

UNITED STATES
INTERNATIONAL TRADE COMMISSION

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THE UNITED STATES INTERNATIONAL TRADE COMMISSION

In the Matter of:)
) Investigation No.:
 AMMONIUM NITRATE FROM) 731-TA-894 (Second Review)
 UKRAINE)

Thursday,
 April 4, 2013

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 IRVING A. WILLIAMSON, Chairman, presiding.

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P R O C E E D I N G S

(9:30 a.m.)

CHAIRMAN WILLIAMSON: Good morning. On behalf of the U.S. International Trade Commission I welcome you to this hearing on Investigation No. 731-TA-894 (Second Review) involving Ammonium Nitrate From Ukraine.

The purpose of this five-year review investigation is to determine whether revocation of the antidumping duty order on ammonium nitrate from Ukraine would be likely to lead to continuation or recurrence of material injury 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 allocation should be directed to the Secretary.

Speakers are reminded not to refer in their remarks or answers to questions to business proprietary

information. Please speak clearly into the microphone and state your name for the record for the benefit of the court reporter. If you will be submitting documents that contain information you wish classified as business confidential, your requests should comply with Commission Rule 201.6.

Mr. Secretary, are there any preliminary matters?

MR. BISHOP: Yes, Mr. Chairman. With your permission, we will add Chelsea Severson, of counsel with Kalik Lewin, to page 3 of the witness list.

I would also note that all witnesses for today's hearing have been sworn.

(Witnesses sworn.)

CHAIRMAN WILLIAMSON: Very well. Will you please announce our first embassy witness?

MR. BISHOP: Our embassy witnesses are from the Embassy of Ukraine. We have Natalia Kolmakova, Deputy Director of WTO, Trade Remedies Department of the Ministry of Economic Development and Trade, and Yuriy Kharchenko, Chief Expert of Negotiations and Market Access Division of WTO, both from the Embassy of Ukraine, and acting as their translator will be Volodymyr Shalkivski, the First Secretary of the Embassy of Ukraine.

CHAIRMAN WILLIAMSON: Thank you.

MR. BISHOP: These witnesses have been sworn.

CHAIRMAN WILLIAMSON: Thank you. Welcome, Ms. Kolmakova and Mr. Kharchenko. You may begin when you're ready.

MS. KOLMAKOVA: Testimony of the Minister of Economic Development and Trade of Ukraine in a full review of antidumping duty order on ammonium nitrate from Ukraine to determine whether revocation of the antidumping duty order on ammonium nitrate from Ukraine would be likely to lead to continuation or recurrence of material injury or damage to the U.S. producers in the future.

Good afternoon, ladies and gentlemen. Let me introduce the position of Ukraine at the hearing in the framework of the five-year review of antidumping duty order on ammonium nitrate from Ukraine, hereafter merchandise, to determine whether revocation of the antidumping duty order on ammonium nitrate from Ukraine would be likely to lead to continuation or reoccurrence of material injury or damage to the U.S. producers in the future.

At the beginning of my testimony, let me cite Section 3.7 of the agreement on implementation of Article 6 of the General Agreement on Tariffs and Trade from 1994, hereinafter WTO agreement. "Definition of threat of material injury based on facts and not merely on

assumptions, conjecture or remote possibility. It must be clearly foreseen possibility, and it should be imminent changes in circumstances which would create a situation in which the dumping would cause injury.

"In determining the existence of a threat of material injury, the authorities, among other things, consider such factors as first, a significant rate of increase of dumped imports into the domestic market indicating the likelihood of substantially increased importation.

"Second, sufficient freely disposable or an imminent substantial increasing capacity of the export indicating the likelihood of substantial increased dumped imports to the importing members' market, taking into account the availability of other export markets to absorb any additional exports.

"Third, whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices and would likely increase demand for further imports."

According to Section 3.7, WTO agreement, it is assured that the revocation of the antidumping duty order on ammonium nitrate from Ukraine would be not likely to lead to continuation or reoccurrence of material injury or damage to the U.S. producers in the future due to the

significant changes in the U.S. industry's competitive position and fundamental changes in the Ukrainian market of ammonium nitrate during the last five years.

Both in the primary investigation and in the first five-year review of the antidumping order relating to merchandise, the Commission in the reports paid attention to importance of component cost of natural gas in producing this type of merchandise, making the natural gas as the main feedstock for the production of ammonia, which is the main component for producing this type of merchandise.

In the analysis, the Commission marked that the cost of natural gas is made by approximately from 70 to 80 percent of value of production of ammonia and from 30 to 50 percent of production of this type of merchandise. Furthermore, in its report on the results of the first five-year review, the Commission noted that projected natural gas prices in the U.S. market will continue to be volatile and high, and at that time Ukrainian producers have access to natural gas at lower and less volatile prices than the U.S. producers during the period of review of this event.

However, the current situation with the price for natural gas in Ukraine and thus the cost of production of goods compared to the U.S. market has changed

dramatically. Nowadays the U.S. ammonium nitrate market is in more favorable conditions compared to the Ukrainian market. Such changes have occurred specifically due to changes in the U.S. market in particular.

Since 2009, in the U.S. there is a sharp drop in natural gas prices due to the new technologies of gas production and access to the new fields. According to the U.S. Energy Information Administration, EIA, the working stock of natural gas in the lower 48 states is now 27 percent above one year ago, higher than one year ago, and 25 percent higher than the five-year average.

Over the long time, the U.S. is projected to become a net exporter of liquified natural gas, LNG, by year 2016, a net pipeline exporter by year 2025 and overall net exporter of natural gas by year 2021. The outlook reflects increased usage of LNG in markets outside of North America, strong domestic natural gas production, reduced pipeline imports and increased pipeline exports and relatively low natural gas prices in the U.S. compared to the other global markets.

It should be noted that the U.S. industry itself has recognized this fundamental shift in competitive advantages. For example, American company CF Industries Holding, Inc., which acquired the company Terra Industries, one of the two U.S. producers of ammonium

nitrate, in April 2010 was North America's largest nitrogen producer and acknowledged that "North America's growing supply of natural gas has placed us in one of the most advantaged cost positions in the world."

Besides this company noted "strong production and record inventory levels of natural gas within North America suggest that prices should remain at low levels for the foreseeable future" because due to the natural gas is a primary raw material in the production of ammonium nitrate, a reduction in its prices significantly affected the reduction of the cost of production of ammonium nitrate in the U.S., which in turn led to the growth of financial and economic indexes of the U.S. manufacturers of ammonium nitrate and improved the competitive position in the U.S. market as a whole.

One of the significant changes in the conditions of competition is the ability of the U.S. manufacturers of nitrate fertilizer to adapt to the weather changes and demand for the chemical products, allowing them to avoid the economic and financial difficulties associated with a decrease in demand for a particular product of chemical fertilizers, depending on changes in weather conditions and conditions on agricultural crops, as well as the opportunity to switch to the production of ammonium nitrate for industrial use.

The analysis of financial and economic indexes of the largest producer of ammonium nitrate in the U.S., company CF Industries, during 2007-2011 year period indicates that during the last three years the company's assets, net profit and gross profit increased by more than three times, which enables this company to constantly increase its production capacity and develop new geographic markets.

According to the 2011 annual report of this company, the average selling price increased primarily due to increased demand for fertilizer. Consolidated net sales in 2011 increased by 54 percent or by \$2.1 billion U.S. dollars, and the gross figure reached \$6.1 billion U.S. dollars. This happens due to primarily higher average selling prices in both the nitrogen and phosphate segments and due to the impact from the acquisition of the aforementioned company, Terra.

In 2011, the average prices for fertilizer nitrogen and phosphate segments increased by 38 percent and 36 percent respectively. Gross profit increased by 146 percent or \$1.7 billion U.S. dollars, and the gross figure reached \$2.9 billion U.S. dollars in 2009 comparing to \$1.2 billion U.S. dollars in 2010.

Basically if we analyze past trends and dynamics of the CF Industries we are sure to conclude that the

company will further expand its production capacity and expand export capacity through expansion into the new markets and through the use of low prices for natural gas.

CHAIRMAN WILLIAMSON: Excuse me. Ms. Kolmakova, I hesitate to do this, but I was wondering. We're very impressed that you and Mr. Kharchenko have come today, and we understand the importance that your government attaches to this in the very thorough statement.

Because we have a number of witnesses that come from all over the country and we have counsel with the Ukrainian companies present, I was wondering if maybe Mr. Shalkivski could just read rather than us having to go through the translation. We have the full record of what you have to say, all the points, and those will be part of the record, but I was just wondering just so we can maybe speed up the hearing and be fair to all the witnesses that have to come if we could just maybe have him read the statement in English rather than having to go through the translation?

As I said, we've been very impressed with your points and I hesitate to do this, but I'm also trying to be fair to all the other witnesses and our time today. Would that be okay? I don't know if you have to translate that?

THE TRANSLATOR: One second.

(Pause.)

CHAIRMAN WILLIAMSON: If that's okay, I think it would just speed it up. We can then also focus on hearing the complete presentation without having the interruption, the interruption in the two languages.

MS. KOLMAKOVA: We understand your position, so it is acceptable for us just to go through further by citing only the English version of the testimony.

CHAIRMAN WILLIAMSON: Thank you for that. I appreciate your understanding.

MS. KOLMAKOVA: Changes in the Ukrainian market. In contrast to the U.S. market prices, the prices for natural gas in Ukraine have increased largely and extensively from \$2.1 U.S. dollars in 2007 to \$12.4 U.S. dollars in 2012 per one metric -- okay. So we see that the increase that happened during five years was more than five times, and the current price for natural gas in the U.S. is from 2.5 to four times lower than we have presently in Ukraine.

Such changes in the competitive position of the Ukrainian producers resulted in the increased cost for production of ammonium nitrate and as a result increased export prices, which puts Ukrainian producers in a much worse competitive position compared with the U.S.

manufacturers.

As it is known, the main supplier of natural gas to Ukraine is Russia. As a result of disputes in January 2009, Naftogaz and Gazprom signed an agreement on gas supply that will last until the end of 2019. Under the provisions of this agreement, the price for gas is formed on a quarterly basis based on a formula according to which Ukraine is obliged to purchase natural gas from Russia at prices much higher than the world ones.

Despite persistent Ukraine and Russian consultations and negotiations on gas issues at the highest state level, the gas price for Ukraine has not diminished. Moreover, the recent statement of the head of the Gazprom, Alexander Miller, suggests that Gazprom is not going to reduce the price for gas for Ukraine. Thus, in the medium term gas prices for Ukraine will remain above U.S. gas prices, even according to the optimistic scenarios.

The average price for gas for Ukraine in 2012 was about \$425 U.S. dollars per thousand cubic meters or \$12.04 U.S. dollars per thousand cubic feet, while the daily price for natural gas on the spot market fluctuated from \$250 to \$350 U.S. dollars per thousand cubic meters or from \$7.08 U.S. dollars to \$9.91 U.S. dollars per thousand cubic feet.

As a result, Ukrainian producers of ammonium nitrate paid for gas from 2.5 to four times more than the current prices for natural gas in the U.S. At the same time, high prices for natural gas in the Ukraine are expected in the future to continue. So in contrast to the situation in 2000 and 2007, the Ukrainian manufacturers do not have the advantage of low prices for natural gas for the production of ammonium nitrate.

At the same time, it should be noted that there has been a change of ammonium nitrate consumption in the Ukrainian domestic market. The bulk of the sales of Ukraine ammonium nitrate producers is aimed at the domestic market. This is the result of the significant development of the Ukrainian agricultural sector and its significant needs and demand for fertilizer, particularly ammonium nitrate.

Ukrainian industry of ammonium nitrate and the Ukrainian agricultural industry are mutually dependent. In Soviet times Ukraine was known as the bread basket of Europe for producing one quarter of all Soviet agricultural products. During the final years of the Soviet era, crops such as winter wheat were the focus of the so-called intensive technology movement, which was marked by the use of improved varieties and the increased application of fertilizer and plant protection chemicals.

Yields climbed in response to the enhanced management practices.

However, during the '90s in the early years of Ukraine's independence following the breakdown of the Soviet Union the sudden loss of state agricultural subsidies severely affected Ukraine's agriculture. By the time of the original ITC investigation in 2000, Ukrainian grain production had fallen by 50 percent and fertilizer use fell by 85 percent. The jump in the U.S. imports of ammonium nitrate from Ukraine during the mentioned period of the investigation should be understood as a result of the chaotic situation in Ukraine's agriculture sector at that time.

Today the situation in Ukraine's agriculture industry has turned around. Between 2000 and 2011, Ukraine's gross agricultural production grew by almost 55 percent. Currently Ukraine is the world market leader in exports of sunflower oil and barley. In recent years, Ukraine has been producing around from 40 to 50 million tons of grain per year and has regained its status as the major supplier of grains to world markets.

The country's agricultural industry represents almost 10 percent of the country's gross domestic product, and its potential for growth remains robust. Specifically, in 2012 the sales of agricultural products

abroad increased by 38.4 percent compared to 2011. In the next two years, the revenue from exports of agricultural products could reach \$22 billion U.S. dollars.

The situation in the Ukrainian ammonium nitrate industry also changed dramatically. Since 2000, with the growth of the Ukrainian agricultural sector applying Ukrainian nitrogen fertilizers, including ammonium nitrate, has increased by almost 500 percent. Thus, consumption of ammonium nitrate will continue to grow, along with the increasing application of fertilizers by Ukrainian farmers.

For the last five years there has been a very high level of capacity utilization by Ukrainian producers of ammonium nitrate in comparison and contrast to what the Commission noted in a report on the results of the first five-year review. The Ukrainian industry operates with excess capacity.

High capacity utilization of the Ukrainian industry during the 2011-2012 years is the result of a higher level of sales on the Ukrainian domestic market, and since 2010 there has been an annual increase in capacity utilization up to 92.7 percent in 2012. In this context, it should be noted that the share of the Ukrainian producers in the domestic market of ammonium nitrate

during 2007-2012 was quite significant and was about 82.7 percent and in 2012 was increased to 87.8 percent.

Opening adjacent bulk markets for Ukrainian products, revocation of the antidumping measures in the EU on June 16, 2012, and the advantage of American industry in the production, transportation cost and a number of regulations according to the American laws for storage, transportation and sale of ammonium nitrate, which is additional financial costs for importers, make the U.S. market less attractive for Ukrainian exporters. Under these circumstances, there is not enough incentive for Ukrainian producers of ammonium nitrate to export to the United States of this product in significant quantities.

However, given the considerable sustainability and capacity of the U.S. industry it is very unlikely that imports from Ukraine will enter the U.S. market at prices considerably lower than the prices for the domestic market like products or will cut the price of the domestic like products. In view of taking into account the above-mentioned, there is no reason to expect that the revocation of the antidumping order on imports from Ukraine would have negative impact on American industry in the near future.

Conclusion. Summing up the just discussed, we would like to note that there are no grounds to continue

the antidumping order on ammonium nitrate from Ukraine according to Section 3.7 of the WTO agreement since these circumstances on the Ukrainian market which serve as a basis for the imposition of antidumping measures have changed.

Thus, we cannot affirm that the revocation of antidumping orders would be likely to lead to continuation or reoccurrence of material injury or of damage to the U.S. producers or renewed dumping from Ukraine in the future. Thank you for your attention.

CHAIRMAN WILLIAMSON: That's very helpful. Does any Commissioner have any questions for the representatives from Ukraine?

(No response.)

CHAIRMAN WILLIAMSON: Okay. Good. Well, we want to thank you very much for taking the time to come and giving this very complete statement. There are no questions from any Commissioners, so we want to thank you, and we're going to go to our next panel.

MS. KOLMAKOVA: Thank you.

CHAIRMAN WILLIAMSON: Actually opening statements would be next. Mr. Secretary, I guess it's time for opening statement, opening remarks.

MR. BISHOP: Opening remarks on behalf of those in support of continuation of the order will be by Valerie

A. Slater, Akin Gump Strauss Hauer & Feld.

MS. SLATER: Good morning, Mr. Chairman, members of the Commission and staff. My name is Valerie Slater, law firm of Akin Gump Strauss Hauer & Feld, here this morning on behalf of the Petitioners. I have to say the translator did an admirable job. In looking through my notes, I also could use his help this morning with some of these terms.

Let me just briefly say that first of all I'm thrilled to appear before Commissioner Broadbent. This is my first opportunity. I'm pleased to see you on the bench and welcome you to the Commission.

The petition in this case was filed in October of 2000 on the heels of a final Commission decision in a different ammonium nitrate case, one involving Russian ammonium nitrate. The swiftness with which the international trading companies that handle this product simply shifted sourcing to Ukraine was quite shocking to us. The amount of material that they brought in very, very quickly, within a month of the Russian product stopping, and the prices that they used to move those volumes was absolutely stunning.

As you'll hear today, the lessons of that period remain highly relevant. Of course, some things have changed since the investigation and also since your last

review. As you've recognized in your previous reviews, security regulations in this country relating to ammonium nitrate have resulted in many buyers walking away from the market, and as a result the market has shrunk.

It is half of what it was in 2001, and at about a million short tons today it is far below the 2.6 million ton market that you examined in 1998 during the Russian proceeding. The shrinkage of the U.S. market is continuing. There will be new DHS regulations specific to ammonium nitrate issued later this year, and the impact on consumption is not yet known.

The U.S. industry is also much smaller. The 10 producers who were part of our coalition when the case was filed are now only two. Those two producers, however, have a greatly reduced share of the smaller market, as your own data will show, and the imports which continue to find this market very attractive have resulted in having a much smaller market share and also significant underutilization of capacity.

Another important change, as the Ukrainian panel just mentioned, is U.S. natural gas prices. As you know, natural gas is the key input to making ammonia, and ammonia is the key input into ammonium nitrate. In the last sunset review you heard a great deal about how very high and volatile gas prices were stressing the U.S.

industry. However, as this country has developed its shale gas resources, natural gas prices have moderated.

For one of the two U.S. producers, these moderated gas prices have made a big difference in the cost situation. For the other producer, which purchases ammonia, difficult cost side pressures continue. As your data show, the AN operations of both U.S. producers are not profitable.

Some things have not changed. The Ukrainian industry remains the second largest in the world, second only to Russia, and it continues to depend heavily on exports. Those exports are still handled by large trading companies. Over the period of review, the Ukrainian industry has had fluctuating capacity utilization and many years of significantly underutilized capacity, and it has publicly stated that it's building more. The U.S. market remains very attractive to those traders and exporters, and pricing in the United States is demonstrably more attractive than prices to the places where it currently sends its nitrate.

The Respondents will tell you that one of the things that has changed is that Ukraine now has higher gas prices -- we've already heard that this morning -- and that these prices are higher than in the United States. It's not at all clear what the Ukrainian producers actually pay

for their gas pricing, as we've discussed in our brief, or whether they even pay for it at all.

But one thing is clear. Ukrainians' export pricing remains at the bottom of the markets to which they export. They continue to quickly shift large volumes among the export destinations, and they continue to vie with Russia for the bottom of every export market to which they sell. If the Ukrainian producers are experiencing increased gas costs, especially compared to Russian producers, it is not demonstrated in their export behavior.

Another thing that has changed is that the EU has lifted its antidumping order against the Ukrainian nitrate. Mr. Lewin will certainly tell you that what has happened in Europe is important, and we agree. The European experience is very telling. In the first six months since that order was lifted last June, 100,000 tons of Ukrainian nitrate moved in. The Eurostat data make it very clear how that happened. The Ukrainian nitrate undersold all of the other imports in every single one of those months by a very large margin, margins ranging from 17 to 28 percent.

This review is not about whether gas prices in the U.S. have moderated, which they have, or whether Ukrainian producers' gas costs have increased, which may

or may not be the case, but rather whether a significant volume of Ukrainian product will come here and will undersell U.S. product and make it very difficult for U.S. industry, which is already facing a severely contracting market which has challenges in the case of one producer due to high ammonia costs and which is concerned about additional security regulations that are further likely to decrease demand.

We're here today with a panel of witnesses to discuss with you why the answers to those questions are yes and why we need to have an affirmative determination. Thank you.

CHAIRMAN WILLIAMSON: Thank you.

MR. BISHOP: Opening remarks on behalf of those in opposition to continuation will be by Martin J. Lewin, Kalik Lewin.

CHAIRMAN WILLIAMSON: Welcome, Mr. Lewin.

MR. LEWIN: Thank you. Mr. Chairman, members of the Commission, for the record my name is Martin Lewin of the law firm of Kalik Lewin. I'm here on behalf of the Ukrainian producers of ammonium nitrate.

The circumstances of this review are highly unusual. Rarely does the Commission see conditions of competition change so fundamentally in favor of domestic producers as has occurred with producers of ammonium

nitrate. Also, rarely does the Commission see conditions in the home market of foreign producers change so fundamentally as the Ukrainian market for ammonium nitrate has changed since the original investigation and since the sunset review in 2007. And finally, rarely has the Commission seen the foreign industry producing the subject merchandise change as fundamentally as Ukraine's ammonium nitrate industry has changed.

The record shows that in the United States prices for natural gas have plummeted since 2010 to levels far below international market prices, providing the U.S. industry a significant competitive advantage in the cost of production of ammonium nitrate and an exceptionally high level of profitability in all nitrogen fertilizer of which ammonium nitrate is a part. The low price of natural gas is expected to continue into the foreseeable future.

The U.S. industry has consolidated from 10 producers during the period of the original investigation and is now controlled by two large diversified companies with broad production capabilities for nitrogen fertilizers. Both are undertaking massive investment in plant and equipment to further improve their competitiveness and their position in the market.

The record in this review also shows the ammonium nitrate industry in Ukraine has undergone

fundamental transformation. During the period of the original investigation, Ukraine's agriculture sector was in disarray, as you've heard in detail. As a result, Ukraine's home market collapsed. Since the period of the original investigation and the period of the original review, Ukraine's agriculture sectors recovered and with it demand in Ukraine for ammonium nitrate has grown significantly.

More recently, during the period since the first review Ukraine's ammonium nitrate industry has consolidated under a single entity whose primary marketing focus is expanding its home market sales of ammonium nitrate. Today, Ukraine's industry is operating at virtual capacity.

The sunset review statute directs the Commission to determine whether revocation of an order would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time, taking into account inter alia whether any improvement in the state of the industry occurred and whether the industry is vulnerable to material injury if the order is revoked.

The statute further directs the Commission to evaluate the likely impact of imports on the subject merchandise of the industry if the order is revoked within the context of the business cycle and condition of

competition that are distinctive to the affected industry. Excuse me. Bad hands. In this review, the cost advantage U.S. producers now have in ammonium nitrate resulting from the dramatic decline in U.S. natural gas prices represents a change in conditions of competition such that U.S. producers are no longer vulnerable to import competition.

The confluence of the U.S. industry's competitive cost advantage, coupled with substantial demand for ammonium nitrate in Ukraine's home market and the Ukrainian industry's primary focus on serving its home market makes it highly unlikely that the volume of imports of ammonium nitrate from Ukraine would be significant if the order is revoked or that revocation of the order would have a negative impact on the U.S. industry. Thank you.

CHAIRMAN WILLIAMSON: Thank you. Mr. Secretary, can you please call our first panel?

MR. BISHOP: Will the first panel, those in support of continuation of the order, please come forward and be seated?

(Pause.)

CHAIRMAN WILLIAMSON: Okay. You may begin when you're ready.

MS. SLATER: Good morning again. Sorry for the shuffling. It's once again a pleasure to be with all of you today on behalf of CF Industries and El Dorado Chemical

Company.

Along with my colleague, Peggy Marsh, and my colleague from Cap Trade, including Dan Klett, we're here with a panel of industry witnesses, and with no further ado I'm going to ask them to speak to you and then we'll be happy to answer your questions when they've delivered their statements, and then we'll hear from Mr. Klett.

I'd like to start this morning with testimony from Mr. Gough of El Dorado Chemical.

MR. GOUGH: Good morning. My name is Phil Gough, and I'm a Senior Vice President of Marketing for El Dorado Chemical Company. I have served in this capacity in the ammonium nitrate fertilizer market for nearly 30 years. I'm very pleased to be here today to discuss the importance of the antidumping duty order on Ukrainian ammonium nitrate and why keeping it in place over the next five years is so critical for my company.

Our industry first found it necessary to seek help from the Commission in 1999 when we asked for relief from unfairly priced Russian imports. We had been stunned by the large volumes and incredibly low pricing of Russian ammonium nitrate. Once our action against the Russian imports became effective, we thought we had solved the problem.

The industry was absolutely knocked flat when

immediately in the same year the Russian investigation ended a second, even larger and lower price wave of imports came in from Ukraine. The large trading companies that handled most international sales of ammonium nitrate simply switched sources in response to the Russian case. They brought in about 300,000 short tons of Ukrainian product, even though we had never seen any nitrate from Ukraine in our market before then.

We found ourselves right back here at the Commission asking for relief from this serial dumping. The antidumping duty order that was in place in this case has been very effective. It helped our company's ammonium nitrate business to eventually recover and then survive through the very difficult periods that followed. It is clear to me that we would not be here today without the order and also possibly that we will not be in the ammonium nitrate business a year from now if this order is revoked.

This morning I want to tell you about high density ammonium nitrate, our market, some of the factors that challenge us today and explain to you why the order continues to be so important to El Dorado Chemical Company. I'd like to start with a description of ammonium nitrate and how it differs from other nitrogen fertilizers.

First, ammonium nitrate is a solid fertilizer. It is made up of very small, usually white to off-white

prills. In this country, ammonium nitrate is principally sold in bulk. Ammonium nitrate serves a niche fertilizer market, as it has characteristics that make it extremely desirable in certain regions and applications. It accounts for less than 3 percent of all of the nitrogen fertilizer used in this country today.

Ammonium nitrate is distinguished from other solid nitrogen fertilizers such as urea because of two primary characteristics. First, it delivers nitrogen to the soil very quickly and, secondly, there is much less risk of nitrogen loss through volatilization, meaning loss of nitrogen into the air. Ammonium nitrate is especially popular in the southern tier United States because its qualities are particularly well suited for the warmer climates and the types of crops planted, such as grasses or citrus or where no-till methods are used.

In no-till applications, fertilizer is applied on top of the soil and is not tilled into the soil. Because the fertilizer sits on top of the soil, having fertilizer that is less susceptible to volatilization, especially in warmer, humid climates, is especially desirable.

In regions or in applications for which ammonium nitrate is preferred, the special qualities of ammonium nitrate mean that there is a limited substitution between

ammonium nitrate and other nitrogen fertilizers. This is even more the case today as tighter security regulations for AN have reduced usage to those areas and customers where the unique characteristics of AN are particularly important.

AN is used either as a single source fertilizer or in blends with other fertilizers such as phosphate and potash and is broadcast on soil surface. An important aspect of the AN market is that ammonium nitrate is a commodity product, that it's manufactured using essentially the same process regardless of where it is produced. Ukrainian produced ammonium nitrate is a perfect substitute for U.S. produced ammonium nitrate in terms of quality and uses.

The trading companies would never have been able to move those 300,000 tons of Ukrainian nitrate here back in the 2000 time period if it did not meet the quality standards of the U.S. market. Although Ukrainian AN has not been in the U.S. market for a number of years, there is no reason to think that its quality has become worse since that time.

Domestically produced and imported AN are sold through the same distribution channels and compete for the same business. U.S. producers and importers sell to distributors who then resell to dealers and also sell

directly to dealers. Competition in the ammonium nitrate market continues to be almost entirely based on price. Our customers will not buy our product if they can get an equivalent product for less.

