# UNITED STATES
# INTERNATIONAL TRADE COMMISSION

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| **In the Matter of:** | **)** | **Investigation Nos.** |
| **SUGAR FROM MEXICO** | **)** | **701-TA-513 and 731-TA-1249 (FINAL)** |

**Pages: 1 - 296**
**Place: Washington, D.C.**
**Date: Wednesday, September 16, 2015**


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THE UNITED STATES

INTERNATIONAL TRADE COMMISSION

IN THE MATTER OF: ) Investigation Nos.:
SUGAR FROM MEXICO ) 701-TA-513 AND
) 731-TA-1249 (FINAL)

Main Hearing Room (Room 101)
U.S. International Trade
Commission
500 E Street, SW
Washington, DC
Wednesday, September 16, 2015

The meeting commenced pursuant to notice at 9:30 a.m., before the Commissioners of the United States International Trade Commission, the Honorable Meredith M. Broadbent, Chairman, presiding.

APPEARANCES:

On behalf of the International Trade Commission:

Commissioners:

Chairman Meredith M. Broadbent (presiding)

Vice Chairman Dean A. Pinkert

Commissioner Irving A. Williamson

Commissioner David S. Johanson

Commissioner F. Scott Kieff

Commissioner Rhonda K. Schmidtlein

Staff:

Bill Bishop, Supervisory Hearings and Information Officer

Amy Sherman, Investigator

Joanna Bonarriva, International Trade Analyst

John Benedetto, International Economist

Tana Farrington, International Economist

Charles Yost, Accountant/Auditor

Courtney McNamara, Attorney-Advisor

Karl von Schriltz, Attorney-Advisor

Russell Duncan, Statistician

Elizabeth Haines, Supervisory Investigator

APPEARANCES:

Congressional Witness:

The Honorable Collin C. Peterson, U.S. Representative, 7th District, Minnesota

Embassy Witnesses

Kenneth Smith Ramos, Head of the Trade and NAFTA Office of the Ministry of Economy in Washington, DC

Salvador Behar, Legal Counsel for International Trade

Opening Remarks:

Petitioner (Robert C. Cassidy, Cassidy Levy Kent (USA) LLP)

Respondents (Paul Rosenthal, Kelley Drye & Warren LLP

In Support of the Imposition of Antidumping and Countervailing Duty Orders:

Cassidy Levy Kent (USA) LLP, Washington, DC on behalf of:

American Sugar Coalition and its members

Todd Landry, Farmer, Loreauville Harvesting, LLC

John Snyder, President, American SugarBeet Growers Association

Robert H. Buker, President and CEO, United States Sugar Corp.

Brian F. O'Malley, President and CEO, Domino Foods, Inc.

APPEARANCES (Continued):

David Berg, President and CEO, American Crystal Sugar Company

Dr. Colin Carter, Professor, university of California, Davis

Daniel Colacicco, Member, Cicco Commodities LLC

Deirdre Maloney, Senior Trade Advisor, Cassidy Levy Kent (USA) LLP

Robert C. Cassidy, Charles S. Levy, James R. Cannon, Jr. and Jennifer A. Hillman - Of Counsel

White & Case LLP, Washington, DC on behalf of Imperial Sugar Company ("Imperial Sugar")

Michael A. Gorrell, President and Chief Executive Officer, Imperial Sugar

Patrick Henneberry, Senior Vice President, Imperial Sugar

Gregory J. Spak and Kristina Zissis - Of Counsel

In Opposition to the Imposition of Antidumping and Countervailing Duty Orders:

Kelley Drye & Warren LLP, Washington, DC on behalf of:

The Sweetener Users Association ("SUA")

Barry Callebaut USA LLC

Tim Jones, Senior Manager of Procurement & Operations, Just Born, Inc.

John Brooks, Jr., Chief Operating Officer, Adams & Brooks, Inc.

Tom Earley, Vice President, Agralytica

Brad Hudgens, Economist, Georgetown Economic Services, LLC

Paul Rosenthal, John Herrmann and Grace Kim - Of Counsel

Rebuttal/Closing Remarks:

Petitioner (Robert C. Cassidy, Jennifer A. Hillman, and James R. Cannon, Jr., Cassidy Levy Kent (USA) LLP)

Respondents (Paul Rosenthal, Kelley Drye & Warren LLP)

I N D E X

| | Page |
|---|---|
| The Honorable Collin C. Peterson, U.S. Representative, 7th District, Minnesota | 11 |
| Kenneth Smith Ramos, Head of the Trade and NAFTA Office of the Ministry of Economy in Washington, DC | 14 |
| Opening Remarks: | |
| Petitioner (Robert C. Cassidy, Cassidy Levy Kent (USA) LLP) | 18 |
| Respondents (Paul Rosenthal, Kelley Drye & Warren LLP | 21 |
| Todd Landry, Farmer, Loreauville Harvesting, LLC | 27 |
| John Snyder, President, American SugarBeet Growers Association | 32 |
| Robert H. Buker, President and CEO, United States Sugar Corp. | 36 |
| Brian F. O'Malley, President and CEO, Domino Foods, Inc. | 41 |

INDEX

| | Page |
|---|---|
| David Berg, President and CEO, American Crystal Sugar Company | 45 |
| Jennifer A. Hillman, Cassidy Levy Kent (USA) LLP | 51 |
| James R. Cannon, Jr., Cassidy Levy Kent (USA) LLP | 58 |
| Michael A. Gorrell, President and Chief Executive Officer, Imperial Sugar | 63 |
| Tim Jones, Senior Manager of Procurement & Operations, Just Born, Inc. | 187 |
| John Brooks, Jr., Chief Operating Officer, Adams & Brooks, Inc. | 191 |
| Tom Earley, Vice President, Agralytica | 196 |
| Brad Hudgens, Economist, Georgetown Economic Services, LLC | 206 |
| John Herrmann, Kelley Drye & Warren LLP | 282 |

I N D E X

Page

Rebuttal/Closing Remarks:

Petitioner (Jennifer A. Hillman, Cassidy Levy Kent (USA) LLP) 287

Respondents (Paul Rosenthal, Kelley Drye & Warren LLP) 292

P R O C E E D I N G S

9:36 a.m.

SECRETARY BISHOP: Will the room please come to order?

CHAIRMAN PINKERT: Good morning. On behalf of the U.S. International Trade Commission, I welcome you to this hearing on Investigation No. 701-513 and 731-1249 involving sugar from Mexico. The purpose of the final phase of these investigations is to determine whether an industry in the United States is materially injured or threatened with material injury by reason of less than fair value and subsidized imports of sugar from Mexico. Documents concerning this hearing are available at the public distribution table. Please give all prepared testimony to the Secretary. Do not place it on the public distribution table.

All witnesses must be sworn in by the Secretary before presenting testimony. I understand that parties are aware of time allocations but if you have any questions about time please ask the Secretary. Speakers are reminded not to refer to business proprietary information in the remarks or answers to questions. If you will be submitting documents that contain information you wish classified as business confidential, your request should comply with Commission rule 201.6.

I would like to emphasize two requests for this hearing. First, because this is a relatively large proceeding, I would like to request that all witnesses and counsel state their name for the record before delivering testimony and responding to Commissioner questions. This will allow the court reporter to know who is speaking. Actually, it looks like there is only one request.

(Laughter)

CHAIRMAN PINKERT: Finally, on behalf of the Commission, I would like to express our condolences for the passing of your colleague and friend, John Greenwald. He was a highly esteemed colleague and friend to many Commissioners, past and present and we will miss him. Just speaking personally, I knew him quite well and I always enjoyed his remarks. He was very collegial and very effective.

Preliminary matters. Mr. Secretary, are there any preliminary matters?

SECRETARY BISHOP: No Mr. Chairman.

CHAIRMAN PINKERT: Very well. Will you please announce our congressional witness?

SECRETARY BISHOP: The Honorable Collin C. Peterson, United States Representative 7th District Minnesota.

CHAIRMAN PINKERT: Welcome, Representative

Peterson. You may begin when you are ready.

STATEMENT OF THE HONORABLE COLLIN C. PETERSON

REPRESENTATIVE PETERSON: Well thank you and thank you members of the Commission for the opportunity to testify today. I represent Minnesota's 7th Congressional District, which includes the heart of sugar beet country. I'm the ranking member of the House Agriculture Committee and was a Committee Chairman from 2007 to 2011.

Sugar is an essential industry in the United States and the American Sugar Industry generates more than one hundred and forty-two thousand jobs in twenty-two states and nearly twenty billion dollars per year in economic activity. In my home state of Minnesota, sugar beet growers and processors support twenty-eight thousand jobs and generate 3.4 billion in annual revenue. American sugar beet growers and processers are among the most competitive producers in the world. But they cannot compete with the huge surplus of subsidized and dumped Mexican sugar that flooded the U.S. Market in recent years.

Subsidized Mexican Imports adversely affected the U.S. Sugar Program by forcing the U.S. Department of Agriculture to remove more than one million tons of domestically produced sugar from the U.S. Market at a cost to the United States Government of two hundred and fifty-nine million dollars. Congress is especially sensitive to the negative impacts of unfair trade on our farmers and on the U.S. Agriculture Policy and I am committed to ensuring that the trade laws passed by Congress are respected and strongly enforced.

Congress adopted a special injury rule for agricultural products, instructing the Commission to consider whether unfair imports increase the burden on Government income or price or programs and that is exactly what happened in the cases before the commission today.

The injury rule is significant because Congress directed that to the maximum extent possible, the Secretary of Agriculture shall operate the sugar program at no cost to the Federal Government.  Unfair Mexican Imports cost the U.S. Government two hundred and fifty million dollars and fifty-nine million dollars as I said during the Period of Investigation for this case.

Undersecretary of Agriculture, Michael Scoose told the Commission that the suspension agreements are the solution to this problem.  The agreements allow the USDA to use the Sugar Program to ensure adequate domestic sugar supplies at reasonable prices and at no cost to the Federal Government.  Mexican Imports injured U.S. Sugar Growers and Processors because Mexico was the only supplier of sugar with unrestricted access to the U.S. Market.

Mexico abused that position by flooding the market with subsidized and dumped sugar and the department of Commerce found in its preliminary determinations that Mexico sold its sugar with a dumping margin of more than forty percent and countervailing duty margins of up to fifty percent. I believe the Commission should reach an affirmative finding of material injury that allows the suspension agreements to continue.

The U.S. Government, Beet and Cane Growers along with the Mexican Government and their Sugar Industry all agree that the suspension agreements are needed to restore fairness to the marketplace. The suspension agreements stabilize the U.S. Sugar Markets by requiring Mexico to compete on fair terms with our Industry. We need to keep the suspension agreements in place to avoid chaos in the U.S. Sugar Market.

Ending the agreements will undermine our Sugar Program, burden taxpayers and disrupt U.S. Mexico Trade and political relations. So thank you for your consideration and I appreciate the opportunity to be here today.

CHAIRMAN BROADBENT: Thank you Congressman Peterson. Are there any questions for the Congressman?

(Silence)

CHAIRMAN BROADBENT: Seeing that we have no questions for you, we appreciate your participation and it's great to have you here.

REPRESENTATIVE PETERSON: Thank you very much.

CHAIRMAN BROADBENT: Mr. Secretary, will you please announce the Embassy witnesses?

SECRETARY BISHOP: Madam Chairman, from the Embassy of Mexico we have Kenneth Smith Ramos head of the Trade and NAFTA Office of the Ministry of Economy in Washington D.C. and Salvador Behar the legal counsel for International Trade, both from the Embassy of Mexico.

CHAIRMAN BROADBENT: Welcome Mr. Ramos and Mr. Behar. You may begin when you are ready.

STATEMENT OF KENNETH SMITH RAMOS

MR. RAMOS: Thank you very much. Good morning members of the Commission. For the record, my name is Kenneth Smith Ramos. I am the head of the Trade and NAFTA Office of the Government of Mexico in Washington, DC. On behalf of the Government of Mexico I want to thank you for the opportunity to make this brief statement regarding the investigation of sugar from Mexico.

From the outset of this trade remedy proceeding, the Government of Mexico has been concerned about the grave risk of disrupting the delicate balance in trade in sweeteners between Mexico and the United States. By sweeteners, we mean U.S. Exports of high fructose corn syrup to Mexico and Mexican exports of sugar to the United States. There has been long-running tension over trade in sweeteners that long predates this proceeding.

The balance envisioned by the NAFTA negotiators was finally reached in 2008, when Mexico and the United States finally agreed that bilateral trade in sweeteners would be free of restrictions. Consequentially, the United States gave duty-free treatment to imports of sugar from Mexico while Mexico accorded, as it still does, duty-free treatment to high fructose corn syrup from the United States. The Government of Mexico has always believed that maintaining free trade in sweeteners was a correct, long-term path for both countries as it is beneficial for both producers and consumers and that if any problems would arise, the best course of action would be collaborative mechanisms between the countries.

Unfortunately, the preliminary results of this investigation ended free trade in sugar. However, showing their strong commitment towards the bilateral trade relationship, last year the Mexican and U.S. Governments and the Sugar Industries of both countries engaged in intense negotiations in order to reach agreements to suspend the anti-dumping and countervailing duty investigations and consequentially avoided a trade crisis and unforeseeable consequences.

The two suspension agreements reorganized sugar exports from Mexico to the United States. The agreement suspending the countervailing duty investigation established the formula for determining the volume of Mexican Exports of sugar that will be allowed into the United States based on the needs of the U.S. Market. The agreed formula ensures that the volume allocation of sugar to Mexico will not create a surplus in the U.S. Market and furthermore ensures that the Domestic Industry is not harmed as it takes into consideration all of its production.

The agreement suspending the Anti-Dumping Investigation established a reference price for sugar, exports from Mexico to the U.S. Market based on the degree of polarity of the sugar. Both agreements established mechanisms for consultation, monitoring and enforcement of their provisions and clear rules and procedures for Mexican Sugar Exports.

On February 5, 2015, the Ministry of Economy published in Mexico's The Adiu Fisal, Mexico's version of the Federal Register, implementing regulations for the allocation of the Mexican Sugar quota in accordance with the suspension agreement. The implementing regulations provide that all sugar exports from Mexico, regardless of their destination, are subject to an export license and provide a detailed procedure, which was designed to ensure comprehensive compliance with the terms and conditions of the agreement.

These rules also provide that exports of sugar to the U.S. must comply with additional requirements including the provision of information. This procedure contemplates the involvement and coordination of three different agencies of the Government of Mexico; The National Committee for the Development of Sugar Cane, Cona de Suca, the General Directorate for Foreign Trade at the Ministry of Economy and the General Director for Light Industry also of the Ministry of Economy, since December of 2014, which is when the agreements came into force, Mexican sugar exports have been within the export limit quota for each of the applicable export limit periods established by the agreement.

This fact, combined with the exports of sugar above or at the reference price agreed in the Anti-Dumping Suspension Agreement, showed that the sugar trade has been adjusted and is benefiting the U.S. Sugar Industry. In the view of the Government of Mexico, Mexican Exports of sugar have not been the cause of injury or threat thereof to the U.S. Domestic Industry. Nevertheless, the Suspension Agreements constitute an acceptable and livable solution to a potentially critical situation for the bilateral trade relationship between our two countries. Thank you.

CHAIRMAN BROADBENT: Are there any questions for the witnesses?

(Silence)

CHAIRMAN BROADBENT: Okay. Thank you very much for your participation. Mr. Secretary, let us now proceed with opening remarks.

SECRETARY BISHOP: Opening remarks on behalf of Petitioner will be by Robert C. Cassidy, Cassidy Levy Kent.

CHAIRMAN BROADBENT: Welcome, Mr. Cassidy.

OPENING REMARKS OF ROBERT C. CASSIDY

MR. CASSIDY: Thank you Chairman Broadbent and Commissioners. My name is Robert Cassidy. I am a partner in the Law Firm of Cassidy Levy Kent. We are appearing before you today on behalf of the American Sugar Coalition which represents all of the sugar beet and sugar cane farmers, all of the raw cane sugar millers and processers and refiners who produce over ninety percent of the refined sugar in the United States.

This is not a complicated case. Mexican sugar production has increased dramatically in recent years, in large part to good Mexican Government Subsidies while consumption of sugar in Mexico has declined. The inevitable result during the Period of investigation was a huge structural surplus of sugar in Mexico. Most of that surplus sugar was exported to the United States. Imports from Mexico increased from one million short tons raw value in crop year 2011-12 to over two million tons in the next two crop years.

The Mexican share of the U.S. Market increased from ten percent in 2011-12 to over eighteen percent in 2013-14. Why was the surplus exported to the United States? The Mexican Exporters and Producers are not here today to explain why but the answer is clear. Mexico is the only foreign or domestic supplier whose access to the U.S. Market is not restricted to buying marketing allotments or terra freight quotas.

What happened in the U.S. Market when it became clear that Mexico had a huge quantity of sugar available for export? Sugar is a commodity. Mexican Estandar and refined sugar are fungible with domestic and 3rd country raw cane and refined sugar. Domestic demand for sugar does not increase or decrease in any significant way in response to changes in the price of sugar. The consequence is that consumers of sugar, be that cane sugar refiners or candy makers, buy from the lowest price supplier.

Any supplier who wants to stay in the market must meet the price of the lowest-priced supplier. During the Period of Investigation, the lowest-priced supplier overwhelmingly was Mexico. The average Unit value of Mexican Imports dropped from over eight hundred dollars per short ton raw value in crop year 2011-12 to four hundred and sixty-nine dollars per ton in 2013-14.

As a result, the U.S. Market prices for raw and refined sugar collapsed. Industrial users would have you believe that this price collapse was caused by the decision of the Domestic Industry to import sugar from Mexico. What the industrial users do not tell you is that the Domestic Industry always imports sugar. It must import sugar because production of sugarcane and sugar beets in the United States does not supply enough sugar to meet U.S. demand.

The Domestic Industry has been importing sugar for years without collapsing domestic prices. Prices collapsed when unlimited supplies of Mexican sugar became available. To unload their surplus, Mexican Exporters offered lower and lower prices to get consumers, including U.S. Refiners to change suppliers. Other suppliers in the market had to lower their prices or leave the market. Many of the traditional TRQ Suppliers did in fact leave the market. The Domestic Industry cannot leave the market so it lowered its prices.

As the record shows, the impact of the low-priced Mexican Imports was devastating. During the Period of Investigation, the Domestic Industry lost billions of dollars in sales revenue and in crop year 2013-14 the Industry had an operating income loss of several hundred million dollars. Moreover, the U.S. Department of Agriculture had to remove over one million tons of sugar from the Market at a cost of almost two hundred and sixty million dollars during the period of investigation.

The Industrial Users devote much of their pre-conference brief to an attack on the Sugar Program. Assertions about the merits of Sugar Policy have no bearing on the issues before the Commission today. U.S. Sugar Policy is a condition of competition in this investigation. Assertions that the sugar program could have or did prevent material injury to the Domestic Industry by Imports from Mexico are contradicted by the facts on the record.

Assertions that some vague collaboration between the U.S. and Mexican governments did or could prevent material injury by reason of dumped and subsidized Mexican Imports is contradicted by the fact that as the Mexican Government Witness just said, the U.S. and Mexican Governments decided they had to enter into Suspension Agreements as the "solution to a potentially critical situation". Thank you very much.

SECRETARY BISHOP: Opening remarks on behalf of Respondents will be given by Paul Rosenthal, Kelley, Drye and Warren.

