of basa being a substitute for catfish whether it's labeled as such or not.

This carries all the way through down to the restaurant level through waiters, waitresses, whatever. Everybody kind of chooses the path of least resistance. If someone asks is this catfish? Yes, sure, this is catfish. Or is this a good substitute for catfish? Sure, it is. It's 50 cents a pound or 70 cents a pound less. It eats away at us again, whether at small operators, multiunit chains, whether they be regional or national or at the distributor level.

COMMISSIONER OKUN: Okay. Others want to comment on that? You know, one of the things, and maybe, Mr. Walker, you could add on this, which is one of the differences in this in the period of review versus our period of investigation of course is the rise in the number of nonsubject imports, primarily as I understand with the Chinese catfish, and so I just wondered if you could talk a little bit about, I mean we have the chart that's been prepared I think by Mr. Klett and it was in your brief about the prices of the Chinese sometimes being higher and I just wondered if you can talk about in terms of what you see out there in marketing going on vis-à-vis the Chinese catfish and versus basa and tra.

MR. WALKER: Our marketing efforts since the review, you know, the environment that we've seen we're in is one of increasing costs to the catfish farmers. As we testified, we are primarily a farmer owned processing industry. In that regard, what we're trying to do for marketing our product is get the best available price in the marketplace to try to get a return to the farmer.

That's been a difficult thing to do, and so as we move up in that price level, as these slides have shown, what's happened to us is more and more of our customers out there in the marketplace, as our prices charged to that customer are higher to get costs for Mr. Lowery to make a break even basically in his operation, more of our customers are switching to the cheaper priced products that are well below our product in price.

Those customers are, if I've got 10 customers that would prefer U.S. product at a certain level, when we rise to an additional level above that, those customers, two out of 10 are going to now say, well, I'm going to take the cheaper alternative, I'm going to go to this product. That's provided opportunity for the Chinese product to come into the marketplace.

It has come in at prices above the basa and tra and so it has displaced some, but I think it's also in the labeling laws we see that Chinese product starts to come in the marketplace, then a distributor is going to switch that person from Chinese to basa and that any consumer, in their mind, it's Chinese catfish. So now the distributor has moved him from U.S. product to Chinese product and then quickly to basa product. That restaurant still in their mind is saying, well, I'm selling the Chinese catfish. You go in the back and you look and indeed what it is is basa and tra.

COMMISSIONER OKUN: Okay. My red light has come on, but I'll come back with some questions later on that. Thank you for those answers.

CHAIRMAN ARANOFF: Commissioner Lane?

COMMISSIONER LANE: Good morning. I, too, welcome you to this hearing and I, too, found the visit last week very fascinating and I was very impressed. I think I had most of my questions answered at that point, but listening to your testimony this morning, one question occurred to me was if I were going to eat catfish or basa, would I know the difference? What exactly is the difference between the two except for the name?

MR. RHODES: As we've been saying, the quality is fairly easy to substitute. There's a little difference in the white meat, there's a little feathered look to it, but other than that, it's a natural looking fillet, thin, much like ours, trimmed like ours. Theirs might be hand trimmed and ours a machine cut. That's a difference. It's very white. The primary sizes tend to be three to five, five to seven ounces, which is our primary food service size for restaurants. You know, if you eat lunch you get a three to five ounce, if you go to dinner, you might get two three to five ounces, you know?

So as far as ease of looking at it, now, we can see the difference because we deal with it every day, but as far as everybody and the consumer going into eat with a breaded product or maybe even a grilled, it's going to be very difficult to even tell the difference.

COMMISSIONER LANE: Okay. Thank you.

Another question that occurred to me, when the Vietnamese export basa and tra to the United States, do they also do that in conjunction with shipments of shrimp so that they're selling to a market that includes both basa and shrimp?

MR. RHODES: Container loads come in from shrimp and basa as one container of one item, but to get through Customs it's probably best for them to ship it. There's a lot of shrimp that comes out of Vietnam. So the basa, tra, pangasius would come in on its own. All these distributors who buy it tend to either go through an importer that might divide it up once it gets to the United States and then separate it or the larger ones would buy a container at 40,000 pounds and have it delivered directly to their docks.

COMMISSIONER LANE: Okay. I guess maybe I wasn't clear. Would a distributor who was buying basa also be in the market for shrimp from the Vietnamese, too?

MR. RHODES: Very likely.

MS. SLATER: Some of the importers and distributors are the same, Commissioner Lane. I think that what we tend to see just, I mean, there's no rule on this. There can be shipments that would have containers of both, but you wouldn't see the pangasius, you know, mixed in a container typically, I don't think, with the shrimp from what we've picked up.

COMMISSIONER LANE: No. What I'm wondering is from a marketing standpoint if I were a restaurant or if I were an importer and trying to convince somebody to buy basa rather than American catfish would I say, look here, I'm selling you shrimp already and why don't you buy this basa also?

MR. RHODES: Shrimp has been coming into this country for years from Vietnam and China so they're used to getting shrimp and that's been common. The catfish or basa has been coming in since really 1999.

MR. RENFROE: If you were talking about approaching a distributor, they might see it as an added benefit to do business with someone who were offering both products, if that's what you're getting at.

COMMISSIONER LANE: That's what I'm trying to -- yes.

MR. RENFROE: What would not be likely, although here lately with the investments being made in new processing facilities there, it would be finding someone that was set up to process basa and shrimp in the same plant. It would call for two companies, probably, to get together there and combine a container, as opposed to sourcing both shrimp and basa from one. If that could be done, then, yeah, that would definitely be an incentive to a distributor to consolidate their purchasing and buy basa and shrimp from the same producer.

COMMISSIONER LANE: Okay. Thank you. To what extent have U.S. processors shifted to more production of other frozen fish fillets, value added, breaded or marinated, frozen catfish fillets or fresh catfish fillets, since 2003?

MR. WALKER: I think the percentages of the product line that we have has remained relatively constant of the primary. The largest volume that we produce is frozen fillets, and that's true for the entire market. Fresh would represent maybe 30 percent, frozen would represent about 70 percent. So that is still primarily the largest part of our marketplace that we do produce product for. I think the breaded and the marinated products are all produced at about the same levels percentagewise as they were before.

MR. KLETT: Commissioner Lane, this is Dan Klett. I don't believe that the processors of catfish fillets are in big way, if at all, involved in other types of fish so they're pretty much dedicated to catfish, and frozen fillets being the largest component of the production.

COMMISSIONER LANE: Okay. Thank you. How has the current state of the economy affected your business?

MR. WALKER: I think that we at Heartland Catfish, we saw a pretty sharp decline in our business about the first or second week of November of this past year. That continued until about the middle of January. From that point forward we saw a more normal marketplace. So we did see a marked decline of about two months right before Christmas where it definitely affected some of the marketplace out there. Since that time it's been back on more of a normal track, what I would say.

We track some national chains that buy 100 percent of their product from us and those particular customers are running about three to seven percent above where they were a year ago in the January to March timeframe. So if that's an indication, than the economy in some areas, and this would be in the national restaurant chains, is not affected that much right now, but it did for two months.

MR. RHODES: I might add that part of our problem last year was fuel and it went extremely high, as everybody knows, and so we started off early in the summer with fuel prices. Then we had the economy having issues. But the National Restaurant Association, basically most of the food service distributors are saying their business is off about 20 percent. Maybe that kind of correlates to what he just said. So the restaurant business has been off, although the last two or three it seems to be picking up and everybody's been real positive about it.

We had the Boston Seafood Show and we've got the restaurant show coming up next week. It seems like it's going to be, the Boston show was very well-attended and very positive that things were getting better in that regard.

COMMISSIONER LANE: What can you tell me about the pricing of the product in Vietnam and the government's involvement, if any, in the pricing?

MS. SLATER: We don't have a lot of information, Commissioner Lane, about the involvement in the direct pricing. The Commerce Department has certainly been granting, you know, individual producer status to each of the applicants so far, meaning they're not treated as part of the nonmarket economy entity, and part of that test is that they have the ability to set their own pricing.

What we do know is that the Vietnamese government has been quite heavily supporting and subsidizing, if you will, I hesitate to use that word in this room, but subsidizing the industry, you know, everything from making sure that their farmers are getting enough for the fish to continue production to controlling the usage and the location of the land for ponds. They recently, we just had another article published yesterday, are targeting to grow this out to be close to three percent of the GDP of Vietnam.

COMMISSIONER LANE: Okay. Another real quick question. Do catfish ponds have a life expectancy? So how do you take care of your ponds?

MR. RHODES: At some point in the history of the ponds they're going to go back and reconstruct. I'll let Joey finish that up, but that's kind of where we -- there's certain times every 10 years or five years, whatever that farmer decides to do, he will drain those fish and reconstruct those ponds.

MR. LOWERY: On the average I'm going to say a pond will last you 10 to 15 years depending on how big a levee you build initially. So every 10 to 15 years if you remain in production you have to rebuild that pond. The costs are just as much as it was when you started out. If you choose to exit the business and convert the ponds back into row crop operations, it's going to cost you about as much to do that.

COMMISSIONER LANE: Okay. Thank you. Madam Chair?

CHAIRMAN ARANOFF: Commissioner Williamson?

COMMISSIONER WILLIAMSON: Thank you, Madam Chairman. I too want to express my appreciation to the witnesses for coming today and also want to express my appreciation for the tour that we got last week. I found it very helpful. Thank you, Mr. Walker, for hosting us. I was wondering about what the industry may be doing to try to compete with the imports. I take it processors haven't really tried to diversify their operations at all or that it's not a feasible thing.

MR. RHODES: There are some processors that have imported other fish species, not necessarily catfish or basa, but snapper, and grouper, and mahi, some of those guys have gone to salmon. Those of us, you know, I don't know what Danny's situation is --

COMMISSIONER WILLIAMSON: For processors in the U.S. of catfish.

MR. RHODES: Yeah. We're not processing

anything else but catfish. Some of them might be handling it but they're not running it through their plants.