Our customers read weekly publications, such as *Green Markets*, that publish prices of ammonium nitrate at various locations. They are also aware of imported product on its way to the U.S. and can typically purchase product from importers well before it arrives. Every producer and importer of AN has access to the same weekly publication published information, and the prices of one producer or importer quickly affect the entire market through these publications and word-of-mouth among the relatively small number of buyers.

Another important factor is even though demand for ammonium nitrate is seasonal, we produce ammonium nitrate year round in order to fully utilize our plants. We therefore must move product in the distribution chain in order to continue to produce sufficiently. We have limited storage facilities, so we sell in the off season to our customers who keep the product in their own storage facilities. This benefits the market and the farmers since nitrate will already be in place and available to farmers when the spring planting season begins.

Because the optimal window for application is

short, it is important the product be in the distribution system and ready for dealers to deliver to their farm customers before the season begins. Therefore, even if we had enough storage facility to keep everything at the plant, it would not be possible to move it all out into the distribution system in time to reach dealers and farmers when application is required. As you know the old saying, you have to make hay while the sun shines.

This aspect of our market is one of the reasons, aside from the large volumes and low pricing, that Ukrainian imports in calendar year 2000 had such a negative impact on us. These large volumes of Ukrainian ammonium nitrate were stored in the same facilities as U.S. produced AN. Storage was quickly filled with Ukrainian product, and U.S. producers had difficulty moving product into the distribution chain and maintaining production efficiencies.

When I see the Ukrainians argue that they mostly need to export in their own off season, which coincides with our off season, I foresee a repeat of this situation. Given the small size of the U.S. AN market today, even a portion of the volume they sent in 2000 hitting in our off season today would again clog up the distribution system, forcing us to reduce production and lose efficiencies.

Today, the U.S. nitrate industry faces some

difficult challenges. In recent years, we have talked to you about high and volatile natural gas prices. All ammonium nitrate is made using ammonia as its primary input, and the primary ingredient in producing ammonia is natural gas. Natural gas or ammonia produced from natural gas accounts for the vast majority of the cost of producing ammonium nitrate.

Today, U.S. natural gas prices have moderated and are favorable, but for El Dorado Chemical the moderated cost of gas has not helped our AN production because we buy ammonia, not natural gas, and ammonia prices have been very high over the last few years. This fact is key to understanding the financial results of our AN operations.

While we are struggling with sky-high ammonia prices, U.S. demand for ammonium nitrate has declined substantially. We had told you back in 2007 that the market was shrinking in part because of the new security regulations that were being imposed on ammonium nitrate producers and distributors. As your data show, consumption of fertilizer grade ammonium nitrate today is less than half of what it was when we filed this case.

And because of the security regulations we continue to see dealers decide not to carry nitrate. In fact, just this week *Green Markets* reported that Orchard Fertilizer Services, a Nebraska retailer, was acquired by

Wilbur-Ellis, but since Wilbur-Ellis no longer allows its facilities to carry AN this retail location has now become another nitrate casualty.

The decline in our market is a fact of life. The big question for us today is whether the new DHS regulations that are due out at the end of this year will cause additional contraction and how much. We are also dealing with competition from imports from other countries. Even though these imports have not been priced as low as the Ukrainian imports, they continue to enter the U.S. in large volumes, and since demand is declining these imports challenge our industry.

The Georgian imports that came late in 2012 and have continued to be imported this year have been a particular challenge for us, given our shrinking market. Despite these challenges, El Dorado Chemical Company believes there will continue to be a U.S. ammonium nitrate market and that we will be able to compete.

We are well positioned geographically to serve key nitrate consuming regions. We have made environmental improvements and been permitted to operate in a manner that would more fully utilize our capacity. We are planning to build an ammonia plant at El Dorado so that our cost structure will be based on natural gas rather than market ammonia, but if the shrinking market is to be

subjected to another flood of Ukrainian imports we may not even get to that point. We urge you to leave this order in place. Thank you.

MS. SLATER: I'd like to now turn to Mr. Fuzzell.

MR. FUZZELL: Good morning. My name is Derek Fuzzell, and I'm the Chief Administrative Officer of LSB Chemical Company, a subsidiary of LSB Industries, Inc. and the parent company of El Dorado Chemical Company. With our company's decision to build an ammonia plant at the El Dorado site, I appreciate the opportunity to appear here today and to tell you why it is so important to our company that the antidumping order against ammonium nitrate from Ukraine stays in place for the next five years.

El Dorado Chemical Company in El Dorado, Arkansas, is one of the only two remaining U.S. producers of fertilizer grade ammonium nitrate. LSB does not produce fertilizer grade ammonium nitrate at any other location, but this is the principal product that we produce at our El Dorado plant.

Although we have ammonium nitrate prilling capacity at our plant in Cherokee, Alabama, that plant is now mothballed, and given the contraction in the market we do not expect that plant to be brought back onstream. El Dorado is the place and the only place where we make

high density ammonium nitrate or HDAN.

The El Dorado plant has been upgraded in recent years and has been retrofitted to fit environmental grade requirements so that it can operate at its maximum capacity. However, although this plant is quite efficient and environmentally sound, under current conditions it has a serious challenge.

El Dorado's HDAN is produced using anhydrous ammonia that we purchase. This has of course always been the case. However, until about mid 2010 the price of ammonia tracked the price of natural gas closely enough that we were not at a significant disadvantage to purchasing it rather than producing ammonia for an input.

In the last few years, however, the price of natural gas in the United States has moderated significantly, but the price of ammonia has increased dramatically due to the supply and demand balance for that product. One major reason for this shift is that producers of ammonia are captively consuming more of their production for upgraded products, leaving less available to purchase on the open market. As a result, El Dorado has been at a significant cost disadvantage in our production HDAN.

While the Ukrainian parties have quoted at length from our public filings concerning the benefits of

natural gas price improvements, our statements have been very specific to the positive impact on our UAN and anhydrous ammonia production at our other plants. Agricultural grade ammonium nitrate, however, is a whole different story as we must rely on purchased ammonia at El Dorado, and our public filings make this clear.

Making HDAN with purchased ammonia has severely challenged our HDAN business at El Dorado. Last year, we began to explore the possibility of constructing an ammonia plant onsite at El Dorado to supply our HDAN production and restore profitability to our HDAN operations. The construction of this plant will cost \$250 to \$300 million.

This is an investment that is crucial to the financial viability of our HDAN operations at El Dorado. The decision was based on our expectation that gas prices will remain moderate, although they are projected to increase from the present levels, while ammonia prices are projected to remain high and volatile.

You might ask why we would decide to expend this type of capital to enable us to produce a product for a shrinking market. Not a bad question. The answer is that while the ammonium nitrate market has contracted and may become smaller, we believe that there will continue to be a core market for this product, that our location is

particularly well suited to serving it and that our plant can produce it efficiently.

We are certainly concerned about whether the new security regulations will cause further contraction, but we have significant investment in the current facilities and believe that if we can supply our own ammonia to the plant we will be able to supply a significant share of the market even if it should contract further.

For us, however, the next few years are critical. We have filed our permits for the ammonia plant. However, we will not be able to build it if we do not receive those permits, obtain adequate financing and if our expectation is that our customers will continue to take our products at a reasonable price are not met.

This means that if this order is lifted and there is a significant influx of cheap Ukrainian HDAN, our ability to move our product at a reasonable price or even to obtain financing could be jeopardized. Given the history with Ukraine and the trading companies who sell ammonium nitrate into the U.S., lifting this order right now would be like burning a bridge while we were standing on it. We at least need the opportunity to get to the other side.

Our ammonia plant is projected to be up and running best case in late 2015, and we do not yet have all

the pieces in place to ensure that it can be built. You can understand why we are concerned about the lifting of this order. You might ask well, couldn't El Dorado just make other products or sell ammonia from the new plant?

I know the Ukrainians seem to be suggesting that we can just make other products or that we would rather make other products at El Dorado, but that's not the case. The ammonia to be produced at El Dorado is intended for HDAN production, the primary product produced at El Dorado. Any leftover volumes available to sell in the open market are expected to be small.

We also produce industrial grade AN at El Dorado, and our ammonia production will benefit that product as well. In this regard, I also want to note that the idea that somehow any underutilization of our capacity is to the decision to shift HDAN production to other products is misguided. In fact, we have not, as the Ukrainians suggest, diverted HDAN production to any other products.

I hope this has helped you understand why we need this order to remain in place. Thank you for your attention. I'd be happy to answer any questions.

MS. SLATER: We'll hear now from Mr. Hopkins of CF Industries.

MR. HOPKINS: Good morning. My name is David

Hopkins, and I'm the Director of Sales for CF Industries, the largest U.S. producer of fertilizer grade ammonium nitrate.

My role as sales director puts me in charge of the CF sales team, including our sales of ammonium nitrate, which we produce only at Yazoo City, Mississippi. My accent, of course, is not from Mississippi. I hold a degree in agriculture from Reading University outside London. After finishing university I then became a farmer and actually used ammonium nitrate to grow winter wheat in Wales.

I have been selling fertilizer since 1988, and six years ago I moved to the United States to work for Terra Industries' fertilizer business. When CF purchased Terra in 2010, I continued my work in fertilizer sales with CF Industries. In total, I've been involved with ammonium nitrate sales for 25 years and with the U.S. ammonium nitrate market for the last six.

There's no question that the Yazoo City ammonium nitrate business is facing different conditions today than it was when I first came to this country in 2006. At that time, very high and volatile natural gas prices were extremely challenging for us. The advent of shale gas has lowered and moderated the prices for our natural gas input, but of course gas price fluctuations always remain a risk

for us.

Natural gas can account for 40 to 60 percent of the cost of producing ammonium nitrate, depending on the cost of gas, but the change in the gas situation does not mean that the antidumping order is not needed, and I want to discuss some of the factors that I hope will help you understand why.

First, I want to discuss what has happened to the ammonium nitrate market over the last six years. Second, I want to discuss the operations at our Yazoo City plant, and finally I would like to take a few minutes to describe the current state of the ammonium nitrate market and what is happening especially with regard to imports.

In the United States, ammonium nitrate has always been a niche fertilizer. Because of the properties Mr. Gough described, this fertilizer is very effective and preferred in temperate climates, especially where no-till farming practices are used. Even though it has always made up a small part of the U.S. nitrogen fertilizer usage, over the last decade and especially over the last six years the ammonium nitrate market has contracted substantially.

The principal reason for this is that new security regulations governing the handling of ammonium nitrate by distributors and dealers have led many of them to decide not to carry it. In those regions where ammonium

nitrate is not strongly preferred, many distributors and dealers have stopped buying the product.

Today, the U.S. market is down to around a million short tons, almost half of what it was just a few years ago. You might not think that to be such a bad thing, given that there are only two U.S. domestic producers left, yet even with the reductions in domestic supply the market has contracted so much and imports continue to find this market so attractive that our Yazoo City plant, which is very well situated to serve the key ammonium nitrate markets, remains underutilized.

Why is that? At Yazoo City we have two prilling towers. Before CF purchased the plant, Terra had entered into an agreement in 2006 to produce explosive grade AN in one tower for a particular customer. Terra made the decision to produce explosive grade because the high density AN market was not allowing us to use all of our capacity.

Retrofitting the plant to allow one tower to produce explosive grade AN was a bit of a hedge against continuing shrinking of the fertilizer market. At least for the next few years that tower is likely to only produce industrial grade product, given our contractual commitments. The other tower, however, is and remains fully dedicated to the production of high density AN.

But, as you know from the data we supplied, even that capacity is not fully utilized, but not for the reasons argued by the Ukrainians. That capacity is underutilized because we currently are unable to sell all that we can produce. The Ukrainian producers would tell you that our capacity is underutilized because we're choosing to make other products instead of ammonium nitrate. That is not correct.

While the CF financial reports noted by the Ukrainians refer to our ability to shift production in certain circumstances, these reports reflect CF's system-wide ability to shift between products. However, this flexibility is in fact very limited at our Yazoo City plant.

The prill tower that produces high density ammonium nitrate cannot produce low density product. Our ability to switch from producing high density AN to producing urea or ammonium nitrate solution is also extremely limited based on operational limitations. Accordingly, although the specific figures are confidential, we have very little ability at Yazoo City to shift high density AN capacity to other products.

It's also important for you to understand that even if we could physically shift from producing high density ammonium nitrate to other fertilizer products we

have no incentive to do so based on the netbacks we achieve on our high density AN sales from Yazoo City. We would like to be making and selling more ammonium nitrate.

This is a key point, and it brings me to the current market situation. In the past several years, we have had more fertilizer grade AN capacity than we've been able to use. In 2013, this has been especially true as our agricultural grade AN sales did not keep up with production in the first quarter; for several reasons that I believe are important to explain.

In 2012 and so far in 2013, there has been a significant increase in imports. The imports, sourced largely from the country of Georgia, are imported by global trading companies. They have filled our historical storage positions in Florida and elsewhere, leaving CF to dial back its HDAN production at Yazoo City in the first quarter of this year.

Traditionally, over 10 percent of our annual sales have been to customers in Florida. When we briefly had production difficulties at our plant last year, imports immediately stepped in and some. As Mr. Gough explained earlier, when the off season storage is filled by imports, U.S. producers have no choice but to reduce production. This production cannot be made up later in the season, and the volume is lost.

I would be pleased to provide you with details on these recent production cutbacks on a confidential basis, but suffice it to say it is not a good situation for a plant that was already not operating at capacity.

Keep in mind that in the contracted market we also have much less storage in the system. This means it takes much less in the way of imports to congest the distribution system than it did when the market was larger. In this regard, it is important to consider the role of global trading companies in the ammonium nitrate market.

During my 25 years in the ammonium nitrate business on both sides of the Atlantic, I have seen the same pattern time and again. Global traders brought large volumes of aggressively priced imports from Russia and then Ukraine into the EU, resulting in antidumping measures there. The traders then shifted to the United States, giving rise to antidumping orders in this country.

The traders' modus operandi is to move as much product as they can as long as they can make some margin on every ton, even if they undersell the market. That was true when they flooded the U.S. market with Ukrainian product in 2000, and it remains true today. The traders love this market and are well established here. They know they will get paid. The ports are efficient compared to other countries.

A number of traders have set up offices and storage in Tampa and have their own marketing capability and even distribution systems. Ukrainian producers continue to sell their other nitrogen products to the United States through well-established global traders. In addition, the U.S. market offers central Gulf port locations with easy access to the river system and other forms of transportation. There's no question that Ukrainian HDAN exports could quickly be diverted to the United States by the trading companies that handle it.

Finally, the current and future U.S. security regulations on ammonium nitrate simply do not impose significant burdens on importers. The increase in imports over the past 18 months speaks for itself. CF is doing well and natural gas prices have moderated, but there are a number of reasons why this order continues to be important to us.

First, the U.S. HDAN market is currently facing uncertain times. The already contracting market is stressed by the prospect of new security regulations that could further reduce demand. As more and more retailers abandon HDAN, alternative products such as coated urea are marketed in competition with HDAN, placing additional pressure on an already diminished market.

Second, CF Industries is the largest U.S.

producer of HDAN and is well situated in Mississippi to serve the largest AN consuming markets. We compete with imports daily and we do so successfully when they are fairly traded, but in a one million ton market it will not take much in terms of sudden increases in import volumes and price undercutting to lead to production cuts and reduced utilization rates.

This is especially the case if the U.S. market declines even further once the new security regulations are imposed. As the market grows smaller, the negative impact of unfairly traded Ukrainian imports would only be magnified.

We have seen how massive Ukrainian export volumes can quickly flood a market at low prices. We have seen it here and in Europe and again in the EU after the order was lifted there last year when Ukraine sent 100,000 tons in the six months immediately after the order was removed. Their export prices to the EU were significantly below the pricing of all other imports. That is the only way that traders quickly move large volumes in this industry.

You can understand with the uncertainties we are facing and a market that is already in decline why we are asking you to allow this order to continue. I thank you for the opportunity to appear before you today, and I would

be happy to answer any questions you may have.

MS. SLATER: We're now going to hear from Mr. Donald Thomas, who is, among other things, an expert in the AN security regulations. Donald?

MR. THOMAS: Thank you. Good morning. My name is Donald Thomas. I'm the Director of Technical Service and Quality Programs for CF Industries, a position I have held since CF Industries acquired Terra Industries in 2010. Unlike Mr. Hopkins, the accent you hear is indeed a Mississippi accent.

I have been in the fertilizer business and specifically in the ammonium nitrate industry for 27 years and have worked at the ammonium nitrate facilities in Yazoo City, Mississippi, since 1986. I hold a security clearance with the Department of Homeland Security and have served as a technical representative of the Fertilizer Institute to DHS on the subject of ammonium nitrate security, storage and handling since 2004.

Throughout my career working with ammonium nitrate, I have seen the marketplace for this very specialized nitrogen fertilizer evolve. Most recently, however, I have seen the security regulation of ammonium nitrate contribute significantly to the decline in U.S. demand for ammonium nitrate. Because I have worked closely with DHS on its regulations, I would also like to

describe these briefly and explain why they do not impede imports.

There are two sets of DHS regulations that have had a significant impact on the U.S. AN market in recent years. The first set is known as the Chemical Facility Anti-Terrorism Standards or CFATS for short. These rules went into effect in 2007 to regulate the security of so-called high risk chemical facilities. CFATS covers a broad range of potentially hazardous chemicals, including ammonium nitrate.

Under these rules, any facility possessing more than 2,000 pounds of covered ammonium nitrate, including agricultural grade, high density ammonium nitrate, must submit detailed information to DHS to allow them to conduct a so-called top screen. As such, AN producers, distributors and retailers would have to submit top screen information to DHS, who then reviews this information, and if it finds the facility to be a high risk facility it then requires the facility to meet additional security requirements, including the requirement to conduct a security vulnerability assessment and the preparation of a site security plan.

In practice, this has meant that some agricultural retailers that might well have carried more than 2,000 pounds of AN in the past have simply chosen to

no longer offer ammonium nitrate to their customers to avoid bearing the costs and risks associated with carrying AN in their product portfolio.

These costs have included consultants to develop facility security plans, physical perimeter security improvements, physical inventory monitoring and additional staff to manage their ammonium nitrate inventory and sales. As a result, many distribution and retail outlets have chosen to exit the ammonium nitrate business.

The second set of DHS rules is very specific to ammonium nitrate and implements the Secure Handling of Ammonium Nitrate Act passed by Congress in 2008 to regulate the sale and transfer of ammonium nitrate by an AN facility to prevent the misappropriation or use of ammonium nitrate in an act of terrorism.

After a public comment period, several years of discussion both in the marketplace and in technical meetings, many of which I have participated in, DHS issued its proposed notice of rulemaking in 2011, announcing a draft ammonium nitrate security program.

In particular, the proposed DHS regulations would require registration by sellers and purchasers of ammonium nitrate, a verification program for purchaser registration prior to completing a sale or transfer of AN,

AN facilities to maintain records of each sale or transfer of AN for a two-year period, reporting of lost or stolen AN, audits and inspections of registered facilities, and it establishes an appeals and penalties process.

DHS has indicated that it presently intends to issue its final rule in December of this year. There are a number of significant questions to be resolved in the final rule such as exactly who in the supply chain is covered by the registration and record keeping requirements and under what circumstances. This is creating a great deal of uncertainty as to what the impact will be.

For example, the proposed rule is not clear about whether, for example, a truck driver who transports ammonium nitrate from seller to purchaser will also be subject to the various requirements or whether a customer purchasing multiple shipments per day or week will have to be vetted or processed through the DHS registration screening system each time an order is placed or only periodically.

Also creating uncertainty is the DHS proposed mixture rule. Under this mixture rule proposed by DHS, any blend of fertilizers containing 30 percent by weight or more of ammonium nitrate will also be regulated as ammonium nitrate and subject to the entire rule.

Therefore, facilities who have historically handled only modest quantities of AN or blended fertilizers containing 30 percent AN would also be subject to the new DHS regulations.

The scope of the AN security program, once finalized, is likely to again affect the number of distributors and dealers that are willing to offer or supply ammonium nitrate to America's farmers. While the full impact of a finalized DHS rule for the regulation of ammonium nitrate security is not clear, what is clear is that the major regulatory burdens in the ammonium nitrate supply chain affect those who produce, store, distribute and purchase ammonium nitrate within the United States.

As explained above, CFATS affects facilities storing more than 2,000 pounds of HDAN, such as producers and retailers, and the proposed ammonium nitrate security program will require registration by buyers and sellers at the wholesale and retail level. In contrast, the existing U.S. Coast Guard regulations that affect importers have been in operation since 2003 and only affect ammonium nitrate transported by water.

Security regulations or costs are not preventing imports from entering the market. Rather, the increased costs and burdens associated with current and proposed security regs are and will continue to be borne

within the United States predominantly by domestic producers, distributors, retailers and purchasers, not by the importers.

Thank you for the opportunity to appear today. I would be pleased to answer any questions you may have.

MS. SLATER: We'll be treated to a PowerPoint presentation by Mr. Klett.

Could I get a quick time check? I'm sorry, Mr. Bishop.

MR. BISHOP: You have 23 minutes remaining.

MS. SLATER: Thank you.

MR. KLETT: Good morning. My name is Daniel Klett. I'm an economist with Capital Trade testifying on behalf of U.S. producers of high density ammonium nitrate.

I will address four issues. First, the current and future situation in Ukraine regarding AN capacity and export capabilities; second, why the U.S. would be an attractive market for exporters of ammonium nitrate from Ukraine absent the order; third, likely margins of underselling based on Ukrainian export prices in non U.S. markets; and, fourth, a summary of the adverse impact on the U.S. industry that would result from revocation of the order.

The four Ukrainian producers of AN are all owned by Ostchem, a DF Group subsidiary. Data from Fertecon

attached as Confidential Exhibits 1 and 9 to our prehearing brief show Ukraine to be the world's second largest producer and exporter of AN behind Russia. Exports have been and continue to be important to the Ukrainian industry. As shown in Slide 1, Ukrainian AN exports declined from 2007 to 2009, but have more than doubled since that time.

AN exports from Ukraine will continue to increase. The DF Group has plans to significantly increase AN capacity in the Ukraine by 990,000 short tons and to increase Ukraine's export capability. Slide 2 includes very recent statements by Mr. Firtash, owner of the DF Group, concerning planned investments at the Stirol plant to increase AN capacity, and that's 900,000 metric tons, which is approximately 990,000 short tons.

Slide 3 shows information on DF Group investments to expand their export capabilities, including those made at a Black Sea port. The reported increase in AN capacity cannot be absorbed by any reasonable projection of home market consumption, so obviously will have to be supported by an increase in exports.

Regarding the attractiveness of the U.S. market, Slide 4 compares average netback prices for Ukrainian exports to non U.S. markets with U.S. netback

prices for ammonium nitrate. The red bars show the average export price FOB Ukraine of Ukrainian AN exports to non U.S. markets.

The blue bars show the average unit values of AN imports into the U.S. into the ports of New Orleans and Tampa from known suppliers of ammonium nitrate such as Georgia and the Netherlands, which have been netted back to the Black Sea based on average ocean freight calculated from Census data. Therefore, the blue bars are FOB Ukraine prices that exports could be expected to obtain at Black Sea ports for exports to the United States.

The U.S. premium is significant and has grown from \$16 per short ton in 2010 to over \$42 per short ton in 2012. These data are from Exhibit 30 of our prehearing brief, which also compares confidential questionnaire pricing information specifically from Ostchem and U.S. importers. Given these price differentials, exporters of ammonium nitrate from Ukraine will have a strong economic incentive to divert exports from their non U.S. export markets to the United States.

The same analysis, but specifically for Ukraine's exports to its largest markets in 2012 -- India, Turkey, Malaysia and Brazil -- yield similar results as shown in Slide 5. The blue bar is the average import price for ammonium nitrate into U.S. Gulf Coast ports from

nonsubject suppliers netted back to the Black Sea.

In 2012, the U.S. market would have yielded higher prices to traders exporting from Ukraine as compared to their largest export markets, an economic incentive to divert such exports to the U.S. The premium for exporting to the United States is at least \$3 per short ton as compared to exporting to Brazil and higher as compared to exporting to other countries.

In the period of investigation, Ukraine demonstrated that it had the ability to quickly increase its AN exports to the U.S., increasing exports by over 300,000 short tons from 1999 to 2000. Trading companies can still divert Ukrainian ammonium nitrate from their non U.S. export markets to the U.S. if it makes financial sense to do so.

Slide 6 shows Ukraine's historical top 10 export markets for ammonium nitrate during each year in the 2007 to 2012 period. The highlighted countries are those in the annual top 10 list that were not among the top 10 export destinations in the prior year.

Look in particular at 2012 where Ukraine exported over 140,000 short tons to Malaysia, even though this country was not among Ukraine's top 10 export market in any prior year. Also keep in mind, as shown in the prior Slide 5, in 2012 ammonium nitrate prices in the U.S. would

have yielded a more favorable netback price for trading companies than exporting to Malaysia, indicating that this would likely have been diverted to the U.S. or there would have been an economic incentive to do so.

The Commission has found in prior reviews that AN exports through trading companies facilitates the ability to shift exports to alternative destinations, and this has not changed. Slide 7 shows Ukrainian companies that produce or trade AN already supply other nitrogen fertilizer products to the U.S. through trading companies.

Many of these trading companies, as well as others, export ammonium nitrate to the U.S. from nonsubject countries so there is an established distribution network for Ukrainian AN producers to supply the U.S. market. I also would ask the Commission to look at the Ostchem foreign producer questionnaire Question 1-3 for a listing of their largest purchasers of ammonium nitrate for their non U.S. export markets.

Regarding underselling, refer to Exhibit 36 of our prehearing brief, much of which is confidential, and Slide 8 shows the columns from this table and public data for December 2012, which I will use as a guide to explain the methodology, and the actual data are in the confidential exhibit. Column A shows average export FOB prices from Ukraine on a monthly basis from 2010 to 2012.

Column B are ocean freight calculations from Census FOB and CIF unit values for ammonium nitrate from nonsubject countries into U.S. Gulf Coast ports.

Column C then is a constructed landed price at the U.S. port based on Ukraine export unit values plus ocean freight. We have from your importer questionnaires an average importer markup during 2010 to 2012. Adding this markup to the landed price results in a constructed price for sales in the U.S. market of imports from Ukraine, which is Column D.

This constructed price is compared to actual sales prices for ammonium nitrate reported by CF and EDC reported in Column E. Columns F and G show the margins of underselling, which are in the confidential exhibit and are similar to those found in the investigation. I provided this constructed pricing methodology because we had no imports from Ukraine for which to actually look at margins of underselling.

We also compared a constructed Ukraine price to the U.S. market for importation which landed prices of nonsubject imports into the U.S. Gulf Coast ports. Slide 9 shows monthly comparisons for 2012. The constructed price for Ukraine in Column C is the average export price to their non U.S. markets in Column A plus ocean freight in Column B. Column D shows the average import price for

nonsubject imports into U.S. Gulf Coast ports from Census data.

In all 10 months where comparisons are possible, the Ukrainian constructed import price was lower than nonsubject import prices by 8.5 to 23.8 percent. The finding of likely underselling also is supported by Ukraine's pricing in their non U.S. export markets relative to other suppliers.

The four markets in Slide 10 have significant volumes of imports from Ukraine, Russia and other sources. With the exception of Brazil, import values are CIF so are values at the port of importation. As shown, Ukraine and Russia competed at the bottom of the market with regard to price. The exhibits have the actual data. This is just a summary of the instances. Out of a total 61 possible comparisons with Russia, Ukraine was lower priced in 39 instances.