CHAIRMAN BROADBENT: Welcome, Mr. Rosenthal.

OPENING REMARKS PAUL ROSENTHAL

MR. ROSENTHAL: Thank you, Madam Chairman. Before I begin my opening remarks I just wanted to say a word or two about John Greenwald. I appreciate the comments by Vice Chairman Pinkert about him. He was a great lawyer and advocate and a wonderful person and a terrific adversary. The trade community will very much miss him. My sympathies to his partners and his clients who he served very, very well and I respected him enormously. I was very much looking forward to arguing against him today and I'm sorry he's not here to do that.

With that said, his partners on the Commissioners side are fabulous and I know my team and I will have our hands full today. I'm looking forward to that. So with that, I would like to begin my opening remarks.

This is an extraordinary hearing and what might seem like an unusual move, the Mexican Respondents at the preliminary stage of this case have moved over to the other side of the hearing room and joined hands with the Petitioners in support of a suspension agreement. It does not take a lot of brain power to figure out why they like this deal. Restricting supplies to the market and guaranteeing higher prices? Gee, it's no surprise that the Petitioners are happy with that.

Guaranteed access to the U.S. Market and higher prices, it's no surprise that the Mexican Industry likes that too. While that deal might smell to others, it's no surprise that this is beginning to feel like and sound like a proverbial garden party for what used to be the

Petitioners and the Respondents. A real garden party.

Well, for today I would just like to tell you that I'm here on behalf of the skunks. We don't like this garden party. It is not a good thing. Not about public policy but there is no justification in this record for a determination in this case. Now, last month begins my fortieth year in being in Washington and I've learned a couple things in that time. The first one is even paranoids have enemies and the 2nd one is that even protectionists can be injured by imports.

What I mean by this last point is that a Sugar Program is considered by many to be bad public policy and many people in Washington and elsewhere think the program should be dismantled. This case isn't about protectionism or the wisdom of the Sugar Program. And with this, I agree with Mr. Cassidy even though he mischaracterized our brief. The Petitioners should not lose this case because they have supported the protectionist policies that have remained in place for many years. But they should lose this case because the facts and the law compel a negative determination.

While I agree with Mr. Cassidy that this case is not about the wisdom of the Sugar Program or that policy, that program is, and we argued in our brief, an important condition of competition in this investigation. Indeed, changes in the Sugar Program, along with other Government Policies have had a profound effect on the Domestic Industry. The program has been able to insulate the Domestic Producers from harm from any source and not just imports.

While the 2008 provisions to the program had increased Market volatility, overall the program helped encourage record profits for this Domestic Industry. Another government initiative the Joint U.S./Mexico Sweeteners Working Group acts as a belt to the supportive suspenders of the U.S. Sugar Program. This extraordinary mechanism has helped to ensure that the U.S. Market is not disrupted and has ensured that imports from Mexico have not and will not harm the Domestic Industry.

Now we all know that Government programs don't always work as intended and indeed the modifications to the sugar program in 2008 had the unintended effect of increasing volatility. But overall, these Government programs have done a spectacular job of preventing the Domestic Industry from being harmed. How do we know? Let's look at the facts.

First, there has been no injury as an effect due to the import volumes from Mexico. The Mexican Imports did not displace Domestic Production, they merely displaced TRQ Imports. The imports from Mexico indeed, as Mr. Cassidy acknowledged, were largely controlled by U.S. Producers and didn't displace U.S. Producers' volume. The imports were necessary, again as Mr. Cassidy acknowledged, and I'm so glad we find some areas of agreement so early in this proceeding, because the U.S. Producers cannot supply the market. They need imports for supply reasons and for quality reasons.

Second, the imports from Mexico did not have egregious price effects. While prices went down over the period of investigation, those declines were from the result of normal agriculture market cycles and other factors having nothing to do with Subject Imports. Moreover, those price declines were from record highs. Prices merely returned to normal, non-injurious levels. There is absolutely no correlation between imports from Mexico and declining prices.

Your pricing comparisons corroborate that conclusion. The vast majority of the buying of imports from Mexico oversold the Domestic Product and any declines in price are due to the Domestic Industry as the USDA, our witnesses and other record information made clear. So without causing any adverse volume and price effects, it is not surprising that the overall Domestic Industry is not suffering material injury due to imports from Mexico.

Indeed, as the U.S. Producers are responsible for the increase in Subject Imports, it would be illogical as well as contra to the record for those imports to have injured the Domestic Industry. There is simply no material injury that can be ascribed to Subject Imports. So we hope you will ask the questions of the Producers of the Domestic Industry who is responsible for the imports? Whose sales are really displaced? Why did they purchase the imports and who did the price on the Domestic Market?

You will see when you hear those answered questions that there is no basis for an affirmative determination in this case.

MR. BISHOP: Would the panel in support of the imposition of the antidumping and countervailing duty orders please come forward and be seated?

Madam Chairman, all witnesses on this panel have been sworn.

(PAUSE)

MR. CASSIDY: Madam Chairman, before we begin, let me say on behalf of Cassidy, Levy Kent that we thank the kind words of the Commission and of Mr. Rosenthal about my partner of 31 years, John Greenwald. I can assure you he was eagerly waiting for this event. And worked very hard on the prehearing brief. That was the last thing that he did, as a matter of fact. And we miss him greatly. But we will go forward and know that he knows that we've got it right.

Thank you.

CHAIRMAN BROADBENT: Thank you, Mr. Cassidy.

OPENING REMARKS OF ROBERT C. CASSIDY

MR. CASSIDY: This morning I want to bring to your -- to the Commission's attention that we have in the audience farmers and cane farmers and beet growers from 11 states who have a deep, deep interest in this investigation and in the Commission's work. And because of that I would like to start our presentation this morning with Mr. Todd Landry, a sugar cane grower from Louisiana.

STATEMENT OF TODD LANDRY

MR. LANDRY: Good morning. My name is Alfred Todd Landry. I'm a fifth-generation sugarcane farmer from Louisiana. I grew up in a small, rural Louisiana community of Louisville surrounded by sugarcane fields.

I began farming in 1985 and I currently farm land in Iberia and Saint Martin Parishes. I operate the farm with my wife Kelly, my brother Patrick, and my son Nevin. I am Vice President of Cajun Sugar Cooperative at Rosherdon Mill located in Iberia, Louisiana. I am also a member of the American Sugarcane League a petitioner in this case.

I am pleased today to be accompanied by a delegation of my fellow Louisiana sugarcane farmers. The last two years have been a rollercoaster ride for Louisiana sugar growers. We have gone from very good prices in 2011 to unsustainable prices in the crop year 2012 and 2013.

Sugarcane is a grass. When you cut it, it grows back. This regrowth is called stubble. It can be cut in up to four different years. Once a crop of sugarcane has been planted, it is very difficult to convert to other crops, this is due to the crop's extended life cycle and its very high cost of planting. Each year about 20 to 25 percent of our acreage is broken out in the spring, left idle in the summer and replanted in August and September.

Our Louisiana sugarcane harvest begins in October and runs nonstop until early January. We run 24 hours a day. This is due to our crop being a perishable crop. Once the sugarcane is harvested, it should be processed within 24 hours.

The harvest, it must be completed before freezing weather sets in, this is usually early in January. Our mills produce raw sugar. We store it in large warehouses and we ship it to refineries during the crop and throughout the following year for further processing.

Our growers absorb all cost of production including seed, fertilizer, fuel, production costs. To remain viable Louisiana growers need at least 22 and a half cents per pound to simply cover our costs of operations. This does not include an owner's salary or living expenses.

Marketing agreements are signed with each mill by growers that determines a set amount of tonnage to be delivered. Payments are made if the crop is being harvested. This payment is determined by individual loads of cane being sampled for sugar contact. These in-crop payments are meant to take care of harvesting costs and to repay crop loans. Once the crop is completed additional payments are made throughout the following year. I must wait at least a year before I receive the final payment on my crop. The reason for this is our mills have to market and ship the sugar throughout the harvest and throughout the following year and is only paid upon delivery. Our final payment is determined by the average price the mill receives throughout the year.

For 2011 my final crop payment received in 2012 was 36 cents per pound of sugar. If I contrast that with my 2013 crop payment, final crop payment received in 2014 of 21.5 cents per pound, there's a difference of 14.5 cents per pound. This drop in final price represents a loss of over $1 million in gross revenue for farmers like mine and has caused my farm to serve serious economic losses in crop year 2013 and 2012 and 2013.

Under this system, falling sugar prices takes some months to work their way through to the farmer. But they always do. At 2012 and 2013 prices, I could not sustain a viable sugarcane farming operation. The question for you is, what does this have to do with imports from

Mexico? My answer, it's pretty much everything. If you farm you understand. As the weather goes, so goes the crop. There will be good years and not so good years. But what has happened in 2012 and 2013 is far away from the normal ups and downs of sugar farming.

In 2011 prices of raw cane sugar gave Louisiana growers enough income to cover our costs, make needed investments and earn a good living. By the second half of 2012 our prices began to erode because of growing Mexican imports. And by 2013 the prices had collapsed because the Mexican imports had turned into a flood of Mexican sugar. This dumping of sugar went from just over one million short tons in crop year 2011 to over two million short tons in 2012 and 2013.

The impact on Louisiana sugar farmers has been devastating.

First, Louisiana mills had to forfeit over 100,000 short tons through the U.S. sugar program in 2013. The first time Louisiana had forfeited sugar in 13 years. We forfeited the sugar at significantly lower costs than our production. The collapse in prices in 2013 was so devastating that raw sugar traded for below the forfeiture level for almost the entire year. We would have forfeited even more sugar in 2013 had it not been for USDA to make major purchases of sugar in order to mitigate the damage done to our market by this flood of Mexican sugar.

Second, the collapse in sugar prices. If the collapse in sugar prices had not been stemmed by the negotiated suspension agreements, I expect some Louisiana growers as a result of these low prices would have had no other option than to reduce their cane planting with no other viable options to reduce losses.

And third, my own farm and those of my fellow Louisiana growers could not survive over the longer term if the prices experienced in the period of this investigation became the norm.

My farm is efficient. I fertilize and irrigate my fields. I use the most advanced farming technology to maintain consistently good sugar yields. I harvest my cane mechanically and I deliver it to Louisiana mills efficiently. I believe there are few if any Mexican growers who farm on the scale as I do, or as efficiently as I am. They have no competitive advantage over me. In fact, the opposite is true. I have a big competitive advantage over them. The only reason my farm is at risk from Mexican imports is because of the subsidies they receive and their dumping.

Mexico has made a decision to substantially increase its sugarcane acreage and expand its production far beyond its own market needs and to dump its surplus into our market in order to protect its own market.

I'm here today because this cannot go on. Thank you for allowing me to speak.

STATEMENT OF JOHN SNYDER

MR. SNYDER: Good morning. My name is John Snyder. I'm a fourth-generation Wyoming farmer. I raise 860 acres of sugar beets. In addition to being a hands-on farmer, I am also president of the American SugarBeet Growers which represents 10,000 growers in 11 states and which is a petitioner in this case. And I am also on the Board of Managers for the Worland Insured Company.

I am joined in the audience today by many of my fellow sugar beet growers from most of our producing states and some of our fellow sugarcane growers from Louisiana and Florida.

We're taking time off from our farms because the issue before the Commission goes to the heart of the future of my family farm and every one of the farms of my fellow sugar beet growers.

Our farmers borrow more money each year than most people do in a lifetime. So our financial lenders and our landlords know the importance of your decision.

Sugar beets are an annual crop. They're planted in the spring and harvested in the fall. Harvested beets are delivered directly to the beet processors and they produce sugar for human consumption in one continuous process. We incur costs of the land we farm, the fertilizer we use, irrigation, pest control, and the specialized machinery, we buy, operate and maintain. To say nothing of the labor of the family and the hired workers.

I started incurring costs in July of 2014 for the 2015 crop that I am now about to harvest. I will receive my final payment for the 2015 crop on October 31st of 2016, 28 months from start to finish.

We are first paid the partial payment by our processor for our crop when it is harvested. It is called the initial payment. That payment is generally made in November and December. It is based on current and projected sugar prices. This payment is often used to make land and machinery loan payments, helps offset some of the previous expenditures of planting, growing and harvesting the crop. The remaining final payment is paid over the remaining year after the processor sells the refined sugar that it produces from our beets. Under this system, farmers are directly affected by the market prices of sugar with a lag of higher and lower prices as they work through the market. What happened during the period of investigation clearly shows the collapse of prices caused by Mexican surplus and the subsequent flood of imports that caused me to lose money on my 2013 sugar beet crop.

The 2011 and '12 crop year I received an initial payment of $43 per ton of beets. The final payment was $74 per ton of beets. In 2013-14 crop year my initial payment was $23 per ton of beets with the final payment of only $38 per ton of beets which is actually below the initial payment I received in 2011.

At 2013 prices my farm lost money on sugar beets and I was increasingly concerned about my ability and the ability of other sugar beet farmers to maintain a viable sugar beet business.

My fellow Wyoming sugar beet growers and I own our processing plant. We banded together and formed a limited liability company to make the investment to keep beet and sugar production in our community in 2002. We understand the chances we take with weather every year. In 2011 sugar beet growers had a good year. We could cover our costs, make needed investments, replace worn-out equipment on the farm and in our factories and make a living.

What happened to our crop in 2012 and 2013 crop years is a direct result of the decision by Mexico to substantially expand its sugar production far beyond it's own demand for sugar and then flood our market with it's sub-subsidized and dumped surplus in order to protect the price in its own market. By the second half of 2012, sugar beet prices started to erode because of the huge surplus of

Mexican production. And it collapsed in 2013 with the flood of Mexican sugar that doubled from a million short tons in 2011 to over two million short tons in 2012 and 2013.

The negative effect of U.S. sugar beet growers has been devastating. Sugar beet processors in five states had to forfeit 266,500 short tons of sugar the first time in nine years. In 2013 sugar was sold for less than USDA forfeiture levels for most of the year. Those forfeiture levels are well below my cost of production. If the USDA hadn't made major purchases of sugar to reduce the oversupply of sugar in the market caused by the flood of Mexican sugar and dispose of it, we would have had to have forfeited even more sugar in 2013.

Our collapsing profitability required farmers to put off new equipment purchases and major repairs. And worse, require farmers to secure new and larger loans of credit and in turn lead to increased interest expenses.

Finally, we were deeply concerned at Wyoming about the viability of our purchase of Wyoming Sugar Company. Like farmer-owned, sugar beet cooperatives around the nation, it was a sound investment before the flood of subsidized and dumped Mexican sugar drove U.S. prices down. Every banker, every banker to every one of our growers, and factories is closely watching the decisions of this Commission. They know to a great extent that our future in the sugar business is in your hands.

I'm taking time off from harvesting because the Commission -- what the Commission does today will matter to the future of my family farm, our Wyoming processor, and the farms of other sugar beet growers across the U.S. Under the suspension agreements Mexico has stopped flooding the U.S. market with dumped and subsidized sugar. And sugar beet farmers now have a chance to earn a fair price that will cover our costs, permit us to make investments to stay competitive, provide our customers with safe and affordable sugar supply, and provide enough income to keep our sons and daughters at home to eventually take over the farm. We hope the Commission will make an affirmative determination in order to keep the suspension agreements to continue the process of restoring fair competition to the U.S. sugar market so we can get back to what we do best which is to raise sugar beets and keep our factories open.

Thank you.

STATEMENT OF ROBERT BUKER

MR. BUKER: Good morning. I am Robert Buker. I currently serve as President and Chief Executive Officer of the United States Sugar Corporation, a petitioner in this case, where I've been employed for over 30 years.

U.S. Sugar is a corporate farm and factory formed in the 1930s and today it's owned by its employees and several charities and several family descendents of the original owner.

U.S. Sugar is a fully-integrated can sugar business. That is, we and our independent farmers grow our own sugar cane which I brought a stalk with here today and harvest it and we process this sugarcane into raw sugar and then we refine the raw sugar into consumable white sugar.

Now, our operations are not quite farm to table, but we are a farm to grocery store. And in that operation we grow eight million tons of this sugarcane every year on approximately 200,000 acres, which is 313 square miles and produce in one factory over 1,700,000,000 pounds of refined sugar annually.

We're fortunate to be producing this sugarcane in South Florida which has excellent soil and climate and it's located in close proximity to our markets. Those advantages result in Florida sugarcane producers being one of the lowest-cost producers in the world. On a head-to-head level playing field our Florida sugar farmers would win over at least three-quarters of the world. As I mentioned, even though we're advantaged by our location, our climate, and our soils, our business culture is one of intense business improvements.

In preparing for this testimony, I reviewed just the recent improvement initiatives we've undertaken at U.S.

Sugar. There were over 49 specific, distinct, large-scale improvement initiatives. For example, we're told that we have the largest contiguous Wi-Fi network in the world. So that every factory -- excuse me, every tractor over those 300 square miles continuously communicate speed, direction, engine RPM, horsepower draw, engine conditions and fertilizer and chemical usage in real time. Our harvest which operates 24 hours a day for 180 days is traced by each individual 40-acre field by a solar-powered, radio-frequency identification system so that 100 percent of our sugarcane is processed within eight hours of being cut.

At U.S. Sugar, our factory is designed to produce more refined sugar than the raw sugar we produce, and that's to maximize efficiencies. The amount of raw sugar would could market is limited by federal allotment. Our needs therefore for the additional raw sugar or estandar, must be met either by PRQ imports or imports from Mexico under NAFTA. All these sources of raw materials are limited by law except for one, Mexico. Because we can refine either raw sugar or estandar for the 180 days we're not harvesting we refine either our own raw sugar that was not refined during the harvest or we refined purchased raw sugar or estandar for a total of 360 days a year refining operation.

Estandar, due to its color and grain size, is suitable for some, but not all end uses. I have three bags of sugar here. I have this dark brown, raw sugar, and then you see I have estandar which is sort of a middle color, and then very white, refined white sugar. The estandar could be either a raw material or an end use. It could be an end use, for instance, in things like a chocolate cake mix where color or stickiness is not an issue, but it would be totally unacceptable in a red, sports drink, for example.

In competing in the marketplace, one constant has been the devastating impact of dumped sugar from Mexico. It impacts us two ways. First, Mexican sugar competes directly where the end use makes estandar acceptable. In those instances the presence of estandars in our market is routinely used by buyers against us to lower the price. That in turn creates an over supply situation in those instances where estandar can't be used because it displaced the white, refined sugar and it lowers the price then even in products where estandar is not acceptable.

The economic impact of Mexican estandar is nationwide. Just not on the border states, but over the whole country. For example, we had to lower our price to a bakery in Iowa by over 30 percent to match offers from Mexico. Mexican sugar lowered our prices to an ice cream plant in Alabama, a cereal factory in Illinois, and a small snack food producer in Iowa, just to name a few.

Overall, during the time under investigation prices dropped substantially more than 25 percent on average.

Second place it impacts us is when sugar refiners are offered Mexican estandars of raw material. This lowers the price of raw sugar and due to the oversupply of raw materials that this creates. Then lower raw sugar prices allow our sugar refiner to lower the price of refined sugar with the result that estandar competing in the raw sugar market as a raw material ultimately impacts prices in the end use refined sugar market.