MR. WALKER: I would add, as most of our processors in the industry are farmer owned, you know, our primary focus is to process, market and sell the products that our farmer owners are growing and to diversify and try to bring in other products that are going to compete directly with the product that we're growing on our own farm is counterproductive to the farm side of our equation. That's why we stay so steadfast with U.S. farm-raised catfish.

COMMISSIONER WILLIAMSON: Okay. I guess in a sense many of you started out as integrated operations then. I was wondering, has there been any trend towards increasing of integration?

MR. WALKER: It started out as an integrated operation, more along the lines of cooperative plants. Over time those that have survived have been more privately owned plants that those farmers grew in size.

COMMISSIONER WILLIAMSON: What about efforts to compete with the imports in terms of distinguishing your product, or coming up with new cuts, or things like that? Are there efforts going on in that area?

Mr. Rhodes, you know, I think you had talked about how innovative the industry has been.

MR. RHODES: Yeah, and that's also the problem. I think on the good days you don't necessarily think you have to invest and back up your products and when times get tough you don't have the money necessarily to invest. There are a lot of other outside -- we can value add the catfish marinade and bread. I think a lot of us have increased our breaded programs, our marinade programs. Maybe tray pack is another way of doing it for the retailers.

COMMISSIONER WILLIAMSON: Tray pack?

MR. RHODES: Tray pack, yeah. It's like you see in the grocery store that it will already be in a small tray and maybe two fillets. There's probably the innovativeness that had to come from efficiencies. We've had to dig deep into the plant and find ways of reducing costs. You know, we probably haven't come up with quite a bit of new products over the last four or five years. We've kind of stayed steady. The inefficiencies, or the efficiencies in the plant rather, have been a reason for us to invest.

MR. WALKER: We have also created some new marketing opportunities and we are investing currently in some new marketing opportunities. Della cotta is a new product that our industry is currently right now trying to launch. It's probably going to be something that's going to be two to five years down the road before it has a significant impact in the industry, but the industry is looking to different ideas there. Hybrid catfish is also something that we've done to try to improve vegan versions and growing out on the fish.

COMMISSIONER WILLIAMSON: Okay. Something like that della cotta, would that be targeting let's say a higher restaurant?

MR. RHODES: White tablecloth restaurants, yes.

COMMISSIONER WILLIAMSON: Okay. Couldn't think of what the --

MR. RHODES: Right, right, right.

COMMISSIONER WILLIAMSON: Okay.

MR. WALKER: Yes, it would, and primarily it's something that the Catfish Institute is looking at marketing in the northeast, which is a traditional area we've not been able to make very good penetration into. That product also is very specialized. It's something that's not going to be, I think at best 10 percent of our production could be devoted to that product because of the size of fish it takes to produce that product.

COMMISSIONER WILLIAMSON: Okay. I was wondering about the pattern of unionization in the industry. I think some processors have unionized labor law while others haven't, or some processors have unionized labor and others haven't. Have there been changes during the period of review regarding that?

MR. RHODES: I think the same amount of processors that are unionized are still here. A lot of us have had to use contract labor for lack of local labor to run our plants. Unionization is not an issue.

COMMISSIONER WILLIAMSON: Any idea of roughly percentage?

MS. SLATER: Percentage of plants that are unionized?

COMMISSIONER WILLIAMSON: Yes.

MS. SLATER: We can certainly get that for you, Commissioner.

COMMISSIONER WILLIAMSON: Okay. And I was wondering, is there any adjustment in labor management relations in light of the import competition? Any adjustments or changes in labor management relations in light of the import competition?

MR. WALKER: No. I'm not aware of any.

MS. SLATER: I will note, Commissioner, in some of the questionnaire responses for some of the processors who are not here today, there are some pretty thorough discussions about the current state of labor negotiations. And that might be helpful to you in that regard without going into specifics pertaining to a particular company.

COMMISSIONER WILLIAMSON: Okay. Because I was wondering what has been the impact on workers of the intense competition you're facing from the imports.

MS. SLATER: I think this is general knowledge. There have been some of the union agreements which are presently or recently have been up for renegotiation, and, you know, in the questionnaire responses you'll find some of that discussion. It doesn't seem from my perspective to be, it's not a UAW situation. I think the unions are still there and there don't seem to have been major changes as a result of the import competition. Let us look back at the questionnaire responses and, if we can, get you a response from some of the unionized processors.

COMMISSIONER WILLIAMSON: Yeah. I was

wondering because I realize in some of the areas where the farms are located have not traditionally been high income areas in the U.S. So I was just curious about the impact of the imports on the development in the region. Another question I've been curious about is you mentioned that about 30 percent of the fish are sold fresh and the rest is frozen. I was wondering, who are the purchasers of fresh fish? Is it primarily in the area or are there other restaurants around the country --

MR. WALKER: Fresh fish is primarily bought in the retail market. That's going to be your Kroger's, your Safeway's, your large retail organizations across the country. It's still primarily in the South. Some on the West Coast, but primarily in the South up and down the Mississippi River.

(Away from microphone.)

COMMISSIONER WILLIAMSON: Okay. So in other words, if you're in the grocery stores you might be able to compete on the basis -- it's going to be fresh fish or you can sell fresh fish.

MR. RHODES: Right. We focused on that the last few years, trying to increase our sales of fresh to customers because of the frozen competition, so we've had to look at that. It hasn't necessarily taken on another 10 percent or 5 percent more. We just all focused. I think for the last producers or processors in the market we've spread it around a little bit more.

COMMISSIONER WILLIAMSON: What percentage of the consumption is in, say, restaurants versus grocery stores?

MR. RHODES: About the same, the 70/30.

COMMISSIONER WILLIAMSON: Seventy/thirty?

MR. RHODES: Right. Right.

COMMISSIONER WILLIAMSON: Okay. Seventy?

MR. RHODES: Seventy frozen, 30 fresh.

COMMISSIONER WILLIAMSON: And what percentage of consumption is fish consumed in restaurants as opposed to --

MR. RENFROE: I'm sorry, Mr. Commissioner. The 70 percent we're referring to goes into food service, the vast majority of it, even though refreshing and methods like that on the retail side of things are becoming more popular. Still, probably it's a pretty true indicator. Seventy percent of what we do goes into food service and it's frozen.

COMMISSIONER WILLIAMSON: By refreshing you mean they take frozen product, defrost it and then sell it?

MR. RENFROE: Right, which is if there's a place where we're losing market share on the retail side of the business, that's certainly it because they still have fresh catfish available to them but they will put it beside refreshed basa which puts us at a little bit of a disadvantage.

COMMISSIONER WILLIAMSON: Are there any shifts in this trend between 70/30 restaurants, retail?

MR. WALKER: I would say it's still, our primary marketplace for U.S. farm-raised catfish is in the traditional southern states up and down the Mississippi River to mom and pop catfish houses and to national chains that sell a tremendous amount of product, and all of those customers primarily want that frozen fillet.

They do not want it prebreaded because, you know, they want to be able to take that frozen fillet and hand-bread it with their specialty breading and create a better product for you, the consumer, to come in and sit down and eat than a prebreaded product that we're going to put too much breading on and we're not going to, you know, that type of product is going to focus more for the retail.

Of all the processes Heartland Catfish, one of them, we've invested a tremendous amount of capital also in our operation so that our operation is specifically designed to produce frozen fish fillets. That's our target market, as in that is the largest market out there for our product.

COMMISSIONER WILLIAMSON: Okay. Thank you. I was just wondering what happened to that cornbreaded catfish that you used to eat in St. Louis. You hadn't mentioned it before. Thank you. Thank you, Madam Chairman.

CHAIRMAN ARANOFF: Commissioner Pinkert?

COMMISSIONER PINKERT: Thank you, Madam Chairman, and I thank all of you for being here today to help us understand what's going on in this industry. I want to begin my questioning with Ms. Slater. I want you to understand that this question is not coming from the point of view of someone who is unsympathetic to the argument that you made about VASEPs representations to the Commission, but rather, I'm focused on a narrow legal question with respect to that, which is to what extent is a false or misleading representation to the Commission relevant under the statute in applying adverse inferences?

MS. SLATER: I think, Commissioner Pinkert, that's something you certainly could take into account as to whether the application of adverse inferences is appropriate, although I have to say in this case you wouldn't have to get to the point of false or misleading, it just was a situation where there was in the end lack of promised cooperation. That would be enough for the application of adverse inferences.

But if you wanted to put that false or misleading label on it, it would certainly be an even stronger support for the notion of drawing adverse inferences.

COMMISSIONER PINKERT: Well, let's refer to it then as a broken promise, okay? To what extent is that legally relevant? I looked at the statute just a few seconds ago in terms of what the criteria are for applying adverse inferences, and while the criteria are fairly broad, I'm wondering if you can help me to understand how a broken promise might play into the statutory framework.

MS. SLATER: Well, the statute talks about the use of adverse inferences where a party does not participate to the best of its ability or otherwise impedes the Commission's investigation. You know, in this case the false or misleading, and you're raising a very interesting question, and if you'll indulge me, I'd like to think about it and do more posthearing. But as an initial response I think, as I mentioned in my brief comments, when this Commission has the very difficult task of deciding whether to do a full sunset review you necessarily have to know who is going to be there.

Now, your new rules will change that a little bit because you'll have more information going in even if you're not going to do a full review. But looking at who is going to participate and what kind of information you can reasonable expect to garner by going through that process happens at a particular point in time.

So someone who makes a representation that could lead you to make a decision about how your process will proceed is particularly important and it's one where the Commission should be particularly strong, I think, in the message that it sends about the following through on the commitment that's made in those responses. These should not be taken lightly, and the certifications that are provided should not be taken lightly.

So I think legally it translates into a pretty egregious example of failure to take all reasonable steps to support, and, in fact, you know, possibly even qualifies, not possibly, I think it qualifies as impeding the Commission's investigation. I mean, here you've set foot on this path based on that representation, but, you know, one of your walking sticks is gone. So that's how I would tie it in. I think this is affirmatively impeding the investigation.