Compared to imports from all other sources of supply, Ukraine was lower priced in 52 of a possible 59 comparisons. Clearly even if natural gas prices in Ukraine are higher this has not impeded the ability of their AN exports from competing aggressively on the basis of price in these markets even with Russia.

Slide 11 has additional detail for imports into Turkey. Georgia is the supplier to that market, and

recently Georgia also has been a major supplier of nonsubject imports into the United States.

From 2010 to 2011 and 11 of 14 months in which both Ukraine and Georgia had HDAN imports into Turkey, imports from Turkey were lower priced than imports from Georgia. Margins of underselling ranged from six percent to 17 percent. This is further evidence that absent an order Ukraine will likely undersell both U.S. producers and nonsubject imports. The adverse volume and price effects from revocation will have serious adverse consequences for the U.S. industry.

Mr. Gough and Mr. Hopkins discussed how the order has benefitted their U.S. operations and challenges they face associated with declining demand, competition from nonsubject imports, and in the case of EDC, high ammonia input costs.

Our prehearing brief contains analysis on the likely increase in import volume from Ukraine with revocation of the order and estimates that the likely adverse volume price and financial effects for CF and EDC. Please refer to Slide 12.

The estimates use two different methodologies. The first uses assumptions of subject import volume increases and a partial equilibrium model utilizing elasticity estimates from the prehearing report. Based

on these inputs, the model estimates the adverse price and volume effects to the U.S. industry.

Because some production costs are fixed, any reduction in shipment and production will also result in higher unit production costs and a reduction in profit margins. CF and EDC provided me a breakout of their costs that are fixed and variable, and from these, the second method relies on the level of price suppression and market share losses found in the original investigation.

The impact results and the financial condition are confidential and are Exhibits 43 to 45 of our prehearing brief. They show significant reductions in the gross and operating profit levels associated with the reduction in U.S. producers' shipment volumes and prices due to an increase in AN import volume from Ukraine.

Note also that the estimated effects are based on 2012 financial results reported by CF and EDC which benefit from high ammonium nitrate prices, and for CF, historically low natural gas prices. Natural gas prices are projected to increase from 2012 levels which will result in some declines in profitability, given existing ammonium nitrate prices. Thank you.

MS. SLATER: Thank you. Mr. Bishop, what's the time remaining?

MR. BISHOP: You have 10 minutes remaining.

MS. SLATER: I think I'm going to reserve my 10 minutes for rebuttal and allow you to ask the questions that I know you're all dying to ask. So, with that, we will end our affirmative presentation, and thank you for your attention to our testimony.

CHAIRMAN WILLIAMSON: Thank you, Ms. Slater. I think we want to begin with special appreciation to the witnesses for taking time from their businesses to come today to present their testimony. It's very useful to us.

This morning we'll begin our questioning with Commissioner Pinkert.

COMMISSIONER PINKERT: Thank you, Mr. Chairman. I join the Chairman in thanking all of you for being here today to help us understand these issues.

I understood the testimony about trading companies that have sold other products than the Ukrainian ammonium nitrate, but do trading companies that have previously sold Ukrainian ammonium nitrate lack sales infrastructure in the United States to sell the subject product in the event we revoke the order?

MS. SLATER: The answer is no, they do not, and I have to be a little bit careful, obviously, but in our brief I think we've set out in some detail -- well, again, I don't want to get near APO information. We can respond further posthearing. But the answer is no. The major

trading companies have the infrastructure just to distribute here, including some of the companies which deal in Ukrainian products and have dealt in Ukrainian products.

COMMISSIONER PINKERT: Including uranium, I mean Ukrainian ammonium nitrate? Just to be clear about that.

MS. SLATER: Sorry?

COMMISSIONER PINKERT: You said have dealt in Ukrainian products and I'm asking specifically if they've dealt in Ukrainian ammonium nitrate.

MS. SLATER: The answer is yes.

COMMISSIONER PINKERT: Okay. Thank you.

MR. KLETT: Commissioner Pinkert, this is Dan Klett. The distribution system in the U.S. is comprised of distributors and dealers or independent distributors and dealers and those same distributors and dealers are in place to distribute Ukrainian ammonium nitrate just as they do ammonium nitrate from Georgia, Bulgaria or wherever.

COMMISSIONER PINKERT: Thank you.

Mr. Chairman, I see a hand up in the back but I don't think she's on this panel. Can we suspend the time for this round while we check on that?

(Pause.)

COMMISSIONER PINKERT: Thank you.

MS. SLATER: If I may, Commissioner Pinkert, I just wanted to supplement that to make sure the record is clear. The answer to your simple question is yes, that trading companies which handle Ukrainian ammonium nitrate do have distribution facilities here, but also important for the Commission to understand the way in which the market works.

The importers, the large trading companies who import this product are able to import and get the product into the distribution system without themselves having complete access to with complete ownership of the distribution. So they will bring it in and sell to independent distributors who then pass it on to dealers.

So both is true. There are some established trading companies which have good infrastructure here themselves internally, but there are also those who are very used to dealing with the existing distribution system and selling into that system. I don't know if that's helpful.

MR. HOPKINS: This is David Hopkins. It might be helpful just to add, draw attention to the recent increase in Georgian imports, for example, which, you know, found it very simple and effective to find a channel into the market. There are a lot of people that can

facilitate the movement.

COMMISSIONER PINKERT: Thank you. Now, is the domestic industry today the low cost producer of ammonium nitrate?

MS. SLATER: Do you mean in the world or --

COMMISSIONER PINKERT: In the world.

MS. SLATER: May we respond to that posthearing? I don't think we know the answer to whether we are the low cost producer.

COMMISSIONER PINKERT: Thank you.

Now, Mr. Fuzzell, I understood your testimony about the ammonia plant and that you feel that there's some vulnerability going forward and I was wondering, do you have any specific evidence that, for example, the financing for that plant is vulnerable to the impact of subject imports?

MR. FUZZELL: No, we don't have any evidence that it is actually directly related to this at this time.

MS. SLATER: Let me just add to that --

COMMISSIONER PINKERT: Thank you.

MS. SLATER: -- and maybe Mr. Fuzzell would like to add, also supplement his response. Of course when the banks are looking at the financing applications they're looking at all of the market factors that are there, and LSB and El Dorado, well, LSB in its annual reports always

mentions, of course, the importance of these orders.

So at least as I understand it from Mr. Fuzzell is that there, you know, one of the things that the finance companies are likely to look at is the market situation in general. So I don't know that other than the fact that that's a factor that's always out there in the market and is considered by the companies to be significant, I don't know what type of support you would hope to have from that, Commissioner Pinkert.

COMMISSIONER PINKERT: Well, let me just ask the question this way, Mr. Fuzzell, and of course you can supplement your answer. It's not clear to me why conditions in the market currently would be relevant to the financing of a project that would improve the competitive position of the company in selling ammonium nitrate in the marketplace.

MR. FUZZELL: In our financial statements, our publicly filed financial statements, we list risk factors in them that show possible risks that might affect future earnings or future risks for the different companies that LSB owns, and this is one of the risk factors.

COMMISSIONER PINKERT: Right, but again, Mr. Fuzzell, wouldn't the plant that you have in mind that's under consideration, wouldn't that improve the competitive position of the company vis-a-vis imports or

even domestically-produced ammonium nitrate?

MR. FUZZELL: I think it would, yes. Yes. I think the answer to your question would be yes.

COMMISSIONER PINKERT: Ms. Slater?

MS. SLATER: As we talked about this yesterday not under the glare of bright lights, one of the things that Mr. Fuzzell mentioned was that, you know, in the factors that will be presented to the financing companies are indications of pricing levels for the product, and so when you look at whether this is going forward going to be a project worth financing on the part of the finance institutions, one of the things they want to know is what the economics look like. That one important factor there is what do you expect to get for this product that you're going to make?

He mentioned in his testimony, I think he described it as a reasonable price for the product. So to the extent that revocation would result in a significant change in the pricing of the product, that would make a difference, I think, in the way that the evaluation would occur.

COMMISSIONER PINKERT: Thank you. That's helpful. Along these same lines, we've heard testimony -- and perhaps Mr. Klett can comment on this -- we've heard testimony about divergence in pricing between natural gas

and ammonia. What's going on in the marketplace that might be driving that divergence in price?

MR. KLETT: Commissioner Pinkert, it's my understanding, and when you look at the data in your staff report you actually see a fairly strong correlation up through about mid-2010, but it's my understanding that one of the big factors that has caused the divergence since then is that a much larger share of ammonia produced is being captively consumed to upgrade into nitrogen fertilizer products by those producers of ammonia, leaving less ammonia available for the open market sales, which is what, you know, EDC purchases.

So it's my understanding that the supply of ammonia available for open market sales has decreased due to a larger volume of ammonia being captively consumed for upgrading.

COMMISSIONER PINKERT: Thank you.

Does anybody on the panel wish to add to that or clarify that in some way?

MR. HOPKINS: This is David Hopkins. I'd just maybe add that one of the reasons for the divergence is that those markets operate today very differently from each other. We have a situation where the global demand for nitrogen fertilizers is exceptionally strong, and I'm sure the Commissioners are aware of the issues on food

supply and lower levels of grain inventories around the world which is causing farmers to plant more acres.

So it's essentially the ammonia market is driven by the demand for nitrogen fertilizers around the world, and the U.S. is a major importer of nitrogen fertilizers, particularly ammonia and urea, and that means that those prices have risen in line with actually the better profitability we see with agriculture in this country at the moment, whereas the natural gas prices, as I think we probably know, has been significantly impacted by the discovery of shale gas in the U.S.

COMMISSIONER PINKERT: Thank you.

Thank you, Mr. Chairman.

CHAIRMAN WILLIAMSON: Commissioner Johanson?

COMMISSIONER JOHANSON: Thank you, Mr. Chairman. I would also like to thank the witnesses for appearing here this morning and for taking time to speak at this hearing.

A principal argument of the Respondents is that natural gas prices in the United States have plummeted to levels far below international market prices, providing the U.S. industry a significant competitive advantage in the cost of production of ammonium nitrate.

I realize that several witnesses spoke this morning on the issue of natural gas prices, but could you

all please elaborate further on this point? After all, natural gas is a primary feedstock used in the production of ammonium nitrate, so I believe that it is worthwhile to examine the issue of natural gas prices closely. Thank you.

MS. SLATER: We were hoping you would ask that question, Mr. Commissioner. Let me start, if I might, and then ask some of the witnesses to supplement. You know, one of the, a couple of really important points with respect to natural gas.

First of all, very important for this Commission to keep in mind that we have only two producers. Only one of these producers uses natural gas as the feedstock. Natural gas is used to make ammonia, and in the case of El Dorado, that ammonia is purchased.

This hasn't been a big issue for you in the past because natural gas and ammonia prices tracked pretty nicely until relatively recently so that as gas prices rose and fell, you also saw a pretty close correlation with the ammonia pricing so that you didn't really differentiate the companies on that basis as much.

That situation has changed, and changed dramatically. You can see that in your financial data, you can see that in the staff report, graphs very nicely laying out ammonia and gas. So just keep in mind that it's

not just about natural gas, but for El Dorado, they would like it to be about natural gas and that's not likely to happen for them until that plant is up and built in 2015.

Secondly, the drop in the price of natural gas, and I think we have to, we must concede this at least with respect to CF Industries, that the drop in the price of natural gas is an improvement in the situation of the industry. There's no question. You've been hearing a lot about gas when we've been here before for the simple reason that the prices were so high and so volatile for so long that it was a source of significant vulnerability.

That situation has moderated. It is not something to be ignored in the sense that, as both companies state in their 10ks and annual reports, there's always the possibility of volatility in natural gas prices, lots of things affect it, but that situation has improved.

There are other things -- in addition to the ammonia price for El Dorado, there are other very significant factors which continue to render this industry a bit, fragile is probably the word I would use. The shrinkage in the market, the additional regulations that are about to be imposed, and the continuing attractiveness of this market to nonsubject imports, those factors are still there.

Now, the relative pricing of natural gas here and in Ukraine is not, and has never been, the issue, and I want to say that very clearly. It is not about the relative pricing.

Natural gas prices here have been an issue for you because they've challenged this industry. Natural gas prices in Ukraine have been an issue because they've been, in our view, part of what may have explained the pricing behavior there. The government, we believed, was involved in keeping natural gas prices down.

Right now the Ukrainians claim there are higher gas prices to their plants. We know two things. We know there are higher prices coming from Russia; we know that Mr. Firtash, who owns the DF Group who owns all of the Ukrainian plants, claims he's not getting his natural gas from Russia, we don't really know what they're paying, and we know -- actually three things -- we know that the Ukrainian export pricing behavior doesn't reflect the kind of gas price increases that the Ukrainians claim they're getting.

So we have to put aside the Ukrainian gas claims because, frankly, we don't really know what those people are actually paying or whether they're paying based on the reports that there's lawsuits happening there for nonpayment, but what we do know is how they're behaving

when they export to each of the markets to which they export. They are still pricing at the bottom of those markets.

The relative gas pricing doesn't so much matter. What more matters for us right now is how the Ukrainians are pricing and what their prices would look like here.

Sorry. That was one thing I wanted to get in while we had a chance.

Does anybody on the panel want to add to that?

(No response.)

MS. SLATER: Okay.

COMMISSIONER JOHANSON: Thank you, Ms. Slater, and if you could speak maybe a little bit further on that issue. This is, once again, a principal argument of the Respondents. You stated, I believe, that the respective prices really did not, were not that important with comparing U.S. production and Ukrainian production. Why is that the case?

MS. SLATER: Well, it's never been about whether our prices were higher or lower than theirs. You know, over the years there have been a number of countries which have exported here which have lower gas costs, and it's true for ammonium nitrate, it's true for other nitrogens as well. If you look, for example, at Egypt, if you look, actually, for periods of time, the Netherlands

I think has had much lower gas costs than we've had. It hasn't been so much about the gas costs there, but in the way in which they export and price their products.

So the fact that we may have lower gas prices now than Ukraine doesn't really tell us -- and by the way, I want to keep coming back to this, that's not clearly, in our mind, that's not the case with respect to these plants because their owner says they're not paying the Russian price. So let's say hypothetically even if their gas prices were higher, that doesn't matter to us if they're still pricing their exports as if their gas prices were much lower.

COMMISSIONER JOHANSON: All right. Thank you for your responses.

I'd like to now move on to another issue and that concerns the perceptions of the quality of the Ukrainian product versus that of the United States. The Respondents allege that there is a perception among U.S. purchasers that the Ukrainian product's inferior to U.S. product in terms of quality. When you all have spoken with customers, has that been an issue before that you've heard of?

MR. GOUGH: Phil Gough. You know, not from our deals. We're in this market every day and, you know, we've competed with nitrate from numerous countries and quality

just, the product that's coming into the U.S. today has not, and even when we saw the 300,000 tons come in back in the prior period, you know, it hasn't been an issue with the people that are buying the product.

COMMISSIONER JOHANSON: Now, of course right now the Ukrainian product's not in the market --

MR. GOUGH: Right.

COMMISSIONER JOHANSON: -- and so my question is a little difficult to answer, I understand, because purchasers can't comment on the quality, but have you otherwise, though? I mean, once again, this is a major argument of the Respondents.

Mr. Hopkins?

MR. HOPKINS: David Hopkins again. I would draw the Commission's attention to the fact that the product is sold widely around the world and used effectively around the world.

In terms of quality, it's often quite interesting to listen closely to the customers because when they talk about quality they don't always mean just product quality. Sometimes they include service, for example.

So it's certainly that true that typically customers would prefer to have domestic product because it's going to be more readily available and it's not going

to be transported so far, and that may have some impact on the final quality when it arrives on the farm, but for practical purposes in this country, imports arrive and are used entirely interchangeably with the domestic product.

MR. KLETT: Commissioner Johanson?

COMMISSIONER JOHANSON: Yes?

MR. KLETT: This is Dan Klett. I mean one kind of real world example is look at the EU. When the order was revoked in June or July of 2012, Ukraine exported over 100,000 short tons to the EU in a six month period.

I don't know what the quality standards are in the EU versus the United States but I think that kind of undermines their position that quality would somehow restrain their ability to export to the United States given their success in other markets. Thank you.

MS. SLATER: I just want to add to that. I mean the notion that so much product moved here so quickly in the year which led to the filing of the case tells us that there was no problem with the market accepting that Ukrainian product. The Ukrainians haven't presented any evidence that their quality has declined for any reason, and you would not expect that to be so given their claims that they've made investment in their plants.

So I mean the best, I think the best test is twofold. One is that they were able to bring that product

here some time ago in very large quantities with no issues at all, and secondly, they're continuing to be able to ship it around the world with no problems whatsoever.

Again, there's nothing on this record to suggest that something has happened to make the quality less acceptable than it was in 2000.

COMMISSIONER JOHANSON: Thank you. My time has expired but I'd like to just ask, follow up just briefly, Mr. Chairman.

There are a number of other countries which ship product to the United States. Are you all aware of quality differences between those products and those of the U.S. producers?

Mr. Hopkins?

MR. HOPKINS: David Hopkins again. In my experience, customers use them fully interchangeably.

COMMISSIONER JOHANSON: So it's -- okay.

MR. HOPKINS: It may involve a small amount of modification to the application equipment and that's sort of slightly disruptive to the farmer, but it's by no means difficult for him to achieve that.

COMMISSIONER JOHANSON: All right. Yes, Mr. Thomas?

MR. THOMAS: Commissioner, from a technology standpoint, ammonium nitrate production technology is

fairly uniform around the world. There's quite a bit of sharing among the producers at conferences and technical meetings on best practices and quality improvements, and so we see the same suppliers of coating agents, and additives, and all of these things that are done to improve product quality fairly freely shared among the producers in open forum, and so Mr. Hopkins correct. We see these products very interchangeably.

They're using very similar production techniques, very similar additives, very similar quality improvement agents added to the particle, so when you place these products in the marketplace side by side, it's very difficult to distinguish one producer's product from another.

COMMISSIONER JOHANSON: All right. Well, thank you for your responses.

CHAIRMAN WILLIAMSON: Thank you.
Commissioner Broadbent?

COMMISSIONER BROADBENT: Thank you. I want to welcome the witnesses. Thanks for coming today.

Could we focus a little bit on the security restrictions for ammonium nitrate? I want to make sure I've got a clear picture. There's been pockets of testimony both on the existing regulations and on the proposed regulations and how they would affect the imports

versus the domestic production. You know, who's got an advantage or where will the costs come.

MR. THOMAS: This is Donald Thomas. From an importer standpoint, for a Ukrainian company exporting AN to the U.S., their goal is simply to get it on a ship, and once it's on that ship and it's headed across the water, it's the job of the transportation company and the port operator or the agent on this side of the water to simply get it off that ship and into a barge or get it off that ship and get it onto land in some storage or other conveyance. Generally, that's barge and rail.

If they're bringing it to the U.S. in a ship, at that point all they have to do is to work with Coast Guard regulations which have been in place since 2003 which are not onerous. Those supply chain distribution entities know well how to do that. Those facilities are already regulated under the Maritime Transportation Security Act. Those security systems are already in place. They don't have to do anything new to put that product here.

In many cases they don't even take it to land. They go straight from a ship to a barge. They'll just park the ship in the middle of the Mississippi River and transload directly to a barge and it never comes on land. At that point, the barge is coming up the Mississippi

River. Then once it gets to a port facility, then it's offloaded from barge to rail and truck. Once it's on land and it's inside a storage facility, then the CFATS rules kick in.

At that point it's a matter of having security assessment plans in place, security plans in place. The DHS then regulates. But those are all existing.

So for a Ukrainian producer to put that product in the U.S., they're not going to have to jump through any hoop, they're not going to have to go through any additional regulatory burden to put that product here because all those supply chain policies, pieces currently exist and they're currently regulated by those various agencies, whether it's DHS or Coast Guard.

COMMISSIONER BROADBENT: Just so I understand, what's the security associated with if it gets to a barge? Is it monitored at that point?

MR. THOMAS: Yes. If it gets to a barge it will have to be fleeted at a location that the Coast Guard's going to regulate.

Without going into any detail about the security plan for a particular site because that's considered security vulnerability information, it's actually classified information, how that's done at a particular site, in general, what you have is a site that the Coast

Guard has approved of, that you have a security plan in place and the Coast Guard has approved that plan, and that you're communicating with the Coast Guard on how to secure that location.

That can be a combination of things. It can be people, it can be electronic surveillance, combination of both things, and it involves communication with the Coast Guard.

These port operators, these fleet location operators, have those relationships with the Coast Guard, the captain of the port. The people operating the tugboats and the barge towing companies, they have those relationships in place because they're moving products today. There are many, many products on the list of hazardous chemicals that fall under that reg. Ammonium nitrate is just one of them. And so they're doing that day in and day out every day. That's their business.

COMMISSIONER BROADBENT: So at least for the existing regulations, the burdens and the costs associated with the security requirements fall equally on the imports, as well as the domestic.

MR. THOMAS: I don't think the importer has any undue burden. I mean they're doing this today with product that's being brought into the country, whether it's Georgian product or any other imported ammonium

nitrate product. The entity in the Ukraine exporting it is not going to have a burden. The supply chain operator has the systems, and the facilities, and the security plans in place to handle whatever hazardous material he's handling today.

MS. SLATER: Commissioner Broadbent, there's also, and I think what we've been hearing about first is the Coast Guard rules. Once the CFATS rules kick in, that's going to affect the downstream -- the CFATS rules affect the downstream distributors and dealers, and then we have the new set of regulations. I don't know if it would be helpful to go through --

COMMISSIONER BROADBENT: Yes. Please.

MS. SLATER: -- a description of each of those.

COMMISSIONER BROADBENT: Yes.

MS. SLATER: Maybe, Mr. Thomas, if you could talk about once it's off the barge.

MR. THOMAS: Yes. Once it's off the barge and it's in a storage location, for example, a distribution center that might have some quantity, they'll have to have a security plan in place covered under the chemical facility antiterrorism standard that's managed by Department of Homeland Security.

Those facilities are existing, they're handling ammonium nitrate today, and they're audited by the DHS

auditors that would come in and approve that site.

What's new and what's coming that's the big unknown is the specific program for ammonium nitrate. CFATS covers hundreds of chemicals, so any facility with any chemical on their list is covered by CFATS. But DHS has a separate rule that's just going to apply to ammonium nitrate and that rule, it's expected to issue in final form in December of this year, we've been told, in the *Federal Register*. Could be later. Could be some time later in fiscal year 2014.

What it's going to require that's really unknown is how they're going to manage this registration of buyers and sellers. So how do you register a buyer, how do you register a seller, and how do you document that transaction to the satisfaction of DHS, and how do you verify every time you execute a transaction that that person's still on an approved buyer list?

If I sell to a customer today one truckload and they're on the approved list and they come back tomorrow, do I have to go back to DHS and get another approval? What if they're buying 50,000 tons in 25 ton increments every day over the next 30 days, or 60 days, or 90 days? Do I have to go every day back to DHS? That is a big unknown. We really don't know how to manage that yet, and DHS has not told us how they plan to manage that yet.

MS. SLATER: But let me see if I can just also summarize, and tell me, Mr. Thomas, if this is correct.

What this new proposed regulation would do, and you can hear Mr. Thomas is very much in the throws of the whole working, the industry working with DHS on, you know, putting in comments and what that will look like, but basically, for the first time there will be an ammonium nitrate-specific regime which will, in essence, track the movement of this product to the point where you're actually registering users and those who take it.

He's going to some of the real uncertainties. You know, are we going to have to register every truck driver, are we going to have to check the approved list if the same person comes back several times every day? This is a very large and significant step beyond what is currently required by CFATS, which is a more general regulation pertaining to a variety of chemicals.

So this will fall on the internal distribution system. It will not affect what happens at the ports. I'm going to look for confirmation there.

MR. THOMAS: That's correct.

MS. SLATER: And so it's movement out from plants, from distribution centers, from dealers.

We were talking yesterday about whether farmers would have to register, but it would be only those who take

possession, so to the extent the farmer has someone else apply his fertilizer, which is quite common, the farmer would not get involved, but conceivably, a farmer who takes possession of this nitrate will also have to be someone who registers.

You can begin to imagine the concerns with those who might choose not to want to be registered with the Department of Homeland Security or might not want to do this paperwork, and so, hence, the further contraction is a bit of a concern.

COMMISSIONER BROADBENT: Mr. Thomas, there's no difference in the certification related to an imported product versus the domestic product.

MR. THOMAS: No, ma'am.

COMMISSIONER BROADBENT: Okay. And then do you get the sense that the Ukrainian exporters will have a sense of what's pending here for them and what they need to do to comply with the new system?

MR. THOMAS: I think they will have -- I can't speak for the Ukrainians. I don't know what they have a sense of.

MS. SLATER: But again, Commissioner, the regulations should not affect the importers at all. I mean this, you know, once it's off that ship they're going to be covered by the existing Coast Guard regulations, and

it's once it's in and being handled through the distribution system is where these new provisions will kick in.

COMMISSIONER BROADBENT: Okay. So, but you don't see any disadvantages to the importers here.

MS. SLATER: No.

COMMISSIONER BROADBENT: Okay. Let's see. Looking at sort of the international market a little bit, now, I understand that China has a general ban on the importation of nitrogen. Are you all aware of that?

MR. HOPKINS: Just to be clear, of course, the ban is on ammonium nitrate, not nitrogen, okay? The specific product.

COMMISSIONER BROADBENT: Right.

MR. HOPKINS: And that's due to previous security concerns. Actually, it's also true in Germany, as it happens, where ammonium nitrate is not a product to be used.

COMMISSIONER BROADBENT: Okay. So has CF been selling in China before the ban came in place?

MR. HOPKINS: CF does not export ammonium nitrate, and, to my knowledge, neither did the predecessor companies.

COMMISSIONER BROADBENT: Okay. All right. I'll wait until the next round. Thank you.

CHAIRMAN WILLIAMSON: Okay. Thank you very much.

Just to clarify, the companies that handle imported AN compared to those who -- is there any distinction, or is it usually the distributors of the product will handle both imports and domestic production? Are there any companies that specialize more in imports than others? Just out of curiosity.

MR. HOPKINS: I think the answer -- this is David Hopkins -- is sort of yes and no. I mean most of our customers for ammonium nitrate also have used and have some access to imported product.

Our customers are typically the distributors, just to be clear about that, whereas importers are going to come in and sell to the same people that we do. I don't know if that sort of answers your question, Commissioner.

CHAIRMAN WILLIAMSON: Okay. So it's not like -- and any distributor is probably going to be big enough to handle the, I mean to deal with the regulations or, I mean or else they're going to get out.

MR. HOPKINS: That's exactly right. Yes.

CHAIRMAN WILLIAMSON: Okay. I just want, I guess, that clarification. To what extent do companies shift production in various types of fertilizer products you produce? What factors do you weigh in making such

decisions?

MS. SLATER: Could you repeat the question, Commissioner?

CHAIRMAN WILLIAMSON: I was wondering, to what extent do companies shift production among the various types of fertilizer products, and what factors do they take into account in making such decision on which ones they're going to produce?

MR. GOUGH: Phil Gough. You know, we really don't have an option. You know, we're ammonium nitrate. We purchase the ammonia for that purpose. I say that. We do have a little bit of nitric acid we sell, but that's very, it's got to be freight logical. There's just not very many places we can go. If you look at year in and year out, those volumes do not vary that much.