Now, our sugar refinery is located in the middle of a sea of sugar cane, over a quarter million acres. Produces a literal mountain of raw sugar. Despite this, during the period under investigation, we actually bought Mexican estandar as a raw material delivered to us at prices lower than we could purchase raw sugar from a raw mill just 20 miles away.

We're not selling cars or jewelry, we're selling sugar. It's a common household commodity. And that means there's a lot of competition and profit margins are thin. This means that a little too much sugar in the market totally destroys all our profits.

The sugar industry like mining or forestry is a basic industry that depends on large capital investments in land and processing factories. We have to continually invest capital in substantial amounts just to remain competitive. Thus, where Mexican sugar floods our market and drives down prices, we can't make capital improvements and then we start to lose ground in that never-ending battle for efficiency.

MR. BUKER: So, we fully support the suspensions agreements, because the previous flood of Mexican sugar made our situation unsustainable. Now we have stability in the market and more importantly, stability prices that reflect economic reality rather than economic intervention by Mexico.

So, on behalf of the 1,700 employee-owners of US Sugar Corporation, I thank you for the opportunity to testify today.

STATEMENT OF BRIAN O'MALLEY

MR. O'MALLEY: Good morning, my name is Brian O'Malley, president and CEO of Domino Foods, Incorporated. I have served in this capacity since 2001 and I've been in the sugar industry on a continuous basis for thirty-three years.

Domino Foods is the largest marketer of sugar in the US marketplace. We have a national footprint with major refineries in New York, Maryland, Florida, Louisiana and California. In addition to the major refineries, we have many intermediate points of distribution scattered throughout the various regions.

We have a very comprehensive portfolio of products and package sizes. Products range from granulated, liquids, powders, browns, as well as a variety of specialty grades. Package sizes vary from two hundred thousand pound rail cars to one eighth ounce sachets and everything in between.

Customers fall into a number of broad classifications, such as industrial manufacturers, consumer, which are various types of retailers, food service such as hotels, restaurants, schools, et cetera, specialty manufacturers with very specific requirements, and then export, which are all of the above channels, but sold outside the United States. All of our products are made from sugar cane, except for about 1%, which is rice products that are used as a rotation crop in Florida.

Domino Foods is part of the ASR Group and is responsible for sales, marketing, supply chain, as well as the entire order to cash cycle. The ASR Group is jointly owned by Florida Crystals and the Sugar Cane Growers Cooperative of Florida. Both Florida Crystals and the Sugar Cane Growers Cooperative grow sugar cane and mill the sugar cane into raw sugar. American Sugar refining sources raw sugar from Florida, Louisiana, Texas and Hawaii and is also a large importer of raw sugar into the United States.

In the United States, the commodity sugar is marketed on a fiscal year basis that coincides with the start of the harvest cycle in October. Some customers may buy on a calendar year basis if it fits their requirements better, but the pricing is based on the laws of supply and demand associated with the fiscal year that begins with the sugar harvest in October and lasts twelve months.

The US Domestic Sugar market is highly competitive with seven major refiners and/or beet processors, in addition to imports buying for business. Most of the sugar is sold on a contractual basis that range from monthly, quarterly, annual and in some cases, large customers commit for multiple years.

When prices are low, not surprisingly, customers will push for longer contracts. Beginning in 2012 and stretching into 2013 and 2014, the US market was flooded with very high levels of low-priced imports from Mexico. The price levels for refined sugar collapsed and in many instances, forward sales could not be made at levels that would cover variable refining costs.

The impact on our business was not immediate because of the fact that we had business already contracted forward. As time passed during the period, it became evident, very evident that our business was facing a crisis going forward, as we were delivering against current contracts and being unable to write new contracts at a level that even covered variable costs.

All domestic sugar refiners and beet processors were scrambling to find profitable business and all products in all channels were being impacted by the flood of low-price estandar sugar entering from Mexico, that was competing for sales to industrial and commercial users of sugar.

Another example is granulated sugar in fifty pound bags. Fifty pound bags were entering direct from Mexico and being sold by various distributors FOB Laredo, Texas, at prices below our variable costs. Our refineries also need access to sufficient raw sugar to produce to the levels that both the market demands and to maintain certain minimum levels of cane capacity utilization. So we source raw sugar from our own integrated farmers and mills, as well as from imports.

The flood of low-priced estandar being sold to US refiners and to us drove down raw sugar prices so dramatically that our mills and farmers were severely damaged. Our traditional TRQ sugar suppliers were driven from the US market.

During fiscal year 2013, as a direct result of the glut of dumped subsidized raw sugar from Mexico, many countries did not ship their full TRQ allotments to the

United States. One of our largest traditional TRQ suppliers, the Philippines, left 60% of their quota unfilled. Philippine raw sugar would have been supplied to the US, but Mexican sugar was at least 10% lower than other world-based alternatives.

TRQ holders have a thirty year track record of filling their quotas. In fact, many TRQ holders sought assurance from the USDA that failure to deliver their quota would not impact future TRQ allotments. Finally, I would refer the Commission back to our questionnaire for specific examples. In summary, lost sales were very concerning, but even more alarming was the overall decline in the general levels of price, which stood to have a serious impact on our going-forward business model. And I thank the Commission for the opportunity to testify today. Thank you.

STATEMENT OF DAVID BERG

MR. BERG: Good morning. My name is David Berg, and I am President and Chief Executive of American Crystal Sugar Company, a grower-owned sugar beet processing cooperative based in Moorhead, Minnesota. I've worked for American Crystal for twenty-eight years in marketing, agriculture, and in factory operations. I've served in my present capacity for eight years.

Today American Crystal is the largest domestic processor of sugar beets. We're owned by around 2,800 farmers, who together operate 725 individual family farms. The Red River Valley is acknowledged to be the most cost-efficient place on earth to make beet sugar, due to our fertile soil and also to the extremely cold winters that allow us to preserve the beet crop and enable us longer utilization of our factory outsets, than anywhere else on earth.

As a coop, we do not retain earnings at our corporate level. Revenues from the sugar and byproducts that we sell are collected, the processing expenses are paid and the residual is then distributed to our farmers based on their crop deliveries. From this distribution, farmers then pay their own farm operating expenses. Sugar is a commodity. American Crystal, no less than any other supplier, obtains the market price for the sugar that we produce and sell.

When sugar prices fall below the full cost of processing and growing sugar beets, payments from the coop to our farmer-owners are not adequate to cover their expenses and the entire enterprise operates at a loss.

Our challenge is to convert the very perishable crop that our farmers deliver to us into a finished food product, and then sell and market this product to our customers on a rigid annual cycle.

Refined sugar storage capacity relative to our total crop production is limited. So we cannot carry surplus sugar from one year to the next. In addition, annual cash flow needs make it necessary that sugar be marketed and funds returned to farmers so that they can finance their next years' crop cycle. We simply can't sit on sugar for a year or two because we don't like the price afforded by the market.

Although there is great diversity among the makeup of our customer base, there is one strong, unifying element, and that's price. Product quality and reliable delivery are essentials that are required to compete for any buyer's sugar business. But price is always been the single overriding factor, and their decision whether they buy from United Sugar or a marketing company or from another sugar supplier. This point was made clear on the survey responses reported in the prehearing report by ITC staff, which indicated that a large majority of purchaser respondents usually buy the lowest cost sugar available.

As the crop develops, buyers will commit to a full calendar years' purchase. This means that the investment of seed, fertilizer and fuel, which our farmers make in the spring every year, is going to take eighteen to twenty-four months to be repaid. And if the sugar market is not favorable, the cooperative's payment will not cover the farmers' operating costs.

The US Sugar program includes an element called flexible marketing allotments. In essence, this program limits the volume of sugar that individual processors may sell in a given year, and attempts to prevent a market oversupply from occurring. The entire series of calculation that works to the marketing allotments begins with estimated domestic sugar consumption.

This means domestic processors cannot oversupply the market, which in turn means that prices should be stable and sufficient to meet on-farm expenses in normal years.

The second mechanism which insures price stability is the system of tariff-rate quotas administered by the USDA and the US Trade Representative.

This system limits the volume of imports from all major exporters, except Mexico, to the US market. Taken together, the domestic marketing allotments and the TRQ system carefully regulate the supply of sugar in the United States and prevent market surpluses from accumulating.

During the 2012 crop year, while domestic US production and TRQ imports were prevented from creating oversupply, Mexico was about to break all records with its own production. I clearly recall seeing reports through the fall of 2012 and into 2013 about the potential for the Mexican sugarcane crop to exceed previous years by a million tons of sugar or possibly even two million tons in some reports.

In fact, the number of sixteen futures contract began to fall in 2012, anticipating that huge Mexican crop. But while domestically produced US sugar was limited by marketing allotments, no such limit existed in 2012 or 2013 for Mexican sugar. If the Mexican industry did in fact produce a million tons more than any prior year, then it had the right to market all of that surplus in the United States. The market recognized this and contract pricing for American Crystal 2012 crop began to fall dramatically.

Marketing the sugar produced for American Crystal 2012 crop of sugar beet was, to be honest, frightening. Raw sugar prices on the domestically traded futures contract, fell from around thirty cents a pound early in the summer to just over twenty-two cents by December, then under twenty cents by the spring of 2013.

This dramatic drop was cushioned for a portion of our 2012 crop, because some of it had been contracted before the onslaught of Mexican sugar was felt in the market. However, the buyers at the major industrial sugar-using companies, set their objectives very low for the next crop, which was produced in 2013.

The very bearish market conditions fed directly through to grower payments at American Crystal Shareholders received for the 2013 crop year, our grower-owners as a group were unprofitable for the very first time in my entire twenty-eight years with the company.

In my estimation, this result was entirely caused by the surplus volume of sugar exported by Mexico into the United States during 2012 and 2013 and the massive negative impact on sugar prices that resulted from these exports. Membership in our cooperative includes a requirement that a grower plant and deliver his or her crop each year. However, if sugar pricing and projected payments to growers are negative, the threat of farmers walking away from that obligation, and also walking away from their investment in the cooperative, is very real.

The fixed costs component of operating sugar beets factories is large, so losing even a quarter or a third of our normal volume of raw material forces that fixed cost load on the remaining crop to be increased. This, in turn, causes the grower return to decrease, and very likely could result in all growers abandoning the sugar beet business and ending American Crystal's century plus of existence.

Frequently during the selling of the 2012 and 2013 crops, United Sugar sales people would inform us that another large customer had threatened to reduce purchase volumes unless we met significantly lower price offerings.

Time and again, the basis for these lower prices was one or more vendors offering sugar that had been imported from Mexico. The form and location of the competitive offers varied, refinado or estandar sugar, delivered directly to the user, or through a screening station or a melt house, but the impact was always the same. Our sugar was worth several cents a pound less than it had been for many years in the past.

Most often we swallowed hard and we just sold the sugar. Beet sugar processors do not have the storage capacity to hold an entire crop off the market. And even though we knew that these lower prices would drive payments to our growers to a loss on their operations, we knew we had to continue to generate payments to keep them liquid.

Today I am glad to report the attrition among shareholders in American Crystal was limited. They've demonstrated faith in their cooperative and also in the processes that we are taking part in here today. Even though it took nearly two years to reach a resolution between the governments of the United States and Mexico, in the form of suspension agreements, we are now back in a sustainable market situation.

I look forward to the opportunity to answer any questions you might have and I do thank you for your time today.

STATEMENT OF JENNIFER A. HILLMAN

MS. HILLMAN: Good morning. For the record, I'm Jennifer Hillman from the law firm of Cassidy Levy Kent. I want to try to tie the compelling testimony from the witnesses that you've just heard to the public and the confidential data that you have before you in your excellent prehearing staff report.

The first point to note is the huge increase in Mexican production. Shown here in terms of the number of acres planted, beginning with 2000, as that was the year in which the Mexican government nationalized the mills that were hopelessly unprofitable and would've likely ceased production, but for their purchase by the government.

At the same time that US producers were reducing their acreage, Mexico increased its acres devoted to sugar cane by over five hundred thousand. The result of that increase can be clearly seen on this chart, which shows the dramatic increase in Mexican production, with production levels of 5.6 million tons in calendar year, in crop years '11 - '12 rising to over 7.5 million tons just one year later with production remaining at very high levels of 6.6 million tons in '13 - '14, and production is projected to remain over 7 million tons per year in the future. So this was not a one-time blip or a one-time bumper crop on the part of the Mexicans.

The problem for the US industry is that Mexico's demand for sugar as shown by the red line on this chart, actually declined during the same period, leaving Mexico with large and growing surpluses that had only one place to go, the United States market.

Why the United States? Because Mexico has privileged access to the US market. Indeed, Mexico is the only supplier, domestic or foreign, that can sell as much sugar as it wants and has available to sell. And that is exactly what happened in 2012 -- '13, Mexico was left with just short of 3 million tons of surplus sugar that had to find a home, and the home that it found was in the United States, driving imports from all other sources, the TRQ countries out of the market, and driving US prices down to levels below the cost of production.

And you don't need to take my word for it. As these quotes make clear, both the TRQ countries themselves and the USDA have made it clear that it was the huge surplus in Mexico and the huge increase in imports from Mexico that caused US prices to plummet.

I'd like to note in particular the dates on these two quotes from the USDA, both of which preceded the filing of this petition, and preceded the quote that I think you're gonna hear about a lot this afternoon in April of 2014, that the US sweeteners have sided to somehow suggest that the US industry inflicted all of this pain on itself through its own increases in production.

I think that particularly this middle quote from the USDA is quite telling. USDA knew then what they know now, which it is that Mexico and its increases in production is what drove TRQ imports out and drove prices down.

What the sweetener users would like you to ignore is the fact that you have heard from all of these witnesses this morning, that US producers, whether they're growers or millers or processors or refiners, have no choice but to sell their product into the market, no matter what the price.

And that the growers cannot react quickly to the changes in price, since they cannot immediately adjust their production levels. As this chart demonstrates, there can be no question that the volume of imports from Mexico was significant.

No matter which part of the statutory provision you look at, the absolute volume of more than two million tons or the increase in that absolute volume of almost a million tons with a near doubling of Mexican imports and the volume relative to domestic consumption is significant as well with Mexican imports capturing a large and growing share of the market.

Rather than looking at the statutory provisions' focus on imports, the sweetener users would have you focus solely on the domestic industry and the lack of a decline in US production or market share. Their analysis, however, totally ignores the fact that any increase in US production pales in comparison to this million ton increase in imports from Mexico.

As Dr. Colin Carter's economic analysis makes clear, there is a much stronger correlation between Mexican prices and US prices than there is between US production levels and US prices, which proves that it was Mexican imports and Mexican prices that drove down US prices, not the much smaller increase in US production.

In addition, the US sweeteners completely ignore the fact that USDA was forced to take over a million tons of sugar out of the US market. Indeed, USDA was forced to try to lower the volume from the TRQ countries to the lowest possible level they could, consistent with our WTO obligations and to accept forfeitures from sugar producers throughout the United States for the first time in nine years. And to sell those forfeitures for use as ethanol, rather than for the purposes for which the sugar was grown and processed, human consumption.

This is not the normal agriculture cycle that Mr. Rosenthal spoke about. That is not what was occurring in this market. As the statute regarding agriculture products makes clear, these forfeitures and the expenditures by USDA must be taken in to account by the ITC in rendering its determination.

And the expenditures point clearly to the fact that the US industry was injured by the surge of low-priced imports from Mexico. Indeed, the data on the record demonstrate just how significant the decline in prices was. During the surge period, prices for estandar, which is considered a semi-refined product, dropped below the price of even US raw sugar and dragged down the price of US refined sugar. The impact of these low-priced imports can be seen in the financial data that you have before you.

You heard Mr. Rosenthal say this morning that the domestic industry was not disrupted, but as this data show you very clearly, the industry was not just disrupted, it was indeed devastated.

As the Mexican imports surged into the market in 2012 and '13, the injury began to be felt, first by the refiners and processors, who were forced to lower their prices for refined sugar, to compete with Mexican estandar, and then in the time lag that you've heard Mr. Snyder discuss, the rest of the industry became affected, such that by the last year of your period of investigation, the entire industry, growers, processors, refiners and millers, everyone, was losing money and lots of it.

While we know the case for the finding of a present material injury is, in our view, overwhelming, we also believe the sugar industry is threatened with material injury due to the chronic surplus supply in Mexico.

As this chart shows, even the Mexican producers own, potentially self-serving projections, show a large and increasing surplus of sugar production in Mexico and a large and increasing volume of that exports coming to the United States.

Because of the nature of Mexico subsidies and Mexico sugar policy, Mexican producers are required to export their surplus, and the US is, and will remain, the viable market for those government-mandated exports.

Finally, before I turn it over to Mr. Cannon, I would note that there are a number of legal issues that the Commission addressed in its preliminary determination related to the like product, and the definition of the domestic industry.

Those issues were addressed largely because of arguments made by Mexican producers and the government of Mexico. Neither of whom are here before you this morning to make any arguments in opposition to the preliminary findings that the Commission made.

We believe that the Commission got it right in its preliminary determination and should affirm that the domestic industry consists of all producers and growers and millers with no one exempted as a matter of being a related party, and that the like product in this investigation should include all sugar, whether raw or refined and whether it's produced from either beet or cane. And with that, I'll turn it over to Mr. Cannon.

MR. CANNON: Thank you. I'm Jim Cannon. I wonder how much time, Mr. Secretary?

MR. BISHOP: You have 15 minutes remaining.

STATEMENT OF JAMES R. CANNON , JR.

MR. CANNON: Fifteen? Thank you.

So I'd like to talk about the pink sheets, which I hope everyone has a copy of. The very first slide that you see, number one, shows the breakout of your pricing products. And the first thing I'd like to call to your attention is Pricing Product 2C. You'll see the little box in the upper right referring to that product.

This Pricing Product was submitted--these are pricing data submitted by one importer, one company. This company in their questionnaire response indicated that this product is not comparable to other sugar products. It is unique.

Secondly, if you compare the price of this product to all the other prices you will see that it is very high.

Thirdly, the record shows the cost to produce this product is unusually high and the circumstances in which it's produced is unusually high.

Therefore, we think you should exclude this from the pricing analysis.  In fact, if you compare Product 2C, which is an S&R, right, so it has a low polarity, if you compare that to fully refined Product 2A, you will see the price of 2C is higher than the price of the fully refined product.  And that is because of the unique circumstances.

So I hope we can ask some questions about this, perhaps.

Next, and more importantly, I would like to look at Product One.  You see that Product One accounts for the large majority of all the imports.  It is exactly the imports that refiners have imported into the United States. It is imports of S&R for refining.  And so of course refiners import it.

This product was not included in the analysis of overselling and underselling presented in the users' brief. And in their statements today about the quantity of underselling, they ignore this product.  They ignore it because in fact it substantially hurts their case.

Now this is a direct substitute for raw sugar. It is used in refineries, and it is, as testimony said this morning, it directly substitutes.  It competes head to head with U.S. production of raw sugar.  And lastly, the pricing here that you have are adjusted to be a landed cost duty-paid basis. In other words, transportation from Mexico duties have been added so that you have a fair comparison to U.S. port between these import prices and the U.S. prices.

Historically, the Commission has had an issue with direct import prices. That is, imports that do not go through an importer but come directly in this case to a refiner. And the issue has always been about the level of trade. Is there a difference in level of trade?

But in this case what you have is refiners purchasing directly from Mexico and directly from U.S. millers of raw sugar. So you do have head-to-head competition of a direct substitute on a landed-cost basis that is fully equivalent. So we submit you must compare these prices and look at the volume as well as the frequency of underselling. And that is what the next page shows you.