COMMISSIONER PINKERT: Thank you. Now, perhaps Mr. Klett might be the person to address this next question. Assuming that the antidumping order is kept in place as a result of this review, what do you think the situation will be for the domestic catfish industry and the frozen fresh fillet market when we conduct the next sunset review in five years?

MR. KLETT: Well, I think what you've seen over the review period is a pretty good indication of what's likely to occur over the next five years. And that is you've seen some increase in imports from Vietnam as some importers have gotten lower rates so you may see some marginal increase in imports from Vietnam. However, you won't see the increase that would have occurred if the order were to be revoked based on the capacity increases.

You may see some increase in imports from China, although China, if you were to compare that to

Vietnam, the capacity in China is nowhere near the growth in capacity that you've seen from Vietnam. So I think you'll see the industry, I don't know if treading water is the right word. They've made some innovations and they've maintained their profit margins. I think there are some "exogenous" factors that we can't predict, such as what's going to happen with feed prices, and therefore cost to the farmers.

One of the things that over the past two years that have had an adverse effect on the industry's profitability is feed prices and the cost of fish to the processors, and therefore, their cost of production. If grain and feed prices go down, that's going to give the industry probably higher profit margins. So it's hard to predict, but I think that you'll see the industry maintaining profit margins in the range of what you've seen over the past three years or so and probably similar capacity and perhaps a bit more consolidation as you've seen over the last two or three years.

MS. SLATER: I'd like to just add quickly to that, Danny. Just what may of interest to you, Commissioner Pinkert, is also the antidumping margins that we're looking at in the calculations that we've been dealing with at the Commerce Department is what I would call an anomalous situation. You should know that we have appealed the methodologies that have led to the dumping margins that are there.

I am hopeful that we're going to see margin calculations that are done on what we consider to be a more legally appropriate and reasonable basis so that the threshold price for reducing margins is going to come up. Without going into details, they've been assuming in their surrogate methodology, which I know you understand, a fish price into the Vietnamese processing plant, they've been assigning that fish a 29 cent price, which is ridiculous.

We've appealed their decisions to do that and the data they've been using. One thing that we think will make a difference is if we can get that straightened out one way or another either, you know, through the Courts or through finding other methodologies for them. What that will do is help to raise that threshold price for the Vietnamese to come in. I think maybe Mr. Walker was going to go to this, but there are wonderful things happening in this industry.

There's della cotta, there's a tremendous amount of research. If you even go Google on catfish conversion and research, the things that come up. We have the Thad Cochran Research Center, Warm Water Research Center. In Mississippi there's tremendous amount of work going on at University of Arkansas, Pine Bluff. Things that are aimed to do exactly the kind of things that Commissioner Pearson and Commissioner Williamson were asking about, which is to help make this industry more sleek and competitive.

So we would hope five years from now that the situation would be improved on a number of fronts. I think treading water is probably, you know, a worst-case analysis.

MR. WALKER: I would just like to add that, you know, I mean my livelihood, my entire life has been based in the catfish industry. I love this industry. You don't know how important the order has been for our industry. We thank you for taking the steps to protect our industry from dumping into this country because over the past five years what it has done is it has allowed us to evolve into a more efficient industry, to go through different mergers, to look at our cost-cutting and to look at ways of growing fish better.

We have become a more efficient industry. Are we out of the woods yet? By no means, we're not, but with the order continuing in place for another five years, it will allow us to remain on that path of continuing to be more efficient, continuing to look for more ways to promote our products in a positive way and to get ourselves back on our feet. You know, I'd love to see the day when we're putting a lot of capital back into this industry because it is homegrown aquaculture.

This is where aquaculture started in the world is right down in the Mississippi Delta, and I'd like to continue to see it. I think it has a very good chance of growing and prospering given time to take on the economic conditions we've got.

COMMISSIONER PINKERT: Well, looking over the next few years, maybe not five years down the road but the next couple of years, do you see profitability trends continuing as they have been or do you see actual improvements in profitability?

MR. WALKER: As processors have merged and other processors have gone out, that has increased and improved the situation as far as profitability for the industry. From a farmer's standpoint, the biggest overriding factor on the farm is going to be the price of feed right now in the short term and that will affect that more than anything. I would say in the next two years, the industry right now is still in a holding on pattern right now.

COMMISSIONER PINKERT: Thank you. Thank you, Madam Chairman.

CHAIRMAN ARANOFF: It's very hard to be last in the questioning order. In a case like this where we haven't heard very much from the Vietnamese producers, we do tend to rely a lot on what the purchasers tell us in their questionnaires. One of the things that I couldn't help noticing looking at purchaser responses was that the vast majority of purchasers told us that they do not consider domestic catfish fillets and Vietnamese basa and tra fillets to be interchangeable. That's a question that we always ask.

What do you think accounts for those responses? Normally we would give a lot of weight to purchaser responses on an issue like that, but what weight do you think is appropriate here?

MR. KLETT: Madam Chairman, this is Dan Klett. We looked at that and we analyzed that extensively in our brief but one of the things we found and we think the Commission should evaluate in looking at the number of purchasers that said basa and U.S. catfish fillets are either interchangeable or substitutable is who made the responses.

This is an industry where the vast majority of sales are through food service distributors. We think that those responses should be taken under the context of the volume involved with the purchasers who responded. In other words, just as an example, when we reviewed those responses in depth there were some retail outlets that only purchased domestic, didn't purchase foreign that said the products were not interchangeable.

They didn't seem to have much experience with one or the other, so we would contend you should look at that response in that light. We went into this in depth in our brief but we think just counting the number of purchasers that said they were or weren't substitutable, you know, apart from the context of who actually responded is a bit too simplistic in terms of looking at those responses. I think you need to go into more depth in that regard.

MS. SLATER: Our clients are at a little bit of a disadvantage having not seen the purchaser responses, so let me just add quickly to what Dan has said. A simple counting is not going to tell you the story. You need to take a look at the responses and first of all take a look at what you heard because you've got purchasers covering a broad range of

Respondents.

So start with the food service companies that responded to you and take a look at what those purchasers said, who they are, what percentage of purchases they account for, and if you're going to weight them, I think weight them in terms of who's handling most of the frozen product. Then take a look at who the other purchasers are and how they actually answered. I think the questions, as often happens with these questionnaires, you never know exactly how they're going to be perceived by the Respondent.

Many of those who are in the retail segment answered as if you were asking them do you grocery store substitute? The grocery stores were saying, Heavens, no. We have, you know, country of origin labeling requirements, we can't substitute. So rather than telling you whether the products are actually substitutable, that's what they were telling you. If you look behind a little more what they said there, I think, you know, the answer fits in a little more clearly with the other evidence you're hearing today and that we've provided you. These products continue to be very heavily substituted for each other.

CHAIRMAN ARANOFF: Okay. That's helpful. Now, also looking at what the purchasers said, some of them claimed, and this is a little bit contradictory to some of the testimony I heard this morning, but some of the purchasers claimed that since the order has gone into effect they have successfully educated their customers about basa and tra and that they're now able to sell those products on their own merits as a species distinct from catfish. So they basically said this order's been a great marketing opportunity for us because now instead of saying oh look, this is catfish, we're going in and we're saying exactly the opposite. This is a distinct species, it has benefits, and we're selling it on that basis now.

But I think I heard one of the witnesses testify earlier today that at least using the word, is it pangasius, that that kind of marketing is really in its infancy. How would you respond?

MR. RHODES: No one will see that on the menu, pangasius. I say no one, very little is being seen on the menu as pangasius.

The distributors might be saying they've trained their buyers to understand basa, but the menus aren't reflecting that. They're just replacing it with white fish, as he said, fried, southern white fish.

Basa and tra, one's grown in the river,

one's grown in the farms. Tra has been a very successful push to supplement us. We were concerned about some of the things in the questionnaires that came back, how can we differ so much. We're the ones declining ourselves and declining our farms, and yet we see these guys are focused back and saying it's not substitutable.

MR. WALKER: We have seen, the food service distributors are going to push the lowest priced product that they've got, offering to that customer on a daily basis because they can easily put a little bit more margin in there, make a better dollar on it, make a very quick sale. What they've done I think, for the most part, what we've seen is they'll go in and market that product as Chinese catfish because there they can say catfish. They'll go in and sell, a typical example may be where they'll take a customer using U.S. farm raised product and they'll sell them a box of Chinese catfish. They'll ship that to them for three or four weeks, and then five weeks out all of a sudden that turns into basa and tra. Now they're shipping them basa and tra. They got the basa and tra cheaper than the Chinese catfish.

Now they've moved that customer from U.S. farm raised to basa and tra, but in the customer's mind what he's still buying is catfish. We can go in and say we want your business and he'll say I use Chinese catfish. You go in the back and you look at it's basa and tra. That restaurateur is not paying attention because he's not subject to those labeling laws. That distributor can make that quick switch and make that quick dollar.

MR. RHODES: I might add, though, as a distributor for the two years I was out it was quite common for the sales people to replace basa with the tra. We didn't have Chinese catfish because it had been banned in Alabama due to the chemicals that were being found in the Chinese. So basa and ponga were in the freezers, and I was torn for those two years. I grew up in this business. Those two years I was out I was torn because I needed to make sales and we needed to get the plants running, but they were substituting catfish for basa.

MR. RENFROE: Something else, too, when the distributor might say that basa's established itself as its own fish, there's no way to quantify to what extent that's true. They may have accounts that they sell that product as basa, but they're not going to say anything that would impede their ability to go out and buy a product so much like catfish that where probably 95 percent of the time or better that's exactly what they're doing with it is replacing our product. Still a true statement that they're selling some of it as basa, it's just there's not any way to tell.

CHAIRMAN ARANOFF: Let me ask, because this is one of the things I'm trying to understand. In the U.S. we have this unique circumstance that there's this part of the country which has a tradition of eating catfish that's been there a long time and that that was the marketing angle that was used to move this product into the U.S., but we've seen on your slides and we've seen in our record that there's been enormous growth in the sale of this same Vietnamese product into other markets which as far as I know don't have a native catfish tradition.