So basically, you know, we're captive. We produce industrial grade ammonium nitrate and ag grade ammonium nitrate, and there is no substitution to other products.

CHAIRMAN WILLIAMSON: Okay. You shift back and forth between the industrial and the ag grade?

MR. GOUGH: Well, I guess yes. Well, no, really not. We have one prill tower for industrial grade and that's all we can make on that unit, and we have two prill towers for ag grade, so we can't shift production,

you know, industrial grade to the ag grade and vice versa. No, we can't.

CHAIRMAN WILLIAMSON: Okay. Thank you. What about for CS? Any difference there?

MR. HOPKINS: Yes. Sorry.

CHAIRMAN WILLIAMSON: CF. I'm sorry.

MR. HOPKINS: David Hopkins again. From CF's perspective, and again, this was mentioned earlier, we do change our production mix around our whole company. We have five facilities or locations in the U.S.

But I would remind the Commission that with regard to ammonium nitrate, we only make that product at Yazoo City. At Yazoo City we have two prilling towers. One is capable of making either product and currently is making low-density explosive grade product, and that total capacity is contracted to the customer that takes that product. So effectively, we cannot make more ammonium nitrate for the agricultural marketplace on that prilling tower.

The other prilling tower, as I mentioned earlier, isn't quite running to capacity at the moment but it would be possible and we would like to do that, and when we make decisions on how we make it, we take account of the market demand, our customer commitments.

It's very typical for us to sell our product

forward, meaning three to four months forward, particularly so that the commitments are in place for the fertilizer season. AN is usually applied between February and sort of July in the United States. So if we find ourselves over committed, for example, then we will try and make more product available for the customer.

Really, they're economic decisions within the capabilities and capacities of the upgrade in facilities that we have. I mentioned a little earlier in my testament that at Yazoo City our actual capability to move volume between in this case agricultural grade ammonium nitrate and UAN, which is a liquid fertilizer, is very limited by the capability of the plant.

CHAIRMAN WILLIAMSON: Thank you. Respondents argue they are not likely to divert supply from their current export markets to try to get into the U.S. market. Mr. Klett is already talking about I guess the price premium in the U.S. market. Are there other incentives to divert production to the U.S.?

MR. KLETT: I think there are. I mean we talked about this yesterday, and maybe some of the others can comment on this, but it's not just the relative price. I think the U.S. market also is attractive because the dollar is a favored currency in terms of sales is one factor. I think the, just getting paid for the export I think maybe

is more assured selling to a U.S. supplier versus elsewhere.

But maybe, David, maybe you can comment on that because I know we discussed this yesterday, about why you, you know, some of the kind of nonprice factors why the U.S. is a favored market.

MR. HOPKINS: David Hopkins again. I might choose Brazil to use a small example to try to and explain one of the issues.

The Brazilian market, for a number of reasons I don't intend to go into, is growing dramatically. Its infrastructure is very much underdeveloped, and some of these global trading companies that we've mentioned can, and have, found themselves sending a vessel to Sao Paulo or Santos, somewhere like that, and they find that the vessel takes -- and this is sort of incredible but it's pretty much true -- it can take between sometimes up to 90 days before that vessel is offloaded.

You bring a vessel to the U.S., if it's delayed more than two days, everybody gets very excited because it's very expensive to haul these vessels.

There's a sort of example of why one would much prefer to come to the U.S. than you would to that particular market, all other things being equal.

CHAIRMAN WILLIAMSON: What about

transportation costs say like between shipping to Europe compared to what it might cost to ship to the U.S. or even shipping to Malaysia?

MR. HOPKINS: There can be a -- clearly, depending where you're coming, well, we know where we're coming from here, but if, for example, if you're going to the U.S. as opposed to Brazil, then there are going to be several dollars. I wouldn't say that it's a huge saving, but there is a saving.

The real saving comes from the not having to pay the demurrage of \$30, \$40, \$50,000 a day.

CHAIRMAN WILLIAMSON: Okay.

MR. HOPKINS: The other thing -- I'm sorry -- if I might whilst I'm speaking, Val just reminded me maybe to mention that the other thing is that the U.S. was, we consider it as a niche market here. A million ton AN market is actually a big market on the world scale. So, again, it's a very attractive market to go to in terms of our total usage.

CHAIRMAN WILLIAMSON: Okay. Thank you. Growth has been relatively strong in Asia. Is that a market that, you want to comment on that in terms of -- I mean shipping to Malaysia, that's quite a distance from the Ukraine, and I assume some of those markets you may have infrastructure issues.

MR. HOPKINS: This is David Hopkins again. I would have to claim to have little knowledge of that market myself. As I said earlier, we sell all the production that we make in the United States market.

CHAIRMAN WILLIAMSON: Okay.

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

CHAIRMAN WILLIAMSON: Yes.

MR. KLETT: I mean if you look at Ukraine's top export markets, Malaysia obviously came up in 2012 as very important. India historically has also been an important market for Ukraine.

You know, we can look more closely at Asia in general from public data in terms of export growth to Asia, but I think the important point is that when you look at prices that Ukraine gets at the port for exporting to Asia and you kind of look at U.S. prices and you net those back to a Ukraine port, U.S. prices are higher on that net back basis.

CHAIRMAN WILLIAMSON: Okay. Thank you. The data are confidential so you may need to do this posthearing, but how should the Ukrainian industry's capacity utilization towards the end of the period of review affect our analysis of likely volume of subject imports if the order were revoked?

MS. SLATER: We will address them more

posthearing, but I think just in general the Commission -- I think we've cited a bit of this in our prehearing brief, Mr. Chairman, but, you know, the Commission has a well-established practice of looking at utilization over the full period. Where you have mixed utilization or you have inconsistent utilization rates, the Commission takes that into account.

You know, one -- well, I'll stop before I get into APO, but we'll answer further.

CHAIRMAN WILLIAMSON: Okay. Thank you, and thank you.

Commissioner Pearson?

COMMISSIONER PEARSON: Thank you, Mr. Chairman.

I also extend my welcome. It's good to have you here today. I have never been in El Dorado, Arkansas, and I kind of regret that because I've sort of wanted to go to the City of Gold. On the other hand, I have been in Yazoo City, Mississippi, but not for fertilizer or for gold, but rather for catfish, so you can see where my priorities are.

I have a question, and this is somewhat hypothetical, but how long would it take to bring a new -- if you were to build a new plant to produce high density ammonium nitrate and you had it there ready to turn the

switch and start it, how long would it take that plant to ramp up to reach full production? Would it come on right away or is it one of those operations that likely would have to be debugged over a period of months to get it to where you would want it?

MS. SLATER: You mean once it's completely available --

COMMISSIONER PEARSON: Yes. You've got it all built and it's ready there and now you're going to turn the switch and start it on Monday morning and produce ammonium nitrate, and I'm just wondering is it going to come in right at full capacity or is it going to have to ramp up?

MS. SLATER: Well, if Mr. Hopkins or Mr. Gough was in charge of it, it would be running immediately, but I don't know. Let me ask --

COMMISSIONER PEARSON: Well, the reason for asking, I have some familiarity with businesses where the design engineers do great work, and the construction engineers do great work, and then the operating engineers have to figure out whether they can make the thing run, and so that's why I'm asking.

MR. HOPKINS: This is David Hopkins, and I am happy to comment because I've always been on the commercial side of our business and not the operation side so, but

actually, what typically happens is that, and if I understand the Commissioner's question correctly, the facility is built, commissioned, you know, you're going to switch it on, then there is usually some sort of post switch on work to be done.

On an anhydrous ammonia facility, that can be fairly substantial, and you can see that our competitors and others, as well as ourselves, around the world sometimes find that it takes a little longer to start than you might have expected because they're very complex pieces of equipment

The specific prilling tower that we're referring to here is -- again, this is a commercial person speaking -- they're more a simpler sort of process, in a sense, because it's about pumping liquid around the place, hazardous liquid, very carefully, might I hasten to add.

But I might draw to the point that when El Dorado was, CF now, when we converted the prilling tower at Yazoo City from agricultural grade to explosive grade AN, it actually probably took around about 12 months before that facility was running exactly as we wanted it to. I hope that helps.

COMMISSIONER PEARSON: It does. Any other comments? Observations?

MR. GOUGH: Phil Gough with El Dorado. I guess

we don't have a whole lot of information but I know when we put in our industrial grade prill tower, you know, there was definitely some tweaking, and I would say, you know, it took a couple months to get it up and operational, but then, like David said, you know, you're always trying to improve that process, so probably over the year we had the industrial folks in to sit there and try to make, to fine tune it. It wasn't that it wasn't producing at capacity, it was just fine-tuning the process.

MS. SLATER: We can try posthearing to see if there's any information out there, Commissioner, that would give a more generalized view of, you know, what the typical start up time would be.

COMMISSIONER PEARSON: Okay. Well, that might be helpful.

In particular I'm curious, and I don't think we'll have the ability to answer it here, but there is on the record the information that there will be another facility added in Ukraine that would come on line I believe in 2014, and I'm just trying to understand, are we to expect, was it 900,000 tons of additional product on the, you know, or will it be six months, eight months, a year before they could hope to be up to that capacity?

MS. SLATER: We'll see what we can find out there in general about the start up time after building.

COMMISSIONER PEARSON: Okay. Thank you.

Others have touched on this but for the posthearing, if not now, which countries, if any, have two criteria: 1) lower prices for natural gas than the United States; and 2) facilities for producing high density ammonium nitrate? Is there anyplace in the world that has both of those?

MS. SLATER: I think we'd like to take that posthearing, and the combination is -- there are a number of possibilities that come to mind, but rather than guess, let us get you the information.

COMMISSIONER PEARSON: Right. Okay. Good. Because there may be places with lower gas prices, but, you know, I don't think we were seeing them in the record in terms of providing a lot of supply to the United States of high density ammonium nitrate. Yes. Okay.

MS. SLATER: Yes. Let us look and see what's out there. You know, again, there are many producing countries which are not major exporters as well.

COMMISSIONER PEARSON: Right. Okay. Thank you. Now, the ammonia that serves as the feedstock for production of ammonium nitrate, that's just a pure ammonium that's in a form of a gas, or is it compressed to be a liquid? What kind of product is it?

MR. GOUGH: It's compressed. It flows as a liquid.

COMMISSIONER PEARSON: Okay.

MR. GOUGH: And it's concentrated. It's 82 percent nitrogen.

COMMISSIONER PEARSON: Is it shipped in pipelines?

MR. GOUGH: Yes, it is. Well, it can be shipped in pipeline, vessel, truck, rail, tank cars, but in our case at the El Dorado location, we are on a pipeline and it comes in via pipeline.

COMMISSIONER PEARSON: Okay. This product then needs some processing to become anhydrous ammonia. If a manufacturer wished to make anhydrous ammonia out of it, you've got to do something with this ammonia in order to get it into an anhydrous form, is that correct?

MR. THOMAS: This is Donald Thomas. No, it's already anhydrous. At atmospheric pressure and atmospheric temperature it will be a gas, but in order to ship it most efficiently we'll compress it and liquify it, but it's 100 percent ammonia.

COMMISSIONER PEARSON: Okay. So just to make sure I understand, anhydrous ammonia that might be applied to corn, for instance, that product is the feedstock for the production of --

MR. THOMAS: That is correct. It is used for direct injection in the soil. It's the highest nitrogen

concentration fertilizer on the market.

COMMISSIONER PEARSON: It goes on fast, too.
Yes.

MR. THOMAS: Yes.

COMMISSIONER PEARSON: It's a nasty product to handle. You want to be a little bit careful with it, but, you want to be a lot careful with it.

MR. THOMAS: Yes.

COMMISSIONER PEARSON: Yes. But it's really effective.

MR. THOMAS: Yes.

COMMISSIONER PEARSON: Sorry. I have to apologize occasionally to my fellow Commissioners. I go back and relive the glorious days of my youth. Okay.

So there has been a lot of corn produced, at least a lot of acres planted, in the United States the last several years. Is there a direct effect -- is the U.S. ammonia market shorter in supply in part because more ammonia is going directly onto corn in anhydrous form?

MR. HOPKINS: This is David Hopkins again, and the quick answer is yes. Actually, surprisingly to some, maybe because of some of the issues the Commissioner alluded to, being the safety and handling of the product, actually, the last couple of fertilizer seasons we've seen an increase in the use of direct application anhydrous

ammonia in the U.S.

COMMISSIONER PEARSON: Okay. You may have said before, but then that would make anhydrous perhaps the least costly form of nitrogen to put on corn, or maybe on other crops, too, but certainly corn.

MR. HOPKINS: Typically, that is correct.

COMMISSIONER PEARSON: Okay. So the marketplace is dealing with if you're going to make high density ammonium nitrate out of it, you've got to add enough value by shifting it into that other form so that it's worth it for the growers to use it.

MR. HOPKINS: If I may -- this is David Hopkins -- I would like to draw your attention to the fact that very little ammonium nitrate is used for corn, it actually, for reasons which we could comment on, but it's typically not.

You're right that anhydrous ammonia is preferred by farmers, probably for two reasons. One, it is very quick to apply. They have very limited window to apply it in the spring so they want to cover a lot of acres. Secondly, because it's the first produced, if you like, the furthest down the, the least complicated nitrogen source to manufacture, it tends to be a cheaper per unit then.

COMMISSIONER PEARSON: Okay. Well, thank you

very much.

Mr. Gough, you had something to add?

MR. GOUGH: Yes. Phil Gough. One thing to keep in mind and the reason ammonia is such a big product in the midwest, it has to be injected into the soil. If it's not injected and covered, it will gas out and lose the nitrogen. And if you look at the statistics in the southern tier of the U.S., there is very little anhydrous ammonia used. It's not a product that's used for grasses, citrus, et cetera.

COMMISSIONER PEARSON: Okay. Thank you.

CHAIRMAN WILLIAMSON: Thank you.

Commissioner Aranoff?

COMMISSIONER ARANOFF: Thank you, Mr. Chairman. I join my colleagues in welcoming all of you on this morning's panel, and since I cannot match the knowledge of Farmer Pearson, I'm going to turn my questioning in a slightly different direction. In the prehearing report, we have some expert sources, which you also quote in your brief, regarding likely future pricing for natural gas in the United States, and that states that prices are likely to increase by over 19 percent by the end of 2014, and I'm curious. In light of the current gas supply situation in the U.S., why are these price increases anticipated?

MR. HOPKINS: This is David Hopkins speaking, and again, I'm not putting myself forward as an expert on the natural gas market, but there are a couple of things happening there that I think are fairly visible. One is that there was a period when the country actually drilled more wells than was required, and that produced a sort of perhaps a more rapid reduction in the price of natural gas, and there's a limit at the level of which natural gas can be extracted.

There's a cost, in other words, so there's a sort of minimum price, and then what we found is because the U.S. is benefitting, the industry in the U.S. is benefitting from the availability of gas at these sort of price levels, the demand has significantly increased. In particular, we see power generators moving away from coal as a source of energy to natural gas, so I would suggest that in general terms, you know, there's going to be a supply/demand change in the gas situation.

COMMISSIONER ARANOFF: Okay. That's helpful. Thanks. Now, do the same experts who make predictions about likely level of gas prices in the not too distant future also make predictions about likely volatility, and have there been any reliable predictions about that?

MS. SLATER: That's an interesting question. I think it's one we'd have to look at posthearing. I can

say for over the years I've worked with the industry and kind of looked at projections, it's usually trends. Volatility seems to be almost by definition the unexpected. That happens, so I don't think people are predicting volatility, but there are these long-term EIA and, you know, other kinds of outlooks of outlooks, so volatility tends to happen all by itself, but let us look at that for you posthearing if that's all right, Commissioner Aranoff.

COMMISSIONER ARANOFF: Sure. Sure. Thank you. I'm curious as to whether ammonium nitrate producers are engaged in hedging and other risk management practices with respect to natural gas prices to the same extent currently as they were in our prior two periods where we looked at this industry. Have those kind of practices been consistent, or have they evolved?

MR. HOPKINS: This is David Hopkins here, and I'm going to, if I might, reserve my comments maybe for posthearing, but in essence, we do have policies where CF is actually one of the largest buyers of natural gas in the country, so we do have a number of different policies and strategies. We do change them over time, and I think more detailed than that, I'd probably want to reserve for later.

COMMISSIONER ARANOFF: Okay.

MR. GOUGH: Phil Gough again. The same for us. I will furnish that posthearing.

COMMISSIONER ARANOFF: Thanks.

MS. SLATER: Commissioner Aranoff, there was some information in the questionnaire responses on that, but we'll be happy to supplement it confidentially posthearing.

COMMISSIONER ARANOFF: Thank you. A number of the witnesses testified this morning regarding the situation with U.S. demand for ammonium nitrate, how demand has fallen off, how there's this sort of core of users for whom it's the preferred fertilizer, who will keep buying it and a limited number of dealers who are willing to keep supplying it to them, and so my question is do you think that demand for ammonium nitrate in the U.S. has basically bottomed out?

When does it bottom out, or is there a point at which even people for whom it's by far the preferred nitrogen source are not going to be able to get it because the cost they'd have to pay because of regulations or whatever are just going to get too high, or have we reached what seems like the reasonable bottom?

MR. HOPKINS: This is David Hopkins. Certainly, I wish I could answer the question, actually, Commissioner. I can't answer the question, but what I can

point to is the uncertainties that we're faced with, and one of them is the regulations, which you've made quite a lot of this morning, but the other thing that we've not talked about so much is there are now technologies that may threaten our ammonium nitrate market.

I refer to the fact that there are now increasingly effective technologies to moderate urea products so that it doesn't volatilize as much as it used to in the past so there's a number of different technologies to do it, and increasingly there are large U.S. companies promoting these products, which used to be, I mean, we talk about AN user's niche. These used to be very niche products. They're now becoming more mainstream, and so they do offer an alternative to the AN user in the U.S.

There's two pretty major, if you like, threats on the size of the market, which makes it rather difficult for me to answer the question as to how that might evolve.

COMMISSIONER ARANOFF: Okay. This regulatory web, which has grown up around the distribution and storage of ammonium nitrate, to what extent does this unique ammonium nitrate, and to what extent do any of these regulations apply to potential alternative fertilizer products?

MS. SLATER: First of all, the regulations

which DHS is about to issue are specific to ammonium nitrate and only ammonium nitrate. The existing CFATS regulations do not affect any of the other solid fertilizers that are there. I don't know about whether it affects any perhaps ammonia?

MR. THOMAS: It certainly covers anhydrous ammonia, but for a product that's competing potentially directly against ammonium nitrate like a solid coated urea or ammonium sulphate or some other nitrogen solid, those products are excluded. They just don't come up under the regulatory guidelines.

COMMISSIONER ARANOFF: That's because they're not explosive?

MR. THOMAS: Well, that's the short answer.

COMMISSIONER ARANOFF: Okay. All right. I wanted to clarify one thing that came up in the conversation with Commissioner Broadbent, and she was asking about how all of these regulations affect global trading companies, and the answer that I was hearing was they don't really affect them because they don't kick in until you unload the product and start doing something with it on land.

So I just wanted to have you clarify for the record that the companies, these global trading companies or whatever companies it is that are the importers are not

the same companies that control the U.S. distribution chain, that there's a complete separation. That's what I understood you to be saying, so none of these large traders like Transammonia, or any of these companies, they don't own their own distribution facilities in the U.S.?

MR. THOMAS: They certainly could, and I'd prefer Mr. Hopkins or Mr. Gough to speak to what facilities they actually control.

MR. GOUGH: Phil Gough here. No. There are some of these, Transammonia would be one of them. Yara has some of their own distribution. I think Helm has a location or two when they bring in product, but again, I think the key is there's really nothing that gets in their way to bring a vessel in, put it on barges, basically the barge lines are the ones that, you know, have everything in place to set there and get it up to the river, be it at one of their locations or one of the distributors these people are selling to.

MS. SLATER: And just to clarify, Commissioner, there are large importers which have chosen not to my knowledge to go throughout the distribution channel, but some of them have set up warehousing facilities here, for example. Many of them have done that since the regulations have been placed in effect, so if they choose to step over the border as it was, you know, off the ship

and into the land, they of course would be subject to the same regulations as other distributors, but they're making those choices with the regulations in place and understanding what that requires.

COMMISSIONER ARANOFF: Okay. I appreciate those answers, and I'm going to stop there because my time is almost up. Thank you, Mr. Chairman.

THE COURT: Thank you. Commissioner Pinkert?

COMMISSIONER PINKERT: I just have a few followup questions. Mr. Hopkins, you talked about modified urea products, products that wouldn't volatilize as readily as the products that are currently out there. What's the time frame for those products to be introduced to the market and be accepted in the market?

MR. HOPKINS: David Hopkins here. They are introduced to the market, and to a reasonable extent, they are accepted in the marketplace. In terms of the ramp up capability, I wouldn't be able to answer that directly, but I will point to the fact that companies like Koch Industries, AGRIM, which are major multinational fertilizer companies now manufacture these products, and in fact in the case of AGRIM, for example, they've recently announces significant increase in their capacity to make various end product.

COMMISSIONER PINKERT: Mr. Gough?

MR. GOUGH: Yes. Phil Gough here. These products, some of them have been around probably, shoot, 15 years now in the case of AGROTAIN, you know, I guess there's two cases here. Yes, it's proven they can sit there and slow the volatilization rate, but they only have a certain protection period before volatilization say on urea can start happening again, and, you know, they increased the cost, so that's the other thing.

No longer is it a cheaper source in urea versus ammonium nitrate, and the third factor is though it does not change the chemistry of urea versus ammonium nitrate. The advantage ammonium nitrate has is its 50-percent nitrate form, so when you put it out, half of it is immediately available to the crop, and that's still one advantage that putting a coating on isn't going to change on urea.

MS. SLATER: That's in case you had any doubt that Mr. Gough is a salesman of ammonium nitrate.

MS. MARSH: Commissioner Pinkert, can I add one point to that, which I believe I understand from all of our discussions, but I'd ask my colleagues here to correct me if I'm wrong, but all of the urea alternative products have really been developed to improve the performance of urea, not necessarily to compete with AN, but as more and more retailers stop handling AN, they're using this as an

alternative, is that correct, David?

MR. HOPKINS: David Hopkins here. That is correct, and we actually have a number of customers that actually stock and sell both products, so basically they will supply what the customer demand, what the farmers' demand is. I hope that answers the question.

COMMISSIONER PINKERT: Did you wish to add anything, Ms. Slater?

MS. SLATER: I was just going to say what I also heard yesterday from Mr. Hopkins was that this product will certainly -- not something that someone sat and cooked up and said how are we going to compete with ammonium nitrate because as Mr. Gough said, there are distinctions there. It is a factor, which is definitely putting pressure on the market, and we've heard that from both companies.

I think if you look at your questionnaire responses, you see that as well. It's in areas where dealers may be reluctant to carry this product or where they're thinking about walking away from nitrate knowing that there's something else there they can try to suggest to their customers would be acceptable, you know, it's one of those things that's not helping. I mean, it's definitely putting pressure on the market.

COMMISSIONER PINKERT: Thank you. Now turning to the revocation of the antidumping measures in the E.U.

and Brazil, is there anything about those cases that is relevant to the inquiry we face in this case, and I would include in that if you have any differences between the situations in those cases and this case, please articulate those as well.

MS. MARSH: As far as an understanding in the E.U., the European manufacturers did not request that the order on Ukrainian AN be renewed. We don't know why, but that's really the story. They didn't examine it and decide to revoke. The European industry didn't ask for it to be continued in the last review cycle, and in Brazil, the measures were suspended, I think, in 2008 or 2009, and Russian and Ukrainian exporters have continued to sell there since then, but I don't have any other facts about why that is.

MS. SLATER: Well, you certainly can look very closely at their decisions to see if there's anything in those very, very long journal notices that would be instructive, Commissioner.

COMMISSIONER PINKERT: And with that, I have no further questions for the panel in this round, and I appreciate the answers. I look forward to the posthearing submissions.

THE COURT: Thank you. Commissioner Johanson?

COMMISSIONER JOHANSON: Thank you, Mr.

Chairman, and I have a question regarding U.S. demand, and I realize a number of my colleagues have asked maybe similar questions this morning, but I think it's worth delving into this a little bit further. What further support do you all have for your proposition that demand may decline further given that U.S. agriculture seems to be growing.

I think it's fairly safe to say around the world the ag industries in the major producing countries are doing pretty well right now, and also given the fact that ammonium nitrate security issues have been out there for some time, meaning I know there's some new regulations around the corner, but this is not a new issue for you all since 9-11 and, I guess, going way back to the Oklahoma City bombing, the explosive nature of this product, regulations have been discussed thoroughly and have been put in place already. Thank you.

MR. HOPKINS: I think first of all on the impact of the security measures, this is David Hopkins speaking, I accept the fact that there is uncertainties about the way they will be implemented, but one of the key differences in the future compared to today in my opinion is that the farmer uses, and the dealers that apply the product, will be under significantly more scrutiny than they are at the moment.

It will become fairly onerous for a sort of administrative point of view, and then I remind the Commission that there are alternatives to AN, maybe I'm not quite as strong an AN salesman as my colleague here, but whilst AN is a lovely product, and I could go on about how good it is, the fact of the matter is that if you're going to apply ammonium nitrate to pasture land, for example, where it's an extremely effective product, it is now possible to use products which, for example, inhibited urea, which may be more expensive, but if they're available, they will do the job.

MR. GOUGH: Phil Gough. Again, there's really not rules and regulations on handling ammonium nitrate in every state. Texas happens to be one that put in some good regulations. We have 15 of our own retail locations in Texas, so we know how it works, and really we had hoped that the DHS would really have modeled the security closer to what Texas implemented. That said, the states that do not have regulations however, via the TFI or other organizations, have done an outstanding job of educating the dealers that handle ammonium nitrate to be aware of who you're selling.

So I think that's been the real plus is that whether a state has regulations today or not, the dealers that do handle ammonium nitrate do due diligence before

they let product get out of the facility.

COMMISSIONER JOHANSON: Yes, Ms. Slater.

MS. SLATER: If I might, Commissioner Johanson, I think your question is obviously a good one, and there's no crystal ball. No one knows what's going to happen with demand. The AN security issues have certainly been out there for a long time, but what's very critical for this Commission to understand is that these new regulations, and let's back up. The CFATS regulations, which are not specific to ammonium nitrate took a terrible toll, and you can see it in your data.

It was requirements that were, I think, these guys will tell you, they weren't nothing, but these are not requirements that are that difficult to follow, but it was enough that it led a number of companies to just walk away, including some very, very large and sophisticated producers and retailers and distributors who just didn't want to be bothered. Those who are left of course are in the regions where there's strong demand from the bottom up.

Now what we're talking about, and Mr. Thomas went through some of these details in his testimony, what we're talking about is something very specific to this product only, which is going to require buyers to register, those who handle it to actually be registered with the

federal government. That won't play terribly well, I think, in some of the states of our union.

To register, they're going to have to actually check the bona fides of the purchasers each time they purchase something. These are a very serious change in the level of regulation that will occur. We don't know yet exactly what those rules will look like. We only know what's been proposed, so when you ask gee, isn't this something that's already been taken into account, arguably, some of the people who have left the market have looked at those proposed regulations, and that was part of the decision already that's been out there to leave.

I think there is a very legitimate concern that once this does happen, combined with the possibility of other products being, certain not perfect substitutes, but at least things that people would consider offering that this is a significant concern for us here. Is it possible to actually show you a spreadsheet that tells you which dealers and distributors are going to go away? No, that's not something we can do.