This is lifted from our prehearing brief. What you see here are when you use the direct imports, the import purchase prices for Product One, you get an overwhelming amount of underselling.

It is both important to look at the underselling itself and the size of the margin of underselling, as well as the trend in prices. Right? So if you look at the U.S. price for example starting in 2011 and scanning down, you see the trend that you see everywhere in this record: U.S.

prices steadily decline.

If you look one column over to the Mexican imports, you see that when the Mexican imports were not underselling by substantial amounts, the volume of such imports was relatively small. But as the surplus crop had to be pushed into the U.S. market, particularly starting in what we call the "surge period," January 2013, Mexican imports cut prices far below--and this is S&R--and they cut prices far below U.S. raw sugar, resulting in substantial volume.

The next page, also taken from our brief, shows the aggregate results when you include Product One as we've done. And what you see here is on the Total line, the volume of underselling. So right in the middle of the page you see "total," you see the number of months, you see the quantity. The very bottom line on the page shows you the overselling.

So what you see here is that in total the volume of Mexican imports that undersold is far greater than the volume that oversold. This directly contradicts the argument that the Users are making.

Now if we turn the page again, importantly here what we've done is we've looked at underselling before the surge and after the surge. So the surge occurs in January 2013. Look at the number of instances of underselling and overselling in January '13 and onward. You see the number of instances of underselling and overselling, and the volume. Clearly the volume is substantial.

Now if you look at before that period--in other words, the prior crop year--the volume of overselling and the volume of underselling is switched. So what you see is that before the surge, as you would expect, Mexicans were essentially following market prices. But after, they had this huge surge in production, it had to go somewhere; so they cut prices in order to push it into the U.S. market. And that's what the timing of the underselling analysis confirms.

The next chart indicates--this is also from our brief--the average unit values. As you see, the average unit values earned by the U.S. industry steadily declined. Producers, importers, and purchasers all confirmed in the staff report that Mexican imports were the source of the price effects and caused prices to be suppressed.

Dr. Carter in Exhibit 1 in his economic analysis attributes to Mexican imports the largest portion of the decline in price. Right? So granted there are some effects from U.S. production, but the largest effect is by reason of the Mexican prices.

Finally--how am I doing? Okay on time?--okay, the last stage, which is the P&L statement, the variance analysis. In the staff report it shows that the major problem for the industry was prices.

Now you heard in the introduction that the U.S. industry is making profits. The U.S. industry is not making profits. They say that because they're looking at net profit before tax. The Commission looks at operating profits. So look at the bottom line for the total industry. 2011, the starting year, this is what Respondents are arguing is this extraordinary year of high prices. This number, this operating profit as a percent of sales, there are steel cases in front of you now in which they have a higher profit ratio and they're arguing that they are injured, right? And that's our base year. And it only gets worse.

So on that basis, I will conclude.

MR. CASSIDY: That concludes the presentation of the American Sugar Coalition.

Imperial Sugar Corporation will now make a statement.

STATEMENT OF MICHAEL A. GORRELL

MR. GORRELL: Good morning. My name is Mike Gorrell and I am the President and CEO of Imperial Sugar Company.

Imperial Sugar is one of the largest cane sugar refiners in the United States. Our company accounts for about 7 percent of all sugar produced in this country, and it employs about 500 workers primarily at our refinery in Savannah, Georgia.

We are a destination refiner, which means that we must import raw sugar in order to produce refined sugar because we do not have sufficient access to a raw sugar supply from domestic sources.

As we have discussed before, there are three parts of the U.S. refined sugar industry. The beet sugar processors represent about 42 percent of production capacity and run at nearly 90 percent utilization. The origin cane refiners represent about 25 percent of production capacity and run at nearly 100 percent utilization. And the destination cane refiners who represent about one-third of the U.S. refined sugar production capacity, due to excess refined, the direct consumption of sugar imports run at only 60 to 70 percent of capacity.

We an Imperial represent nearly a quarter of the destination sugar refining capacity. I will focus today on the injury suffered by this segment of the industry.

First, the U.S. market does not need these refined sugar imports because the U.S. producers can supply the entire U.S. market.

Second, imports of Mexican refined sugar are being offered at low prices and these prices have required us to lower our prices or lose our customer.

Finally, I will explain how these imports harm the can sugar refiners.

My first point is that we have not needed imports of Mexican refined sugar at their current levels for a few years now. This was not always the case. Slide one above demonstrates why current volumes of refined sugar imports are extraordinary.

This shows the history of U.S. sugar imports from all sources. The red bars show refined and direct consumption sugar imports, and the blue bars show raw sugar imports. While the red bar includes refined and direction consumption imports from other quota agreements and specialty sugar quotas, these other sources now represent only about 300,000 tons per year.

During the period of review, the Mexican portion of refined and direct consumption sugar imports averaged about 950,000 tons per year. As you can see, the red bar was consistently below 200,000 tons from 1991-92 to 2004-05. Imports from all sources jumped to 840,000 tons in 2005-06 in response to the loss of U.S. refining capacity due to Hurricane Katrina.

They declined again once that capacity came back online in '06-'07. In 2008-09 two things happened that increased refined sugar imports from Mexico, as we can see from the jump again in the red bar. There was a horrible explosion and fire at our Savannah refiner that closed our operations for over a year.

Also, Mexico achieved full duty-free access to the U.S. market under NAFTA. In 2009-'10, the Savannah refiner was still coming back online and the U.S. beet crop was lower than expected, so imports remained at higher than normal levels.

In 2010-'11, the U.S. refining capacity suffered its most recent reduction when Imperial transferred its Gramercy Refinery to Louisiana Sugar Refining as part of a joint venture with Cargill and the Louisiana Growers. It took a long time for LSR to ramp up to full production. However, since that time, from 2011-'12 onwards, which is the period of investigation, U.S. refining capacity has been fully available and in significant excess of demand. But imports of refined sugar from Mexico kept coming at the same record high levels.

We simply are no longer experiencing the extraordinary circumstances that may have justified these higher volumes of Mexican refined and direct-consumption sugar imports. They are not needed. But more importantly, they are causing us significant harm.

My second point is that low prices of refined sugar imports from Mexico have forced us to cut our prices or lose sales. Starting in 2012, several important customers have challenged us to lower our prices to meet the price competition from Mexican imports.

We have provided some examples in our confidential submission and can provide more information in our post-hearing brief.

Now some may say that Mexican refined and direct-consumption sugar cannot cause injury to the U.S. cane refiner because the U.S. refiner has transportation advantage and our customers do not accept Mexican quality sugar.

Let me tell you, this conclusion is simply wrong.

First, in many areas of the United States--the Southwest for example--the cane refiners do not enjoy a transportation advantage. Or in other areas the Mexican sellers just offer the sugar even more cheaply to compensate. As for the quality argument, this may be applicable at first but over time the record is clear, Mexican direct--refined and direct-consumption sugar imports have grown from negligible amounts to nearly one million tons per year.

One reason for this can be seen in slide two, which shows the deliveries from U.S. producers outlined by customer segment. About one-third of deliveries from U.S. producers go to distributors and grocers, a customer segment in which we see undercutting from Mexican competition every day.

I would be happy to answer questions about these figures later, but the reality is that anyone who suggests that the can refiners are not harmed by Mexican price undercutting is ignoring the fact that customers like the distributors and grocers are an important part of our business.

My final point is that the cane refiners suffered significantly from the increased volume of unfairly traded Mexican refined and direct-consumption sugar. This is no surprise. Any time that you have a refining industry with significant spare capacity, any imports of refined sugar will injury the domestic refiners.

The refining capacity in our part of the industry, the destination refiners, is about 4.4 million tons. When Mexico ships 950,000 tons per year of refined and direct-consumption imports to the United States, it knocks our utilization rates down by about 22 percent.

And in today's market, that means that we must idle about a third of our production capacity. This was the case during the period of investigation and will continue to be the case in an ongoing basis. In this environment, every ton of imported refined sugar hurts, especially when it is dumped and subsidized.

We spoke in the Injurious Effects proceeding here about the impact of fixed costs on a can refiner's business, so I will not go into more detail about it right now. But it is clear, every ton of sugar throughput that we lose at the refinery causes us harm, as we are unable to generate a contribution margin on that lost volume to cover our fixed costs.

My estimate is that the Mexican refined and direct-consumption sugar program is costing the destination cane sugar refiners well in excess of $100 million per year, and that is before even considering margin compression that occurs due to more refined and direct-consumption sugar entering this country, and less raw sugar being imported into the United States.

We spoke at length about this during the Injurious Effects hearing and it's shown in slide three.

I would welcome any further questions about it today. The truth is that the injury caused to the cane sugar refiners caused by this continued Mexican refined sugar import program is undeniable, and that injury is material.

I hope this helps you to understand the market conditions and the effect of these conditions for the refiners. The harm that we have suffered, along with the rest of the sugar industry, justifies an affirmative Final

Material Injury determination.

That concludes my direct testimony and I look forward to your questions during the Q&A. Thank you.

CHAIRMAN BROADBENT: Okay. Thank you. And I want to thank all of the witnesses for coming today and taking time away from your work and your businesses to be here.

A couple of us just returned from a visit to the sugar beet operations of the American Crystal Company, and before that we saw sugar cane operations of United States Sugar Corporation. And I think we even had some folks last year out looking at the Domino Sugar standalone refining facility in Baltimore. So we appreciate all your abilities to accommodate us on our crazy schedules and make really valuable visits for everyone involved.

This morning we are going to begin our questioning with Commissioner Kieff.

COMMISSIONER KIEFF: Thank you, Madam Chairman, and thank you very much to the witnesses from all sides for coming and making yourselves available. And thank you also to the lawyers for the excellent arguments, recognizing that we work, to the extent we can, under the Sunshine Act together to make sure that a range of questions get asked.

I would like, if I could, to begin with some questions for the lawyers in the hopes of just using the opportunity for live exchange to facilitate communication, recognizing that we may not get full answers here today--and that is a feature not a flaw of the system. The post-hearing brief is a wonderful opportunity to provide a more fulsome discussion.

So let me, if I could, just begin by asking the lawyers how we are supposed to think about the relationship between our docket, what we do here in this case, and the range of U.S. Government programs that are essentially designed to insulate the U.S. sugar market from larger market forces.

So in particular what I am wrestling with--and I hope you can help me wrestle with this--is, number one, a capacity question: To what extent do the various programs have the capacity to actually insulate the U.S. sugar market from larger market forces?

And then the follow-up question is: If that is a significant capacity, or indeed an insignificant capacity, how do we disaggregate the impacts that larger market movements have on the U.S. sugar industry from a case like this one, one country, and its impact on the U.S. sugar market?

So let me just begin by asking, to the lawyers at least, do you get the gist of the questions?

(Heads are nodding.)

COMMISSIONER KIEFF: Okay, so then--I'm seeing some heads nodding--can you just very briefly during the live session provide some guidance?

MR. CANNON: I think so. I'll at least start out on this one. I believe we have a slide that showed the capacity.

(Pause.)

Do you know what I'm talking about? Do you know the number? Okay, this is Mexican oversupply. Anyway, so as to your overall point, how we think about sugar policy, is it designed to insulate the U.S. industry? So as Mr. Cassidy said--well, we're apparently not finding our slide--we think about that as a condition of competition. The Sugar Program, like it or not, is the environment in which this case comes before you.

Secondly, the statutory provision. The Congress states that support payments, support intervention in the market is something that you should consider, in fact you must consider. Therefore, the statute contemplates that even in an industry that's highly controlled, regulated if you will, there could still be injury, material injury.

COMMISSIONER KIEFF: Oh, yeah, and I didn't take your opponents' argument to be that the strong form, which is that because this is a highly regulated industry it is not available for a remedy from us.

I think his argument was to agree with everything you've just said, these are conditions of competition--

MR. CANNON: Correct.

COMMISSIONER KIEFF: We should work within our regular statutory framework and bake in, to use a phrase, our thinking exactly what you're saying.

I take it that his argument, though, is that once baked in it turns out that in effect what is going on here is too largely a function of factors other than imports from Mexico to be treated under his view as injury by Mexican imports.

MR. CANNON: Correct. And obviously we disagree.

COMMISSIONER KIEFF: Sure.

MR. CANNON: Now as to capacity, there is an allocation which was set on the marketing of sugar. It's something like nine-and-a-half million tons. And then there is the U.S. industry's level of production. And they produce to a lower level than their allocation. And now they have to, when you think about production, this is a crop so it has to be planted. It's not going to be harvested for a year later. Then it's refined, and then can be sold.

And so they see this allotment out there, but really their production, because it's an agricultural product, is limited by how much they planted. And so it's actually that limitation that is guided by the sugar policy, but it is not the sugar policy that results in the limit on U.S. production, it is agriculture.

COMMISSIONER KIEFF: I think he may even agree with that point. I guess, let me push a little bit further and ask: How do we disaggregate in our thinking, let's call it, impact from market movements other than Mexican imports from the impact of the Mexican imports?

MR. CANNON: Okay. So if you then look specifically at the increase in production, what you see in the C Table, right, and you look at the magnitude of it, it is much less than the surge in Mexican imports, one.

Two, if you look at Dr. Carter's analysis the impact of U.S. production and the impact of the increase in U.S. production on U.S. prices accounts for a far lower percent than the impact of Mexican prices on U.S. price levels, right? So econometrically that's the conclusion that he comes to.

And so those two sort of economic factors tell you something. Moreover, think about it. This is the first time in 9 years for the beet industry, and 13 years for the Louisiana cane industry, that there were forfeitures. This is the first time that the industry has been driven to below-cost price levels in years.

And so those other factors should be taken into account when you look at the volume. In other words, you don't look at--the Commission never does--when you look at impact, you don't just look at the volume effects. You look at it together with the price effects.

COMMISSIONER KIEFF: So I think his argument on that is that you--the volume is largely a substitution between Subject Imports and Nonsubject Imports rather than a substitution between Subject Imports and Domestic.

MR. CANNON: Indeed that is his argument. But here's a market in which the refiners are importing from TRQ countries and the Mexican imports have this enormous 3 million tons of excess production that they have to move.

And so what did they do? They cut prices in order to move that into the U.S. market to refiners, which pushed the TRQ imports out. So, yes, in volume it's a tradeoff. But it's the price effects. They cut prices to push off the TRQ import, but this is a commodity market. And when the price for ESPEN dropped so low, it went below the price of raw sugar. When it falls to that extent, it has a price effect that ripples across the market. You see it at every account in all of the business.

In fact, Mr. Bukar testified that the price effects were fine--

COMMISSIONER KIEFF: Just to quickly ask, then, you're saying that the price that you want us to focus this in price effect even though you have this large, roughly one-year lag between contract time and delivery?

MR. CANNON: So that lag affects the analysis of the P&L. It takes a little longer for the losses to trickle through.

COMMISSIONER KIEFF: But not the overall --

MR. CANNON: But the price effect in the U.S. market essentially happened very quickly.

COMMISSIONER KIEFF: Let me just then take advantage of the last 30 seconds to ask a question for both sides for follow-up in the post-hearing, which is to focus on the 259 million, and explain to us why in your view, each side I suspect has a different view of this, but explain why in your view that is an example of what you're arguing in your case.

I take it, for example, that the Petitioners' view is that this is evidence of injury, and the Respondents' view is that this is evidence of the existing programs in fact operating as intended to insulate the domestic industry, and that therefore the impact on the domestic industry is either largely addressed by these programs, and that the remaining injury is largely caused by imports other than the subject imports.

So if you could just explain that in more depth in your brief, that would be helpful.

MR. CANNON: Thank you very much for that, and I realize I forgot to say I'm Jim Cannon before I started talking.

CHAIRMAN BROADBENT: Thank you.

MR. CANNON: Thank you. Thank you, Madam Chairman.

CHAIRMAN BROADBENT: The court reporter appreciates that. Commissioner Schmidtlein.

COMMISSIONER SCHMIDTLEIN: Thank you, good morning. I'd also like to say thank you to the witnesses and welcome you all here today, including everyone in the audience. I also visited U.S. Sugar in I guess it was just earlier this summer. It seems like ages ago, but it's a very impressive operation and I learned a lot. So I appreciate your hospitality those few days.

I'm going to follow up on sort of the some of the questions that Commissioner Kieff just started with, because I sort of think this kind of gets to the crux of the matter at least, and maybe I have a slightly different angle on it. This question about market allocation and exactly I'd like to understand more how that works.

With the U.S. producers, who gets the allocation and then how does that work when U.S. production is, and I just heard Mr. Cannon say the allocation is always more than U.S. production, but of course U.S. production was greater in some of these crop years that we're looking at. So how was that -- how does that play out?

But let's start with can you explain the market allocation for U.S. producers to me.

MR. CASSIDY: Mr. Berg will address that.

COMMISSIONER SCHMIDTLEIN: Okay.

MR. BERG: I'd like to give you a little flavor for this first of all. I bragged earlier about the Red River Valley being the most efficient place in the world to make beet sugar. It is. I mean it's documented. For that reason, many years ago, one of my predecessors fought very hard to prevent having marketing allocations in the farm bill, in the sugar program. He wanted unfettered growth and the opportunity to take market share from other people.

Well, what happens when you have unfettered growth and lots of oversupply in the market because somebody is growing too fast, is that prices go down, and prices went down very badly. That causes us problems financially; it also causes us problems justifying a sugar program to Congress.

So okay, fast forward or forward a part of the period anyway. We agreed that having marketing allocations was a better concept. We need to restrain oversupply in the market, so that prices can be stabilized. So my predecessor, another predecessor, the one I mentioned before, said we should have marketing allocations.

So the process began. It was written into the law, and it's worked very nicely. So here's how that works. The first step, as I said in my testimony, is the USDA looks carefully at the total demand for sugar in the United States. From that starting point, it factors down how much of it's going to come in from TRQ countries under BODA, CAFTA, NAFTA, not NAFTA, CAFTA and WTL, and then it carves out a portion for the domestic industry, which is mandated by law.

But from those components, we are guaranteed not to have an oversupply, which is key to what I said and key to this case, I think. Domestic sources and TRQ countries will not oversupply the market. Add the wild card of NAFTA, Mexican oversupply and then the whole thing fell apart.

But under the marketing allocation system my company, because we're constrained by what Mr. Cannon said, we can only grow so much, we can only process so much, even with the cold winters that Mother Nature gives us in Minnesota and North Dakota. We can only process so much.

We have not exceeded our allocation for several years. Other competitors within the beet industry and some in the cane industry have exceeded their allocation, so have therefore had to either abandon some of the raw material crop, the beets or the cane in the field, or process the product and stick it in a warehouse for a year because they may not sell it.

But there is a hard cap on how much they can sell, and for that reason, we know we cannot oversupply the market. So I'm thinking of a person in the back of the room right now. I know the crop result that they are having right now as the harvest is going on, who's probably quite uncomfortable because they know they can't sell all the sugar that they're going to produce this year. So they'll have to stick it in a warehouse or abandon some of the crop.

COMMISSIONER SCHMIDTLEIN: And is that -- so literally, are the allocations at every level, or is it just that processors and millers have allocations, and so growers, that's all they can buy. Is that, you know, that's what I'm asking.

MR. BERG: Well, at American Crystal, and I think there's a similar situation for most of the beet processors. At American Crystal, you buy a share of stock. It entitles you to plant a fixed portion of acreage, and then you deliver the acreage or the tonnage that comes from that acre.