How are they marketing the product in Russia, Egypt, Eastern Europe, some of the other places where it's had very large growth?

MR. RHODES: I just came back from Brussels and France two days ago, and at the Brussels Seafood Show, and I FedEx'd a large package to bring today and it showed up after I left the office Monday, but it's pangasius. There were 16 Vietnamese processors in the Brussels show and there were I think 10 to 11 of the

Chinese doing their thing. I couldn't get the prices because these guys -- they could tell I wasn't from Europe so they didn't know exactly what I was asking for and they had prices for Europe. But they've been very focused on the pangasius basa/tra over there. And from time to time in those booths I saw "catfish" in parentheses listed underneath some of the descriptions of pangasius. They would simply say catfish because people had gotten familiar with that. Although certain parts of Europe aren't used to, they're like catfish. The name translates in an odd way. But Russia's basa and tra, Australia's basa/tra, pangasius.

We did go to Germany in '97, '96 I think it was. We spent $2.5 million with the Catfish Institute to promote Germany as a way for us to export our fish. It worked fairly well for about a two year period. It cost us a lot of money considering we didn't make up the investment. But basa and tra kicked us out of Germany and Europe around '98, '99, because it was easily substitutable in catfish and people still didn't like necessarily the name. So it was easy for them to look at the white fish, and it was similar to catfish.

CHAIRMAN ARANOFF: Are they just displacing other fish in Europe or Asia?

MR. RHODES: Sole is a big item over there. Cod and pollock is big. The Eastern Bloc countries that are emerging now, never had fish for all those years, they were communist countries. They've now kind of taken up the pollock and cod and basa.

CHAIRMAN ARANOFF: It just strikes me as a very interesting contrast to say that this product came into the U.S. by taking advantage of sort of a local, cultural fish, and it has done something very different in other countries. But either way the growth pattern has been pretty much the same.

MR. RHODES: I think they had to. Thanks to you guys, they had to find a place to sell their fish and they went over there and started their own marketing campaign.

At first it was catfish, in Germany. And the same thing here. It was grouper or sole or catfish here. So they've had to wise up and leave this country and go somewhere else.

CHAIRMAN ARANOFF: I'm going to come back to this in my next round. Vice Chairman Pearson?

VICE CHAIRMAN PEARSON: Thank you, Madame Chairman.

Let me follow up on that line of questioning by asking, given the huge increase in imports of basa and tra into the European Union, why haven't there been any trade remedy actions? Is there no domestic production of anything that might compete with basa and tra?

MR. RHODES: Not at all. There's nothing there that can compete. There's one small catfish in Holland that grows indoors that there's been some work on, and actually about 15 years ago it was outdoor farms, but they cannot get it out. It's not as white as ours, it's grayish, maybe even a red tint. Grayish red. And it's not very desirable as a white fish substitute.

VICE CHAIRMAN PEARSON: Okay. A nice market to move into. No one fusses. They all want to buy it.

Mr. Lowery, I was curious, what size are your ponds?

MR. LOWERY: They range anywhere from 5 to 15 acres. Probably the most, the average size around 8 acres.

VICE CHAIRMAN PEARSON: Did I understand from your testimony that some portion of your ponds are currently not being used for fish?

MR. LOWERY: That's correct. We've drained the ponds. And like I said, when you rebuild these ponds, you're taking on a 10-15 year commitment to raise fish, and given the current economic conditions I'm not comfortable making that decision right now. I guess I'm kind of in a holding pattern to see what might develop. I think that's true for a lot of the industry. There's a substantial cost to rebuilding and you've got a long term commitment when you do that.

VICE CHAIRMAN PEARSON: If you thought there was a situation in which for two or three years it might not be profitable to raise catfish, would you consider planting soybeans in the bottom of a 15 acre pond? Is there some of that going on?

MR. LOWERY: Yes, there is. There's a lot of that going on in the delta. You can get into drainage problems, though. If you get a lot of rain you've got a pretty good chance of getting hurt there because you still do have some levies left. It's hard to get the proper drainage you need as you would in a traditional farming environment.

VICE CHAIRMAN PEARSON: But you do have the blessing of that deep alluvial soil, so you've got pretty decent soil to work with in the bottom of a pond --

MR. LOWERY: Very good.

VICE CHAIRMAN PEARSON: -- even after you've moved it around some years before to create the levies and all that.

MR. LOWERY: Yes sir. It's very good soil and the soil is even richer behind producing fish.

VICE CHAIRMAN PEARSON: That would make sense, wouldn't it? You want to put corn in there then. The soybeans don't need the nitrogen.

MR. LOWERY: That's true. I know of people growing rice that didn't even have to put any fertilizer out.

VICE CHAIRMAN PEARSON: What percentage of the live weight of a catfish ends up in fillets or other products that would be used for human food? Let's take maybe a two, two and a half pound fish, something kind of a standard size fish.

MR. WALKER: Typically about 34 percent is going to be the yield for the fillet. Then you're going to be producing a nugget, which is going to be about another 8 percent. So from a fresh standpoint you're looking at around 42-43 percent yield off of a whole catfish.

VICE CHAIRMAN PEARSON: Do you have any idea, is the cutout from other species similar?

Salmon or basa or tra? I don't have a sense of how much of the live fish end up in the --

MR. RHODES: Basa and tra will end up being about the same. I'm not sure about the size exactly, but their yield's more like a 33-34 percent without the nugget. We have the belly and they don't. They have a very small ten-piece, I don't know how much it accounts for, one or two percent.

VICE CHAIRMAN PEARSON: The useable portion of the catfish is actually higher than the useable portion of the basa or tra?

MR. RHODES: The extended belly the basa has or the tra has is very long and thin and the meat's not very useable.

VICE CHAIRMAN PEARSON: And the fillet portion is similar.

MR. RHODES: They use it in soups and stuff like that, but they're not selling it as a belly like we do.

But salmon's grown, caught and are grown to be three, four, five pounds. The bigger the salmon the better because you portion it. Most salmon you eat as portion, all of it is, where catfish are natural fillets. Tilapia is going to be grown around a three to five to seven ounce tilapia and that's going to still be, their yield is 32-33 percent, again, without nugget. So their yields are less.

VICE CHAIRMAN PEARSON: So the cutout from the catfish then actually compares quite favorably to these other species that --

MR. RHODES: If you consider nugget favorable. We don't necessarily consider it very favorable.

VICE CHAIRMAN PEARSON: I did enjoy a catfish cake that may have had some nugget in it and that was quite a nice product I thought.

MR. RHODES: Good.

VICE CHAIRMAN PEARSON: I assume that would be ground nugget or something that goes into --

MR. RHODES: Right, minced and formed into a patty of some sort. The nugget prices lately have been a little higher than we've ever seen in this longer period anyway. We might have gotten a little higher and then we'd drive the market down by getting too high, but right now we're holding very steady.

VICE CHAIRMAN PEARSON: It was dressed with a very nice mango chutney or something like that. It was very pleasant.

Do basa and tra have taste issues that relate to water quality? Mr. Rhodes?

MR. RHODES: Very different. They're grown in the rivers, and even the ponds that they grow the tra in has to take the water from the rising tide into their ponds. Unlike ours. Well water or runoff water. The tide of the Mekong River has to rise up and they exchange the water. So exchanging it with water from the Mekong which has no sanitation from Cambodia all the way into southern Vietnam. So you don't know what's been dumped into those rivers from the factories along the rivers or even human issues.

But when we were there we'd like to have seen some of the really bad water but we didn't necessarily see it. We just knew it was murky and dirty and you didn't necessarily see floating cows or pigs in it. But the water is being exchanged daily from the rising tide.

VICE CHAIRMAN PEARSON: Does algae or other things in the water in Vietnam affect the taste of the fish?

MR. RHODES: Because of the river, yes. They have flavor issues as well.

VICE CHAIRMAN PEARSON: How do they deal with that at the processing plant? I found it very interesting last week to see the degree of attention given to the taste profile of the catfish prior to going in for processing, so how is that dealt with in basa?

MR. RHODES: I didn't go through any kind of testing when I was there to see how they did the testing of the flavor. The water doesn't, it might be because it's rotated more often that they don't have the different flavors that we might have, but I'm not aware.

MR. WALKER: I might add, in any of the processing plants they're located along the river, the Mekong River there, so they have pretty large holding facilities there where they can bring fish and basically flush the fish through with the river so if they're off flavor, brought to the plant with a bad flavor profile, then they can flush that fish for a period of days. They don't have to necessarily kill it that day. But I'm not the expert there.

MR. RHODES: Live as well. So from the farms they're hauled in live bottom boats to the plants and then they unload it like he said along the river, so there's some purging going on, much like tilapia purges itself right before it processes, a lot of them do.

VICE CHAIRMAN PEARSON: In regard to the taste issues with catfish, is there research that's being done to try to allow that to be managed more consistently?

MR. RHODES: Mississippi State and Auburn have constantly been in research trying to figure out what the best method to do, to get flavor. I've always said it was a natural phenomenon because we need all sizes. If we just try to get a three to five, five to seven ounce, now we've got even bigger issues with imports. But off flavor creates a bigger fillet and it gives us a chance to have a variety of sizes and that means retail and food service.

We are very, all of us, very well test for flavor. There's mistakes made, but we all think we make the best fish so it just depends on who you talk to and how great their fish is compared to their competitor.

VICE CHAIRMAN PEARSON: I came away persuaded that this is an issue that's taken very seriously. For good reason.

Are profits of catfish farmers correlated with the profits of processors?

MR. WALKER: I'm not sure I understand your question exactly.

VICE CHAIRMAN PEARSON: If the processors are doing well, are the farmers doing well? Or if the price to the farmers goes down, do the processors do better because --

MR. WALKER: In normal market conditions the processor tries to maintain a thin profit margin, operating margin, regardless of where the live pond bank price is for catfish.