As Mr. Gough said, every week when you read Green Markets, there's somebody else who's basically gotten out of the nitrate business. This is a continuing process and something which we expect we won't really know the end of until these regulations are done.

MR. KLETT: Commissioner Johanson, this is Dan Klett, just one other point. You can also look at this relative, not just absolute, in terms of ammonium nitrate versus other nitrogen fertilizers. I mean, I think both in your questionnaire and, I think, also in public data, nitrogen fertilizer demand, and growth has been fairly strong over the POR, but ammonium nitrate's share of nitrogen has actually gone down.

COMMISSIONER JOHANSON: All right. Thank you for your responses, and I have another question which touches upon these security regulations. The Petitioners argue at page 26 of their brief or your brief that the most stringent security regulations impact U.S. producers and retailers and no exporters. How is this the case? Aren't all levels of the supply chain impacted by increased cost brought about through increase regulation? You think it would be passed on somehow. Yes, Mr. Thomas?

MR. THOMAS: I think the supply chain has already adjusted to the predominance of the regulations which CFATS and Maritime Transportation regs, the Coast Guard regs, so they're fully in place, and the market has contracted, and the players who wish to be in this market have already chosen to be here, and they're accommodating those regs today. They're living under those.

I don't think any additional cost to the

importer is going to exist simply because they're dropping a shipload of product at a port. What's unknown again is where we stand in the future with buyers and sellers. That's going to be exposed only to the land side domestic supply chain. The importer's not going to experience that. They're not going to have to manage that registration process. They're not going to have to manage the retail side of this. That cost is going to predominantly borne by the domestic supply chain partners.

MS. SLATER: Just to make sure your question, which I think is similar to what we were discussion with Commissioner Broadbent --

COMMISSIONER JOHANSON: Right. It is.

MS. SLATER: Right. Why is it that the importers are not going to be getting this burden? I mean, the importers do have to deal with the Coast Guard regulations and happens at the ports and when there's transfers made to barges and when the barges are transferred, but those are under the Coast Guard regulations, which have been in place for some time and have been basically accepted and absorbed.

It hasn't been a problem for the importers to deal with it. The CFATS regulations and these coming ammonium nitrate security regulations will focus on the internal supply chain, so it really is not something that

will affect imports per se. It's only once it comes across the border and lands, so to speak.

COMMISSIONER JOHANSON: All right. Thank you for your responses. I have another question, but I will wait since my time is about to expire. Thank you.

THE COURT: Commissioner Broadbent?

COMMISSIONER BROADBENT: Thank you. I want to sort of talk a bit about the implications of the lower natural gas price in the U.S. and how that affects the prices for ammonium nitrate. In our first review, the Commission noted that ammonium nitrate prices tended to track very closely with the natural gas price, and that seems to make sense to me, but now as costs have stayed flat, your average unit values are increasing over the period, why are these prices not generally tracking the natural gas prices at this point?

MR. KLETT: Yes. Commissioner Broadbent, this is Dan Klett. I mean, natural gas is a major cost input into ammonium nitrate, so clearly there are going to be some pressures on price due to its major element of cost, but ammonium nitrate prices are also affected by other supply and demand factors independent of natural gas prices so that while over time you may see some correlation it's also conceivable, and I think it's what we've seen over this most current POR that the supply and demand

factors affecting natural gas and affecting ammonium nitrate have diverged somewhat so you don't see as much of a correlation during the current POR as you see in prior periods.

Just examples on the natural gas side, you see, you know, a supply situation that has caused natural gas prices to moderate and be low while at the same time you see ammonium nitrate prices and other nitrogen fertilizer prices increase and just one kind of demand side factor on that is that over the last year, especially in 2012, the farm economy has been very strong, so that has supported usage of nitrogen fertilizers and supported relatively high nitrogen fertilizer prices, so it's just that it is a factor, but the demand supply factors over the most recent POR have caused some divergence ammonium nitrate prices and natural gas prices.

COMMISSIONER BROADBENT: Okay. I mean, I think we've just we rejiggered kind of the original basis for this finding which is really that they were getting low prices in Ukraine, and it was unfair, and our prices right here were so high. How would you respond to that though?

MR. KLETT: Commissioner Broadbent, this is Dan Klett. I think in the original cases, the concern with the Russian and at the time Ukrainian natural gas prices

was that those low prices allow them to or at least was one factor that allowed them to significantly undercut the market, and even if Ukrainian natural gas prices are higher now than they were then, and we wonder whether factually that's the case, the point that Val made was that hasn't been translated to their actual pricing of ammonium nitrate into the market.

In other words, what really is at issue is if you revoke the order, at what price will Ukrainian exporters sell? You don't see a correlation between higher natural gas prices in Ukraine, and you don't see higher export prices, at least not in the same proportion, and you see Ukrainian exports still significantly below what they could get if they were to export to the United States.

COMMISSIONER BROADBENT: Ms. Slater?

MS. SLATER: If I can, Commissioner Broadbent, I think that the way you put the question was actually a really good way to frame the issue, and I would go back to the premise which is that the original case looked at the fact of this difference, but in truth, when you look carefully at the original determination, it wasn't so much that the Ukraine had lower gas prices.

I can't imagine a case where someone would come to this commission and say find injury and give us a dumping

order because our foreign competitors have lower costs. That's not going to fly. It's not so much that Ukraine at that time had lower gas prices, it's that there was government interference which was suppressing the gas costs, which was allowing these rather old plants to keep chugging out the amount of ammonium nitrate that had been made to service the old Soviet agricultural system, and that had nowhere to go but out.

So to some extent, there's something of a continuation there because we see that the Ukrainians are continuing to produce at a substantial pace. They are exporting at a substantial pace. Not clear what's really happening there with gas. If you look at, and it really is interesting reading, some of the articles we've supplied, and there's been some more recent ones, which we'd be happy to give you posthearing. Whatever's happening there suggests that the Ukrainian plants are not in fact getting the same gas.

There's something going on which is allowing these plants to keep producing this ammonium nitrate. It's being exported to a very substantial degree and still at prices which are at the bottom of the international market. They are underselling the Russians in these third country markets. You can see it in the import data. It's all in our brief, so the import data in Brazil and in Turkey

and all the different places where they compete with the Russians.

I think the issue is not that the order is in place because the Ukrainians had lower gas prices. The order's in place because the Ukrainians were exporting very large quantities here at very low prices that took market share and undersold the U.S. producers. The current situation is relevant, as I said, for two reasons. One is we are saying to you, at least with respect to CF, the moderated gas prices have helped that situation.

It hasn't solved the problem with our shrinking market, and the situation in Ukraine, whatever it is with gas, hasn't helped with the volumes and pricing of their exports, so it doesn't make the problem go away.

COMMISSIONER BROADBENT: But just to summarize, how would you say the conditions of competition have changed or not changed since the original order?

MS. SLATER: Well, actually, with respect to gas prices, I'd have to go back and look. I think in the original period of investigation, I don't think gas prices had yet reached the spikes we saw during the first review period, so I'd have to actually look at what the comparative situation was in U.S. gas prices. Yes, I'm getting old. My memory is fading as to that. We could certainly do that comparison.

With respect to Ukraine, to be honest, we don't really know. We know that the Russian gas price into Ukraine is now higher than it was through the pipeline. We don't know what, if anything, the Ukrainian plants are paying for gas. When the Ukrainians talk to you about increases in gas prices, what they're citing to you is information about what the Russians are charging to the Ukrainian government off the pipeline.

All of the articles from Mr. Firtash, who owns the DF group, who now owns all four of these plants, suggest that he's not using that Russian gas, that he's sourcing his gas from his contacts elsewhere.

COMMISSIONER BROADBENT: But where?

MS. SLATER: He says from Central Asia, yes? From Central Asia. He says he's bringing gas to the --

COMMISSIONER BROADBENT: So what countries is that?

MS. SLATER: What?

COMMISSIONER BROADBENT: What countries would that be?

MS. SLATER: So you remember? Yes, it could be some of the Stans, Turkmenistan. He doesn't mention specifically where. There's also evidence, we've put into our prehearing brief, of litigation that's going on

with all those plants for nonpayment of their gas bill, so at a period of time when they were actually taking gas from the Ukrainian agency that was being supplied from Russia, they didn't pay that bill.

This would also explain how it is that they continue to be able to export large quantities at very low prices and compete with and undersell their Russian counterparts. Something is happening there with their gas, which is not, you know, \$12 gas off the pipeline from Russian, so I don't know that we can answer that question. There are no Ukrainian producers who are here today for you to ask the question to.

What we do know is, you know, you can't see what's behind the shadowbox, but you can see what's coming across the border and what's coming into third countries, how much and at what prices, so I would say the conditions of competition have not changed in terms of the volumes and pricing of the Ukrainian export and of the significant reliance in Ukraine on exports.

COMMISSIONER BROADBENT: Okay. Does the domestic industry export at all to any of these growing markets? Brazil, anywhere else?

MR. GOUGH: This is Phil Gough. No, not outside North American.

MR. HOPKINS: From CF Industries point of view,

this is David Hopkins, we do sell small quantities into Canada.

COMMISSIONER BROADBENT: Into Canada?

MR. HOPKINS: Canada.

COMMISSIONER BROADBENT: Canada.

MR. HOPKINS: Canada.

COMMISSIONER BROADBENT: Yes. Thank you.

MR. HOPKINS: Sorry. It's the accent.

COMMISSIONER BROADBENT: And why not given how much grown is out there?

MR. HOPKINS: It's not simply reverse in the imports, so the infrastructure that we talked about in terms of bringing product in, for example, offloading vessels in the middle of the Mississippi. It's slightly more difficult to unload vessels in the Mississippi unless you have barges, and our ability to ship ammonium nitrate by barge from my Yazoo City facility is very restricted.

It rather depends on the water level in the Yazoo River, which is extremely unpredictable. It happens to be at the level where we can load barges today, but for about three years, there was not enough water there, so slightly long answer to your question. We don't really load barges of ammonium nitrate, so we don't have the infrastructure to export.

MR. GOUGH: Phil Gough with El Dorado Chemical.

As our facility, we're located not close to a river, so the cost would be substantial to get the product and even put in infrastructure in place at some port where you could gather up enough tons then to load into a vessel, so it's just not economically feasible for our production.

COMMISSIONER BROADBENT: Thank you.

CHAIRMAN WILLIAMSON: Thank you. I just have a few more questions, for posthearing, could you please comment on what are the projected El Dorado, the date for the El Dorado, when it's going to be operational? Is that within the reasonable foreseeable for purposes of our investigation?

MR. FUZZELL: Derek Fuzzell with El Dorado. The earliest could be would be the end of 2015 if everything went perfect as far as permits and construction.

CHAIRMAN WILLIAMSON: Okay. Okay. And then Ms. Slater can address whether or not that -- should we consider that, the reasonable foreseeable future, for purposes of --

MS. SLATER: I'd be happy to address it posthearing.

CHAIRMAN WILLIAMSON: Okay. Thank you. Also, there's been some discussion about I guess ammonium nitrate used for explosives. To what extent is the demand for that or any changes in that relevant to our

consideration of the HDAN. I don't know what kind of explosives would you use in anything like. And I'm not asking that question because it may not even be relevant, so I was just wondering if there was any --

MS. SLATER: You're asking to what extent is demand for explosive-grade nitrate relevant to?

CHAIRMAN WILLIAMSON: Yes. No. It's the fact these people might producing some of that or not. I think you've already indicated that you don't really switch plants and all, but I just raise the question.

MS. SLATER: I'll give you two seconds, and I don't know if we have HDAN experts here, but one of the things the Commission looked at at the beginning of these proceedings was the difference between industrial grade, which is also called explosive-grade nitrate and fertilizer grade and did decide quite correctly that these really are two different industries.

There are a number of producers who you've never had the pleasure of meeting who only make industrial grade. The buyers of industrial grade are quite different, so these markets are quite separate, and we could pull up some of that if you're interested, but I don't know whether the witnesses would like to testify on that some more.

MR. HOPKINS: David Hopkins. I can comment in general terms that in the U.S. market whilst for the last

four or five years, the demand for explosive grade has been fairly robust. Over the last year or two, that is declined, and I'd cite the fact that where the country is mining and using significantly less coal and that, that is relevant in the market for explosive grade. That's not the only market for it, but it's a fairly large consumer of our product.

CHAIRMAN WILLIAMSON: Okay. That satisfies my curiosity about that question. Is there anything going on with respect to regulations in the E.U. or other major markets? Are they imposing security requirements or anything that might affect the demand in those markets?

MR. THOMAS: We don't see a regulation in the E.U. that's nearly as onerous as the Department of Homeland Security. There's certainly regulations on storage, shipping with entities comparable to our Department of Transportation or comparable to our FBI. They're certainly regulated in E.U. countries, but we don't see anything nearly as onerous as what's coming down the pipe with DHS.

CHAIRMAN WILLIAMSON: Okay. And is this current end of the year date, has than been extended in the past?

MR. THOMAS: Yes. That date is in the Federal Register today as anticipated final ruling December 2013, but just yesterday we saw a memo from DHS now just saying

generically Fiscal Year 2014, so that's the best information we have.

CHAIRMAN WILLIAMSON: Okay. Just wondering. Thank you. Now, the exact date may be confidential, but if you are correct about the true level of nonsubject imports, the apparent consumption trends you present in Exhibit 3 of your brief are quite a bit different than those in the prehearing report, particularly towards the end of the period of review, and how do you square this argument with the argument that increased security requirements have hurt the demand for HDAN, and you may have to do this posthearing, but --

MR. KLETT: Mr. Chairman, I can just answer generally. Our data are different than what's in the staff, and the reason is that we think some importers that didn't respond that was assumed to importing nonsubject or non-HDAN actually did import HDAN, and we supplemented that with CNIF data since we could identify those specific importers. Regarding your question about squaring the trends in our apparent consumption with the effect of DHS regulations, in fact when you look at the prior POR and the current POR, there has been a significant decline.

When you look at 2007 versus 2012, in fact there has been a significant decline. There have been some, you know, upturns over the most recent years, but this may

reflect things such as your questionnaire data relied on import shipments. When we supplemented our data, we had to actually rely on imports into the U.S. market, and so the increases you see over the last four years, I think, just are -- I wouldn't say statistical noise, but I don't think undermine the general point that when you look longer term there actually have been significant decreases in demand, but we can supplement in our posthearing brief.

CHAIRMAN WILLIAMSON: Okay. Thank you.
Okay. With that, I have no further questions.
Commissioner Pearson.

COMMISSIONER PEARSON: Thank you, Mr. Chairman. I'd like to know a little bit more about the capacity utilization figures that we have for the domestic industry, and I know you've talked some about this. Maybe a first question is just to clarify, in the two plants that we're talking about, do both of them have the capability to produce nitrogen fertilizers in addition to ammonium nitrate?

MR. GOUGH: This is Phil Gough. In the case of El Dorado, no. It's strictly ammonium nitrate with using purchased ammonia.

COMMISSIONER PEARSON: Okay. And, Mr. Hopkins, you indicated that you can produce some UAN solution?

MR. HOPKINS: That is correct.

COMMISSIONER PEARSON: So it would be two potential products, not more than that?

MR. HOPKINS: Well, actually we do sell some nitric acid to the industrial marketplace.

COMMISSIONER PEARSON: Okay. Thank you, so in our record, we see the capacity utilization of the domestic industry was less than 100 percent, and we would understand from that the plants stopped producing nitrogen fertilizers for a period of time. There wasn't an ability in the case of the facility at Yazoo City to shift enough capacity over to producing the UAN solution such that the front end of the plant was still working full tilt and just part of the back end was shut down, and part of the back end was still working?

You can answer it posthearing if you want, but I'm just trying to understand whether you actually had to take the plants down, and that's what we're seeing in our capacity utilization figures.

MS. SLATER: Yes. I think in terms of explaining exactly what changes to the plant result in that capacity level where the reduction occurs, that would be better to do posthearing if that's acceptable?

COMMISSIONER PEARSON: That's fine. I don't know how much the two firms know about each other's

business. I know they know a whole lot, but I wouldn't ask anyone to speak in a public setting like this about something that should be kept proprietary, so that's fine.

MS. SLATER: Thank you.

COMMISSIONER PEARSON: We have talked a lot about prices in the U.S. market, and you may have addressed this before, but is it your understanding that the prices in the United States generally are higher than in other major markets, other countries in general? Mr. Klett?

MR. KLETT: Commissioner Pearson, yes. I mean, Ukraine is a major supplier to other markets, so I think looking at what Ukraine gets when it sells to non-U.S. markets, and also we looked at what Russia when it sells to non-U.S. markets because Russia and Ukraine are really the two big, dominant exporters to non-U.S. markets so looking at their average unit values to other markets is a pretty good proxy for what's going on.

Now, those are on an FOB basis so you'd have to add ocean freight to actually to what the prices are in those markets, but we also looked from the other side, for example, some of the major export markets for Russia and Ukraine, Brazil, Turkey, India. We can also look at their import statistics, which in most of those countries are on a CIF basis, so we actually have kind of a landed price in those markets at the port.

On that basis, comparing those prices at the port to U.S. prices at the port from either U.S. import statistics or green markets, based on that analysis, it does look like U.S. prices are higher than elsewhere looking a number of different sources.

COMMISSIONER PEARSON: Okay. Would it be reasonable to assume that one of the reasons, perhaps the primary reason that the U.S. price is relatively high is that there are antidumping duty orders in effect on Russia and Ukraine, and if that's a correct assumption, how ought we to incorporate that knowledge into our analysis of pricing for this investigation?

MR. KLETT: Well, I think that's a correct assumption, and the reason is that Ukraine and Russia are such large suppliers to the world market that having import restrictions on those suppliers to the U.S. market actually does drive a wedge between the supply and demand conditions in the United States versus supply and demand conditions outside the United States that explains why prices in the U.S. are higher than elsewhere. In terms of how you factor that into your analysis, I think the flip side is that if you were to remove the order, you'd have more Russian and Ukrainian supply coming into the U.S. that that wedge would be broken such that U.S. prices would come down, so then you'd have --

COMMISSIONER PEARSON: Right. To that point, your Exhibit 45 in the posthearing brief shows an analysis of the effects on the U.S. industry in 2012 with the order and hypothetically without the order and because you won't want to discuss in the public session, for posthearing, could you comment on the change in the operating profit margin that's shown and give us an analysis of whether we should find that change to be significant?

MR. KLETT: I understand, Commissioner Pearson. We will do so.

COMMISSIONER PEARSON: Okay. Thank you. So, Mr. Klett, I might as well stay with you. Would we be reasonable if we were to assume that the relatively strong U.S. prices have encouraged the importation of nonsubject imports? I mean, we've seen a little bit of up tick in nonsubject imports here in the past couple of years. Are we drawing that in through attractive pricing?

MR. KLETT: I think that's a reasonable assumption especially because keep in mind that a lot of world trade is through trading companies who are very opportunistic in terms of maximizing price and maximizing profit margins so that for trading companies, they're kind of looking at okay, where can I get my best return because these trading companies don't just export to the U.S. They export all over the world, so when they make their

decisions as to where they sell, they're going to look at where can I maximize my volume. Where can I maximize my profitability so that higher prices in the U.S. would tend to incentivize those trading companies to export those nonsubject to the United States rather than elsewhere.

COMMISSIONER PEARSON: All right. Mr. Hopkins? I'm sorry. Ms. Slater.

MS. SLATER: May I just supplement just quickly? One important thing to keep in mind though it's not just the pricing which is attractive because even at times when the U.S. price has not been particularly attractive as during the course of the original investigation here is the volume. Because it's trading companies that are moving this product, Commissioner Pearson.

For them, it's a matter of how much can they make in terms of their markup, their piece of each ton, so if they can move 100 tons even if they just get \$5 a ton, it might be better than moving 10 tons, you know, with a much higher return, so it's a volume issue, and I think one of the things we presented in our brief was an indication that even when this market is not the highest because it tends to be still one of the larger importing markets, the market is very attractive, so certainly prices today look more attractive than other options for the Ukrainians, but the

size is equally as important given the way that this is traded.

So even if that were different, which was the case with the Ukrainian product in the original investigation. The Russians had already pushed the market to a pretty unhappy place as some will recall, so I would just suggest we keep that in mind, that it's not just about price for the traders. It's definitely a volume play.

COMMISSIONER PEARSON: Right. And Mr. Hopkins in his testimony actually pointed us to the increase in the last couple of years of nonsubject imports as something that we should take into account. He will not have seen the C table of course, but for those of you who have, could you either now or in posthearing put into context his concern about the last two years relative to what we see over the period of this investigation because the last two years have not been the high points of nonsubject imports, and so I just want to know how we should understand the significance of the recent increase.

MS. SLATER: Well, understand also that the C table we believe is missing a significant portion of the imports, which is one reason we went through the Exhibit 3.

COMMISSIONER PEARSON: Then give it to us both

ways in that case.

MS. SLATER: Okay.

COMMISSIONER PEARSON: Mr. Chairman, I think I'm about out of time, and I think I'm about out of questions, too, so why don't I stop here.

CHAIRMAN WILLIAMSON: Fortuitous indeed. Thank you.

COMMISSIONER PEARSON: Allow me to express appreciation to all of you who have been here with us today. This has been very interesting.

CHAIRMAN WILLIAMSON: Thank you. Commissioner Aranoff?

COMMISSIONER ARANOFF: Thank you, Mr. Chairman. Obviously, the Commission's prior opinions have focused a lot on global trading companies, and we've discussed them a lot today. I noticed in reading the Respondents' brief though that they make the claim that the new consolidated Ukrainian company has brought its global trading operation in house, that it isn't using these existing unrelated global trading companies anymore, but is in fact using its own trading arm.

I guess, I need to know whether that's something that you've observed out in the market, whether you think it would make difference in terms of conditions of competition in the U.S. market if the order were revoked.

Is there any information that you can supply, Mr. Klett?

MR. KLETT: Commissioner Aranoff, this is Dan Klett. We don't think it does. Basically, the point they were making is that because Ostchem now owns NF Trading, and they say all their exports are through NF Trading, and NF Trading would not want to take the risk of exporting to the United States, but in fact it really doesn't change anything because exports from Ukraine still go through the same trading companies now that they did before, and just a couple examples.

I mean, you can see Ostchem, which is the owner of NF Trading, and maybe the data source we use is sometimes not precise, so maybe it says Ostchem. It could have been exports from NF Trading, but in any case, Ostchem, and you see the last two instances, NF Trading, the importer of record is Transammonia, Mosaic Fertilizer and Helm Fertilizer. Those companies, those are the same importers, trading companies now that they were prior to this change or the change that Respondents claim is in their distribution system.

So there may be a change in the ownership structure or the paperwork in terms of how it's exported, but I really don't think there's been a change in the actual distribution system in terms of who is taking the product and who is importing into the United States.

COMMISSIONER ARANOFF: Okay. And when are these data from that you have up on the slide?

MR. KLETT: Yes. We use a source called Import Genius. You're also aware of PIERS, but essentially it's ships' manifest data from U.S. Census.

COMMISSIONER ARANOFF: For what years?

MR. KLETT: I think this is for 2012. I can go back and check. We have all the detail in our prehearing brief. Yes, Exhibits 14 and 26, but I think this is 2012. It could be some 2011.

COMMISSIONER ARANOFF: Okay.

MS. SLATER: Sorry. This is Valerie Slater. Also, Commissioner Aranoff, if you would look at the foreign producer questionnaire, response to question 1-3, you asked the Ukrainian respondents to indicate who their largest purchasers were for exports to non-U.S. markets for ammonium nitrate, so that's also a helpful indication for 2012, which is what I believe these data, but we'll double check that for you.

COMMISSIONER ARANOFF: Okay. So questions about nonsubject imports, there's been some discussion of the fact that Georgia is a new supplier to the U.S. market that's entered the U.S. market fairly frequently. What information do we have about the source of the product in Georgia, the size of the industry, who's bringing those

imports in, that sort of thing?

MR. KLETT: Yes. Commissioner Aranoff, we know who the sources are from the CNIF data, but that's confidential, but we can provide you who were the importers from Georgia. In terms of the source, we have information from Fertecon in terms of the, you know, what is the Georgian plant that's actually producing that as well.

MS. SLATER: There's also in our prehearing brief, we've given you some public information from importers' websites, companies' websites who discuss, it's a little bit sensitive just because we want to be careful not to reveal what was in the net import file, but there is a lot of really good information there just from the website about the companies who have set up to bring product and specifically from Georgia.

As to your question about the size of the industry, that's something we can certainly give you posthearing.

COMMISSIONER ARANOFF: Okay. Is Georgia a new supplier on the global scene or just new in the U.S. market?

MS. SLATER: That's a good question. Have you seen Georgia elsewhere?

MR. KLETT: Yes. Commissioner Aranoff, we've looked at imports into other countries, and Georgia has been a supplier to other countries as well, for example,

Turkey. They export to Turkey. We can also look at Fertecon data which has information on Georgian production and Georgian total exports so we can kind of look at to what degree Georgia has been export oriented over a longer period of time.

COMMISSIONER ARANOFF: Okay. That's sort of a subset of kind of the broader question that I was getting which is whether in terms of there have been changes during this period of review, have there been changes in this period of review to the traditional global supplier who the large suppliers are that are trading ammonium nitrate globally or maybe in terms of the purchasers, although I think we do have that kind of information we've discussed.

I'm just trying to assess whether there are any new significant global players in terms of supply or alternatively whether there are any previously large global suppliers that have become less significant during this period, just so we can assess what is going on in the rest of the global market.

MS. SLATER: In terms of supplying -- you're talking in terms of trading companies, Commissioner, or supplying countries?

COMMISSIONER ARANOFF: No, I'm sorry.
Producers.

MS. SLATER: Producing countries, yeah. Let

us look at that. Russia and Ukraine, you know, remain by far the two largest export sources. I mean, it's not a contest. We'd have to look at the data and see whether there has been much in the way of change once you fall down beyond that. I would be happy to do that for you posthearing.

COMMISSIONER ARANOFF: Okay, thank you.

(Pause.)

COMMISSIONER ARANOFF: With that, I think I don't have any further questions. But I do want to thank this panel very much for all your answers. Thank you, Mr. Chairman.

CHAIRMAN WILLIAMSON: Thank you.
Commissioner Johanson?

COMMISSIONER JOHANSON: Thank you, Mr. Chairman. I have just one more question. How do Petitioners respond to the Respondent's arguments that increases in domestic demand in Ukraine and a focus on nearby export markets make it unlikely that Ukraine would export ammonium nitrate to the United States? Thank you.

MR. KLETT: Commissioner Johanson, this is Dan Klett. First of all, even though Ukraine's home market is large and has grown, they still continue to export significant volumes to the world market. And furthermore, you also have to look at where those exports

will go. In other words, even if the home market is increasing, exports will continue to be a major part of -- in terms of absorbing their production, and based on relative pricing some of that will be diverted to the United States.

Number two, we know that the DF Group, which owns all the producers in Ukraine, is planning to expand capacity, and the magnitude of the expanded capacity can't absorb any projections in terms of what -- or any reasonable projections of what increases in apparent -- domestic apparent consumption may be. And I think another point is that the DF Group has actually invested in a new export port on the Black Sea. Or I say new. It has been within the last few years. In other words, Odessa and Yuzhnyy had been the major export ports in the prior POR. Sometime during the current POR, the DF Group made significant investments in an export port for bulk commodities, including fertilizers.