So we therefore have an internal allocation, internal constraint on how much volume is going to come to the company. Now again this year, we're also suffering or enjoying some very good weather, and we're going to probably be at a cap on how much we can actually physically get through our plant.

So some of those tons of sugar may be left in the field, simply because we know that we can't get them processed before the year ends. But we will be far short of filling our own marketing allocation, and I would guess that even though this particular crop, 2015 crop looks to be a good one, there will be several processors who can't sell all their sugar because of allocations; others who will not fill their allocation.

But we know on a macro level for the entire U.S. beet sugar industry and sugar industry, we are not going to oversupply the market.

COMMISSIONER SCHMIDTLEIN: And so I heard Mr. Cannon say that usually U.S. -- let's call them U.S. producers; we'll just lump them altogether -- don't, do not produce enough to meet the allotment, and I thought I read somewhere that generally the allotment is 85 percent for U.S., 15 percent for TRQ countries?

MR. BERG: Correct, correct, and generally we do not exceed. I can't think of a year in which we have -- well, we haven't oversold it, because that's against the law and there's serious penalties for that. I think what's happened in many cases is that later in the year, some time I think the middle of May, the USDA will go back and look at someone who is not filling their allocation and redistribute the unused portion of the allocation to someone who needs additional --

COMMISSIONER SCHMIDTLEIN: Within the U.S.?

MR. BERG: Within the U.S.

COMMISSIONER SCHMIDTLEIN: With a U.S. producer.

MR. BERG: Within the beet sector, first of all, and then within the cane sector.

COMMISSIONER SCHMIDTLEIN: Okay.

MR. BERG: And then that kind of is a pressure relief for some of these companies who may have a surplus of crop over allocation.

COMMISSIONER SCHMIDTLEIN: So that was going to lead to my question of in the past then, were Mexican imports playing a role because the U.S. and TRQs are set at 85 and 15, and you know, if the U.S. isn't meeting its allotment, then who's filling that if the TRQs are capped at 15 percent?

MR. BERG: Very simple. If you go a few blocks from here to the U.S. Department of Agriculture, there's a spreadsheet, and they will go in and drop all these inputs. What's the consumption, total consumption of the U.S., the 15 percent reserved for the TRQ countries, etcetera, down to the domestic industry, and it all works out to get to a nice ending stocks to use ratio which we like to see at, under the suspension agreements, 13.5 percent.

Mexico doesn't fit in that spreadsheet. It simply doesn't. There is no place to factor that in, and then they just bring the sugar to the market and do what they do to the price.

COMMISSIONER SCHMIDTLEIN: So --

MR. BERG: That's the history of the last few years.

COMMISSIONER SCHMIDTLEIN: Right. So prior to this case and the suspension agreements, Mexico was always potentially a competitor that could take market share from U.S. producers?

MR. BERG: Absolutely. Well, and free trade in sugar under NAFTA began January 1, 2008.

COMMISSIONER SCHMIDTLEIN: Right, that meant like yeah, it was phased in. Right, okay. So my question is then why didn't Mexico take market share from U.S. producers during this time, or do you agree with that statements by the Respondents, that subject product was only displacing non-subject or TRQ, and when you look at the market share, it's not.

So why was the U.S. not losing market share to Mexico at this time, especially in light of your argument that there was significant underselling going on that was driving down the price?

MR. BERG: I'm going to leave -- I'm going to give you a short answer, and then defer to the attorneys, because there's probably some legal specificities you'd like to get to. But we did not give up market share for this reason. As I said in my testimony, when our farmers deliver 10 or 11 million tons of sugar beets to our company, and we know that we have the marketing allocation to sell it, we will turn those sugar beets into sugar and we will sell it.

Because to not do that means that we were not going to generate revenue, not going to make a payment to them, and therefore very likely put them out of business, which is not going to be a popular decision at a cooperative. So I'm going to process those beets; I'm going to get that sugar sold. I'm going to generate a payment to them.

Even if it's a poor payment, I still have to generate cash flow for them. So therefore we did not lose market share to the subject imports from Mexico, but what we did was we got beat up on the price terribly. So therefore they took a big stair step down on price, but not on volume. If there's any legal pieces of it --

MS. HILLMAN: Well Commissioner Schmidtlein, again I think the other point is that from the growing end, again there's limited ability to make quick adjustments. I mean you heard from Mr. Landry that, you know, cane is a crop that grows for four years.

So if you have low prices in a given year, it's not like they can all of the sudden stop growing cane. It's going to keep coming up year after year, and as Mr. Berg is indicating, you know, for the beet farmers, they're committed to their coop in order to provide a certain amount of product.

So there cannot be quick adjustments to respond to a decline in price. That's partly a function of the sugar program, but it's mostly a function of the way in which sugar is grown and marketed.

COMMISSIONER SCHMIDTLEIN: So, and I don't have much time left. With the Respondents' arguments that it was -- this was self-inflicted because of the bumper crop that U.S. producers had in that year, and if I understand their argument, that was driving down prices in the U.S. market. Is that possible, given the market allotment system?

MS. HILLMAN: Again, there's two things I would urge you to look at. One is again, it's the confidential data. But look at the total amount of imports that were brought in by the domestic refiners, and I think what you'll see is again, not a significant change. So the issue for you is what changed during the POI?

There was a change in the ratio between TRQ imports and Mexican imports. During all the time that the

TRQ imports were coming in, you did not see this disaster. You did not see any forfeitures to the USDA. You did not see any financial losses. What changed was the percentage that came in from Mexico at the very low prices.

That's what is the change. It's not a volume issue about the amount of imports that the domestic industry brought in. They were always bringing in the same amount. The only shift is that it went to Mexico, and went to Mexico at very low prices.

MR. BUKER: This is Robert Buker. It is impossible under that program for the domestic industry to oversupply the market, without breaking the law and getting in a lot of trouble. It's never happened.

COMMISSIONER SCHMIDTLEIN: Uh-huh, okay. Thank you. Thank you. My time is up.

CHAIRMAN BROADBENT: Okay. Yeah, sorry. I'm still trying to get my head around these allotments. So you're given -- Mr. Berg, you're given an allotment, but you're not exactly sure what the growing conditions will be like. So you have to sort of use your expertise in the Red River Valley to hit the right planning levels, to make a yield that's equal to your -- roughly equal to your allotment.

And then if you overshoot things, you get better weather than you expect, that stuff rots or goes to waste, or you might try to store it until the next year?

MR. BERG: In fact, as we sit here today, our yield as grown rapidly in the last few weeks. Our estimation of our yield for this crop has grown rapidly. We may have more raw material sugar beets than we can process in the allotted time, from August until next May.

So we have already engaged a program, where we already set up a process where our farmers, our shareholders have bid, so that they will accept payment in exchange for leaving those beets in the ground. This is really not governed by the allocation, because we're going to be several million pounds short of filling our allocation.

This is governed by simply our processing capacity relative to the duration of time we can store the beets. I wish I could say I was going to be brushing up against my market allocation this year. More sugar would be better when prices are right, but we simply can't process all that volume of sugar beets in the give or take nine months that we have from August to May.

CHAIRMAN BROADBENT: And why are we low on processing capacity?

MR. BERG: I have good numbers from a solid engineering firm based on construction of a plant in another country, that says it costs in excess of a billion dollars to build a new sugar beet factory.

Based on what we see for sustained pricing of sugar, we don't -- we can't justify spending a billion dollars for the incremental amount of volume that we could sell. It would be a low return or possibly a negative return investment.

So as much I'd like to increase processing capacity, the prices that are built into the farm bill simply don't justify it.

CHAIRMAN BROADBENT: Okay. Is global demand for sugar growing? I mean are there -- with the middle class growing in advanced developing countries --

MR. BERG: Yeah. Global demand for sugar is growing, as yes. We see it all over the place. Global demand for sugar is growing, but the price of sugar in the world market is still around 12 cents this morning. So I can postulate on subsidies from many, many countries trying to generate foreign exchange for their industries, and therefore capitalize on that.

But I think there are credible studies that say the price of producing sugar all around the world is more like 20 cents. But today it's selling for 12, and I think you understand that that's only possible through subsidies. But yes, sugar consumption is growing.

CHAIRMAN BROADBENT: And do your growers ever want to sell their -- they're legally prohibited from exporting, is that right, or what's the legal restrictions on them selling?

MR. BERG: No, no. We may export. We're under an anti-dumping order against Canada. But --

CHAIRMAN BROADBENT: Oh when? Yeah.

MR. BERG: Dating back to the 1990's under this other CEO who just recently died, as it turns out. That's not a subject for humor. I'm sorry.

CHAIRMAN BROADBENT: Say that again, that you do export?

MR. BERG: We do not export.

CHAIRMAN BROADBENT: You do not export?

MR. BERG: We have a market in our country under the allocation system for every pound that we can produce. So we do not export from American Crystal.

MR. CASSIDY: There are no restrictions on exports ^^^^

MR. BERG: There are no restrictions.

MR. CASSIDY: --from the U.S. of sugar, and some small amounts are in fact exported, primarily to Canada, although Canada does have an anti-dumping duty order on U.S. refined sugar.

MR. BUKER: This is Bob Buker. What I've seen says that the world price of sugar today is below everybody's cost of production in the whole world, right.

So it makes no sense for anyone to export. But take a place -- a lot of these countries like India, it's what we call a cash crop. The little farmer grows his subsistence crops, but the crop that he turns into cash to buy things is sugar.

So it was like tobacco was in the South here, you know, generations ago. It's how they -- the crop they sold. So they will be subsidized like India heavily by their government, to get cash in the hands of, you know, thousands and thousands of two acre farmers. So that's what happens.

But we just sell domestically because of that. So we manage so that we don't exceed our allocations, or if you ever did, it's very, very small. So you don't -- and the capital increase is so intense, as David said, that you just -- it's a limit.

CHAIRMAN BROADBENT: Okay. How often do U.S. producers generally reach their marketing allotments?

MR. COLACICCO: Could you repeat that question please?

CHAIRMAN BROADBENT: Sure. How often broadly do U.S. producers meet their marketing allotments.

MR. COLACICCO: Dan Colacicco, two years retired federal employee. When I managed the sugar program for 15 years prior to that, and I was managing during this Period of Investigation.

CHAIRMAN BROADBENT: Managing where?

MR. COLACICCO: The domestic sugar program, the marketing allotments specifically.

CHAIRMAN BROADBENT: At the Department of Agriculture?

MR. COLACICCO: At the Department of Agriculture, yes. The cane -- cane hasn't reached it for a decade, the cane sector. That's the source of surplus allotment generally. Beet, technically allotments cover production and stocks. So technically in most years, beet has production and stocks larger than their allotment. So beet tends to press their allotment much more than cane.

CHAIRMAN BROADBENT: Why is that?

MR. COLACICCO: The cane sector, you know, look at Hawaii. The dramatic reduction in sugar cane out in Hawaii, Louisiana, seems to be under pressure, the cane growing area. So I'd say --

CHAIRMAN BROADBENT: You mean under pressure -- it's just less --

MR. COLACICCO: Less acreage available.

CHAIRMAN BROADBENT: Okay, in terms of real estate ^^^^

MR. COLACICCO: Where they determine they can grow cane.

CHAIRMAN BROADBENT: Yeah, okay, all right.

Petitioners, you all said that a million tons of sugar was removed from the market by USDA, 2012-2013 year. One of the tools used to remove the sugar was the USDA's sugar re-export program. Can you explain to me just quickly how that program works?

MR. COLACICCO: Yes. Dan Colacicco again. We have a program to try to help refiners maintain throughput, where they can -- if they export domestic sugar, they get -- they export a pound of domestic sugar, they get the right to import a pound of world sugar at world prices.

Generally, the U.S. price is above the world price. So there's a premium that makes it very attractive for them to go out and import, to take this right to import world sugar and exercise it. Generally, they tend to export before they import. So that means at any point in time, there's an inventory of credits, of rights to import world sugar sitting out there.

During this Period of Investigation, the world price of sugar was very close to the support level. So USDA, we're under a non-cost, no cost mandate. But it became apparent because of the supply, mainly due to the growth in supply of imports coming from Mexico, that USDA was not going to be able to maintain at zero cost.

Well then the next thing it tries to do is minimize cost. So it found out that it could purchase those rights to import world sugar, which at the time were only worth three or four cents a pound, much cheaper than any -- we could buy that right to import sugar, which reduces supply, cheaper than any other alternative that USDA was facing.

CHAIRMAN BROADBENT: So wait a minute. So you created a right to export that you then bought back at the USDA?

MR. COLACICCO: Yeah, and that right to export has been out there ever since the 1990's.

CHAIRMAN BROADBENT: Okay, and which kind of -- where, what sugar growers are using that export program?

MR. CASSIDY: The cane refiners are the primary users --

CHAIRMAN BROADBENT: Cane refiners, okay. Excuse me, yeah.

MR. CASSIDY: --of the reexport program, and it was designed to keep capacity utilization at cane refiners above where it otherwise might be, because it allows them to import non-TRQ sugar, process it and reexport it, and as Dan said, they can substitute U.S. origin sugar for the reexport.

But what USDA did do was to look and see how many credits there were out there under the program, and a credit would mean that the refiner was entitled to import under the reexport program, and the USDA bought those credits from the refiners. The result of that is sugar that would otherwise have been imported was not imported.

That was just one of the techniques that USDA did to get sugar off of the market. Another technique was to buy sugar domestically or to take forfeited sugar. They did both, and then to sell it under the flexible feedstock program for ethanol, non-human consumption. They use different techniques in order to get the volume off the market.

CHAIRMAN BROADBENT: Great, I appreciate that answer. Thank you. Commissioner Pinkert.

VICE CHAIRMAN PINKERT: Thank you, Madam Chairman, and I thank all of you for being here today, to help us to understand these issues. I too visited American Crystal in Moorhead, and found that to be very, very helpful.

So I want to begin with a follow-on to a question by Commissioner Kieff about the impact of USDA's actions to stabilize the market, and I just want to ask it as a hypothetical question. If those actions, taking the sugar off the market.

I think you talked about a million short tons or so in 2013, if those actions were successful in stabilizing the market, then is that a sign that we should go affirmative on material injury, or is it a sign that we should go negative on material injury?

MR. O'MALLEY: Let me try to address that question. Forfeitures are something that are a last resort, to be avoided. It's not a decision that is made lightly at either a cane, a person who grows cane or beet. The reason for that is that we really have as a goal not to cause cost to the U.S. agricultural program.

So even before you get to forfeitures, there's a lot of pain that's already happened. Sugar has been sold, as Dave Berg said or others, at prices that were -- really didn't want to sell at, because it's not covering your full costs. But then you get to a point where you can't continue to do that, and then that's when the forfeitures occur. So even before forfeitures, there's injury.

MR. BUKER: This is Bob Buker. The forfeiture price is below our cost of production. So it's the right to bleed to death slowly rather than all at once. So when I forfeit, I lose money. But if the price otherwise of forfeit is even lower, you forfeit. So it's, you know, a help, but you're still in trouble, and that's what happened. Everybody that forfeited lost money doing it.

MR. CASSIDY: And the program, the forfeiture program does not prevent the market price of sugar from going below the forfeiture rates. Sugar can be sold at a lower price, was sold at a lower price.

So the notion that somehow the program is going to prevent, through the forfeiture element, injury to the industry is clearly wrong, because the forfeiture program doesn't keep prices above the forfeiture rate, and even if it did do, the forfeiture is below the cost of production of both the cane and beet producers.

MR. SNYDER: This is John Snyder. The program is designed to run at no cost. Politically, we have worked very hard to make sure that the USDA had the tools, as I call tools in the tool box, to be able to run the program at no cost. Through all of the things that we've done over the years, that's -- it's mandated, as Dan mentioned, to run at no cost.

The only tool they didn't have was the ability to somehow regulate the imports from Mexico during this period, and as everybody else has testified, our cost, the forfeiture levels don't even come close to what our costs are. If we're at forfeiture levels, we're bleeding pretty heavy.

MR. LANDRY: This is Todd Landry. The prices take time to get to us. So in 2012 and '13, we were somewhat insulated, because we had pricing at higher levels in the earlier years. But as we went along, the prices kept declining and we didn't have the good prices on the later crops.

So as we got to 2013, we were kind of up against a wall, because the prices in the future were getting even worse, and that's kind of why you don't have a choice, because you're at below production costs. So you start to stem your losses and turn the sugar back in.

MR. CANNON: So I'll just put like a footnote on here. This is Jim Cannon. If you look at, for example, Slide 10 which shows the profit and loss, the way analytically to think about the statutory provision is to think what would have happened but for the sugar policy, right?

So imagine that there were no supports in place. There wasn't this loan rate. The U.S. government did not spend $259 million on the program, but the industry had to deal with it. You just heard testimony that the refiners, they were able to sell back the right to import. So they actually had revenues with essentially no cost.

So you know the red line and the negative for the refiners would have been much deeper, right. The millers, they were able to sell their product at the loan rate. But the actual market price went below that. So they essentially would have just had to eat the production at a complete loss, or sell at a lower price.

So but for the program, these bars, especially in '12, '13 and '13-'14, would be lower, deeper. You would see more losses, and that's a way that Congress is indicating that you can think about the industry that way, by looking not only at the losses the industry incurred, but the cost to the government on top of that situation, in terms of impact.

MS. HILLMAN: Commissioner Pinkert, this is Jennifer Hillman. Just again to note, just so to put it in the context of the statutory provision, and particularly the legislative history of this particular provision, and I would only read you one sentence from the House Ways and Means Committee report on this provision that says what are you to make of this idea of a government intervention, and Congress, in enacting this, said very clearly "Since the intervention of the support program in the market is one of the factors the ITC shall consider, the necessity for such government intervention could be sufficient for a showing of injury."

So it is clearly indicating to you, as between which side of the ledger does it fall on, if there is government intervention in a support program, that is to be taken as a sign of injury. In fact, this House Ways and Means Committee report is indicating that it could in and of itself be sufficient for a finding of injury.

VICE CHAIRMAN PINKERT: Thank you. Now Mr.

Cannon, I don't want to put words in your mouth, but I think you did try to deal with the volume of overselling that's shown in the staff report, and I'm trying to understand whether you think that the volume of overselling that's shown in the staff report is deceptively large, or if you think that we should just consider other information that puts it in context?

MR. CANNON: So the volume of overselling in the staff report, it's like a fact. It's a slice of my pie, right. You saw the pie chart. It ignores the largest slice of the pie. So the problem with only looking at those data that are presented in the staff report and the way that they're presented, is that it's ignoring sort of where a lot of the surge came from, a lot of the increase in Mexican imports.

In fact, it's ignoring the issue that they're focusing on. You know, their whole argument about self-inflicted injury is that the refiners brought in these imports, and yet they don't want to even talk about the price of the Mexican imports to the refiners, right.

So the refiners brought in the Mexican imports because they were the lowest priced product they could get Estandar, which is slightly higher in polarity than raw sugar at a lower price. So they did, in order to stay in business, in order to be competitive.

Therefore, I think you should be looking at particularly the underselling in the direct imports, Product 1, and particularly that volume. I mean that's the reason we asked to have the pricing products broken out, to show that product because it's key, and in fact it's therefore essential, I think.