On the farm level, the farmer also tries to maintain a thin margin, but more often than not he will have some years where he makes a good profit and some years where he has tremendous losses due to the price of feed and the live pond bank price.

So live pond bank price can very much more directly impact the farmer than it does the processor.

MR. RHODES: I have the advantage much like he does now because they purchase Southern Pride, but my days at Southern Pride, it used to be that when prices were high to the farmers we made more money. When I got to Harvest Select and researched back through their 18 years in existence, similar things happened. With Southern Pride if prices were very high to the farmer we tended to make a lot more money. That was before the Vietnamese started coming into the country. It's all shaken up since then.

VICE CHAIRMAN PEARSON: My red light's on so

I guess I'll leave it there. Thanks.

CHAIRMAN ARANOFF: Commissioner Okun?

COMMISSIONER OKUN: Thank you.

In looking at the factors that influence demand in the reasonably foreseeable future, I think you talked to this a little bit in response to Commissioner Lane's earlier question, do you think those are the same factors that drive worldwide growth? Is that specific to the U.S. market? Would you have any sense of that?

MR. RHODES: Can you say the first part again?

COMMISSIONER OKUN: The factors you look at in determining what demand's going to be like in what you see as your reasonably foreseeable future.

MR. RHODES: I look at all the species all over the world. I'm a member of different organizations around, other than just catfish. So I go to a ground fish forum, for instance, that I'm a member of and they tell me what the supply quotas are for pollock and cod and hake and hokie and salmon and on and on. They kind of tell you what their differences are.

In the past, 20 years ago, we would say we were a substitute for pollock. Today it's not so much pollock as it's gotten substantially higher the last few years.

MS. SLATER: Commissioner Okun, are you asking whether the demand conditions are international or specific to particular country markets? Is that --

COMMISSIONER OKUN: Yes, whether it's different for what you would look at for the U.S. in predicting what demand's going to be versus worldwide.

MS. SLATER: I don't know whether any of these fellows want to answer, but I know that certainly from some of the data we've seen from international sources you can see a definite difference in per capital consumption, for example, of fish, which would suggest that are somewhat different demand drivers. We can give you that.

MR. WALKER: I would just say that if you look at the very large volume increases and the correlating low prices in the foreign markets, that product has been coming in there, it's been displacing everything. Not just one item or two items. And with the order in place, I think our marketplace is a U.S. catfish market. Without it they would consume us and then move on to the very next thing.

COMMISSIONER OKUN: Okay. So for the growth in Vietnamese exports worldwide, and you've had a chance to talk about that a fair amount, in terms of the pricing on that, because I know Ms. Slater you've pointed to that as one of the reasons the U.S. is having an attractive price. I'm still trying to understand, maybe a follow-up to some of the other questions, in terms of the markets overseas and the EU, are they displacing a lower priced fish than a catfish? Should we look at the pricing of basa and tra in these other markets as a good indicator that the U.S. is an attractive market if they're marketing them differently, as I understand it?

MS. SLATER: It definitely is a good indicator not only because of the experience we had here. We were kind of the first stop on this tour. there's some data in our pre-hearing brief which I think is very helpful, and that is information from some of these individual country markets where you can see this product came in in every case at the bottom, below whatever prevailing species is there. So this is the way of marketing. We have also Article 3 Vietnamese industry consultants who follow this, this is a very big industry in Vietnam, write about sort of the tendency of the industry to shoot itself in the foot by going in with very low prices. They talk about inviting dumping actions, inviting phytosanitary responses because of the pricing.

So it's definitely something which is not a function of those particular markets. You can see it in the data and the reactions that come about in each country.

Am I answering your question?

COMMISSIONER OKUN: Yes. And Mr. Klett wanted to add something?

MR. KLETT: Yes, I just want to say the basa that's being exported, the fillets that are being exported to Europe versus the U.S. are the same fish, same cost of production notwithstanding they may be competing with different fish in Vietnam. There's a higher profit margin to be had here given the higher price so there's an incentive to shift to the U.S.. Even aside from shifting, we've got the over-capacity issue as well.

COMMISSIONER OKUN: That's helpful. I think maybe Mr. Rhodes mentioned this when you were talking about it before, in terms of U.S. looking at export markets, that's not where you're focusing your efforts or the industry is focusing its efforts, or --

MR. RHODES: We've got Canada going on and a couple or processors are shipping into Europe still. Very small amounts. Carolina Classics was at the

Brussels show last week. He still exports, but a very small amount.

MS. SLATER: I do want to add, I know this just because I was discussing this with the Director of the Catfish Institute last week, Canada, there actually is a very focused campaign going on now for increasing sales to Canada. I think one of the things that has the industry concerned is basa is sort of expanding its market there.

Mr. Rhodes told me previously about the experience at his former processor, having done a pretty good job of getting sales going into Germany and then finding them drying up because the basa began to come in there.

It's a challenge because the basa is everywhere and is being, to some extent, identified as a catfish. I know you were asking about this earlier. We can try and get you some information on how it's being marketed outside the United States and the use of the catfish name. I think some of the materials that just came back from Brussels may be helpful for that. But this is creating challenges to the industry in terms of expansion and even getting into Canada where a U.S. brand will have some hold, we hope.

COMMISSIONER OKUN: We may have covered this in the original, I'm trying to remember. But in terms of the other white fish out there that's also available, like tilapia, when we had the original investigation it was fairly new in the market it seemed to me at that time, or I'd only seen it in restaurants more recently. Do any of the white fish that you're competing against in the U.S. market, do any of them command higher prices still? Or has there been some -- Are there other white fish that command higher prices in the U.S. market? And how about internationally?

MR. RHODES: Fresh tilapia is a little higher than fresh catfish. We fluctuate a little bit. It's gotten extremely high in the last couple of years.

Frozen tilapia is coming from China, very cheap. Indonesia. Tilapia might have a couple of fluctuations, but pollock price is going up and basa price has come down and Chinese has come down to hurt us.

MR. WALKER: I might add that when you look at the tilapia market I think a lot of that product is in the retial segment of the market place. The frozen that comes in cheap. The fresh is priced a little higher than us. But when we look at our traditional market in the south, the frozen fillet market in the south, that product is not competing directly with us.

We have customers where they will have catfish on their menu. They will also have tilapia on their menu. In many cases we find it a complement to our product because it introduces that consumer to more white fish, and if they try tilapia and they like it then they're more apt to try catfish.

But what we don't see is we don't see that product being sold to our customers and then marketed as catfish and sold as catfish. We don't see menus where there's catfish on the menu and also basa. That's just unheard of in our markets.

COMMISSIONER OKUN: I appreciate that.

With respect to the likely price, I want to make sure I understood what was going on even during the period of review here where we see the increases in average value for frozen fish fillets increasing through the period. Is it your experience that that's a result of across the board increases trying to reflect rising raw material costs, feed? Or has there been value added processing or changes in the channels of distribution that have affected pricing? I just want to make sure I understand what you think went on.

MR. WALKER: It would absolutely primarily be the rising cost, input cost to the farmers and processors attempting to try to get the best price we can for our product, to help to try to cover those rising costs out there. We would also process strong volumes to try to create, get the cost down from a processor standpoint to be more efficient. I think if you look at the '06, '07 timeframe, you would see where with the industry processing at full volumes in '06, processors had little better volumes. In '07 you saw those margins go drastically down. That is because while we were processing the farmer's fish and paying a decent price for them to try to stay alive, we were also building inventories. The foreign product was continuing to undersell us. As a result, in '07 we had to take tremendous write-downs on those inventories to move them out at worse levels, and also cut back on production which increased processing costs.

COMMISSIONER OKUN: Any other comments on pricing?

MR. RHODES: The inputs that we deal with are fuel and feed, they have to deal with as well, so they probably have raised their prices to accommodate that. Plus they see us going up and they can take advantage of that if they're smart as far as the importers are concerned. That's been one issue the last year and a half.

COMMISSIONER OKUN: And then looking forward -- Actually, my red light's on, so if someone doesn't cover it I'll come back to it.

Thank you.

CHAIRMAN ARANOFF: Commissioner Lane?

COMMISSIONER LANE: Thank you.

Are there currently other species of fresh water fish that are farm-raised process and sold as frozen fish fillets in the United States?

MR. RHODES: Trout. That's the only thing. It's not white fish, but that's an aquaculture product on the Snake River in Idaho. They're probably altogether, 40 million, 50 million pounds total out there in Idaho, but that's a substantial trout business. Compared to us.

COMMISSIONER LANE: Thank you.

The statistics show that catfish farming acreage has fallen in Mississippi, Alabama and Arkansas but grew rapidly in Texas. To what do you attribute the growing expansion in Texas?

MR. RHODES: There's a small processor in northeast Texas and there's another one south of Houston that has gotten a little bigger over the last couple of years that's probably added onto their plants. But they haul quite a bit of fish out of Alabama, Mississippi, to help their plants run.

MR. RENFROE: I think Commissioner Lane, if you look at it, the number of acres in production and the number of pounds that they process, Texas is not known as a catfish producing state as much as Alabama, Mississippi and Arkansas. Any increase would look like a large increase, too.

COMMISSIONER LANE: Thank you.

I'd like to talk a little bit about the difference in unit sales values between the higher priced domestic fresh catfish fillets and the domestic frozen catfish fillets during 2003 to 2008. What factors account for the increase in the price of the fresh catfish fillets versus the price of the domestic frozen catfish fillets during this period?

MR. WALKER: Primarily that the fresh is a U.S. domestic industry and the frozen fillet industry is also more and more so a foreign market as well. So we have the ability to take care of those needs but be able to get a little better margin on the fresh markets than we do the frozen markets. We don't have the competition coming in and underselling us at the degree they are.

COMMISSIONER LANE: To what extent do the frozen compete with the fresh in the United States?

MR. WALKER: Frozen fillets are primarily sold in the food distribution service to the restaurants that are cooking prepared meals for customers. The fresh sales are primarily in the retail markets where the housewife is going in and she has eaten catfish out in a restaurant, likes it, so she wants to go in and try it. So she's bringing it home to cook.