So that decision seems inconsistent with the notion that they will not increase exports if they've made an investment in actual export facilities.

MS. SLATER: I would also suggest, Commissioner Johanson, that if you take a look at the data, obviously without revealing anything confidential, even what we know publicly from published statistics, Ukrainian exports

over the last three years have -- four years have increased as domestic shipments have. During the period of time when they, you know, claimed they have been focusing on the domestic market, they've also been increasing their exports.

Exports in 2012 were, you know, up significantly, something like 30 percent from 2009, and had reached a level back to where they were just about at the high point in the period. So the increase in the home market focus, if that's what is happening there, hasn't stepped away from there, hasn't led them to step away from the export market.

To the contrary, it has increased it. And they also tell you the importance to them of continuing to be able to export. There is more about that in our brief, but they've given you some interesting, I think, and honest answers in their questionnaire responses.

In terms of the closeness of the market, I also would ask you, just because it's confidential, but in our prehearing brief we point out some of the things that they've discussed in their questionnaire response about the way in which they sell and their view of export markets and relative pricing. I can't say anything more than that, but I think if you look at that portion of our brief, you'll find it interesting.

COMMISSIONER JOHANSON: All right, thank you. That concludes my questions. And once again I would like to thank the witnesses for appearing hear today.

CHAIRMAN WILLIAMSON: Commissioner Broadbent.

COMMISSIONER BROADBENT: Thank you. I have no further questions.

CHAIRMAN WILLIAMSON: Does any other commissioner have any questions? If not, does staff have any questions for this panel?

MR. McCLURE: Jim McClure, Office of Investigations. Staff has no questions. I just want to thank the witnesses for coming and giving us this information.

CHAIRMAN WILLIAMSON: Okay. Thank you. Do those in opposition to the continuation of the order have any questions for this panel?

MR. LEWIN: We have none.

CHAIRMAN WILLIAMSON: Okay. Thank you. Okay. I think we'll conclude our -- thank this panel for coming and presenting their testimony. It's very helpful. We will take a lunch break, and we will resume at 2:10.

I just want to remind everybody this room is not secure, so if you have any business proprietary confidential information you should take it with you. And

so we'll see you at 2:10. Thank you.

(Whereupon, at 1:11 p.m., the hearing in the above-entitled matter was recessed, to reconvene at 2:10 p.m. this same day, Thursday, April 4, 2013.)

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

(2:12 p.m.)

CHAIRMAN WILLIAMSON: Good afternoon. I'm sorry. Good afternoon. You can begin when you're ready. Thanks.

MR. LEWIN: Good afternoon, Mr. Chairman, members of the Commission. Again, for the record, my name is Martin Lewin of the law firm of Kalik Lewin. I'm appearing on behalf of Ukraine's ammonium nitrate industry. I want to take this opportunity to thank the Commission for the opportunity to testify.

Unfortunately, the witness who I had hoped would testify on behalf of U.S. industry -- the Ukraine's industry -- a wholesaler in the southeast and central southeast, HGN Market, that purchases both domestic and imported product, is unavailable because the regions are in the midst of peak planting season.

The witness had intended to discuss the U.S. market for HDAN, the role of imports in that market, current shortage of ammonium nitrate in the southeast and central southeast HDAN markets his company serves that he estimates to be in the range of 125,000 to 200,000 tons, and finally, the limited role of imports of HDAN from Ukraine that might occur in the U.S. market if the order on ammonium nitrate from Ukraine is revoked.

In his absence, what I would like to do is touch upon the key issues for the Commission to consider in this review. This morning officials of the government of Ukraine presented some detailed testimony regarding aspects of the U.S. industry as well as Ukraine's industry and market. And I hope I'm not repeating myself too much, but there are some key points I would like to make.

The first is the dramatic decline in U.S. natural gas prices in recent years. And as you can see from the chart, which came from the Commission's staff report, the price of natural gas since 2011 going into 2012 and even today is extremely low. It has not been a moderate change. It has been a paradigm shift.

In previous investigations, the U.S. industry was viewed as a high-cost producer of AN, and now there is no question that they are if not *the* lowest-cost producer of AN in the world, they certainly are right up there. And also, both in the original investigation and in the first sunset review, the Commission stressed the significance of natural gas costs in the production of ammonium nitrate as a determinative factor of vulnerability.

Also, the Commission noted -- the Commission contrasted in previous -- in the original investigation the volatile and high prices for natural gas in the U.S.

with Ukrainian producers' access to lower gas at lower and less volatile prices than U.S. producers throughout the period of review. I have no intention of emphasizing Ukraine's high cost of natural gas, but the key factor is that the low cost of natural gas really affects the industry's performance and ultimately whether or not the industry is vulnerable.

The prehearing staff report details the change in condition and competition, particularly since the period of the first review. As can be seen, the price of natural gas going back decline by 49 percent. Going forward, it's important to note that although on a percentage basis there are projections of some cost increases, the Henry Hub spot price for natural gas, which the Commission used to prepare this table, projects the natural gas price to average \$3.51 this year, and \$3.74 in 2014.

And the staff report notes that according to the Energy Information Administration the Henry Hub spot price index estimates that it will remain below \$4 per million BTU in constant dollars through 2018. So whether there are issues relating to some increase or not, it really is irrelevant to the fundamental point, which is that the industry is a low-cost producer with an enormous competitive cost advantage.

To put it into some perspective, the low prices of natural gas in the United States are expected to remain 50 to 70 percent below prices in Europe for the foreseeable future.

Now, CF Industries has acknowledged the significant change in conditions of competition in its 2011 annual report. I put it up here simply because it spells the situation out completely. The increase in supply has translated to more favorable natural gas prices, and a sustainable advantage for North American nitrogen producers through a fundamental shift in cost structure.

Also, the 2011 annual report acknowledges that the natural gas prices will remain low for the foreseeable future. Now, the fundamental shift in the industry's cost structure is reflected in the industry's nitrogen fertilizer segment, of which the ammonium nitrate is a small part.

This is particularly the case for CF Industries, which noted in its 2012 form 10K that higher average selling prices for nitrogen fertilizers in 2012, combined with lower natural gas costs, resulted in record profitability. And you can see the profitability on this chart, which again is taken from the form 10K for 2012. And, you know, what really is notable here is that gross

margin as a percent of net sales was only 32.21 percent in 2010. But in 2012, it was 57.17 percent.

So in terms of vulnerability based upon economic performance, I think the issue of their profitability speaks enormous volumes.

The performance of the other HDAN producer, El Dorado, does not match CF's performance because as they have discussed, the company does not benefit from low natural gas prices. Unlike CF, El Dorado purchases ammonia rather than producers. And the Commission staff report explains the divergence between ammonia prices and natural gas prices, and the reasons for it. And I won't go into that. But El Dorado acknowledges the fact that it is at a cost disadvantage.

But it also announced plans to alleviate this disadvantage in the near future as it plans to construct its \$250 to \$300 million ammonia production facility at El Dorado. The company explained that the ammonia plant will produce all of El Dorado's facility's feedstock requirements, replacing ammonia currently being purchased at a cost disadvantage compared to ammonia produced for natural gas.

The performance of CF Industries and El Dorado in its ammonium nitrate operations are not discussed in their published reports. Also, much of the staff report

discussion of the industry's operations on HDAN during the period review is confidential. However, I urge the Commission to look at the industry's ratio of net income to net sales at table 3-8 on page 311 of the confidential staff report. And I urge the Commission to take particular note of the ratio of CF Industries' operating income to net sales at table 3-9 on page 314, which is cited on page 8 of our prehearing brief.

Without characterizing these figures, I ask the Commission to consider whether this industry can be considered vulnerable to material injury if the order on HDAN from Ukraine is revoked in light of these figures.

Going forward, the industry will be in an even stronger competitive position. Not only will El Dorado join CF Industries as a low-cost producer, when its ammonia facility is complete and it can purchase natural gas instead of ammonia to produce ammonium nitrate.

CF aims to take advantage of its reliable natural gas sourcing network through increasing its nitrogen fertilizer production capacity. In November of 2012, it unveiled a \$2.1 billion expansion of its manufacturing complex. The expansion includes new ammonia and urea AN plants at our complex in Donaldsville, Louisiana, new ammonia and urea units at our complex in Port Neal, Iowa. In addition, it is advancing its plans

announced in 2011 to invest between 1 billion and 1.5 billion in manufacturing capacity and/or product mix enhancements within its existing North American facilities over the next four years.

The industry's ability and willingness to invest hundreds of millions of dollars to expand its operations and improve its competitiveness further demonstrates that the industry is no longer vulnerable to import competition.

I would like to turn now to the situation in Ukraine and the fundamental changes in Ukraine's ammonium nitrate industry and Ukraine's domestic market since the period of the original investigation and first sunset review.

You've heard some testimony about the situation in the decade following the breakup of the former Soviet Union in 1991. During that period, Ukraine's agricultural sector underwent enormous upheaval, sending Ukraine's ammonium nitrate industry spiraling into a significant decline.

I have here a quote from a Foreign Agricultural Service report from 2004, where they were -- they traveled to see what was going on in Ukraine and were seeing the nascent recovery at that time. But the report going back points out that the sudden loss of state agricultural

subsidies had an enormous effect on every aspect of Ukrainian agriculture.

The contraction in livestock inventories that had begun in the late 1980s continued and intensified. Fertilizer use fell by over 85 percent over a ten-year period, and grain production by 50 percent. So when the Commission undertook its original investigation, Ukraine's industry was operating at about 15 percent of what it had been operating at a decade before.

Not only that, but it was operating in 1991, 1990, late 1980s, as part of the Soviet system. It had no information regarding markets, marketing prices. So what the Commission saw in 2000 was something which cannot be translated into the situation that exists 13 years later. I think that's a key point that needs to be understood because the Petitioners, you know, constantly are going back saying, well, it happened in 2000, it can happen again. It can't.

You know, official Ukrainian statistics confirm the decline in fertilizer use during the period. And again you can see here that the index of crop production declined by 50 percent, and fertilizer use, nitrogen fertilizer use, declined from 59 kilograms per hectare of sown area to 10 kilograms per hectare of sown area. And so here you see the use of nitrogen fertilizer in 1990 and

2000. And it presents a pretty stark picture.

By the time of the first sunset review in 2006 and 2007, Ukraine's agricultural sector showed some improvement as a result of its conversion to a market economy, as evidenced by indices of crop production, although it still lagged behind the levels of 1990. And you can see here again it's still below.

Now, nitrogen fertilizer consumption also rebounded, but remained substantially below the 1990 level. So as you can see, it was less than half of the level of consumption per hectare in 2005 as it was in 1990. However, during the period of the first sunset review, Ukraine's ammonium nitrate industry and its marketing of ammonium nitrate was unchanged from the period of the original investigation.

At the time, the industry consisted of four unaffiliated producers operating independently of each other without an understanding of either global or domestic pricing of HDAN, and without an active marketing structure. Export prices at the time were based upon export purchase prices from international trading companies, which we've heard a lot about, without an understanding of global pricing or global market conditions.

During 2010 and 2011, the industry in Ukraine

underwent a complete restructuring when Ostchem acquired majority stakes in each of the four Ukrainian ammonium nitrate producers. This consolidation enabled the industry to optimize its investment, production, marketing logistics and sales policies, while also decreasing operating costs.

Importantly, consolidation of the industry allowed coordination and rationalization of marketing both in Ukraine and globally. The restructuring of Ukraine's industry coincided with significant growth in Ukraine's domestic HDAN market. In 2011, the most recent year for official agriculture statistics, agriculture production in Ukraine reached an all-time high, more than 41 percent above the level of 2005.

Also during the period, per-hectare use of nitrogen fertilizers more than doubled, reaching 48 kilograms per hectare, almost five times the level in 2000. I think we have a little table showing that.

The level of nitrogen fertilizer consumption is expected to grow because Ukraine is experiencing an increase in fertilizer use across the board, which is projected to increase by more than 10 percent in 2013, and ammonium nitrate is a favored fertilizer in Ukraine.

The increase in consumption of nitrogen fertilizer in Ukraine in recent years is reflected in the

growth of domestic shipments of HDAN by Ukraine's ammonium nitrate industry. And here you can see what has happened, and you can see that it's more than doubled from 2001 to 2012. So this is the use in the domestic market. It has more than doubled.

Satisfying the growing demand for HDAN is the top priority of Ukraine's ammonium nitrate industry. In December of 2012, Ostchem acquired 16 warehouses strategically located in Ukraine's agriculture regions. Together these warehouses maintain a storage capacity of approximately 260,000 tons. These warehouses also serve as marketing entities for domestic sales of HDAN produced in Ukraine, enabling Ukraine's industry to expand HDAN sales to farmers, small local traders, and retail consumers.

Ostchem plans to add an additional 20 storage facilities for a total of 36, supporting all the principal growing areas in Ukraine, giving the company a competitive advantage in Ukraine over imports, which do not have this type of storage capacity. It's also looking into expanding its presence into the retail market, and is already packaging ammonium nitrate in three-kilogram bags for retail sales for local gardens, which are popular in Ukraine.

In the first sunset review, the Commission

described the AN industry in Ukraine as the picture of a large industry with significant excess capacity, unchanged from the original investigation. This is not the case now. As set forth in the foreign producer questionnaire response, in 2011 capacity utilization of Ukraine's HDAN industry was very high, and in 2012 the industry operated at virtually full capacity.

With domestic demand growing in Ukraine, even operating at full capacity Ukraine's ammonium nitrate industry cannot satisfy domestic demand and maintain 2012 export price levels. As a result, exports are likely to contract in the foreseeable future.

If you take a look at the foreign producer questionnaire response, the table that deals with these issues, what you can see is that the industry was very conservative in its projections on domestic shipments, but because it had some inventories in 2011 that they were able to use in 2012, in fact exports are going to decline. And if you look at the Fertecon data, which the Petitioners have included in their exhibits, you can see that Fertecon also projects that Ukraine's exports will decline.

So with the industry in an extremely strong position as a result of its competitive cost advantage and the production of ammonium nitrate, and Ukraine's industry operating at virtual capacity and focused on its growing

home market for ammonium nitrate, the Commission should determine that revocation of the antidumping duty order on ammonium nitrate from Ukraine will not result in a continuation or recurrence of material injury within a reasonable foreseeable time.

Thank you, and I look forward to your questions.

CHAIRMAN WILLIAMSON: Thank you very much, Mr. Lewin. We'll begin our questioning this afternoon with Commissioner Johanson.

COMMISSIONER JOHANSON: Yes. Thank you, Mr. Chairman, and I'd like to thank Mr. Lewin and Ms. Severson for appearing here today. As you all heard this morning, domestic producers contend that Ukraine is not at a competitive disadvantage vis-à-vis U.S. producers in terms of natural gas prices. They take issue with your claims respecting Ostchem's actual natural gas costs at page 32 to 34 of their prehearing brief, and further argue that regardless of what Ostchem is actually paying, any increase in Ukrainian natural gas prices has not impeded the Ukrainian industry's ability to produce and export ammonium nitrate.

Could you all please respond to their arguments now? Thank you.

MR. LEWIN: Yes. First of all, I would like to respond more fully in our posthearing brief because there

are some legal issues involved in the pricing of natural gas in Ukraine that may be relevant here, and I'd like to spell them out.

There has been a lot of discussion regarding the issue of natural gas prices in Ukraine. There has been discussions that somehow Dimitri Firtash has some back channel to extremely low natural gas prices somewhere. I have no idea. Mr. Firtash has explored and has purchased natural gas. He is allowed to under Ukrainian law. But those prices are not anywhere near U.S. prices.

The whole issue of natural gas prices in Ukraine effectively is a red herring because the real issue of natural gas relates to the competitive advantage of the U.S. industry in the U.S. market. And I submit that when you look at the data that is in the staff report relating to the operations of the industry, what you see an industry that is not vulnerable to import competition.

So we can talk about whether the price is \$425 per metric ton or \$280 per metric ton. But it really is irrelevant. Ukraine is not a low-cost producer, first of all. But really, it's the fact that the United States now, that these producers are very low-cost producers, and it gives them an extreme competitive advantage in the U.S. market.

You know, we can't talk in any detail about their

operations because it's confidential. But the public portion of the staff report talks about the fact that the net sales quantity of U.S. producers declined between 2010 and 2012. And at the same time, their net sales value went up because the price of ammonium nitrate in the U.S. market went up. And the staff report also talks about the fact that at the same time, their cost of goods sold went down. And to me, this is a most unusual situation, when an industry has -- sees prices increasing, its cost of goods sold going down, and it sells less. And it raises real questions to me about issues in the staff report such as capacity.

Now, I've talked about the fact that there are possibilities of product shifting. The Yazoo City facility can do product shifting. El Dorado had problems in its production. It had some outages. But any way you look at it, the question is why are they selling less when prices are going up and their costs are going down. And it makes no sense.

You can talk about the fact that non-subject imports have increased over this period, but it really doesn't explain it because are they losing sales to non-subject imports? Is that what is really going on here when you look at the price-cost situation? I honestly don't have a good answer. But the answer I do have is that

the record here is very clear. They are not vulnerable to import competition because of natural gas prices. And that really is what this whole issue of natural gas prices is about.

COMMISSIONER JOHANSON: And just remaining on the issue of natural gas prices, since that is a major part of the Respondent's argument, what is the situation in Ukraine right now regarding natural gas? Is their production -- and also, I know that in that region there is quite a bit of gas production in the region, if not in Ukraine itself. And it's my understanding as well that in Poland there is talk of beginning the process of hydraulic fracturing.

MR. LEWIN: There is talk about production of natural gas in the region. There is talk of natural gas production in Poland. But there was a recent article that quoted from the head of Gazprom, who was involved in the negotiations with Ukraine over natural gas prices because Ukraine was saying, oh, we're going to go into Europe, and we're going to buy natural gas. And the Gazprom response was, guess what, you cannot buy natural gas in Europe as cheaply as we're selling it to you.

So there is a global price that is very, very different than the U.S. price. Now, going forward into some future that is not in any foreseeable time frame, the

situation may change due to hydraulic fracking and using it in places, and there is even talk about it offshore, offshore development of natural gas in Ukraine. But there is nothing that is concrete in terms of any of these things that is affecting the fundamentals of natural gas prices that Ukraine is dealing with.

And so I said that at least for the foreseeable future there is no question that Ukraine is not going to be a low-cost producer of natural gas. And again, I'm not sure I agree with them that that part of the equation may not be relevant, frankly, because the real part of the equation is the U.S. natural gas prices.

COMMISSIONER JOHANSON: All right. Thank you for your response. Respondents contend that there is a quality difference between U.S.-produced ammonium nitrate and that produced in Ukraine which is sold for export. Can you elaborate on that? And also, are these quality differences, or are they different standards?

MR. LEWIN: No, no. First of all, they're not quality differences. They're quality perception differences. Don't forget, Ukraine has not exported ammonium nitrate into the U.S. market in 13 years. So everything we're talking about is perceptual. And one of the sources of that is in my affidavit, and he talked about it, talked about the fact that in his priority of

purchasing he purchases domestic first, then he purchases imports. And if Ukraine ammonium nitrate were on the market, he would import it, oh, at the end of the line, only when he absolutely needed it.

Now, you know, it's interesting that ammonium nitrate is viewed as a fungible commodity, and in some ways it is. But when you look at the staff report, you see some very interesting points regarding this. And I've been looking at page 216, where a purchaser makes a decision based upon producer, usually three times, sometimes one, never four. So almost half the time, who the producer is makes a difference.

Then I look at page 2-7, and I look at the ranking factors used in purchasing decisions as reported by U.S. purchasers. And what I see is that the first ranking item is quality, even ahead of price. You go further into it, and you look at what is very important, and again you see among the most important things, price is certainly one of them, but quality, meets industry standards, price consistency, reliability of supply. So there is a variety of factors, but quality is a very important one.

And finally, if you look at table 2-10 -- and this is a comparison of product by source country as reported by U.S. purchasers. And what you see is that with six purchasers, four say, well, it's comparable. But two

say it's inferior. And so -- and technical support service, the same thing.

So there are issues here other than price that makes a difference. So the perception of quality is what makes a difference. And this is really an important issue because on the one hand, yes, this can be overcome to some extent by discounting. But then your, quote, "premium" that the U.S. producer is talking about sort of diminishes a lot. But from a practical level, what you have to do is you have to reverse market perceptions. And this takes time.

So you're not going to see the market flooded with Ukrainian ammonium nitrate. And there are a lot of other reasons for that, and we can go into that later. But quality is a factor. It's going to take time to change those market perceptions, and that is part of the reason it is important.

COMMISSIONER JOHANSON: And once again, is the -- well, let me step back just for a minute. My time has expired, but I just would like to finish this one question. I see where the same product is sold in Ukraine, which is exported.

MR. LEWIN: Yeah.

COMMISSIONER JOHANSON: Okay. So it's all -- there are not, as far as you know, different

specifications for the product sold in Brazil, sold in Argentina, Ukraine, et cetera.

MR. LEWIN: No, no, no. As far as I know, there is not.

COMMISSIONER JOHANSON: Okay.

MR. LEWIN: Correct.

COMMISSIONER JOHANSON: Thank you then. I appreciate your responses.

MR. LEWIN: Sure.

CHAIRMAN WILLIAMSON: Thank you.

Commissioner Broadbent.

COMMISSIONER BROADBENT: Thank you very much. I wondered if you could -- I was going to have you respond to one of the statements I heard this morning by Mr. Klett, who was an economist with Capital Trade. I had asked him about the separation of natural gas prices from ammonium nitrate prices. And he said there are sort of other supply-and-demand factors that have driven this. What do you think explains the divergence in these prices?

MR. LEWIN: Here in the United States?

COMMISSIONER BROADBENT: Yes.

MR. LEWIN: I think in the United States it could very well be that the U.S. producers have either a limited availability or choose to limit the availability of their product -- again, I don't know which -- and that

everybody is nice and happy about the prices in the U.S. market.

Now, the other factor is the regulations and the restrictive nature of this market. It's very interesting because, yes, demand has declined because of government restrictions. But prices have gone up. And I think that that in part explains it. And, you know, one of the issues is --

COMMISSIONER BROADBENT: Wait. What explains it?

MR. LEWIN: What? I think that this price differential between the cost of production that is declining as a result and the price which is relatively high is due to the fact that it's a more restrictive regime, and there are, I assume, associated costs with that. And so I think that may be a factor.

But really, it may very well be that there are a limited number of suppliers into this market. Everybody is happy with the price.

COMMISSIONER BROADBENT: Great. And then do you see this sort of as a price magnet that other people will want to sell here?

MR. LEWIN: Well, you know, you can think about it that way except that when you really look at the market, everybody is selling not on a CIF basis here. They're all

selling them at delivered basis. Either they're importing it themselves and bringing it in, or they're -- and selling it directly, or they're importing it and sometimes warehousing it. But the market sells pretty much on a delivered basis.

And it was really interesting listening this morning to the discussion regarding the regulations. I will tell you that as a lawyer sitting here and trying to listen to them and trying to absorb them, I said, my goodness. And I've read them over. As a company that hasn't exported to the United States for 13 years, I have to tell you, this would be very daunting. And the idea that they're going to sell to one of these global trading companies, yes, they do sell to these companies sometimes in some markets. But most of their sales are direct to wholesalers and to dealers in third countries, where you don't have these difficulties. And frankly, there is a premium associated with receiving merchandise on a delivered basis to your warehouse when you have this restrictive transportation regime.

So looking at this market, yeah, there is a price premium. But I'm not sure that that price premium would translate into additional profitability for Ukrainian companies, and, you know, they're selling to many, many markets. You know, they sell to Europe. As a matter of

fact, you know, their sales to Europe increased recently, and, you know, the Petitioners make a real big deal about that.

But even during the period, when there was an antidumping duty order in place, they were exporting into the E.U. So they have the relationships in place. And so, you know, it's not surprising that the level would go up. You know, when they're selling it into Bulgaria, they dump it -- they put it on the Danube. When they sell it into Poland, they put it on a train and just cross the border.

But when they're trying to sell it to the United States and trying to sell it to a warehouse inland, it's a whole different world. And so I really don't think that the argument that, oh, all of a sudden there is going to be a massive influx of Ukrainian product, when their total exports are going to decline, is realistic.

COMMISSIONER BROADBENT: So you're predicting their total exports will decline?

MR. LEWIN: Their total exports, yes, will decline, absolutely. The reason for this is twofold. First of all, the peak export in 2012 reflected some inventories. They're operating at capacity, but they sold more than capacity. So you go into 2013, and if you look at the projections that they did, they kept the

domestic shipment projections constant. But their exports went down because they just didn't have that much product.

As a practical matter, their domestic shipments are actually going to go up because as the Ukrainian government people testified this morning, Ukraine's agricultural sector is growing. It is a growing exporter of agricultural products. The market is using more fertilizer per kilogram of sown area. So the demand for ammonium nitrate in Ukraine's home market is going to increase. And if they're selling at capacity and demand in their home market is increasing, their exports are going to go down, and it will.

COMMISSIONER BROADBENT: And what do you predict on capacity in the future?

MR. LEWIN: Well, it's an interesting point. There was a comment that was raised here earlier that Mr. Firtash made about 900,000 additional tons at one of the facilities.

COMMISSIONER BROADBENT: Right.

MR. LEWIN: And, of course, that duplication of that is that was going for exports. I'd like to read to you what that quote really says. It's in Petitioner's Exhibit 17. Let's see if I have it here. Yes. Let's see. Okay. "In particular, in 2013, Stirol concern is

to launch the construction of a new ammonium nitrate production facility as this fertilizer is meeting with the highest demand among Ukrainian agricultural producers." And then, quote, "At this time, we are launching the product of a new ammonium nitrate production plant construction, which will enable a 900,000 ton increase into the existing capacity. If we are committed to winning the domestic market, we have no alternative to expanding the capacity."

So what the business strategy of the group is, is to maximize its sales in the home market. The home market is substantial. It is more than double the size of the U.S. market, or it's approaching double the size of the U.S. market. I apologize. And it's growing. It's growing rapidly.

So, you know, Mr. Firtash is projecting into the future, and he's saying three, four, five years down the road, where are we going to be, and how much capacity will we need to satisfy that market.

So that quote, if you read the full quote, really, really confirms what we've been saying, and that is primary market for Ukraine, and the primary business strategy, is the domestic market.

COMMISSIONER BROADBENT: Okay. Looking at some of the other market restrictions or removal of those

around the world, do you have a sense of what was going on in Brazil and the E.U. in the decision to remove the dumping orders?

MR. LEWIN: Well, in Brazil, Brazil is a net importer, as you know, a substantial net importer. So I just think that in Brazil, it was probably some sense that it was needed, and therefore the imports weren't injuring anybody. I don't know the answer in the E.U. But it seems like the domestic producers in the E.U. felt that imports from Ukraine, even at the level that they've shot up to, were not really a threat to them.

It's the United States where the heavy restrictions on ammonium nitrate for security purposes have had really this impact. In many places around the world, demand is growing. And so the fact that these markets are open is merely an indication of the fact that demand is there.

COMMISSIONER BROADBENT: Okay. Thank you very much.

MR. LEWIN: You're welcome.

CHAIRMAN WILLIAMSON: Thank you. Can you tell us more about NF Trading, international trading and Ostchem.

MR. LEWIN: Sure.

CHAIRMAN WILLIAMSON: For example, what

products does it trade in? What countries is it active in? And is it active in the U.S.?