MR. O'MALLEY: This is Brian O'Malley from Domino. I think it's also important to, and possibly you already do understand this, but I'll just say it, that the Estandar from Mexico that is bought by refiners, is also bought by other people. It's not just refiners.

Estandar is bought by end users, it's bought by trading houses. So that price, that low price is not something that refiners caused to happen. We reacted to a market that was falling. So we're not the ones who made the price; we're the ones who bought a lower price, but so did a lot of other people. We were reacting to a market.

Now a refiner is not just concerned with the raw sugar price; they're also concerned with the refined selling prices. So far a cane refiner, it's the margin between the two prices that's very important. We will buy sugar when it's high, we will buy sugar when it's low. The key is what can we sell it for, and during this period of inquiry, the big problem was that the margin or the spread between those two prices was deteriorating as well.

But the notion that we are the only ones who buy Estandar from Mexico or even TRQ imports, or even buyers buy sugar from Louisiana or they buy sugar from other places as well. It's not just us; there's plenty of people that make this market, not just the cane refiners.

VICE CHAIRMAN PINKERT: Thank you. Thank you, Madam Chairman.

CHAIRMAN BROADBENT: Commissioner Williamson. Oh excuse me.

MR. GORRELL: Madam Chairman, just to add to what -- I'm sorry. This is Mike Gorrell from Imperial Sugar Company. Just to add to what Mr. O'Malley said here, if you look at the beginning of the period of review, just looking at USDA prices, which we believe to be accurate, in September of 2011 and then you fast forward to the depth of the problems in the U.S. sugar market, which was August of 2013, I think it's useful for the Commissioners to understand that the refined sugar prices in this country went down 56 percent over that period, from September of 2011 to August of 2013.

The raw sugar prices went down by 48 percent, and if you look at the refining margin, which you need to adjust for polarization, shrink and payment discounts, which I think we went through extensively in the last hearing, the refining margin over that period went down 82 percent. So the perception that the cane refiners are just buying cheap sugar and bringing it to the marketplace, what was happening here is that the refined sugar prices were being driven down in this country, and we were unable to afford to pay anything more, because we had lost 82 percent of our refining margins over that period of time. Thank you.

CHAIRMAN BROADBENT: Thank you. Commissioner Williamson.

COMMISSIONER WILLIAMSON: Okay, thank you. I want to express my appreciation to all the witnesses for coming today, and also in appreciation for the tours we had of the operations in Florida and around Moorhead, Minnesota.

Let me get back to this pricing for Product 1, and I know you argue that we should use for Product 1 the direct import approaches cost data. Do the refineries that directly import sugar incur additional costs for these imports, in other words, costs that are not reflected in the reported data?

MR. CANNON: The staff report asked us to report the pricing for the imports, including all costs, right, the purchase price plus cost, to get the product to a landed cost duty-paid basis, right. So the refineries reported therefore the price they paid on the invoice, plus transportation costs, plus duties and there are none because it's NAFTA, to get it to that point.

The additional cost to actually refine the sugar, the additional processing cost, they didn't add those costs. Is that -- I'm not sure I understand your question.

COMMISSIONER WILLIAMSON: Okay. I just want to make sure that --

MR. CANNON: So we think you have all the costs, and in fact, if you look at that table, the table for Product 1 in our brief and on page two, look at the size of the underselling. You could add some more costs there, and they would still be underselling. It's pretty large margins, but are there -- I guess the cane folks can answer --

COMMISSIONER WILLIAMSON: We've had some other cases where --

MR. CANNON: The cane folks can answer are there additional costs beyond the transportation to get the product, the Estandar from Mexico? Are there more -- are there other costs than that.

MR. BUKER: This is Bob Buker, no. I mean you've got to bring it there, but once you have it, there's no other costs associated.

COMMISSIONER WILLIAMSON: We've seen in other cases where the folks who are doing the direct importing had much larger cost than some people who brought from distributors. So I just wanted to make sure we weren't missing anything here.

MR. CANNON: I'm aware -- so that's part of the complexity of this direct import issue. But we're not talking about sort of the big box retailer type scenario, where they're importing. Here, it's actually a processor who imports, a refinery, and so they're looking at a raw material input in essence. I think that cleans out some of the added expenses that you might see in other cases where we struggle.

I mean we've had this in hydrofluorocarbon refrigerants, and we've had it in -- you just voted yesterday on boltless steel shelving. It's an issue there.

COMMISSIONER WILLIAMSON: Yes, okay. You understand why I asked the question.

MR. CANNON: It's a timely issue.

COMMISSIONER WILLIAMSON: Okay, good. Well, not to worry about that here.

MS. HILLMAN: Commissioner Williams, only to note that very clearly the questionnaires were asked all of this. So again, the data that's reflected in -- the questionnaires themselves were designed specifically to make sure that you ended up with apples to apples comparisons. So that the questionnaires themselves asked for all of this cost data, in order to make it very clear that you would end up with very clean data, where the domestic raw sugar and the Estandar from Mexico were on an exact apples to apples comparison.

I think to our knowledge, everybody reported all of the data that was asked in the questionnaire, so that what you have ended up with very clean apples to apples comparison data.

COMMISSIONER WILLIAMSON: Even though we're thorough, so we always have to double-check. Thank you. In our view that the Mexican and your sugar are completely substitutable. However, some purchasers and other questionnaire responses describe differences between Estandar and other sugar, and also between U.S. and other differences between U.S. and Mexican sugar. Now how do you respond to those?

MR. BUKER: This is Bob Buker. There really isn't much difference. There's a little difference in grain size and color, but it's really irrelevant. When we are processing Estandar to turn it into refined sugar, it's identical for all practical purposes. For end use purposes, there are some end uses, as I stated, that Estandar is not acceptable for, like a sports drink that's clear. But in many, many, many uses, like a tootsie roll or a chocolate cake mix, it's also identical.

MR. BERG: And David Berg. I'd like to add just one little anecdote to what Mr. Buker just said. It was a punt to the gut one time early in this process, when a customer that -- very large, very well known and many of you eat their products every single morning, and we heard that a plant in the middle of the United States, at which one of their major products is made, had just replaced our sugar with Estandar sugar.

It was going directly into the process with no alterations at all. But I mean I have that bag of Estandar, and if you -- I'm not going to betray their confidence but, you know, it's a product that many of us eat in the morning. When that is melted and sprayed onto that product, it's indistinguishable, and all of the sudden somebody we had served for decades at that plant just all of the sudden we don't need your sugar anymore. We're going to put Mexican Estandar on our product.

COMMISSIONER WILLIAMSON: Okay, okay, and that's -- but there are differences in Estandar, aren't they? Is that ^^^^

MR. BERG: There are differences, but I don't think that they keep them from being used in many, many product applications.

COMMISSIONER WILLIAMSON: Okay.

MR. O'MALLEY: Well, I would just add that at a refinery, Estandar and raw sugar are substitutable. As a matter of fact, even within raw sugars, there is variability in that. But the refineries are built to handle those differences and to still produce the same end product. So the refineries are capable of handling a wide spectrum of products.

What I believe Bob just mentioned or Dave is that for certain end users or, you know, Estandar can be used, either directly or through some intermediate process, such as melting it into a liquid form and things like that, filtering it.

COMMISSIONER WILLIAMSON: Okay.

MR. BUKER: This is Bob Buker again. As a matter of fact, when we use Estandar as a raw material, there are just days when it's mixed in with the raw sugar that we have, just because they're stored in the same place in the shed and we're just indifferent to it.

COMMISSIONER WILLIAMSON: Okay. But that's using it an import, further processing. Okay, thank you. We're hearing different stories about whether Mexican sugar pushed TRQ sugar out of the U.S. market, or whether Mexican sugar replaced TRQ sugar, they left the market for other reasons. There's been some discussion about this already, but what evidence should we look at to resolve this issue?

MR. O'MALLEY: This is Brian O'Malley again from Domino, and I think in the fiscal '13 year, as I stated in my testimony, there was a significant amount of TRQ sugar that was not filled. Then if you look at the history of those TRQ holding countries, the history has been to deliver that.

In fact, as I mentioned, there was concern. They had, you know, to deliver the sugar to the U.S. would have been economically not as good as delivering it to somewhere else, because of what happened with the low price imports from Mexico. But even with that, there was concern that they probably wanted to find out should I do it anyway, even though it's not in my economic best interest to do it, because I don't want to lose the ability to have those TRQ imports down the road or TRQ exports to the United States down the road.

So I think given that fact, and the fact that they were petitioning the USDA for assurance, tells us that they left because of the low prices, not because of anything else. They wanted to come here.

DR. CARTER: This is Colin Carter. If I could just follow up on Mr. O'Malley's point.

COMMISSIONER WILLIAMSON: Uh-huh.

DR. CARTER: I think there's some confusion. It was stated earlier that TRQ imports completely offset additional exports from Mexico and it was a wash. That's just not the case. In my report, I look at the data, and the question you have to ask yourself is what are the but for TRQ imports?

The way I do it is I look at the four years prior to the POI, and then I look at the particular year that Mr. O'Malley was referring to, 2012-'13, and I find that TRQ imports were 560,000 tons lower, and I think you're very familiar with the Mexican numbers. Those were, you know, close to a million higher.

So in fact there was additional supply on the market due to the subsidized Mexican exports, and I estimate it's around 320,000 tons. That might seem like a small number, but in a commodity market like sugar, a number like that can have a huge price impact, and I estimate that price impact to be about 20 percent.

COMMISSIONER WILLIAMSON: At what point do these -- my time is running out. But just briefly, at what point are the TRQ sugar exports deciding they want to export to the U.S. market, or they want to ship to the U.S. market, in terms of -- compared to what's -- what we know about what's happening in the market?

MR. CASSIDY: Well they have resumed shipping to the U.S. market by and large. You're talking about today?

COMMISSIONER WILLIAMSON: Well no. I'm thinking about when they made -- when they made the decision maybe not to ship in 2013.

MR. BUKER: This is Bob Buker. Every year, you know, when we plant our crops, the TRQ growers and the U.S. growers, you know, they made the decision at that point to grow it and ship it. But all of our access is limited by either foreign or domestic allocation.

But with Mexico having unfettered access, then you have to rethink that decision once the flood hits and the price drops. At that point, it was a problem and as you've heard, you know, their big concern was if I don't do it this year and take a whipping, will I lose the right forever, because we're all limited except for Mexico to what we can do, and we want to keep that access. So that's every year, but once the flood hits, you have to reassess.

MR. CASSIDY: And the TRQ operates on a crop year basis. So October through September and then some time in the summer time, USDA makes its determination about the amount of sugar. Typically it says the minimum to be safe. USTR then issues the quota certificates. So that is the time of the year --

COMMISSIONER WILLIAMSON: I'm reading the stories in the 80's about people selling sugar on the ship, you know, sugar was on the water and stuff like that. I guess that's --

MR. CASSIDY: Yes. I think it still happens.

COMMISSIONER WILLIAMSON: It still happens, okay. Thank you.

CHAIRMAN BROADBENT: Commissioner Johanson.

COMMISSIONER JOHANSON: Thank you, Chairman Broadbent. I would like to thank today's witnesses and their counsel for appearing here today. I note that other Commissioners and I visited U.S. Sugar's mill in Florida over the summer, and we learned much while there. I perhaps particularly appreciated the opportunity to tour the sugar facilities in Florida, as I formerly worked fairly sensitively sweetener issues.

But I'd never before visited a sugar production area. So thank you for that. Unfortunately, I was unable to visit North Dakota earlier this month, but I understand that other Commissioners learned much while they were there.

My first question deals with price. Raw sugar prices were falling over the same period that U.S. sugar prices were falling; that is, from crop year 2011 and '12 through crop year 2013-'14.

Is your argument that U.S. sugar prices should not have fallen over this period, even though they did not -- even though they did fall in the rest of the world, or that U.S. sugar prices should have fallen less than they did?

COMMISSIONER JOHANSON: How can we determine how much of the price fall was due to Mexican sugar imports and how much was due to other factors such as faulty raw material prices and/or better U.S. harvests?

MR. CANNON: So not to sort of overstate the latter, right, world sugar prices were falling and you would expect, therefore, and also U.S. production you see from your data, it's in your C Table, increased modestly, slightly. You would therefore expect some decline in the prices in the U.S. market. However, what you would not expect is forfeitures, prices falling below the cost of production, losses across the industry for a two-year period. So those factors tell you, prices fell too far, right? It's the first time in nine years for one segment and 13 years for the other of the industry.

The next thing you can look at is the post-petition period, after the petition is filed. Right? After the suspension agreement goes into effect and you start to control the volume of imports from Mexico what happens? Prices stabilize, they rise, the situation alters. That tells you there is a causal nexus between the Mexican imports and the price levels and therefore the profitability of the industry.

And as you know, imports don't have to be the most important cause of injury. Now, I think the record shows that Mexican imports are in fact the most important cause. And Collins' analysis shows that.

But they don't have to be. They only need to be a material cause and undoubtedly here they are. So that's sort of the legal answer.

MS. HILLMAN: Commissioner Johanson, if you would look at the chart that we've put up here, what this shows you, this is an index to March when the petition was filed. And so what this shows you is the blue line at the top is what's happened to U.S. refined prices since the petition has been filed versus what has happened in the world market which is the purple line down below.

So I think it's clearly indicating to you that once the petition was filed and there was some discipline in the market, you see this bit of separation between world prices, if you will, and U.S. prices and which you would not have seen during the period in which Mexico could have readily come into the market. You would not have seen that big of a gap between world prices and U.S. prices.

COMMISSIONER JOHANSON: And also if you could help me out, and I apologize if this was already covered in the staff report, but there's a lot of information there. What happened over this period of time to cause the world prices to fall?

MR. BERG: Thankfully we're insulated to a large extent from what happens in the world market, so I don't follow it completely as close as I should, but there were--Brazil is a massive influence on the world sugar market. This is David Berg, American Crystal Sugar. Sorry. Massive influence on the world sugar market. The largest producer and exporter of sugar.

Brazil had some minor drought conditions in the period leading up to it and therefore--and India also had a failure of its monsoon and that reduced the amount of exportable surplus from those two countries and cause the world prices to go up. There are--sometimes there are, you know, large stocks of sugar in the world market. At this time there was not sufficient stocks to offset that reduction and production and that's what caused the world sugar market to go up prior to this. So external to this entire process, it was just working on its own.

COMMISSIONER JOHANSON: Okay. I appreciate your answers. I guess with the structure of the U.S. sugar program and the various programs around the world, it's hard to correlate the U.S. price in conjunction with the world price; is that correct? Is that what you would contend?

MR. BUKER: This is Bob Buker. They're totally unrelated. Totally unrelated. Because like you just said, all over the world.

MR. BERG: Bob was my partner at United Sugars Corporation. I want to argue with him a little bit. When the world price goes up high enough, it's going to pull U.S.

prices up with it. So that the U.S. sugar program is not related to the U.S., to the world sugar program, but let's just say that something catastrophic happened in Brazil and they stopped exporting sugar completely. If there were 40 cent prices in the world market, our prices would go up with it. Because some countries would choose to ship to some other country for logistical reasons and not ship to the U.S. So therefore U.S. supply would be affected. But in general terms, when the world market is in it's normal 10 or 12 or 15 cent, you know, languid range, programs that are unrelated should not have and do not have anything to do with each other. The markets have nothing to do with each other.

MR. CARTER: Commissioner, it's Collin Carter here. If I may jump in? Going back to your initial question, both of those prices started to come down in the latter part of 2011. But I think it's instructive for the Commissioners to look at the relationship between the world and the domestic drop price in conjunction with imports from Mexico. So they both started coming down by about the same degree. And then the gap closed. In other words, the U.S. price came down further than the world price about the time Mexican exports to the U.S. increased.

MR. GORRELL: Commissioner Johanson, if I may inject something here. It's Mike Gorrell from Imperial

Sugar.

Could we go back to slide 3 that I presented? In response to your world market question, while this is coming up, there was over the period there was a growing surplus in the world market and I think Mr. Berg explained it reasonably well. But when you look at the business of Imperial Sugar and also the destination and refiner segment, one-third of this sugar industry which Mr. O'Malley's company is the large majority of this, when we look at price, we look at this, the bulk refining margin.

Now, this is isolated in a much greater way than the overall price in the U.S. market. This is isolated to U.S. factors. Right? And as I mentioned before, this price went down about 82 percent over the period.

You can flip back to slide 1. What is the largest driver or variable driver in this price when we're not dealing with refinery outages due to the explosion in Savannah in 2008 or the revamping of the Grammercy Refinery in Louisiana. One of the largest drivers of price in our segment, right, which is one-third of the market, and in addition I would say the other 25 percent of processing capacity in this country, the cane refiners that are in Florida and Louisiana also deal with that previous slide because to the extent that their benchmark is the raw sugar loan rate in the United States, those cane sugar refiners in

Florida and Louisiana are worried about that bulk refining margin as well.

The largest driver of that is that green line up there. The green line is the percentage of refined and direct consumption sugar imports as a percentage of total imports. And as I explained before, the largest driver to that green line is Mexican refined and direct consumption sugar imports. It is about 950,000 out of the 1.2 or one and a quarter million tons that were coming in during that period.

And during 2012/13 which was the depth of the sugar problem in the United States, that green line hit an all-time high. Right? And there were short-term highs that we needed during Katrina and after the Savannah refinery fire, but in 2012-13 that hit an all-time high. And that's where a large proportion of the injury related to the Mexican sugar imports are coming into this marketplace.

COMMISSIONER JOHANSON: Thank you. I appreciate your answers. So I guess the bottom line that you all would state is that although respondents contend that U.S. prices were simply following world prices, maybe that's a simplistic summary of what they stated in their brief, you said that that is not relevant because the U.S. price does not necessarily follow the world price.

PARTICIPANT: That is correct.

MR. BUKER: This is Bob, yes, and not in stronger, they're not necessarily and normal conditions doesn't follow the world price.

COMMISSIONER JOHANSON: Okay. That's helpful. This is a very different type of case for us. We deal with a lot of commodities. But this -- and this is a commodity product, but the way the market is structured, it doesn't necessarily act like a -- you would contend this does not necessarily act like a commodity in the world market?

MR. O'MALLEY: Yeah, I'm sorry. I would just also add to -- this is Brian O'Malley again. That if you look at the fact that the TRQ sugar did not come. It didn't come because the price in the U.S. got so low that it was now all of a sudden better for them to go to other markets in the world. So that tells you that the world was actually now better than the U.S. somehow because of what had happened with the very low pricing that came in from Mexico which is, that's a very -- I would say unprecedented situation basically.

COMMISSIONER JOHANSON: All right. Well, thank you for you answers, my time has expired.

CHAIRMAN BROADBENT: Commission Kieff?

COMMISSIONER KIEFF: Thank you. My long intellectual interests in law and economics are very well satisfied by the excellent discussion you have had with me and my colleagues and my cooks' interest in making English toffee for the annual winter holiday party will also be helped by the great knowledge bank of sugar and its substitutes that you have brought to me so -- to us, so thank you.

I just, if I could, ask a few questions to round out the discussion. I think the first -- if we move, and I know you would like us to focus our thinking on this as an injury case, but if we were to move our thinking, or focus our thinking to a threat analysis, can you talk about how the opportunities for consultation should feature, if at all, in our threat analysis. Do they mitigate the risk of threat? Do they mitigate it at all? Not enough? What's your view on these consultative approaches?