COMMISSIONER LANE: Are the schools a big market for frozen fish fillets?

MR. RHODES: We've had programs that the USDA has helped us with that created school lunch programs, but most of the time nuggets might work in certain applications, but fillets are too expensive.

COMMISSIONER LANE: Thank you.

MR. WALKER: It's a very small percentage piece of the business.

COMMISSIONER LANE: Is it mostly because of the cost?

MR. RHODES: Yes.

COMMISSIONER LANE: One more question. How does the American public know that the frozen fish coming from Vietnam is safe to eat?

MR. RHODES: There is no certification programs for them to follow. There's internal Vietnamese agencies that are supposed to have done their homework. We don't really know how well that works, obviously. The FDA checks it probably three to five percent of all imports coming to this country are being checked by the FDA. So to answer your question, there's really no way of telling they're safe.

MR. WALKER: I would add, there is no way of the American public knowing. If you look at our catfish industry, 1300 farmers, we are a democracy and we are regulated by laws and our laws have very strict penalties and punishments for if we don't abide by those laws.

The competition you're looking at in Vietnam, in China, these are communist countries. Where there's 1300 farmers here, I don't think there's any accurate information on how many Vietnamese farmers there are, but I can assure you it's thousands upon thousands. There, there is not the degree of law and order that there is in any democracy, as you well know. There's not the checks and balances in that system that there is in this system.

MS. SLATER: Commissioner Lane, you've put your finger on something that's been the topic of a great deal of discussion in everything from congressional hearings to the GAO report that was issued recently.

We very tightly control in this country, not only domestic production of our beef and our chickens and our pork, but we have very strict requirements for any of those items which are imported.

For seafood in general, this has not been the case. There are inspections that the FDA is authorized to conduct at the border. They in fact inspect and sample, as Mr. Rhodes indicated, a very tiny percentage of the fish that comes in. They test it for chemicals which are banned and for additives and other problems with the fish. You can actually, any day of the week, go onto the internet and see a listing of the shipments that have been seized and stopped and the reasons. Everything from flouroquinalins to, what was the latest thing you were mentioning that was so common? But there's all kinds of reasons for that.

But it is not the type of systematic inspections that we require for other types of food. Congress and GAO and others have been focusing on this quite heavily.

One of the things that will hopefully come out of the 2008 Farm Bill that we talked about at the beginning of the questions is a system both here and abroad for inspecting catfish production which is designed to make everyone comfortable that whatever they're eating that comes under that nomenclature will be up to standard.

But the answer to your question, at this time there isn't any assurance that fish has been safety inspected.

COMMISSIONER LANE: Thank you.

Madame Chair, that's all I have. Thank you.

CHAIRMAN ARANOFF: Commissioner Williamson?

COMMISSIONER WILLIAMSON: Thank you, Madame Chairman. I have a range of different questions.

I was wondering about the consumption in the fast foods restaurants, fish fillet sandwiches. I think when I was growing up I thought that was mostly pollock. I was wondering what type of fish is used in those types of --

MR. RHODES: Pollock and hokie and cod. Primarily pollock.

COMMISSIONER WILLIAMSON: In other words the basa, the catfish, are not being --

MR. RHODES: No. There was talk last week about pangasius being in McDonalds in Europe. That's the only thing I've heard. Nothing here yet. But they're possibly using it over there for fast food.

COMMISSIONER WILLIAMSON: The Chairman asked questions about what was being displaced, and you're basically saying basa are being used in Europe for new customers, I take it. I was just wondering how that was happening? Was it like in the restaurants, fast food, or --

MR. RHODES: I didn't see any fresh over there. In grocery stores, I didn't go in any grocery stores. I probably should have last week, but I didn't think about it. But this is the fastest growing aquaculture industry, is the tra/basa group in Vietnam. As she mentioned, it's like 1.3 billion pounds in the last nine years, has come out of nowhere. That's what everybody's listening to in other parts of the world.

COMMISSIONER WILLIAMSON: Which implies there's a change in the say European, or even in Egypt, the consumption habits of fish in those countries. I was trying to get a better handle on that. We've already talked about Eastern Europe being a new market.

MR. RHODES: They're cheaper, so I think a lot of people are eating more fish over there. I think that's the difference. Much more fish is being eaten in per capita consumption. EU has grown substantially. We can probably get the numbers and verify that, but I don't know that it displaces much as it just took up new areas in the Eastern Bloc.

MR. RENFROE: Fish a lot of times is just seen as the cheapest source of protein that there is available, and that's certainly the case.

COMMISSIONER WILLIAMSON: What about the trends in the U.S.? Is fish becoming, is it mainly steady, the percentage of fish as a source of protein in the U.S.? Or any trends there?

MR. WALKER: The overall trend line that we've talked about before which was really kind of a continual growth or around seven percent for the industry, that has remained, it's been proven pretty well with the test of time. Of course our percentage of that market has been declining while foreign competition has been increasing.

MR. RHODES: There's 15 pounds per capital consumption for total seafare. Then you went to 15.6. Now it's back down to 15.4, 15.3. Catfish has been overtaken as number five species to number six now by tilapia. Basa is now at number ten.

2008 we showed basa slipping into number ten, and it displaces cod. So you go back 15 years ago, cod was the item, especially up here in the northeast, or the middle east up to the northeast would be cod, from the Atlantic.

COMMISSIONER WILLIAMSON: Thank you. That was what I was wondering about.

What about the cost of feed? Are there forecasts about feed prices in the next year or two?

MR. LOWERY: Currently this year feed prices are a little bit lower than last year. It's tied to the commodity markets, soybeans and corn. You know how volatile they've been. You look at all of the forecasts, I would say feed will remain pretty high. Probably comparable to last year. A little lower.

COMMISSIONER WILLIAMSON: What about in Vietnam? Do you know anything about their feed costs? Are they using similar types of feed as here, and where are they getting it from?

MS. SLATER: We know some, although I wouldn't say any of us are experts on the Vietnamese industry other than what we've learned through dealing with this case over the last five years. There are farms which use feed very much like here which are composed of basic grains and so on, although the feed mixes are not identical. But there's also still quite a bit of what we call home made feed using elements and things that are available naturally, trash fish, things like that. So it varies across the industry. But what we've seen I think is a move toward the higher grain feed. So you would expect to see cost of production rising there as well, given what we know.

We haven't yet seen that reflected in the pricing of what's coming out. And that, Commissioner, may reflect the support and involvement of the government, despite rising grain prices.

COMMISSIONER WILLIAMSON: Thank you.

I was wondering about the impact on the cost of operating for the processors, if operating at less than full capacity in producing fish. And in particular, what role does the level of the variable costs play in enabling processors to continue to operate?

MR. RHODES: I didn't hear --

COMMISSIONER WILLIAMSON: I was wondering, what was the cost of, how do you handle operating at less than full capacity? And what level do variable costs play in the ability to sort of continue to operate, even if you're operating at less than full capacity?

MR. WALKER: Obviously when you look at your input costs, your variable costs are going to move up and down with increases and decreases in production. Those fixed costs are going to remain there. So as you come down in production you're going to be increasing your cost per unit on what you're producing. I think each processor probably has a threshold number where when we decrease processing to a certain level we've increased costs but not dramatically. But once we go below that certain level then the costs go up dramatically. So we want to try to not fall below that number that's going to be that threshold number.

COMMISSIONER WILLIAMSON: Thank you.

Just one other question about, Mr. Lowery, I thought you said there were no processors in Arkansas, or the number has gone down. I was just wondering, how do you process the fish? I assume there are some limits to how far you want to ship the fish to a processor.

MR. LOWERY: We truck our fish to the plant. About 200 miles, our particular farm. So I guess I'm probably a little bit out of the loop as far as the major production, but that's where we're located and that's what we have to do to get fish to market. We haul them live on a tractor trailer rig.

COMMISSIONER WILLIAMSON: So there's a big difference between the competitors say of Arkansas farmers than someone in Mississippi that goes less than a mile?

MR. LOWERY: It's probably about two cents a pound difference in freight. I would estimate.

MR. WALKER: I would tend to agree with him. Depending on the distance you're traveling, you're looking at 1.5 to 3.5 cents a pound would be freight costs for transporting those fish.

Also the further distance you've got to go, especially in the summer months, the more stress you put on those fish, and that stress relates to poorer quality in the meat that's produced by the fish.

MR. RHODES: It's quite common to haul fish between Alabama and Mississippi and back and forth to plants. So there are quite a few plants coming to Alabama and hauling back 200 miles back to Mississippi. So it's tough on the fish in certain times of the year, though.

COMMISSIONER WILLIAMSON: Thank you.

I have no further questions and I want to thank the witnesses for their testimony. It's been very helpful. Thank you.

CHAIRMAN ARANOFF: Commissioner Pinkert?

COMMISSIONER PINKERT: Thank you, Madame Chairman.

I recall earlier in the testimony that somebody testified that there is a difficulty or at least there hadn't been a lot of in-roads in marketing catfish in the northeast of the United States. I'm wondering if you can help me to understand why that might be the case.

MR. RHODES: Why we had increased marketing in the northeast?

COMMISSIONER PINKERT: Why there had been difficulty in marketing catfish in the northeast.

MR. RHODES: Why it's difficult. Okay.

We spent quite a bit of money, TCI has, since 1986 trying to get away from fried up here because there's more grilled and broiled and the catfish name has been a problem. We talked about it in the early '80s, about changing the name away from that so the New Englanders and the Northeasters might try it better, but it was a whole process that just never came together. We all had our own marketing and it was kind of hard to hide that it was still a catfish.

But it's always been difficult up here.

You go back 15 years ago and you'd see quite a bit on the menu for a while. Now it's gone over the last 5 to 10 years.

MR. WALKER: I'd like to add too, that in the northeast the traditional fish are ocean-caught fish with the proximity to the ocean. Up and down the Mississippi River, traditional southern places, that's where catfish has traditionally, people have grown up and know and grown to love that fish because that's what they grew up eating.