MR. LEWIN: Okay.

CHAIRMAN WILLIAMSON: And also, does it sell HDAN or other fertilizer products through other trading companies besides itself?

MR. LEWIN: Okay. Let's first talk about what NF Trading is. NF Trading is a classic trading company in the sense that it is there to study markets and to provide supply to markets. The difference is that it sells Ukrainian product. It is selling HDAN around the world in a lot of different markets. It is selling other products in a lot of different markets. Has it sold to the United States? Yes, it has. I think it has sold urea. It may have sold other products. I don't know. And I can check on that.

I don't know the extent to which it has utilized trading companies for its sales in certain markets of certain products. It may have used trading companies for some HDAN sales in some markets. It sells in a lot of different markets. I do know that in terms of the major markets, its neighboring markets, it sells to wholesalers and to dealers, and it sells to them. It does not sell through trading companies.

CHAIRMAN WILLIAMSON: Okay. Thank you. And

you say it does sometimes trade through other companies.

MR. LEWIN: It may very well. I think in the producer questionnaire response -- and I know what company is being cited in the response -- to the extent that it does sell to a trading company, it's very likely that it would be right up there because a trading company might deal in a lot of different countries, as opposed to them selling directly to one wholesaler in one country and two in another.

But in terms of the major markets that are their target markets, Turkey and the E.U. in particular they sell directly, from my knowledge. I will confirm that as well as try to be more responsive on the other aspects of your question.

CHAIRMAN WILLIAMSON: Good, okay. Thank you. Can you describe a competition that the industry faces from Russian product --

MR. LEWIN: Sure.

CHAIRMAN WILLIAMSON: -- in its home market and also in its export markets?

MR. LEWIN: Well, let me talk about the home market in particular because I've read about it and understand it a little bit. Obviously, Russian HDAN is a product which certainly could be sold in Ukraine, and Ukraine is a neighbor. And it has been sold. And so the

imports of HDAN, the overwhelming share are from Russia.

What has happened, though, is that in recent years imports have declined. And it has declined coincidental with the restructuring of Ukraine's industry. And as I mentioned in my testimony, the strategy of the industry in Ukraine is to sell in as many facets of the Ukrainian market as it can. So it has established warehouse operations because the importers don't have these type of warehouse operations. It's trying to sell in retail. It is selling these three-kilogram bags. I guess it's for all the dachas. But it's a big market for them, and they're talking about selling these in grocery stores and things.

So they want to saturate as much as they can the home market. And as a result of that, and as a result of their marketing domestically, imports are going down.

In global markets, I don't know, honestly. I can check. But of course they are competing in some markets. But, you know, it seems like there is enough demand for all. It is a growing, growing commodity globally, if not in the United States.

CHAIRMAN WILLIAMSON: Do you think the Russian exports, either in the home market or in the Ukraine or elsewhere, are putting price pressure on the Ukrainian product?

MR. LEWIN: Well, I mean, let me put it this way. You know, again this morning we've heard about how, oh, after Russia, Ukraine is the biggest exporter of ammonium nitrate. Well, put it in a little bit of perspective. Russia exports more ammonium nitrate than Ukraine has the capacity to produce. And it's three, four, depending on the year -- three, four, five times as much exports. So you have a whole different issue here, whereas for Russia's industry, given the size of its exports, yeah, I guess so. It really needs to continue this level of exports.

In Ukraine, yes, it will continue to export. But it will export less. And how that affects competition between the two, I can't say. Again, I can perhaps find some specifics there, but I just don't know.

CHAIRMAN WILLIAMSON: Okay. Thank you. The domestic producers have submitted data showing that the industry in the Ukraine can and does quickly shift its export markets. How do you respond to those charges?

MR. LEWIN: Well, I mean, it can shift its export markets. I mean, there is no question about that. But again, if you look at the confluence of these factors that are affecting the industry -- for example, Malaysia, I think Malaysia -- I've asked them about Malaysia, honestly. Malaysia seems to be something of an anomaly. And apparently from what I've been told, the industry

there, the dominant player in the industry buys every few years, and just has massive storage. This is what I was told.

And so, you know, they had one big sale there, or big amount. But their primary markets are fairly consistent. And, yeah, and maybe it shifts between one new country and another perhaps, or maybe Morocco one year less or more. But you're talking about Turkey. You're talking about the E.U. at some point. You're talking about Brazil year-in, year-out, because it's counter-seasonal. You're talking about Asia. You're talking about India. You're talking about Indonesia and Malaysia, because they do not have the levels of available supply to meet the exploding demand for ammonium nitrate in their market.

So that's the big picture. And when you go from there, yeah, they can shift. No question.

CHAIRMAN WILLIAMSON: Do they face -- the Ukrainian exports, do they face difficulties in markets, in the export markets, in terms of things like the security restrictions or other export restrictions?

MR. LEWIN: My understanding is there is nothing like those types of restrictions elsewhere. Again, they're selling, you know, to the wholesalers in Turkey and the dealers, and they're selling in the -- there

are certain packaging restrictions in the E.U., as I understand it, but nothing like the United States, no, no. It really has not been a problem for them, from what I can -- what I was told.

CHAIRMAN WILLIAMSON: And what do they think about the situation in the U.S. in terms of --

MR. LEWIN: Well, you know, they have not been in this market for 13 years, first of all. This entity that has come together in the last couple of years is looking at the United States, and is saying, you know, there may be a time when market conditions warrant their entry into the market. And as the affidavit that we included in our prehearing indicates, there are times when there are real shortages in the market. And if they have supply that's available at that time, they'll sell.

But the idea that they have a business strategy of flooding the U.S. market, there is nothing to support that. They have not studied the U.S. market. They basically have told me if they're selling in the U.S., it would be probably, you know, FOB CIF. Yeah, I mean, they're not going to sell -- they said they won't sell through trading companies because, heck, they're going to lose their mark-up.

So how much can they sell in that environment? I don't know. And again, I think it will be opportunistic

rather than by any means targeted regular sales.

CHAIRMAN WILLIAMSON: Okay. Why would they lose -- they wouldn't do the U.S. market because -- they wouldn't go through trading companies in the U.S. because they would lose their mark-up, but they would do that in other countries.

MR. LEWIN: Well, if they're selling any significant quantities --

CHAIRMAN WILLIAMSON: Okay.

MR. LEWIN: -- they would sell it, you know, directly, like they do in their other markets. I mean, if a trading company comes to them and says, do you have an extra 1,000 tons or 3,000 tons that we can pick up, yeah, they'll sell it to a trading company, sure. But if they're talking about really selling into the U.S. market, they're not going to sell it through one of these trading companies.

CHAIRMAN WILLIAMSON: Okay. I see the difference, good. Okay. Thank you. Commissioner Pearson.

COMMISSIONER PEARSON: Thank you, Mr. Chairman. Mr. Lewin, good to have you here today.

MR. LEWIN: Thank you. Pleasure.

COMMISSIONER PEARSON: This would be a request for a posthearing, okay?

MR. LEWIN: Of course.

COMMISSIONER PEARSON: There is some difference of opinion that has been expressed between the domestic industry and the Ukrainian producers regarding the price that's being paid in the Ukraine for natural gas for the manufacturer of high-density ammonium nitrate. I assume that your clients, if they wish, could provide us quite definitive information that could go into our final staff report regarding what they have been paying for natural gas over the past several years.

If you could get that for us, it would really help to answer this question. So that's my request and question for you.

MR. LEWIN: Thank you for the question. It's a big company, and this is a small piece of a big company. So I will ask them to provide as much information as I can.

COMMISSIONER PEARSON: Okay. Well --

MR. LEWIN: What I am able to provide certainly is information on pricing regulations that they must adhere to in the market. And then beyond that, I will try my best.

COMMISSIONER PEARSON: Okay. Well, this is a big investigation, and this is only a small part of it, but it's --

MR. LEWIN: I understand that.

COMMISSIONER PEARSON: -- a small but quite interesting --

MR. LEWIN: No. And I do appreciate it, although again I think it doesn't really go to the heart of the matter. It goes the -- it goes to yes, something that has been raised and that is important.

COMMISSIONER PEARSON: Right. And if you have questions about this, you can direct them to Mr. McClure or members of the staff afterwards because if Mr. McClure finds the information persuasive, then there is a reasonable probability that I also would find it persuasive.

MR. LEWIN: Sure, absolutely. We will do everything we can.

COMMISSIONER PEARSON: I didn't say complete certainty.

Okay, shifting gears. You've indicated that the United States is a low-cost producer because of the natural gas prices. Are you aware of any countries that might be lower-cost producers that would have both more cost-effective supplies of natural gas and production capacity for producing --

MR. LEWIN: I honestly am not, and the only country that could possibly come to mind is Russia. But other than that, as far as I know, the other sources don't

have this type of inexpensive natural gas.

COMMISSIONER PEARSON: Okay. This morning I spoke with Mr. Klett about his Exhibit 45 from the posthearing --

MR. LEWIN: Yes.

COMMISSIONER PEARSON: -- prehearing brief.

MR. LEWIN: Yes.

COMMISSIONER PEARSON: And that indicated that he laid out two scenarios, one a hypothetical, regarding if the order was revoked, what would be the effects in the domestic marketplace. This would probably also -- you can answer it more fully in the posthearing, but if you have anything that you would tell us about it now, I would be glad to hear because the key question for me is, the changes that he illustrates in the operating margin, if indeed we think his analysis is correct, should we consider that to be significant?

MR. LEWIN: It depends on what you mean by significant.

COMMISSIONER PEARSON: Well, we get to decide that.

MR. LEWIN: There are two types of significance here. Is it significant in terms of how one looks at the industry overall, or is it significant in relation to where it was or where it might be in terms of the specifics? I

obviously can't comment on the details, but I think the underlying assumptions are very troublesome to me.

You know, the elasticities that are in the Commission staff report are unchanged since the original investigation. And I'm not sure -- I'm not an economist. I don't know, but it seems to me that when you have a paradigm shift in costs, and when you have this level of non-subject imports that are supplementing the market, the question is how much displacement of U.S. production would occur, or would the displacement be displacement of non-subject imports?

And if you think about it, their hypothesis starts out with the idea that if Ukraine is going to enter this market, it can easily enter this market because it's going to go through these established international trading companies. Well, if the established international trading companies were going to be selling more, they probably could now.

You know, I mean, the real question is will it displace what they're selling now. And I just -- you know, I can't answer that, but I sure can ask it. And so I really start out with that as a fundamental question for me. And then I go further, and I say, okay, if we're talking short-term, and Ukraine has been out of the market for 13 years, it's not like a compass model where you're testing

it in an existing situation of imports.

They have to reestablish themselves in the market. And from our own perspective, we don't think that it's such an easy task, or that these significant volumes would occur.

So these are the questions that I have in relation to the model itself, and they obviously impact the results. As for the results themselves, yeah, I'll talk about them.

COMMISSIONER PEARSON: Okay. Just you had mentioned at the start of your presentation that you had hoped to have a witness here who I believe was a wholesaler involved in the --

MR. LEWIN: Yes, yes.

COMMISSIONER PEARSON: -- in purchasing and reselling both --

MR. LEWIN: Yes. He is -- yes.

COMMISSIONER PEARSON: -- imported product and domestically-produced product?

MR. LEWIN: Yes, yes.

COMMISSIONER PEARSON: Perhaps for purposes of the posthearing, you can pose to him the question if there was to be an increase in imports from Ukraine, is there sufficient marketing capacity on the import side to warehouse and absorb that product, or of necessity, if

Ukrainian product comes in, does it have to push out some other product?

MR. LEWIN: We can certainly ask that of him, and I will.

COMMISSIONER PEARSON: If the domestic industry has thoughts on that for posthearing, I'd be happy to hear them also because there are a lot of people in this room who know a whole lot more about this marketing system than I pretend to. Thanks.

MR. LEWIN: Thank you.

COMMISSIONER PEARSON: Okay. Also this morning we discussed the possibility that the U.S. price for ammonium nitrate is higher than in other countries, in part because of the existence of the antidumping duty orders against imports from Russia and Ukraine. If that's the case, either now or for posthearing, how would you advise us to analyze that? Does that, the reality that we have an antidumping duty order that may be encouraging the imports of nonsubject products, does that have some effect on how we should consider what would happen in the event the order against Ukraine is revoked?

MR. LEWIN: Well, I think it has two facets. I think the first facet goes to vulnerability, you know, and that is even if imports come in, are they really injurious under the peculiar set of circumstances that exist in this

case? So that really to me is one facet of it. And so, you know, I think that that to me is really the nub of the issue. And that is, you know, under a worst-case scenario -- I personally think under a worst-case scenario that they're hypothesizing the Commission should find that it's not.

But I don't think that the worst-case scenario is realistic. So that's the perspective I have.

COMMISSIONER PEARSON: Okay. Then the domestic industry directed us at one point to look at table 4-5 on page 4-8 of the staff report. And this provides among other information the unit values of Ukrainian shipments to countries other than the United States because of course they weren't shipping to the United States during this time frame.

MR. LEWIN: Right.

COMMISSIONER PEARSON: And if we compare those unit values with unit values for sales in the United States that are available elsewhere in the report, we see that there is a margin between them.

MR. LEWIN: Yes.

COMMISSIONER PEARSON: Why wouldn't we expect revocation of the order to lead to imports from Ukraine to take advantage of that gap in pricing between what we see in table 4-5 and what we see elsewhere for the U.S.

pricing?

MR. LEWIN: Well, part of it does relate to the difficulties that exist in the U.S. market and the difficulties of entering the U.S. market.

COMMISSIONER PEARSON: A little closer to your microphone.

MR. LEWIN: I'm sorry. Part of it relates to the issue of the difficulties of entering the U.S. market and perceptions and prices that could result from those perceptions. And part of it also goes to an issue of timing, and that's one of the issues that I have with the Petitioner's whole pricing analysis.

They have this pricing premium calculation that they've done, and they start off. They have one with green markets, which is very interesting because if you look at those numbers, they have prices to New Orleans for every month during 2012. And if you look at the U.S. import statistics, there were no imports into the U.S. market in about half those months.

So I ask, where are these numbers coming from? They're telephone survey numbers. I mean, so that sort of struck me first.

Then today I saw some other numbers. I saw numbers from the Census data. And I've looked at the Census data in New Orleans, and they're very interesting

because if you look at the numbers, what you see is there are two major exporters to that market. And the prices that they get in any -- in certain months vary by in some cases \$30, close to \$40, and the trend lines differ completely.

You have the Georgian prices going up between January and October, and you have the Netherlands prices going down. And so the question I have is how do you determine what the premium is because how do you determine what Ukraine's price could be at any given point in time?

It's very difficult to me.

COMMISSIONER PEARSON: Okay.

MR. LEWIN: So I have -- I don't know the answer honestly. I just know that what I am seeing is not persuasive because it tends to just blur all these distinctions.

COMMISSIONER PEARSON: Okay.

MR. LEWIN: And again, I go back to the fact that their exports are declining and that they have -- and that, yes, there may be a premium, and I don't know the premium.

COMMISSIONER PEARSON: We're blurring my time allocation here --

MR. LEWIN: Sorry.

COMMISSIONER PEARSON: -- rather. But, Mr. Chairman, my apologies. I asked a question that elicited

a long answer, and I had a short amount of time. So thank you.

MR. LEWIN: I apologize for that.

CHAIRMAN WILLIAMSON: Commissioner Aranoff.

COMMISSIONER ARANOFF: Thank you, Mr. Chairman. Welcome to this afternoon's panel. In response to one of my colleagues, you were describing a little bit about NF Trading. But more broadly -- and you also were describing Ostchem and saying it's a big company that sells a lot of other products. And I was going to follow up on that and ask you, can you describe the company to us a little more? Is it a new entity that was formed to purchase the Ukrainian ammonium nitrate producers, or was it an existing business prior to that? And can you give us a sense of the scope of the company and its ownership?

MR. LEWIN: Sure. And I think if you look at the DF Group website, you can see that. The parent company is DF Group, and DF Group is a diversified company. And Ostchem is its chemical sector, particularly focusing on the fertilizers I believe. That's my understanding. But when I was talking about higher up, I was talking actually about DF Group as being the principal company.

COMMISSIONER ARANOFF: And the parent company is owned by a single individual?

MR. LEWIN: I don't know the exact configuration of the ownership honestly. He is the controlling force in the company, yes.

COMMISSIONER ARANOFF: Is this company, DF Group, owns things only in Ukraine?

MR. LEWIN: No. No, not completely. He's concentrated in Ukraine. I believe there are some other assets outside of Ukraine. Again, I would have to go to the web site and look it over and double check, but it's heavily a Ukrainian company and Mr. Firtash is very focused on being a force in Ukraine.

COMMISSIONER ARANOFF: Is he a Ukrainian national?

MR. LEWIN: He is Ukrainian as far as I know, and yes.

COMMISSIONER ARANOFF: Let me go back to some comments that you were making earlier regarding the issue of possible quality differences or perceptions of quality differences between the U.S. and Ukrainian product now.

As I understood your testimony in response to one of my colleagues' questions, here you said there's not really a difference in quality, it's a perception issue. Which is inconsistent, at least to my mind, with what you said in your brief where you made specific references to powdery consistency and inconsistent prill sizing.

MR. LEWIN: Right.

COMMISSIONER ARANOFF: Have you abandoned that argument now?

MR. LEWIN: I was essentially quoting from, if I recall correctly, from the affidavit of a wholesaler who was characterizing the product.

I went back to, because it is a real issue. I went back to the company and I said can you explain these quality differences? They said quality differences. That's from a long time ago. And so, and I think in the brief I did talk about perception mostly. And it really comes down to the perception. The company itself would tell you oh no, no, we produce an excellent product. Companies do that. Again, I can't go beyond that, but it is old news that remains in the market. And you can see it in the staff report.

COMMISSIONER ARANOFF: Your argument is, as I heard you to say, that it would take a while to overcome that perception.

MR. LEWIN: It takes some time, yeah.

COMMISSIONER ARANOFF: Do you think that would depend on who the seller that the ultimate purchaser is dealing with is? If they were dealing directly with NF Trading which is the Ukrainian arm, maybe they'd say that might be a problem; but if they're dealing with another

person that they've dealt with before and they haven't cared so much about the source of the product and they know that their U.S. distributor is going to stand behind whatever they get, and that distributor says to them this stuff's fine. Is it going to make a difference?

MR. LEWIN: I can't say that wouldn't make a difference. I really can't. And it won't make a difference for every customer. It's a question of approaching a new market, which is what this is, with a preconception that does exist and how you deal with that preconception.

In my experience typically what happens is that people buy small quantities first and they test it in terms of its ability to be sold at the next level, because they're not selling directly to end users, and again there's experience there. It may not have an impact.

It does take some time. I'm not saying that it can't be overcome, but again, are we talking one season, two seasons? And how far forward do we want to go? What would the situation be in Ukraine at the time? Those are questions which I don't have an answer for. I just know that in the short run, certainly, it's problematic as far as the company is concerned and they would have to work at it.

COMMISSIONER ARANOFF: I'm having a little bit

of trouble understanding the marketing model that NF Trading is using when it's exporting outside of Ukraine. In some instances it appears to have its own distribution infrastructure. in the receiving country, and in other cases relying on other trading companies. Can you provide more information on that?

MR. LEWIN: I can tell you, because I've talked about this with the company, and the first issue is what does the market expect? And when they're selling to Turkey, when they're selling into the EU, they're not selling -- They're just selling to the wholesaler. Delivery is not a problem, or it's to the port and inland freight charges are not very much. So these sorts of infrastructure issues are not as critical.

COMMISSIONER ARANOFF: So you're saying they don't have any in-country infrastructure.

MR. LEWIN: The infrastructure we're talking about here.

This market is very different. If you look at the staff report number on the percentage of transportation costs that the domestic producers have for their products, and you do the numbers, it is different than other markets.

Then you say okay, but now the customers, they're buying delivered from other companies. They're

buying delivered to their warehouses from the domestics and they're buying delivered from these other ones.

So if Ukraine wanted to enter the market they'd have to sell it delivered. If they have to sell it delivered they'd have to deal with all these sorts of issues that they don't have to deal with in other markets which makes it less attractive to them.

Will they never sell? No, I'm not going to say that. I'm just saying that you have to look at what the situation is and it's not this clean, oh my goodness, look at the price differential and they're going to sell everything.

COMMISSIONER ARANOFF: You've mentioned that Ostchem has in the past and probably still does sometimes sell to global trading companies, and when that happens, when Ostchem or any producer sells to a global trading company, they don't know where the product is going. Right?

MR. LEWIN: I don't know. Honestly. I honestly don't know what those situations are for them.

COMMISSIONER ARANOFF: One issue in this case is, you've made a case that Ukrainian producers may have various reasons why they can't or won't or don't want to sell into the U.S. market. But the motivations of Ostchem might not necessarily be the motivations or cost

structures of trading companies. So if Ostchem is just selling to a trading company for whatever they have at the time and getting a favorable price, they wouldn't have any control and it wouldn't be Ostchem's marketing plan that would control whether the product got into the U.S. market and at what price.

MR. LEWIN: In discussions with NF Trading, what they said about the U.S. market is they would not sell through a trading company because they would lose their margins. I think what they're talking about is they would not sell a significant volume if the opportunity presented itself because of that.

Again, I know for a fact that they don't use intermediate resellers in a lot of their markets. So the question --

COMMISSIONER ARANOFF: Mr. Klett obviously did --

MR. LEWIN: What I'll do is I'll go back to them and develop a good sense of which market they do use a trading company in and why.

COMMISSIONER ARANOFF: That would be helpful.

MR. LEWIN: I appreciate the fact --

COMMISSIONER ARANOFF: -- respond to Mr. Klett's slide where he pointed to some particular transactions --

MR. LEWIN: Right. If you look at those --

COMMISSIONER ARANOFF: -- and the use of some trading companies.

MR. LEWIN: If you look at the product, most of them are, first of all, some of them are not trading companies as is a Yara. They're U.S. companies that import transammonia, for example. They have their facility here that they're dealing with. I'm not sure the extent to which they're dealing with them in that way.

The second thing is of course you don't have the same restrictions. So it's easier for the customers to deal with the product.

I think the dynamics are different and some of them were just small products. Again, I don't know the volumes, but we'll check on that.

COMMISSIONER ARANOFF: I appreciate that. What I think I personally would find persuasive is if you can walk me through all the different channels through which the product could get from production in Ukraine into the U.S. market and explain to me in each case why that's not likely to happen in any significant volume.

MR. LEWIN: I will ask the company to explain when it uses a third party trading company and when it sells directly to wholesalers or end users, mostly wholesalers.

COMMISSIONER ARANOFF: All right. Thank you

very much, I appreciate those answers.

Thank you, Mr. Chairman.

CHAIRMAN WILLIAMSON: Commissioner Pinkert?

COMMISSIONER PINKERT: Thank you, Mr.

Chairman, and I too thank the panel for being here today to help us to understand these issues

I want to begin with a question about Russian ammonium nitrate. In particular, does its role in the Ukrainian market make it more likely that Ukrainian subject merchandise would come to the United States in the event of revocation?

MR. LEWIN: It actually makes it, from today it makes it less likely. The reason is that the entire business model of the company is to expand its sales in Ukraine and thereby reduce the level of imports from Russia, and they've been successful in doing that.

The level of imports from Russia into Ukraine have declined in recent years. And when they talk about building warehouses or purchasing warehouses and establishing regional marketing presences, what they're doing is they're talking about competing with these imports and competing in a way that the imports cannot compete with them. Because the importers do not have that type of infrastructure, to use the word.

So revocation does not really impact it except

that over time there will be less imports into, from Russia; more domestic shipments; and therefore, less export availability.

COMMISSIONER PINKERT: Taking us back to the natural gas pricing issue, who's got the cost advantage as between the Ukrainian and Russian producers?

MR. LEWIN: Russian.

COMMISSIONER PINKERT: Then how does that impact your analysis of the dynamics in the Ukrainian market?

MR. LEWIN: I think where they are coming from is that they are using marketing to make sure that they reach every potential market and customer that they can in a way that the importers can't. That's really what their strategy is. I can read you quotes to that effect. So I honestly don't know how the competitive factors affect them in that way, but I do know that that is what their strategy is and that they have been successful thus far in reducing the role of imports from Russia into the Ukrainian market.

COMMISSIONER PINKERT: If you could, in the posthearing submission supplement your answer with any of the specifics about how that business strategy of limiting the imports from Russia into the Ukrainian market, how that business strategy plays out. That would be helpful.

MR. LEWIN: Sure. Absolutely.

COMMISSIONER PINKERT: Staying with this natural gas pricing issue, one of the questions that's been raised with respect to whether the U.S. industry has a natural gas cost advantage is whether we can compare the prices that are available to the producer in Ukraine, the prices of the natural gas available to the producer in Ukraine with the prices available to the producer in the United States. Can we really make a head-to-head comparison, a valid comparison based on the cost to the ammonium nitrate producer in the two countries?

MR. LEWIN: I think you can. I think the record has that information. I understand that the Petitioners are trying to obfuscate the issue by saying that who knows what the price is, and they really are obfuscating the issue. The real issue in this review is whether or not imports from Ukraine are likely to materially injure the U.S. producers if the order is revoked.

So the question shouldn't be whether the price of Ukrainian natural gas is 4.25 or 2.80 or anything like that. The real question is what is the effect of this low priced natural gas on the U.S. industry? Here the record is so clear, that it just says they're not vulnerable. They are not vulnerable. It says that they are not in a weakened condition as they might have been.

Everything in this record points to that. Commissioner Pearson's question earlier is to me a very relevant question about their entire econometric model and what it says, and their econometric model is their best case scenario. You look at it and you say okay, I can't speak any more to it, but I leave that to the Commission to do it, and it's their best case model. And I don't agree with the assumptions.

So all these other questions, I understand they've been raised, I understand the reason they've been raised, I understand the long history relating to Russian-Ukraine gas relations and issues surrounding that. It's a very big issue globally, it affects a lot of things. But I'm not sure of its real relevance here.

So I will provide every bit of information that I can get my hands on, and I hope the Commission takes it in that respect.

COMMISSIONER PINKERT: Thank you. But help me to understand what you're trying to say about the natural gas costs.

I thought I understood that the reason that you argue that the domestic industry has such an advantage in the marketplace is that they have a natural gas cost advantage vis-a-vis their competitors, for example potential competitors in Ukraine.

Now I think I'm hearing you say no, this is not a question of their cost relative to anybody else's cost. So I'm trying to understand what your point is.

MR. LEWIN: Sure.

First of all, they have a competitive advantage vis their competitors. That's the first thing. The reason we talk about it is because if you go back to the original investigation, if you go back to the first review, this was an issue. So this is a changed circumstance in that sense.

But the issue is what is the implication of that changed circumstance? And the implication of that changed circumstance is that prices are up, costs are down, sales values are up, prices are up, shipments are down. I don't know why. But if they have more, why aren't they shipping more? With prices up and costs down. And again, if you look at the results, it is truly to me a perplexing question. Whether it's a question of are they shifting product mix or is it problems with down time or bottlenecks, who knows. But all I know is that in terms of this issue, in terms of the review and whether or not they're vulnerable to the competition, I think the price of natural gas determines their economic performance and determines their vulnerability.

COMMISSIONER PINKERT: Is there any issue here

that U.S. producers are restricting supply to the U.S. market?

MR. LEWIN: No. Obviously there are non-subject imports coming in, significantly. I'm only talking about their own shipments. That's all I'm referring to.