MS. HILLMAN: Commissioner Kieff, Jennifer Hillman for the record. A couple of things to comment on those. Obviously the fact that the Mexican government entered into the suspension agreement -- and I think the testimony that you heard even from the Embassy of Mexico this morning -- is indicating that the government of Mexico realizes that it needs something other than the consultative mechanism in order to be able to restrain the volume of exports such that it is not causing injury in the U.S. market.

As you may recall in the preliminary phase of this investigation, there were indications that there was some sort of an agreement of some kind for Mexico to try to divert 1.1 million tons out of the U.S. market and have it go elsewhere. Two comments to just note about that. One, there was in fact no such agreement. There may have been consultations, but there was never anything resembling a binding or a, you know, signed upon agreement between the U.S. government and Mexico with respect to that.

Secondly, the proof is in the pudding. Mexico was not able to follow through on its commitment to divert this 1.1 million tons. So if you actually look at the volume of Mexican shipments that went other than to the United States, it did not come anywhere close to 1.1 million tons. Yes, there were some greater exports from Mexico to other places in the world, but they did not approach that 1.1 million figure. So I think part of what you can take from the evidence on the record is that in the absence of a suspension agreement, and given the Mexican sugar program and Mexican subsidies that mandate that all surplus be exported, so the Mexican producers must export all of their surplus. And it's proving that the only real viable market for the Mexican exports is the United States. You clearly have both a structural surplus in Mexico coupled with a mandate that they have to export, coupled with the fact that this is the viable market for them is the reason why I think the Mexican government felt that it must enter into a suspension agreement in order to bring about any discipline that would not result in consistent, continual injury.

COMMISSIONER KIEFF: So if someone were to look at the arc of the story around sugar, NAFTA, and this case, and tell us that a big part of the at least anticipated environment surrounding NAFTA was the sense that sugar could come into the U.S. market and high fructose corn syrup could come into the Mexican market, and if one were to look at all of that and say, in effect, that our decision to recognize injury in this case will trigger or correlate with a decision by the Mexican system to react negatively to high fructose corn syrup transmission to Mexico and that in effect we are seeing the unraveling of a bigger deal. If the arc of the story that I just described might be wrong, please help me think about whether it is wrong and please also help me think about whether it's relevant to our role? It may be right, but irrelevant, for example.

I ask this because I think there is a lot going on outside of this case. And I am struggling with what seems to be an effort to ask me on the one hand to pay a great deal of attention to things that are going on outside of the case. While at the same time asking me not to pay a whole lot of attention to very big things that are happening outside of the case. And so any help you can give to that tension will help me think through the case.

MS. HILLMAN: Commissioner Kieff, Jennifer Hillman for the record. What I would suggest to you first is that I do think you need to take NAFTA into account in the sense as a condition of competition. And two things relevant with respect to the NAFTA, the reason why you need to take it into account is, it is the source of the unfettered access that Mexico has. So it's very clear that the reason that Mexico and Mexico alone has unfettered access is NAFTA.

COMMISSIONER KIEFF: So let me just then ask, is this the expected outcome of that unfettered access?

MS. HILLMAN: Two comments on that. First of all, when you say "this" what I will tell you very clearly is the other thing about NAFTA is there's nothing in the NAFTA. And I would say expressly nothing in the NAFTA that suggests that the availability of the trade remedy laws, the antidumping or the countervailing duty laws would not be available to the NAFTA parties. So certainly this, the fact that you have an antidumping case with a NAFTA party is certainly something that is well-known, well-expected and has happened in many other cases.

So, in that sense, you should be deciding this case under the terms of the trade remedy laws and on the basis of a traditional injury decision. The fact that we happen to have a free trade agreement with one of the parties to an antidumping investigation in that sense, it's not legally relevant.

But, again, there is this competition -- conditions of competition issue. The other part of the conditions of competition relates to this issue of how much Mexico is producing. It is clear as a result of the NAFTA that Mexico realized that this unfettered access was part of the reason in which the Mexican government chose to subsidize very heavily its sugar industry. Sugar is now the second largest agriculture product in Mexico, largely as a result of the subsidies. The reason that sugar, if you will, was selected as an industry for the government to heavily subsidize was because of this unfettered access to the large U.S. market for sugar.

COMMISSIONER KIEFF: So I hear you. Let me try asking a more sharp question then which is, should I worry at all about the risk that an affirmative in this case is on the mind of the Mexican government and their decision to support you in this case? Not because of this case, but because of their keen awareness for the reciprocal relationship between northward movement of sugar and southward movement of high fructose corn syrup and the risk that if you will, this will blow up the deal? And the deal is the larger deal, not the suspension agreement.

MR. BERG: I'm not Mexican, I'm Norwegian, Norgei-American. David Berg from American Crystal. I can't tell you what's on the minds of the Mexican government. I can tell you what we sensed was on the minds of the Mexican government when the suspension agreements were negotiated. When the initial findings of dumping and subsidization came through, and it was clear, apparent to us that duties were going to be imposed. The phrase came out of some government official in Mexico through the press that all hell would break loose if that happened. We interpreted that to mean that the imposition of duties would stop or severely retard exports of sugar from Mexico to the U.S. and therefore that they would make -- possibly make some retribution through high fructose, actions against high fructose going to Mexico.

At that time, we were encouraged by various people within Washington, from Washington government agencies and Congress, you guys need to find a way to find a suspension agreement, get some kind of terms that you could balance trade between the two countries. And from that point forward, subsequently two suspension agreements were arrived at. The one that was decided on December of last year, I think, governs the situation between the two countries in a way that -- my interpretation is that instead of locking down exports from Mexico at zero or very low levels, it allows substantial access to the U.S. market, but controlled access to the U.S. market. And therefore, if any of the Mexican government representatives in the room or anywhere else would like to opine about this at some further point, they are going to have substantial and controlled access to the U.S. market. And I think in exchange for that, they may have decided that continuing access of high fructose to the Mexican market is okay. But I'm from Minnesota, I don't know.

COMMISSIONER KIEFF: Well, thank you, and I see that my time is up. So thank you and I welcome any input anyone wants to provide in the post-hearing. Thank you.

CHAIRMAN BROADBENT: Commission Schmidtlein?

COMMISSIONER SCHMIDTLEIN: Thank you.

I wanted to follow up on a pricing question which is, can someone discuss in more detail how or what your position is, I should say, of how U.S. prices were influenced by the Mexican imports? So I'll just give you a little insight into the reason I'm asking. When you look at the pricing tables, and the staff report for products two through six, the relative quantities between the U.S. and Mexico, there's quite a -- there's a fair amount of disparity, right? So, is it your position that within these pricing products those quantities are influencing the U.S. price? Or is it more product one, just to cut to the chase?

MR. CANNON: Within the pricing products, so when we asked for pricing products and the definitions at that point in time after the preliminary decision, the Mexican industry was still opposed to us and they asked for breakouts with products B and C and slice and dice a common farm interest strategy to look at pricing data. And so they have created categories where indeed some of the volumes are small, some of the prices, particular for estandar in some cases are higher than the price for fully-refined which makes no sense. So looking at the data, looking in the aggregate for the refined sugar products, in other words, two through six, not product one.

COMMISSIONER SCHMIDTLEIN: Uh-huh.

MR. CANNON: What you see is what you would expect in a commodity. You see mixed underselling and overselling infrequency and you see a downward trend in all the prices. And that tells you that the imports, which are widely available, and once there's mixed underselling and overselling, they're having an impact in the market and are causing price depression through the market.

COMMISSIONER SCHMIDTLEIN: Regardless of the product one?

MR. CANNON: Regardless of product one. And in particular you can see that the incidence of underselling starts to pick up because the period goes on. In other words, as the Mexicans were confronted with this excess production, they had to move it into the U.S., they start cutting the prices. And so it tells the Mexican side of the story of what was happening here.

Now, as I said this morning at the outset, product one is the most important pricing product in terms of coverage.

COMMISSIONER SCHMIDTLEIN: Let me stop you there for a second.

MR. CANNON: That's 40 percent of the imports.

COMMISSIONER SCHMIDTLEIN: Yeah. No, I know. And I agree with that. But I guess my question is, I mean, like you made this argument, but where can I find comfort that even if you aggregate it, right, the numbers are going to be so different, is it, this is because it's a commodity product that the small amounts are --

[SIMULTANEOUS CONVERSATION]

MR. CANNON: You're going to see mixed underselling and overselling --

COMMISSIONER SCHMIDTLEIN: -- are going see --

MR. CANNON: -- in any commodity product.

COMMISSIONER SCHMIDTLEIN: Uh-huh.

MR. CANNON: Indeed. That's what you're -- you see this in many cases where you have mixed underselling and overselling.

COMMISSIONER SCHMIDTLEIN: So why would I conclude that --

MR. CANNON: If you look at frequency, not quantity, that's simply the incidence of underselling, you still see more underselling by the domestic -- I mean, I'm sorry, more underselling by the Mexican import than versus domestic prices.

COMMISSIONER SCHMIDTLEIN: By instance?

MR. CANNON: By -- yeah, by frequency. And look in your head-to-head. So product two is where all the volume is. In essence, if you take away product one and you just look at the pricing data, it's the product two series that have all the volume. All right. Product 2A is refined to refined, heads up, same product. You have mixed underselling right there, right through the data and that tells you that we're talking about a commodity product in which price is important and nobody's price moves too far apart. And when you get to the variance, like product 2C, for example, this is one I think is an oddball, it should be taken out of the data set.

MR. CANNON: Can't just keep going on publicly, I'm afraid.

COMMISSIONER SCHMIDTLEIN: Oh, okay, well maybe, if you will just follow up, because I still, I mean, when I look at Product 2, you know, you see a lot of overselling.

And you see, um --

MR. CANNON: Indeed, you do. But you do see incidents of underselling.

COMMISSIONER SCHMIDTLEIN: But why would I conclude from that, that that's driving the price?

MR. CANNON: Underselling is a tool like anything else. It's a picture of some of the data set. You know from, well, the purchasers, producers and importers when asked, what was driving the price, the majority of the answer was, Mexican prices were driving the price. Right?

You know from the volume of Mexican imports that enter the US market, whose volume changed as a result of the price? Mexico's volume changed. And domestic industry's volume, yes it moved, slightly. The market share is flat.

Whose volume changed? Mexico's volume changed. What did the purchasers, producers and importers tell you? Mexico was pushing lower prices. All right. What does the logic tell you of the surplus in Mexico? So, when you see correlation, prices move together and go down together, that may not mean causation. But these other elements of the case tell you that there is causation here. Right? There is other evidence, in other words, than Product 2A, Product 2C. All right? And you have to look at total record. And then, on top of that, Product 1, I mean, let's not forget, where the volume was, and where the low prices are. And

I've heard that's not just refiners.

COMMISSIONER SCHMIDTLEIN: Right. All right, well, let me ask you a question about Product 1, and this you might not be able to answer here in the hearing, but, I mean, you clearly see a point where, you know, the numbers change for the US and Mexico. And so I guess my question there is, given the decrease for the US, is that not a displacement? You know, we've talked this morning about whether or not --

MR. CANNON: Volume effects?

COMMISSIONER SCHMIDTLEIN: Yes. So, and again, I'm sensitive to confidentiality of this, but how does that fit in with the notion that Mexico was displacing only TRQ countries? So where did that product go? Because I asked at the beginning if you agreed with that, and I thought you did. So, what is happening here? Where -- within the second part of this --

MR. CANNON: When I agreed with that Mexican imports replaced TRQ, I was talking sort of C-table macro level. When you look at the big picture, it's the same when I was explaining that, we don't fill up the allotment, it's macro-level, right at the grower level, individual growers fill their allotments, but from your standpoint, looking at, say, the C-table macro level, the view of the industry. All right, now when you look at the individual pricing products, do you see some volume shift, which would be displacement? Right. There I think we can address that in the post hearing.

COMMISSIONER SCHMIDTLEIN: Okay, that's probably better, and then Mr. Carter, this is related to something you were just talking about, in terms of, I guess, a chart in your report that shows there was five hundred thousand short tons of Mexican product that hadn't displaced TRQ that was supplemental. Is that what I understood you to say? In other words, you disagreed with this notion that it was a wash?

MR. CARTER: Yes, correct.

COMMISSIONER SCHMIDTLEIN: And so I just wanted to understand that further. Because when you look at the total import numbers, of course, like, they're very constant.

MR. CARTER: Yeah, correct.

COMMISSIONER SCHMIDTLEIN: Between when you add Mexico plus all other --

MR. CARTER: Yes, and you know, there are lots of numbers and there are different ways to look at this. In my opinion, the imports from Mexico -- the growth and imports from Mexico were larger than the reduction in imports from the TRQ countries and the difference was approximately three hundred and twenty thousand tons. In that critical year, 2012 - '13.

COMMISSIONER SCHMIDTLEIN: Oh, you're looking at one year.

MR. CARTER: That's the one year where there was a big drop in TRQ.

COMMISSIONER SCHMIDTLEIN: Okay. I'll have to look back at that. Now then, the last question, and you can address this in the post hearing if you'd like, is, can you respond to the respondents' argument with regard to the significance of the volume, and specifically this argument that, given the -- there was a certain number of US producers who were responsible for importing a certain amount of the Mexican product. How should we consider that, and then the question of this displacement? And is that, is that properly analyzed under a volume analysis, in terms of determining whether volume is significant, or is it analyzed more properly somewhere else? Maybe an impact?

MR. CARTER: So, Jennifer Hillman spoke to this. When you do the -- is volume significant analysis by statute, you are talking about the volume of imports in absolute terms and relative to consumption and production and also is the increase in volume significant? And that significance finding in the section in your opinions under volume is talking about volume of imports.

Now, what the users do in their brief, is sort of compact that with the impact, right? So, if you scroll down the statute to Subpart 3 from Subpart 2 we talked about price, and so Part 3 we talk about impact, and one of the subsets under there is impact of volume, and that's where you look at domestic producers output, market share and so forth.

And, so strictly speaking, the volume of imports absolutely is significant and the increase in that volume is significant, and when you look at impact, now you bring into the analysis the US side of the equation, and what is the impact. And there you look at all the factors, not only volume, but also price.

And in this case, it is true that some domestic refiners also imported, I mean, that's a fact. There is not sufficient capacity to make enough cane and beet raw sugar to supply all the refineries. All right, so this is an industry that cannot supply the whole US market.

You have many industries before you. Many steel industries cannot supply the whole US market. That cannot be a reason not to find for domestic industry. The fact that they can't supply the whole market cannot be a reason to rule against them.

And Congress has spoken to this. Right? So in the 88th Senate report, right, Congress talks about, if the domestic industry is importing because it needs the imports to stay in business. You have talked about this in several cases, in polyethylene retail carrier bags, in furniture, and we've talked about it in terms of whether the actual imports by the US industry are themselves a sign of injury.

In other words, the fact that they imported shows injury and the issue is, are they importing because they need it to compete? So what's going on here is, this is a refiner and this is a refiner and they compete with each other. And if one of them starts importing from Mexico, he's gonna have lower prices than the other one and so, when the Mexican imports drop that price and continually drop it, they have to fill the refineries and they have to do it with the lowest priced product in order to stay competitive.

And that's exactly what the Congress is talking about, and that's exactly what you have addressed in earlier cases, like furniture and -- it might even be an issue in your boltless shelving case you just voted on.

COMMISSIONER SCHMIDTLEIN: Okay. Thank you.

MS. HILLMAN: Commissioner Schmidtlein, Commissioner Schmidtlein, Jennifer Hillman. Could I just very quickly? Um, again, the data is confidential, but I think if you added up the total amount of imports from these producers that you're talking about, what you would see is no increase in the total. So, in other words, what -- two things to make on that point.

One is that their portion of their production that they purchased domestic raw sugar did not change. So these refiners did not use Mexican imports in lieu of domestic raw sugar. They continued to buy all of the raw sugar that was available to them in the market throughout this POI. So there was no injury, if you will, that was self-inflicted by their imports onto domestic producers of raw sugar. They bought all the domestic raw sugar that was available to them.

The only thing that happened here was some switch between TRQ and Mexican imports. If you look at their total import volumes -- total. Add TRQ plus Mexico, there's not an increase by these -- by the domestic refiners in terms of their amounts that they brought in. The only change here is that the Mexican product came in at a price that was much lower, than any of the TRQ imports. So where you see the impact, is in the price. And that's where you see the big impact in this Product 1 area, is in that price.

COMMISSIONER SCHMIDTLEIN: Okay. I am sensitive to the time. But in the post hearing, if you could then just explain what's going on between December 2012 and January 2013 on the US column in the quantity. Right. Again, like I'm way past my time.

MR. CANNON: Yeah, so there's also another take on that table. In the Appendix to our brief, because that reflects one of the importers data was left out of the staff report and if you put it back in, it fills out all those --

COMMISSION SCHMIDTLEIN: I see.

MR. CANNON: -- missing -- based on questions about their data, and I don't know that we resolved those. I think I may need to address that in the post hearing brief as well.

COMMISSIONER SCHMIDTLEIN: Okay.

MR. CANNON: Maybe because those empty -- there were Mexican imports.

COMMISSIONER SCHMIDTLEIN: Well, that was another question. But I'm talking about the US column right now.

MR. CANNON: Yes, there were, but we, there was some question about the accuracy staff, question on accuracy of their data. And I think it was legitimate.

COMMISSIONER SCHMIDTLEIN: That was gonna be my third round of questions.

MR. CANNON: Yeah, but there were imports. We just --

COMMISSIONER SCHMIDTLEIN: Okay. All right, thank you.

CHAIRMAN BROADBENT: I have a question for the folks from Imperial, Mr. Gorrell and Mr. Henneberry, is that right? Oh, there you are, okay. Um, let's see, I remember the testimony of your company when we did our last proceeding on sugar, that the suspension agreement with Mexico didn't alleviate the injury that you all were suffering. Is that still the case now? What's your position on the current US suspension agreement?

MR. GORRELL: The current position is the same. We still, I'm sorry if you could go back to Slide Number 3. Yeah, no, I'm sorry, Slide Number 1. The suspension agreements, there are two causes of injury that you've heard about from the various participants today.

One cause is caused by the total amount of sugar coming to the United States. And from Mexico. And in broad terms, what was happening is Mexico was exporting 2.1 million tons per year of total sugar to the United States, and that needed to be rationed back to about 1.5 million, and that's what's happening right now under the Nates-based formula.

What the suspension agreements failed to address is the green line, all right. And at the very beginning of the period under which sugar was coming in under the suspension agreements, we saw that the Mexican flow of refined and direct-consumption sugar was coming in slowly, you know, it took some time for that program to get momentum.

More specifically, in the first four months, I'm sure we can address this in the post hearing brief, but approximate numbers in the first four months, we were seeing about forty-five thousand tons a month on average, of refined and direct-consumption sugar coming to the United States.

The last three months reported by the USDA are May, June, July, and that is north of 100 thousand tons per month of refined and direct-consumption sugar coming to the United States. If you were to analyze that, 100 thousand tons per month, and add to that the 300 thousand tons comes from other origins, you would get to 1.5 million tons of refined and direct-consumption sugar coming into this country, which, against our forward outlook, we're estimating that to happen in 2017 -- '18 -- '19. I may well be conservative in that forward outlook.

So that second layer of injury which is compressing US cane sugar refining margins and suppressing our throughput down to what I think most people at this table would agree are horrendous capacity utilization rates. That has not been addressed by suspension agreements.