If you look at pangasius, we don't see the explosion of pangasius in the northeast right now. Why is that? Where it is exploding is in the south and that's because it's sold as catfish.

COMMISSIONER PINKERT: What about as one moves up the Mississippi River into Illinois and Missouri and further up? Is there an opportunity there as well?

MR. WALKER: The market from Chicago down on the Mississippi River is all a good market for catfish, yes.

MR. RHODES: A lot of people in the Chicago, Milwaukee, Cleveland area came from the south in the mid 1900s, so they're familiar with catfish in that marketplace. A lot of times it's whole fish, not necessarily the market that we're talking about, is whole, a blood whole or big whole and they cut them into steaks.

MR. RENFROE: You move north of that line and there's probably a preference as far as small, natural light fish fillets go to lake fish, the Great Lakes fish. Where in New England people identify with saltwater fish.

COMMISSIONER PINKERT: That raises an interesting point. I'm from the midwest. I recall that growing up I would see a lot of frozen perch fillets in the supermarket and just about everywhere. Is that still true? Or has that product kind of exited the market to some degree?

MR. RENFROE: Perch and walleye are still the preferred local fish there.

MR. RHODES: Probably Detroit all the way over to Minnesota.

COMMISSIONER PINKERT: So there hasn't been kind of a decline in the perch population that would affect the marketing of that product?

MR. RENFROE: I'm not sure about what the fishing laws and catches are on the Great Lakes as they relate to perch and walleye. I just know there's a preference for that product there, and I know that Commissioner Pearson had talked about being from

Minnesota. I've tried to sell catfish in Minnesota before. It's a hard sale. They tell me, we throw those on the bank when we catch them.

(Laughter.)

COMMISSIONER PINKERT: Thank you very much. I have no further questions for the panel, but I appreciate your testimony and I look forward to the additional information that you're going to supply in the post-hearing.

CHAIRMAN ARANOFF: I want to go back to some of the questions that I was asking in my last round. In particular, I noticed that in your brief you point out that quality concerns have impeded to some extent the growth of Vietnamese exports into I think in particular you pointed out Russia, Egypt and Italy.

Why would or wouldn't the same concerns impede further growth in the United States if the order were revoked?

MS. SLATER: What we've seen are two things. One is the Vietnamese, and this is based on, Commissioner, just what we read in the Vietnamese press so to some extent we're, I don't want to be i na position of filling in for the Vietnamese industry. But I think what we've seen is in their growth of this market they have not always paid attention to, at every processor, to getting the best quality fish.

Now that having been said, the size of the industry and the size of the exports are so great that there would be no problem doubling, tripling, quadrupling what they send here at plants there which hold themselves out as what we call HASEP certified which is the program that, the individual program that plants can use to show that they're operating correctly.

Some of these bigger processors can easily meet those standards. Would we wind up potentially with getting quality issues at some point? It's conceivable. But they have learned this market very quickly. They understand what's required here. So the odds that we would see that I think would be small.

The other thing to note is it's always hard to know in the trade world whether those claims, for example in Russia and Egypt and elsewhere, whether that was a reaction to the volume and pricing of the stuff as opposed to health issues. We see that sometimes, the Vietnamese certainly jumped up and down and claimed that this was not health related, that it was in fact a violation of SPS agreements and so on.

So it's hard to say to what extent the

problems were really there. We do know they are themselves making a lot of noise internally about keeping standards high. We also know they would have no problem sending fish here that could meet standards.

CHAIRMAN ARANOFF: That's one of the questions I had with respect to what's gone on in some of these other markets. As you say, you could have a country saying we don't want any more of these imports so we're going to call it a health issue. Of course if there really isn't a local product that's competing with it, it's hard to see why you'd do that in a country like say Russia, unless they're competing too much with chicken. I don't know.

MS. SLATER: I think it's not so much that they have, they don't have in these countries farm-raised catfish industries like we do here, but there is clearly some displacement going on based on some of the press that we see. Whether the issue is that the local distributor of some other product is well connected and complaining, we've given you some of that. We can certainly supply you post-hearing with some of the press that we've seen both on the Vietnamese side complaining that there's really no health issues, and some of the reactions of local folks in those countries when they do impose things. It's been Russia, Egypt and perhaps one other country.

CHAIRMAN ARANOFF: There's no grading system either for catfish or for basa and tra. It's all sold as a single grade, right?

MR. RENFROE: With respect to quality?

CHAIRMAN ARANOFF: Yes.

MR. RHODES: The USDC currently inspects our plants and there is a Grade A program under USDC and we expect to have the same opportunity under USDA to have a Grade A program.

CHAIRMAN ARANOFF: So does that mean there's more than one grade of product sold? You can sell Grade A or stuff that didn't make it to Grade A?

MR. RHODES: USDC is in most all of our plants. Nobody's actually packing a Grade A unless they do for school or military, stuff like that possibly.

MS. SLATER: There's very little use of the program that allows for grading a fish. So the answer is yes, it is sold other than to these particular programs, it's sold as a single product.

CHAIRMAN ARANOFF: Okay.

One of the things I'm curious about, and your knowledge may be limited on this, is I'm trying to assess how likely it is there could be further increases in processing capacity in Vietnam in the reasonably foreseeable future given the relatively low levels of capacity utilization that we have evident in our records.

MR. KLETT: Chairman Aranoff, this is Dan Klett.

We found that there were continued plans for capacity expansions even in '09 based on web site research and companies announcing capacity expansion.

I think one of the things that has to be kept in mind is that this industry in Vietnam is very large. It's a fairly substantial share of their GDP. It's a significant export item for them. So it's considered a strategic industry for Vietnam.

So they are projecting further increases in capacity and in fact I think they have a plan to make past projections out to the year 2020 showing additional expansions. We can provide more information on that, but I think it is considered an important industry for Vietnam and there are announced plans for capacity expansions and they are announcing additional growth.

CHAIRMAN ARANOFF: Are there any limits on the ability of Vietnamese producers to increase production of live basa and tra in the Mekong River?

MS. SLATER: Apparently not. It's very clear in recent articles, within the last few days and weeks, talk about government plans for increasing fish supply and controlling where that will happen.

This was published April 29th, "The People's Committee of Southern Bin Long Province have granted an investment license to the International Seafood Joint Stock Company to build four agricultural and seafood processing facilities in Long Ho District."

These are very large factories. We can supply this to you. It doesn't specify that it's going to be pangasius, but that represent 50 percent of all of their processed seafood, so this is a targeted sector for the government and they are supporting these investments and the continuation on the processing end as well as on the fish side.

CHAIRMAN ARANOFF: Normally we ask whether you're aware of any antidumping or trade remedy orders in other countries against this product. I'm gathering from what I hear probably not because there aren't really domestic industries that would compete and bring those cases.

So for post-hearing I guess I'd just state it more broadly. If there are any sorts of import restrictions that you're aware of or that are on the drawing board, be they SPS based or whatever, that you could put on the record for us, that would be very helpful.

MS. SLATER: We'll see if there are any others that we can identify.

CHAIRMAN ARANOFF: I do have two more questions. I'm jumping all over the place here.

I don't think any of my colleagues asked this, but our data show that while catfish farming acreage in the U.S. fell during the period that we're reviewing in most states, including Mississippi, Alabama and Arkansas, it grew fairly rapidly in Texas. Can you tell us exactly if there's a story behind that, what you would attribute the expansion in Texas to?

MR. WALKER: The expansion in Texas from a total acreage standpoint is very small. I think what you see happening in Texas is a very small niche market that's being built around fresh product produced and sold in the state of Texas. Of course there they would have a little advantage on us from a transportation standpoint. Although it looks like a very big growth percentage wise, from a total acreage standpoint it's very small. It's a small industry trying to fill a niche market there.

CHAIRMAN ARANOFF: Okay. That's why apparently the capital has been available to go into that expansion when we've heard from the rest of you that it's difficult to come up with capital to do that kind of work right now. Someone thinks it's worth the investment.

MR. RHODES: There are two companies down there. There's one that's Farm Catch in the northeast, and then there's Bowers. And Bowers also does shrimp. So he's got a plant that can do both. That's his investment. He's got it covered from one angle or the other.

MR. LOWERY: There's also very favorable growing conditions down there. They've got good climate. I would say they could feed a month longer than we can. So they have a little bit of an advantage over some of us in the delta.

CHAIRMAN ARANOFF: Okay. That's interesting.

I have one last question and it's going to be for post-hearing, so I'm just going to ask it even though my light has turned red.

The financial declines or poor experiences that some processors have experienced have not been across the board on our record, so if you could comment post-hearing on why some processors have been able to do much better from a profitability standpoint than others, and in fact had different trends during the period that we're reviewing, that would be very helpful.

MS. SLATER: We'll be happy to do that Commissioner Aranoff.

CHAIRMAN ARANOFF: Thank you very much.

Vice Chairman Pearson?

VICE CHAIRMAN PEARSON: Thank you, Madame Chairman. I have two questions left.

The first is for Mr. Klett. You indicated that the current growth in capacity in China is not as strong as the growth rate in Vietnam. Either now or in the post-hearing could you elaborate on that point? For instance, if you have details regarding expected growth in Chinese capacity, that might be helpful. And in particular if there are any Chinese government policies that relate to encouraging or discouraging this industry, that might be good to know.

MR. KLETT: I'd be happy to. I have some information on live fish production in China versus Vietnam and we'll provide what we can to support that statement.

VICE CHAIRMAN PEARSON: I think in general it's correct to understand that there's quite a bit of aquaculture that happens in China. I don't have any idea what percentage of that effort might be directed to the species we're concerned about today.

MS. SLATER: We'll take a look at that Commissioner Pearson.

VICE CHAIRMAN PEARSON: Thank you.

Ms. Slater, the last question is for you. The Court of Appeals for the Federal Circuit continues to help us understand the issue of non-attribution. Here we have an opportunity to consider it on a review for the first time in a while. Since the Court's been doing things, we haven't really done a review in that same timeframe.