CHAIRMAN WILLIAMSON: Restricting their shipments --

MR. LEWIN: I don't know. This is what the Commission noted in its staff report, that net sales quantity between 2010 and 2012 went down. Net sales value went up. The reason for this is because the unit values of ammonium nitrate went up. I'm working from the top of my head and I couldn't find the page, but this is what the Commission's staff report says.

Then the next sentence says that the cost of goods sold for ammonium nitrate has gone down.

I'm just taking these factors and I'm saying okay, what does it say in terms of this market? To me, if they had more they could sell more. So if they don't sell more, it raises questions to me. But then I look at what I can't talk about, and I'm saying that's very odd, when you look at what I can't talk about.

So that's really all I'm saying and it goes to the question of how you evaluate their vulnerability.

When you look at the economic factors that are for example cited in the statute, and you look at things like production and capacity and you say okay, how does that play in here? And I'm just saying that to me, there are only two things that really reflect the vulnerability of the industry. One is their operating performance; and two is their ability to do substantial new investment, new plant and equipment. Enormous quantities in a declining market.

So those are, to me, those are the factors that really relate to the industry's vulnerability. And what I perhaps misspoke or was not clear about was that the issues relating to their sales quantities, relative to the sales value, raises questions relating to things like production and capacity for me, and hopefully for the Commission as well.

COMMISSIONER PINKERT: Thank you very much.

Thank you, Mr. Chairman. I know that I went a little bit over my time.

CHAIRMAN WILLIAMSON: Thank you.

Commissioner Johanson?

COMMISSIONER JOHANSON: Thank you, Mr. Chairman.

Mr. Lewin, domestic producers note that Ukrainian producers ramped up their exports to Brazil

after Brazil in 2008 suspended its antidumping duty on Ukrainian ammonium nitrate. What lessons are we to draw from these circumstances?

MR. LEWIN: I would say that it's difficult to draw any lessons from those circumstances for a couple of reasons.

The first and foremost reason is, it was 2008. In 2008 there were four producers in Ukraine who were operating without a real understanding of the international markets.

Beyond that, Brazil is the largest import market and it's a counter-seasonal market. That is where they shipped in 2008 when they were not operating at capacity.

Now it's 2013, and in 2012 they were operating at capacity.

In 2013, if they maintain the same level of domestic shipments their exports are going to go down.

So you have a very different dynamic in place. So I would not draw any meaningful lessons from that.

COMMISSIONER JOHANSON: This next question is a follow-up to my previous question.

Respondents have argued that the Ukrainian industry's focus on other export markets such as the European Union and Brazil make it unlikely that it would direct significant volumes of ammonium nitrate to the U.S.

market in the event of revocation. But don't these other markets tend to show that Ukraine can rapidly ship exports of ammonium nitrate between markets?

MR. LEWIN: What it shows is that as Ukraine went from a condition of less than full demand in their home market and an industry which was again, fragmented, that trading companies could opportunistically buy things. That's what it shows. To me, the change that has occurred, and it's so dramatic. If you look at the growth of their home market in terms of its agricultural sector and in terms of its domestic shipments, and the growth going forward that the Ukrainian government is doing everything that it can to promote. It's changing laws on foreign investment, it views this as an important sector, that whatever the take-away was from the original investigation, the first review, or even the year or two after, it's very different.

The idea that you would average, for example, capacity utilization here, because that's the way it's done, honestly, I think it would be inappropriate. I think you have a trend line here. What you have is, you have it was up, and then there was a global crisis that hit and it went down, and then it went right back up and it's higher than it's ever been. That is the trend line that needs to be looked at in terms of evaluating Ukraine's

market and the industry. And it colors everything.

COMMISSIONER JOHANSON: Following up on that, I spoke with my staff on this yesterday. We were trying to figure something out, and this is a very basic question. We read all these documents, read the staff report, the briefs, et cetera. How is it that Ukraine became and remains such a massive supplier or producer of ammonium nitrate and such a major exporter in the world market? Once again, the brief of the Respondents talks about natural gas a lot. And as far as I know, Ukraine is not a major producer of natural gas. So we're trying to figure out why Ukraine is a major producer. What happened there?

MR. LEWIN: I'm not an economic historian, but I think the explanation lies in the history of Soviet industry. As the official from the Ministry of Economy and Trade Development discussed, Ukraine was the bread basket of Europe. Soviet policy was to build that industry. They built that industry by developing a fertilizer industry in Ukraine and as a result of that you had this substantial increase in agricultural production.

All of this took place before the collapse of the former Soviet Union. So when you ask that question, that's the reason. It's historic relating to Soviet economics. It was there. Then what happened? Then what's happened since then? That's the story of where we

are today. But that's the starting point.

COMMISSIONER JOHANSON: Do you by chance know the situation in Brazil? I know Brazil had a dumping order so they must produce.

MR. LEWIN: The only information I have about Brazil honestly is in the staff report.

COMMISSIONER JOHANSON: I understand. I don't expect you to be an expert on Brazil. It's hard enough being an expert on Ukraine and the U.S., I know.

Thank you for being here today. That concludes my questions.

MR. LEWIN: Thank you.

CHAIRMAN WILLIAMSON: Thank you,
Commissioner Broadbent?

COMMISSIONER BROADBENT: Thank you.

Ukrainian industry data that we have here indicates that capacity utilization has gone up steadily. What's going on at this point? Are they getting better at sort of tying their prediction to their capacity?

MR. LEWIN: I think what's happened is actually two concurrent agricultural developments. One is that the agriculture sector in Ukraine is recovering, it has recovered to a substantial extent because it was in a depressed condition. And that draws more fertilizer in as you get more growth.

Secondly, there is a recognition that even today there is an under-utilization of fertilizer. The fertilizer utilization rates are pretty low right now in Ukraine. I've seen some numbers. There is a fertilizer report on, I forget whether it's ammonium nitrate or nitrogen fertilizers which shows that it's a fraction of what the U.S. numbers are, or were. I'm sorry. It goes back a few years. So what you're seeing is, you're seeing -- And we had two of these graphs. You can look at them. One of them shows the growth in agricultural crops and the second one shows the growth in use of nitrogen fertilizers, and ammonium nitrate is the favorite fertilizer. So I don't know the exact numbers there, but when you put those two together and you start from where they were in 2000, this is what you see.

COMMISSIONER BROADBENT: Just to clarify once more, what are you seeing in terms of future capacity?

MR. LEWIN: What I see is that the industry sees significant growth opportunities in their home market for the reasons we've discussed, and wants to maximize its presence in the home market, and is dealing with capacity accordingly. Beyond the article, I don't know what Mr. Firtash's plans are. But if we accept what he's saying is something that he is absolutely doing, he explains why, that it's to me anticipated domestic demand. So that's

really what this is all about.

COMMISSIONER BROADBENT: Talking about, we have to get our hands around export orientation as we deal with it here. We often make distinctions between regional export markets and non-regional exports when trying to define export orientation. Ukraine is sort of stuck between a couple of continents there.

How do you define the neighborhood that Ukraine may or may not be servicing?

MR. LEWIN: Ukraine is on the Azov Sea. East of the Mediterranean. To its north and west are EU countries -- Poland and Bulgaria. Natural markets. Hungary, a natural market. River transport, rail transport, very similar to what the domestic producers are doing here.

Then Turkey is a historic trading partner, a major trading partner of theirs. It's right across the Azov.

So we start from there. Then you look at other markets. Israel. They're developing significant trade with Israel. Egypt. Again, right across. Then you move to the west and you see Morocco.

I would say if you look at the EU, Turkey and that Middle East, North African sphere around the Mediterranean, they're the natural market.

Then they look to the future and say, these other countries, where really demand is exploding. The Asian countries. It's not a neighboring market but it is a market that is the market of the future.

So if you look at their trade, that's the other one.

The last one is Brazil which is this enormous market which has enormous needs and which balances their production. That's the way they look at it, from what I can tell.

COMMISSIONER BROADBENT: How fast, is it your sense that sort of Malaysia and India are growing?

MR. LEWIN: I don't have numbers.

COMMISSIONER BROADBENT: But sort of exploding demand?

MR. LEWIN: Well yeah. It's exploding because the agricultural demand is exploding. Wealth is increasing in these countries. So the use of fertilizers to expand food is something which makes total sense. And that's apparently what is happening. That's why those markets are available to them.

COMMISSIONER BROADBENT: How would you advise us on prices? Kind of the best way to compare domestic prices with potential Ukrainian import prices, given our absence of any comparative price data.

MR. LEWIN: I'm looking at it and I honestly don't know. I have to think about it some more. Every time I've looked at something it seems to be problematic.

Again, I started off looking at the numbers with green markets. That doesn't make any sense. I looked at the NOLA numbers and they're all over the place. It depends on the month and it depends on the customer.

It's clear that this market is higher priced, but then you have to say why is it higher priced? And what are the characteristics of the market? And the characteristics of the market are that it's hard to get to the customer.

You can talk about oh yeah, go through a trading company. But I'm talking about if you're selling to a wholesaler in the United States, it's hard and it is costly. So you have to take all these factors into account.

I look at the, again when I looked at the inland transportation cost figure, just transportation costs, and I did the calculation, I said oh my goodness, and I compared it to the numbers that I have for like Turkey. There's no comparison.

So those are factors that weigh into this. It's not a simple calculation at all. I don't have a good answer. I just know that these answers that the

Petitioners are putting out are very simplistic and I think really lack probative value.

COMMISSIONER BROADBENT: Why do you think our domestic industry's not exporting to Brazil or --

MR. LEWIN: Wow. it's a question that I'm racking my brains out over this. Again, I go back to the question of do they have excess capacity? If they have excess capacity, why are they trying to export? Mexico. I would think there should be some type of market they could develop in their neighbor. I don't know.

COMMISSIONER BROADBENT: My last question here is, you were mentioning in Ukraine that they're going to be selling this product in three pound bags for gardens?

MR. LEWIN: Red bags.

COMMISSIONER BROADBENT: What is the difference in our sort of security sensitivity with respect to this product and theirs?

MR. LEWIN: I haven't gone through the regs completely. Listening this morning it sounds like it would be utterly impossible for the grocery store or the gas station to sell to drive-in customers, driving on a Friday afternoon into the countryside to do planting. I think there's just no comparison.

COMMISSIONER BROADBENT: Thank you very much.

CHAIRMAN WILLIAMSON: Thank you.

Commissioner Johanson earlier asked you about the prospects for development of natural gas production in Ukraine. So I'd be interested in that when you're going to provide some information posthearing.

MR. LEWIN: In terms of natural gas in Ukraine specifically. Yes. Absolutely.

CHAIRMAN WILLIAMSON: My final question is, and I asked this this morning. For posthearing, please comment on whether the projected date that El Dorado's ammonia plant will be operational is within the reasonable foreseeable future.

With that, I have no further questions.

I want to thank you.

I'll turn it over to Commissioner Pearson.

COMMISSIONER PEARSON: Just one question.

Please also comment on whether the possible expansion of capacity in Ukraine would happen within the reasonably foreseeable future.

MR. LEWIN: Yes.

COMMISSIONER PEARSON: With that I have no further questions. Thank you.

CHAIRMAN WILLIAMSON: Commissioner Aranoff?

COMMISSIONER ARANOFF: Just one request to parties on both sides for clarification.

I've asked and some of my colleagues have asked

questions about how product is distributed, and we've used the terms traders, retailers, wholesaler, distributor. I'm not sure I entirely understand how each of you is defining each of those terms. So when you use those terms in your posthearing brief, if you could just be clear about what it means to you. That would help me to understand where in the chain of distribution the various parties are.

Thank you very much. With that I don't have any further questions.

CHAIRMAN WILLIAMSON: Commissioner Pinkert?

COMMISSIONER PINKERT: I just have one additional question.

You heard the testimony earlier today about the El Dorado ammonia project, or ammonia plant project. The argument was that while that project is being financed and being put together, that that's a particular time of vulnerability for the company with respect to the impact of any other forces including potentially subject imports.

Do you have any response to that? There was a particular discussion of the vulnerability of financing.

MR. LEWIN: I don't know what their financing situation is. It just seems to me that the first question is return on investment. And return on investment is predicated on sales, the price/cost differential. And I go back to looking at what the potential is as seen in the

staff report for a company that uses natural gas in its production of ammonium nitrate. And I think that is really the decisive factor there.

Of course the other factor would be the strength of the company. If it's a strong company, a finance institution would be more likely to finance it. It looks like LBS is a pretty strong company.

So I have no doubt that if they want to do it they can do it. Whether or not this order is revoked.

COMMISSIONER PINKERT: Thank you very much. I have no further questions.

CHAIRMAN WILLIAMSON: Does any other Commissioner have questions?

Does staff have any questions for this panel?

MR. McCLURE: Jim McClure, Office of Investigations. Staff has no questions.

CHAIRMAN WILLIAMSON: Do those in favor of continuation have any questions of this panel?

MS. SLATER: No, thank you.

CHAIRMAN WILLIAMSON: Okay.

Thank you, Mr. Lewin. It's now time for closing statements.

Those in support of continuation have ten minutes directly, five closing for a total of 15 minutes.

Those in opposition to continuation have 40

minutes from Direct and 5 in closing for a total of 45 minutes. Our custom is usually to combine the time of direct and closing and I assume that's okay with everybody.

With that, thank you, and we'll see you in a couple of minutes.

MR. LEWIN: I'd like to thank the Commission for the opportunity and for the questions. Honestly, this has been a very interesting day. Thank you.

(Whereupon, a brief recess was taken.)

CHAIRMAN WILLIAMSON: You may begin when you're ready.

MS. SLATER: Good afternoon, thank you for the two minute break.

I have to say that I've been very excited all day to be able to participate in an official proceeding where, for those of you who are Seinfeld fans, one can use the word "shrinkage" in an official context. So this has been an interesting hearing, and I will proceed to use that term.

Let me just -- Obviously you've got posthearing briefs coming. We're going to address a lot of the questions that you've raised and some of the very interesting points that we heard from counsel for Respondents this afternoon, but I want to just hit a few points and then we will meet again in the posthearing

briefs.

Let me talk about natural gas, which is the elephant in the room.

The decline in gas prices in the last year and a half, two years, has been a really big benefit for CF. There's no question about it. We don't deny it. But the fact of the matter is for the only other remaining producer it has not created a benefit. For El Dorado, which needs to still buy its ammonia, you see the data. That business, that ammonium nitrate business is in serious trouble at the moment. And understand that natural gas is used to make ammonia. It's the ammonia that goes into the ammonium nitrate, so El Dorado's need to purchase that ammonia is creating a real stress for it at this point in time.

So the gas benefit, if we want to put it that way, benefits one part of the industry but not all of the industry.

But I think stepping back for just a moment, one thing that's important to understand and we've been able to look up a little bit of information since Commissioner Broadbent asked the question, gas prices that were prevailing during this industry in 1999 and in 2000 at the time when the cases were brought against Russia and then Ukraine, were basically in the same range as we have gas

prices today. So high natural gas prices in the United States were not a problem at the time of the original investigation, but yet there was injury and there was injury that was very swift and very serious because of the volumes and pricing that happened at that time in a market which was 2.5, 2.6 something like that, million pounds. Much larger than the roughly million pound market that we have today.

The gas prices that you heard so much about were simply from the perspective of one vulnerability factor that was affecting the industry very badly, but affecting the industry during the sunset reviews that were here. So I just wanted to clarify that.

We'd like to think maybe gas prices have normalized back to where they were in 2000, but the important point for you is that gas prices today are roughly where they were at the time that the original injury occurred.

I want to talk a little bit quickly about the contraction of the market. Mr. Lewin really doesn't discuss this very much. That's a factor which has become increasingly a problem for us. It was not a factor when we brought these cases. It has become a factor over time as the market has increasingly, post-9/11 for the most part, been subjected to all of these regulations. And the

one thing I would just want to leave with you today is that you need to understand what's coming down the pike is something very significant, very detailed, and very specific to this product. There is an entire statute requiring a regulatory regime for ammonium nitrate.

So it is something that everybody's watching carefully. Mr. Thomas, unfortunately, is living it at the moment. We will also try in our posthearing brief to give you even graphically an understanding of what parts of the supply chain are affected by which regulatory pieces, and I suspect once we put that together it will have much use even beyond this Commission.

Price comparisons. We took quite a lot of care in preparing those price comparisons for you. You haven't had Ukrainian imports here in a very long time, and we needed to look also and see what the situation was, particularly given claims of increased costs in Ukraine as to what the export prices looked like and what they would have to look like to land here.

So we gave you some extremely detailed pricing comparisons to the United States.

Mr. Lewin's comment that it just somehow didn't look right and it just wasn't right and it wasn't all there, let me just recount for you what we did.

For Ukraine we looked at data for two sources

as to what the FOB pricing is. We have public data from GTIS as to what Ukraine exports its nitrate for, and we have the producer questionnaire data which of course we didn't present here today. We used both of those sources to compare with U.S. prices, landed prices here from three different sources. We used Green Markets, which Mr. Lewin for some reason doesn't like even though the industry relies upon it. We used the importer questionnaires, the data that you collected from importers. And we looked at the Census AUVs.

This is a commodity product so we don't have a lot of problem with using that kind of data. Every one of those comparisons, two different sources of Ukraine FOB data, we took that FOB Ukraine data, we added to it both transportation and trader markup. The trader markups came out of your questionnaires. We were able to calculate information on trader markups from your questionnaires. So we added freight, we added trader markup, and we compared it to three different sources for pricing at the U.S. Gulf. Every single one. Every single mode of comparison showed a substantial, and very, very substantial underselling.

So all of that is in the brief. I'm sorry, it's all at Exhibit 30. If Mr. Lewin doesn't like the Green Markets or somebody else doesn't like it, we invite you

to look at one of the other modes of comparison that are there.

The market is very attractive from a price perspective, but again, don't forget, for the trading companies it's not necessarily true that it's all about price, and we saw this in the original investigation and we see it today. Volume sometimes trumps a better price that you could get somewhere else, but you can get the better price here.

I want to talk about U.S. capacity utilization.

Mr. Lewin seemed to be suggesting, which it's astonishing to me, but he seems to be suggesting that there's some reason beyond just the market that the U.S. industry isn't producing capacity, that they're making a decision to withhold production, or he's just not understanding what's going there.

Let me make it clear. Capacity utilization is not where it should be in this industry because the market is shrinking and U.S. producers can't sell more product so they don't make it. That is the simple truth, and I can tell you, each of these companies would love to be producing to capacity and putting those tons out in the market.

In this year in particular, late last year and this year, there is pressure from an additional wave of

non-subject imports which is adding additional problems on top of the shrinking market.

Why not export, he says? He's just scratching his head, trying to figure out why we're not exporting. That's not a hard thing to figure out. There are two plants. These plants are both situated -- Look where they are. These are situated precisely where they need to be to serve the U.S. market. They were built for that purpose. They don't have the capacity to readily move product for export. It wouldn't make economic sense for them to do that.

So this is when you build a plant for U.S. consumption, it's a little bit difficult unless you happen to be some place where you can get your product to an export port on an economically sound basis, it wouldn't make much sense for you to try and do that.

Let's just turn quickly to the industry in Ukraine. The one thing we know after this afternoon's session is there are a lot of things we don't know. We knew that. We knew there's a lot we don't know. I hope that you also see there's a lot we don't know. There's a lot of uncertainty about what's happening in Ukraine and we've known that in trying to watch the nitrogen industry there for a long time, and the nitrate industry now in particular.

The gas situation is very unclear. We've seen in their briefs that they claim that there's higher gas prices which may be in the Ukrainian economy in general, but for those producers it's less than clear as to what their gas prices are.

How do you compete with Russia if you've got \$12 gas? How do you compete in your home market? How do you match their prices in third country markets, which we know they're doing? And how do you decide to build a 900,000 metric ton plant if you've got \$12 gas? That's something that wouldn't make sense.

Our industry thinks long and hard about building plants, not nitrate plants, but building new nitrogen plants with \$4 gas. So it's something of an enigma and I think at this point it's probably going to remain unclear, but I think we move past it and we say what is clear. Whatever is happening there, they are continuing to price in a way which suggests that their gas costs are different or that their costs somehow don't get factored into their pricing.

We know that they're pricing in third countries at the bottom of the market. We know they're underselling the price, the cost-advantaged Russians in many cases. And we know that they're hoping somehow in their home market to compete with the Russians. So we can see what's

going on there more by looking at what's coming out and how they're pricing than actually what their gas prices may or may not be doing.

How do they export? Well, we do know how they're exporting because we know how they're exporting here from public information which we shared with you. We know how they're exporting to third countries because we have that information which we've shared with you in our brief. They continue to operate as many large exporters do by using trading companies. They may be doing some of this themselves in closer markets, but we know that as recently as 2012 they're still continuing to work through some of the big companies, and the names on that list were not small. These are Transammonia, these are Yara, these are companies that have big trading operations and know how to move commodity ag products like ammonium nitrate.

Finally, we have here in the sunset review an industry with divided performance. Mr. Lewin likes to focus on CF Industries, but I think you need to look at both companies. You need to take a look at all the facts that inform the U.S. to the current status.

One of two producers is right now on its nitrate business in pretty poor shape. We have a market that is unquestionably under pressure from new regulations and shrinking demand -- something which we didn't hear about

this afternoon. And in Ukraine we know we've still got a situation with a lot of exports and we have a very attractive market here. Attractive price wise, attractive size wise and attractive for some of the other normative reasons that you heard from the witnesses today.

With that I'm going to ask you to take all of these things into account. Thank you for your attention. WE look forward to sending you the posthearing briefs. And thank you again very much.

CHAIRMAN WILLIAMSON: Thank you.

(Pause.)

CHAIRMAN WILLIAMSON: You may begin when you're ready, Mr. Lewin.

MR. LEWIN: Yes, thank you again for the opportunity to testify.

There are several issues that I think the Commission should focus in on based upon the hearing and based upon the testimony today, and based upon the direction of the industry's argument.

Starting out, first of all, I appreciate that there is or has been a decline in the market here. That decline looks like it's stabilized. But what is really important is that concerns about a declining market seem to be contradicted by the investment in increased ammonium nitrate production capacity by the domestic industry, and

by investment in the weak sister in ammonia capacity to strengthen its competitive position.

So to me it goes back to the question of vulnerability and if this market is smaller than it was five or ten years ago it's the situation today and that's really the way the Commission should look at it.

The U.S. industry seems to feel that the Ukrainian industry is somehow obscured in terms of what's going on. Again, I really don't think that it's that much of a case.

The evidence is very clear that the economy in Ukraine has now driven the domestic market to record levels. It has now recovered after 13 years from a precipitous decline. It is an agricultural exporter that sees its future in agricultural exports. It is going to be using fertilizer at a greater rate per hectare than it has been. So all of these factors lead to a focus by the Ukrainian industry on its domestic market.

Again, if you look at the data it shows that the market is growing and is likely to continue to grow.

The capacity numbers are there. They're explained in terms of domestic production and exports, and they're operating to capacity.

So those are the real relevant factors here that defines the likelihood of substantial volumes of exports

coming into the U.S. market.

There's every indication that the export volumes from Ukraine will decline. Every indication of that. And again, if you look at the 900,000 tons that was again raised, it's very clear that the focus is on the domestic market.

The issue of prices is one that again has been raised. I am not questioning that the market relies on Green Markets numbers. That's the best information they have. And it's very current for them.

For example, the first week in April had information on prices at the end of March. There were no prices available in terms of CIF imports in March at that point. So it's a guesstimate. That's all I was saying. That here they're saying this is the CIF price in July when there were no July imports. How reliable is that? That's all I'm saying.

The census data is reliable. What I'm saying about the census data is that if you look at it you can say okay, what is the market prices, CIF Nola. You can see a market price of 3.20 per metric ton, you can see a market price of 3.8 per metric ton. You can see a wide range of prices at different times, and even at the same time period between different suppliers.

The question was properly raised. What prices

should be used? My answer is, I don't know.

I do know that this market is a difficult market if you're really serious about entering it and if you're a manufacturer who has a limiting supply of exports. It's not a market for the long term. It is declining. There is substantial non-subject import competition, and you have a very competitive domestic industry that is investing in it.

So as a long term proposition, why would you target this market? It doesn't make a lot of sense to me.

And one of the issues that is most disturbing is the fact that for some reason every quote from Mr. Firtash is used to suggest that somehow he's focused on exports. When you read the quote, he's focused on the domestic market.

The same issue exists with ports. Read the quote in Exhibit 17 on ports. The 10 million and 20 million tons that he's purchasing. Read the quote. What is he saying? He's saying this is necessary for the country of Ukraine. We need to modernize. He is saying that we need it for a variety of imports and exports. He's talking in the biggest of pictures.

Then in the last sentence he says besides, it will prevent us from being blocked in our exports of fertilizer.

These are the quotes that are being used and it really is troublesome to think about a situation where the facts point to a growing market in Ukraine, declining exports, and yet we keep getting hit over the head with this idea that all of a sudden exports are going to explode into the United States.

The issue is -- The issue is not really the price of natural gas in Ukraine. Ultimately we're not at the Commerce Department here testing on dumping. We're at the Commission and we're looking at injury. We're looking at questions of vulnerability. We're looking at questions of the likelihood of a substantial volume of sales.

So high cost/low cost on that end is really not relevant. But low cost on this end is very relevant because it determines how they can compete, how they can price their product effectively and how they can control market share.

Why they don't export, okay, the answer is it's too expensive. It's too expensive, but boy, it looks like they sure have an opportunity there given their cost structure.

So I can't say anything more about that.

We've talked about the economic model that they use and again, I think you really have to look at the facts. The modeling is very, very elegant in certain ways, but

Ukraine has not been in this market for 13 years. There's a certain dynamic that occurs under those situations. That's real.

This market is not the same market it was 13 years ago. There are big players in this market who have established relationships with Georgia, who are global players. There's really no reason for the Ukrainian producers to focus on this market. I'm not saying they're not going to sell in this market, but they're not going to export what would be a significant volume of their available exports to a market that is difficult, where there is a low cost producer. It's not going to happen.

They're going to continue to develop the market in Europe, next door. They're going to continue to supply Turkey, which is going to continue needing it. They're going to continue to supply the growing markets of Asia. And they're going to continue to supply Brazil.

So let's look at the facts here rather than all this speculation. And let's remember that this is not 2000. This is 2013. The world has changed since the original investigation in so many ways that the Commission really needs to take a fresh look at the situation as it exists today, and as it exists in particular not in 2007, but beginning in 2010 and '11 when these major changes occurred. Changes in the structure of natural gas pricing

in the United States, changes in Ukraine's industry, and changes in Ukraine's market. These are all factual recent developments.

If you look at those facts I believe a very strong case exists that revocation of the order is not likely to result in material injury.

And I thank you.

CHAIRMAN WILLIAMSON: Thank you.

Closing statement.

Posthearing briefs, statements responsive to questions or requests of the Commission and corrections to the transcript must be filed by April 15, 2013.

Closing of the record and final release of data to parties is May 2, 2013.

Final comments are due by May 6, 2013.

With that, I want to thank everyone who participated in today's hearing and this hearing is adjourned.

(Whereupon, at 4:32 p.m., the hearing in the above-entitled matter was adjourned.)

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CERTIFICATION OF TRANSCRIPTION

TITLE: Ammonium Nitrate from Ukraine
INVESTIGATION NO.: 731-TA-894
HEARING DATE: April 4, 2013
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: April 4, 2013

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).

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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: Gabriel Gheorghiu
Signature of Court Reporter