If we look at this industry we see that it's being affected by a variety of factors. Yes, there are subject imports, but there also are the non-subject imports from China, there are increasing feed and energy costs, there's a general slow demand at the present time and perhaps other things.

In light of this, in assessing whether injury will continue or recur if the order is revoked, how do we distinguish the likely impact of imports from Vietnam from these other factors?

MS. SLATER: Commissioner, I would like to take that on post-hearing, if that would be acceptable.

VICE CHAIRMAN PEARSON: That would be fine. If you have anything you want to say now, that would be --

MS. SLATER: I think the recent court decisions do make it a very interesting issue, how the test is applied to sunset. I think rather than blurt something out here, I'd like to think about it and give you a solid response in a post-hearing setting.

VICE CHAIRMAN PEARSON: I for one would appreciate the guidance because we do our best to try to understand what the Fed Circuit is telling us --

MS. SLATER: As we all do.

VICE CHAIRMAN PEARSON: -- so help us do this one to the extent that you can.

MS. SLATER: We'll do that.

VICE CHAIRMAN PEARSON: With that, I have no further questions and I'd like very much to thank all of you for being with us today. It's been very interesting.

Yes, it was in some respects unfortunately to be stuck with the full review when there's nobody on the other side, but I learned a whole lot and getting this out on the record now may well serve the industry well.

Thank you.

CHAIRMAN ARANOFF: Commissioner Okun?

COMMISSIONER OKUN: No further questions. I also want to thank all of you for being here. I appreciate all your answers.

CHAIRMAN ARANOFF: I have actually one more question that I found on another piece of paper.

Just to kind of round out our thinking with regard to non-subject imports from China, why don't Vietnamese farmers breed American catfish for export the way the Chinese do?

MS. SLATER: It's a great question. I've actually asked this question to one of the outstanding academics who supports the industry and knows a lot about catfish.

This species, the pangasius species, is native to Vietnam and to the Mekong River and does very very well there. The Chinese have had a very hard time raising that species and are focusing on the ictalurus species which is the channel catfish.

By the same token, the assumption is that either the Vietnamese are having so much luck with the pangasius that they haven't tried it, or it's possible that the conditions there wouldn't be as good because they are not precisely the same conditions that we have here or that the Chinese are replicating there.

So the answer is we don't completely know, but some of the conjecture may be that it would not do as well or that the economic incentive isn't there just because they're doing so well at the moment with growing out the pangasius.

I'll be happy to follow up on that, Commissioner, and see if there's any more hard information.

CHAIRMAN ARANOFF: What do the pangasius eat? They're not fed corn and soy, are they?

MR. RHODES: They've got feed much like ours, but in the beginning they were doing actually table leftovers, cooking it, and trying to dry it out and fed it to, in houses, they actually lived on the river and there was a trap door that dropped the feed into the fish beneath the house. Now they've slowly migrated to a more feed like we are.

But the catfish can't be grown over there because there's still the same issues as we mentioned earlier. There's no breeding, brew fish. It's hot all the time. Catfish don't necessarily swim in the river very well, constantly, like a pangasius does.

So there's all these other issues that are going to keep them from being successful with ictalurus versus pangasius.

CHAIRMAN ARANOFF: Thank you very much for those answers. I don't think we have any more questions from Commissioners. So let me ask if the staff have any questions for this panel.

MR. CORKRAN: Douglas Corkran, Office of Investigations.

Thank you, Chairman Aranoff.

I do have one question for the panel based on some of the testimony. There's a description I believe that there had been an explosion of imports into the south or at least comparing imports of basa and tra into the south as opposed to other regions.

What I was trying to get a little information on is, what is happening with the imports of basa and tra into regions such as the west coast of the United States? Several sources of data in the investigation suggest that there are fairly large shares of the subject imports entering on the west coast. Is that a different regional market from the south?

MR. KLETT: Mr. Corkran, this is Dan Klett. I'm going to respond and then I'm going to ask Mr.

Renfroe to give an example in terms of his experience on that.

We looked at the importer questionnaires, and of course the data is confidential in terms of what regions they're shipping to, but there are a few things we think you need to be aware of when you're reviewing the regional distribution of the imports.

Number one is the coverage of the importers that you have in terms of whether that's being representative of everything coming in.

Number two, whether the shipments being reported are actually where the product is being sold regionally, versus just the first tier sale to a particular region.

We were discussing this last night just generally, and Mr. Renfroe had an example that I think also will be useful to answering your question so I'll turn it over to him.

MR. RENFROE: Mr. Corkran, are you talking in terms of product making it to the end user, or that is a point of importation?

MR. CORKRAN: I was actually referring to both. I took the initial point from the brief that there was a possibility that the questionnaire coverage might be contributing to the information that we were seeing in terms of which region the imported product was being sold into. But we also compared it to the official import statistics, and that indicated that there was a fairly, a large share entering through the western ports of entry.

MR. RENFROE: That's accurate. Most of the basa that enters the country comes in on the west coast and as far as how it's impacted the market out there at the operator level, most of our market is retail on the west coast. So as far as food service operators it's going into there, I don't have as much knowledge of that. But I know from what I see of basa in the rest of the country, whether it be at the distributor level or a national account level, there's room for the product to be imported by an importer there and passed on to primary and even secondary distributors before it gets to our operators. Everybody still seems to be able to make money at it. I'll run into an account, whether it's a small distributor or an end user, who is buying product from someone who is buying it from an importer on the west coast and they're still covering freight and margin and everything else to get to my customers. They're still below me by quite a lot.

MS. SLATER: Can you just clarify where it is that you're seeing that, where you're competing with that product that may enter on the west coast?

MR. RENFROE: It's all over. It is absolutely pervasive. It's everywhere. It's in the southeast. On the national account side of our business that's not as limited, still somewhat limited to the southeastern United States as it applies to catfish, but it reaches a little bit further out, and I run into basa everywhere. It's coming off the west coast.

MS. SLATER: Just to be absolutely clear for the record, Mr. Corkran, you're absolutely right, the west coast ports are a significant point of entry for a good amount of these imports, but that is exactly what it is, the point of entry. They make their way through the distribution system to a number of places.

Mr. Renfroe's example I think is a good one. He's run into it quite directly, knowing that it comes from west coast distributors. It's the way it's being shipped across from Vietnam that lands it there originally.

MR. CORKRAN: Thank you very much for all of your testimony, and thank you Chairman Aranoff. Staff has no further questions.

CHAIRMAN ARANOFF: Okay. Proceeding out of the regular order for a moment, Vice Chairman Pearson has one thing to add.

VICE CHAIRMAN PEARSON: Thank you, Madame Chairman.

Mr. Renfroe, I was negligent in not mentioning that I appreciate the difficulty you would have selling fresh catfish in Minnesota. The walleyes are so revered there, it's a cultural clash that it would be difficult to overcome.

(Laughter.)

However, what I wanted to say is that there is a small niche market in Minnesota for smoked catfish. Some of the old guys who ran smokehouses would really do wonderful work with them, and if you can get me some, let me know. I'd be glad to have it.

(Laughter.)

MR. RHODES: Maury's has it outside Minneapolis. I can't think of the small town that the Sarimi plant's it. But Maury's has a smoked catfish if I remember correctly.

COMMISSIONER PINKERT: I just want to note in response to the Vice Chairman's comment that where I grew up, walleye was known as a very large perch.

(Laughter.)

CHAIRMAN ARANOFF: We learn all these things about each other at these hearings. I don't know. I'm a Boston girl and nothing substitutes for that cod.

In any event, now we have to have another fish comment.

COMMISSIONER OKUN: Exactly, because I listened with -- I didn't comment on it but thought about it at the time which is I'm from Idaho, so rainbow trout are revered on the Snake River. I lived there. We still thought those catfish were bottom dwellers which is why when I did come out here and go on the tour and go eat catfish at a restaurant, I did have a lot of myths dispelled about those catfish. But I still like my Idaho trout.

MR. RENFROE: All of this hits close to home.

CHAIRMAN ARANOFF: I think we are up to a closing statement, Ms. Slater, if you're ready to go.

MS. SLATER: I think it's very hard to follow those closing statements, but I just thank the Commission for taking time today to hear the witnesses. We will do our very best to respond to your questions post-hearing and provide the additional information that will be helpful to you.

I just wanted to finish by, not with as

terrible a joke as I started, but I was listening to a CD that my daughter made for me because, of course, I'm at the age where I'm not listening to appropriate music without her help. She has, heaven help us, started listening to a group called Flogging Molly, which is apparently some Irish folk group. You know it, so that's a good thing. And they have a song which talks about what you should do in horrible times and when you're weathering bad periods, and the refrain is, "Whatever you do, don't sink the boat that keeps you afloat."

And it struck me as quite apropos for this. This dumping order has been of tremendous importance to this industry. It has in fact helped to keep it afloat through some very hard times, particularly over the last few years. We would encourage you to leave it in place for another five years, let this industry continue to develop and grow and find new ways to compete. Thank you very much.

CHAIRMAN ARANOFF: I want to thank again all of the witnesses for spending this time with us this morning, and a little of this afternoon. We very much appreciate all the work that you've put into this case.

Post-hearing briefs, statements responsive to questions, and requests of the Commission and corrections to the transcript must be filed by May 15, 2009. Closing the record and final release of data to the parties will take place on June 8, 2009. And final comments are due on June 10, 2009.

With that, I believe we have no further business and this hearing is adjourned.

(Whereupon, at 12:42 p.m., the hearing in the above-entitled matter was adjourned.)

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CERTIFICATION OF TRANSCRIPTION

TITLE: Certain Frozen Fish Fillets From Vietnam
INVESTIGATION NO.: 731-TA-1012
HEARING DATE: May 6, 2009
LOCATION: Washington, D.C.
NATURE OF HEARING: Hearing

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

DATE: May 6, 2009

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: Rebecca McCrary

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