CHAIRMAN BROADBENT: Well, what is your advice to the US government at this point, given the ongoing negotiations and, I guess, your preference here is for the, for us to go affirmative and the dumping duty and the subsidy duty go in place?

MR. GORRELL: Look. I think we've been consistent from the very beginning. We have believed and we continue to believe that the Mexican sugar imports are causing injury to the industry, and that's material. And so we do believe we should put affirmative decision on this, this part of the case.

We know that if you do that, the suspension agreements go into effect. Right? We don't like that, because it does impact our business, as we talked at length about, in the previous hearing. At the same time, we do believe that good suspension agreements can be made and at least by having that affirmative decision, we have a vehicle in place with the suspension agreements that can be improved.

Now I'm not gonna sit here and tell you that the improvements are very small to correct this. Because getting those blue bars and red bars realigned up there on the green line, there's a lot of work to do here. All right. But I am absolutely convinced that good suspension agreements can be had. We're not in control of that, unfortunately. That's the control of the US government for now.

Last, but not least, there is a reasonable chance that the suspension agreements are violated. We have seen some violations to date and we're in discussions with the Department of Commerce about that. I think it's very important that the US sugar industry have the backdrop of an affirmative injury ruling from this proceeding. In case the suspension agreements are violated and the suspension agreements go away. All right.

The suspension agreements go away and the outcome is just going back to what was happening in 2012 -- '13 and I don't think that's fair to any US sugar producers, whether it's a cane refinery or a beet processor or a raw sugar cane producer or a sugar cane mill. So, that's, in that sense, I understand your question, why are we here? That's exactly why we're here. We think that an affirmative determination in this proceeding is good for the entire US sugar industry.

COMMISSIONER BROADBENT: But you're kinda putting some adjustment in the suspension agreement so that you're not facing this in terms of refine volumes?

MR. GORRELL: Yeah, I mean, as we discussed before, we've discussed repeatedly with various departments within the US government, that what we are faced with today is that we're unable to supply -- to secure adequate raw sugar supplies for our business. All right. Until we're able to secure adequate raw sugar supplies for our business and increase our capacity utilization rates, we see that there's a still a problem and there's still injury coming from Mexican sugar imports to the United States.

CHAIRMAN BROADBENT: Okay. Thank you very much. Let's see. Mr. Cannon, US prices of raw sugar remain stable really over a 19-year period, between 1981 and 2008, averaging about 20.45 cents per pound. The, so you're really not seeing much of a variation in the price, maybe three cents a pound during those, that 19-year period. And then you have this sort of big jump-up in, what, 2011, is that right? I mean 2008 or 2009. So you increased from twenty-one cents per pound to thirty-eight cents per pound. How did -- how do you sort of defend that this is not just the market returning to normal levels, in terms of price?

MR. CANNON: You've asked me, I'm sure some of the industry folks want to comment on this, too. But I will start. What they have presented on that table, that chart that you're looking at, is price only, does not take into account the cost to make sugar. So back in 1981, most things cost a lot less than they cost today.

But if you were to take today's cost of production, the average unit, the COGS, the average unit, and lay it on top of that chart, all those historical costs, prices will be below cost, that whole time line. Because they were looking only at the price and they're not relating it to the cost.

Secondly, if you look at the tables, right, I mean, we talked about this, the P&L table. These are not extraordinary profits. They were losing money in the last two years. So, I think as a principle, you cannot conclude that a situation is normal when the US industry is losing money. Those are not normal prices.

And thirdly, that record, those costs, that historical data that's not before you. We didn't build a record with that. Because you look at this period and these data and so I'll stop there and ask if anyone else wants to address this.

MR. O'MALLEY: Well, it's not saying anything This is Brian O'Malley, Domino again that you didn't say, but normal prices, the history shows, do not cause forfeitures. Normal prices do not result in the USDA needing to remove a million tons of sugar from the market, so the contention that this is normal is, you know, very disingenuous. This is way below, the price level was below what would be considered normal because of what happened afterwards.

MR. BUKER: Chairman, we heard a lot of this is Bob Buker we heard a lot of people testify that it was an unsustainable, and what they're saying is, we would've all gone out of business to seek continuance. So, in a normal situation, people don't plant crops and reinvest every year with the expectation they're gonna go out of business, you know, so this was highly unusual situation for us in the marketplace, I think, at these prices.

MR. SNYDER: John Snyder. As I testified earlier, that the forfeiture levels are well below our cost of production, those forfeiture levels have changed very minimal, or several farm bills, and they just don't follow a cost of living increase or anything. Our costs have obviously gone up substantially from when those forfeiture levels were set, and so they do not reflect our cost of production, so when we get down to forfeiture levels, we are hurting very badly.

MR. BERG: David Berg, American Crystal, very briefly. I don't think we would be here if prices had returned to normal. Normal is above the price support level. This was below the price support level. And so, to say that prices came down from their peaks at the world market run-up, yes they did, but did they return to normal? No, they did not. They went to well-below normal and well-below sustainable levels.

VICE-CHAIRMAN PINKERT: Thank you, Madame Chairman. I'm still struggling with some of the issues that were raised by Commissioner Schmidtlein questions. And I'm looking at that movement in apparent consumption over the course of the period and I'm trying to understand if it's your contention that Mexican imports drove the increase in apparent consumption over the period?

MR. CANNON: So, first, whether there was an increase in apparent consumption, the data that you've collected show a certain incremental increase in apparent consumption, because of the way that it's added up. But perhaps the industry would comment on, has demand in US in apparent consumption increase over this three year period and to what extent?

VICE-CHAIRMAN PINKERT: I'm gonna ask about demand in a second, because it could make a difference here for these purposes between demand and apparent consumption. So, let's stay with apparent consumption right now, and ask the question, was that driven by imports from Mexico during the period?

MR. CANNON: I think our view would be that, indeed, as Dr. Carter pointed to, the increase in Mexican imports was greater than the decline in TRQ imports. And so there is a volume there, which added to apparent domestic consumption, so some of that increase was captured by Mexican imports, in fact.

VICE CHAIRMAN PINKERT: That leads to my next question, which is: Does an increase in demand during the period partially account for the movement in apparent consumption during the period?

MR. CANNON: So perhaps the witnesses would address that.

MR. BERG: I've been at this for most of my adult life, and sugar consumption just continually marches upward--that's not accurate. It doesn't continually march upward--David Berg--it has gone up in about nine years out of ten. Most of the time it goes up. Most of the time it goes up because the population of the U.S. is increasing.

Sometimes we actually see per capita increases, but it just continues to go up very incrementally. Sometimes faster, sometimes slower, but it goes up a small amount all the time.

Not having seen the data on the pink sheet, I can't tell you what the correlation might be between that and what we see from USG reports, but we just expect that sugar consumption just goes up every year. And sometimes it goes up a little bit, sometimes it goes up more, sometimes it shrinks back a little bit depending on some ebb and flow and something, but for the most part the trend line is up.

MR. COLACICCO: Dan Colacicco. In the--I don't know exactly what consumption data you're looking at but you want to make sure that it didn't include USDA purchases of like 450,000. Those are included in USDA's deliveries.

MR. CANNON: So your staff report I believe in part four subtracted the forfeiture volume, the USDA deliveries, when you calculated consumption. So you adjusted for that, and I think that was correct.

But the magnitude of the increase in consumption is--I think if I were to--when they see this, when it's a public version and it's at the end, right, in the final report, I think they will be somewhat surprised by the size of this increase because it's a little--it's a little more than the industry would have thought was experienced.

What I can say about that, though, is that the Mexican imports do indeed capture the bulk of, a big chunk of, obviously their market share, their market penetration percent ratio increases substantially over the period.

And I would also point out that, you know, when you think about this, I've said that, how do we know that the Mexican prices were the price leaders here, that they caused prices to fall? We have correlation. Does that mean causation?

If demand is increasing, everything else being equal, you would actually expect prices to rise, right? I mean, we have a pretty--but you have this additional supply of surge in Mexico trying to push its way in, and prices fell. And I think that gives you some confidence in the causal nexus, too.

VICE CHAIRMAN PINKERT: Thank you. Any other comments on that issue before I go to my next question?

(No response.)

VICE CHAIRMAN PINKERT: Okay. The staff report reflects that foreign producers consider high fructose corn syrup and sugar to be mostly interchangeable, but that U.S. producers and purchasers consider them to be only somewhat interchangeable.

What is the basis for this difference in opinion?

MR. BUKER: This is Bob Buker. I would argue that that's not, probably, accurate in that what makes the difference is the use. So high fructose came into this country in the '70s and primarily displaced soft drinks and other uses where it's suitable, and took a hundred percent of that. And then it stopped because there are other uses that it is just not acceptable for.

And that is true everywhere. Now in some, you know, foreign countries they may not use it as much because there's logistical problems. For instance, there'd be a soft drink manufactured in Columbia or Venezuela and the nearest high fructose factory may be in Iowa, so logistics prevents them from putting high fructose down there, for an example, everything else being equal.

So they may be using sugar in applications we're not. But where the logistics support it, high fructose for a long time has displaced. And we don't really, other than around the edges, it's not a competitive thing for us at all because it took its uses and kept 'em. And that's based on not nationality but end use. It's true everywhere.

MR. BERG: There are some products, some mainstream products, like Pepsi that do put some sugar into their products, beverage products. Coca-Cola, to my knowledge, does not have any broadly distributed products that are sweetened with sugar. Pepsi has some niche products like one called Sierra Mist, another one Mountain Dew Throwback, another one Pepsi made was Real Sugar, but you kind of have to hunt for them.

I mean, so obviously I'm somebody who cares about this. I go hunting in the grocery store for them, and I find them, but they are niche products. If I'm looking at Pepsi, I see cases and cases in the traditional blue case, sweetened with high fructose corn syrup. And then around the corner up on the top of the shelf I might find a 12-pack of Pepsi sweetened with sugar. But it's a niche product.

For the most part, sodas in this country are sweetened with high fructose corn syrup. There's a significant price differentiation. It's been that way for a long time and I don't see anything changing that.

MR. CANNON: If you're thinking about the Like-Product analysis, they're made in different factories, different types of production processes, but this last point: there's a big difference in price.

And so the fact that there might be some applications where it's interchangeable, that is one of the factors you consider. These other factors all tend to indicate it's a separate Like Product. The fact that they strongly indicate it, almost as strong as the impact that it is a much lower price, and so if it could be used in cake it would be--but it can't.

VICE CHAIRMAN PINKERT: Mr. Berg, you referred to the sugar in the soft drinks as being kind of a niche part of the market. It's my understanding that that's a growing part of the market. Does that signify some change that's going to be of benefit to U.S. producers of sugar?

MR. BERG: I don't think that it is growing. I wish I could remember the year, but it would be about five or six years ago when we were quite excited where I work because we sold some sugar to Pepsi because they came out with what they called Pepsi Throwback and Mountain Dew Thowback, throwing back to the days when it was sweetened with sugar, and they have stayed exactly where they were at about that much market share.

So, no, I don't see it really seriously growing because given what sugar sells for, and given what high fructose normally sells for, it would be a very expensive proposition for the major beverage manufacturers to shift to sugar.

VICE CHAIRMAN PINKERT: Any other comments on that issue? I see Mr. Cannon puzzling over something.

MR. CANNON: The only other comment would be, if you think about the staff report--and now I'm going to have to prove this in my post-hearing brief; I shouldn't even go there--if you think about the staff report and the answers to the questions, they also asked them the question: Does a change in the price make a difference?

And largely there, even in the same people who said they might be substitutable, said no.

MS. HILLMAN: Commissioner Pinkert, if I could add again, just if you walk through both the staff--and again you have to remember in the prelim there was no question about whether or not high fructose corn syrup should be considered.

As a result of an argument made by the Government of Mexico, the Commission did collect data this time on high fructose corn syrup. But I think if you look at that data and you look at your six factors in terms of Like Product, without a doubt they all point in the direction of these are two separate Like Products.

And again, over and over and over again you had nobody saying for example that there were common production facilities, because there aren't any. You had nobody saying that these are comparable with respect to price.

With respect to physical characteristics of uses, everybody is clearly noting that high fructose corn syrup is only liquid. So for any application in which you need a solid product, it is simply not useable. So if you start to add up all the places in which there is no overlap, and your questionnaire data indicates that, and your purchasers indicate that, there's no overlap at all in many of your six Like Product factors, I think you end up at the end of the day with a clear analysis that high fructose corn syrup and sugar are not Like Products for purposes of your final determination.l

MR. O'MALLEY: This is Brian O'Malley from Domino. There have been instances over the last five years of customers that have switched, or products that have switched from high fructose back to sugar.

In no instance was it due to a price condition. In all instances the reason for the change was marketing related, or to appeal to a certain consumer preference. And in all instances, that change was made at a substantial increase in cost to that particular product.

But again, I don't think it would be--you cannot attribute changes in overall demand or consumption to conversion of high fructose corn syrup to sugar. It's happening here and there at the edges, but it's not something that's a major factor in a change in demand in the

United States for sugar.

VICE CHAIRMAN PINKERT: Thank you, very much. Thank you, Madam Chairman.

CHAIRMAN BROADBENT: Commissioner Williamson.

COMMISSIONER WILLIAMSON: Thank you.

Recent USDA data cited in the Respondent's brief indicates that Mexican production is declining and not projected to increase. However, you argue that Mexican sugar production is increasing.

How do we resolve this issue? Mr. O'Malley?

MR. O'MALLEY: Well obviously--this is Brian O'Malley again from Domino--I think the issue, especially during the Period of Inquiry where we were focused on, so at the time this was going on we were looking at the acreage, and with any crop weather plays a role. Husbandry plays a role in terms of how the land is cared for and things like that. But simply looking at the acreage that was devoted to cane in Mexico and the rapid rise in acreage made it clear to us that we were facing not just a blip but a sustained program of increased production that we were going to be looking at these 2 million tons, or these million-ton increases for the foreseeable future absent some kind of event that would cause it to be less.

But we can't plan on weather helping us. We can only look at the data, which was a substantial increase in acreage.

MR. CASSIDY: There is no question that Mexican production increased during the Period of Investigation. And as you have heard today, all of their crop is sugar cane, and sugar cane once planted continues to grow for a period of years. It is, I suppose, conceivable that four or five years from now you might see a reduction in the acres, but it is unlikely given the nature of the industry in Mexico. As long as they are able to maintain prices at some level that is adequate, they are going to keep growing the sugar cane at the level.

We see no reason to think it is not a structural change. It will be different from year to year, but it dramatically increased and is now operating in a new normal at a very high level.

MR. BERG: David Berg, American Crystal. In your readings you may have seen that several Mexican mills have been bankrupt, privatized, gone bankrupt again, efforts to seel them back to industry which are ongoing today. I think it was last week I received an e-mail that had been sent to us offering one of the mills that was currently in government hands.

There does not appear to be any desire by anyone down there to close down any portion of their mills. I mean even though they've been financially insolvent, some of these mills, multiple times they still want to keep them in operation. So I don't see any trend that says they're going to, as Bob said, going to structurally shift to a lower level of production.

COMMISSIONER WILLIAMSON: In fact that was one of my questions. Does this trend have any impact on exports, future exports, do you think?

MR. BERG: Not if the Suspension Agreement holds, sir.

COMMISSIONER WILLIAMSON: Okay. Is there any indication of increased--

MS. HILLMAN: Could I just--

COMMISSIONER WILLIAMSON: I'm sorry, Ms. Hillman?

MS. HILLMAN: --just a comment on this issue of what is USDA predicting. I think it's very interesting. So if you look at this chart, the green bars are the volume of exports that USDA was predicting before the Suspension Agreements were negotiated.

The purple bars are the amount that USDA is predicting after the Suspension Agreements. The only point being, however you look at those green bars, in the absence of the Suspension Agreement it's clear that USDA was predicting very, very high volumes from Mexico.

So, yes, they may have come down a little bit in some of the years, but you're obviously--they're obviously showing USDA is predicting, you know, again structurally somewhere in the order of 2 million tons of imports from Mexico throughout this entire, you know, 10-year period of their predictions.

So it's not clear to me that USDA would even agree with this notion that Mexico is going to have any decline in their production. Either set of predictions would indicate significant Mexican production, as does your questionnaire data.

I mean, you asked in your questionnaires for the Mexican producers themselves to predict what their production levels were going to be over the next couple of years going out. And again, those continue to show both an increase in their total production--they are predicting it--and an increase in the portion of that production that is coming to the United States.

So your questionnaire data would also support the notion of rising Mexican production and rising Mexican exports to the United States.

COMMISSIONER WILLIAMSON: Just to round out the picture, in addition to the acreage increases, is there an indication of yield increase in Mexico? Are they becoming more productive or efficient? If you don't know, that's okay but I was just wondering, since I did learn something last week.

MR. BERG: I think Mr. O'Malley--this is David Berg--Mr. O'Malley referenced husbandry, taking care of the fields?

COMMISSIONER WILLIAMSON: Yes.

MR. BERG: When prices are good you do everything good you can to induce the best production you can from those fields, which cane being a perennial crop it's going to keep growing. As prices have come off their highs, we see evidence that the husbandry isn't quite as good as it was before.

But the main determinant is how much sunshine and how much rain, and when does it come. And since the number of hectares planted in sugar cane in Mexico has not decreased, they certainly have the potential to go back to a large crop again.

COMMISSIONER WILLIAMSON: Okay. Okay, thank you for those answers.

USDA forecasts continue an increase in U.S. demand for sugar. Do you agree with these forecasts? And what is causing this increase, and how will it affect the market and U.S. producers. We already talked about the fact that it tends to seem to go up with population growth. Any other factors you want to discuss?

MR. O'MALLEY: Yeah, certainly population is the biggest factor driving consumption or demand. I think we are seeing some impact in the retail market for the impact of a lot of the discussions around the media reports of sugar being less than healthy and all this other kind of thing. And I think within the last year or so we are starting to see some impact there. But I do think overall caloric consumption in the United States continues to increase. Sugar will be a part of that increase. I think it's--the science would say that it's not the predominant cause of the increase in calories, but as a result of that I think sugar consumption will still over time continue to increase at, you know, roughly a half to a percent, maybe one-and-a-half percent in a given year.

MR. BUKER: This is Bob Buker. The other thing is that one of the largest demographics of population growth right now is Hispanics. And if you look demographically on sugar consumption their sugar consumption as a group is slightly above average.

So I think that's one of those things--but again, still it's that one to one-and-a-half percent type long term, you know. It still looks like that's the future.

COMMISSIONER WILLIAMSON: Okay. Thank you.

What led to the increase in U.S. production between 2008--I mean, between the 2008-2009 season and the 2012-2013 campaign? What led to increased production in Mexico between the 2010-11 period and the 2012-13 period?

MR. BERG: This is David Berg from American Crystal. I think the data that was already shown on the slides earlier shows that by far the biggest increase in Mexican production came because of an increase in area planted, dramatic and unsustained--dramatic and sustained increase in their area of planted in sugar cane.

In the United States, at least where I work, roundup ready sugar beets cane--roundup ready sugar beets genetically modified so that you can apply the herbicide glucoside and it will kill the weeds without harming the crop, the herbicides that were used before the glucoside-tolerant beets were planted, herbicides would also set the crop back. It would injure the drop while it was killing the weeds.

And so having roundup ready sugar beets available has helped the yield to increase. In addition to that, seed readers continually work to find disease-resistance and higher productivity, and it's been dramatic the last few years about what they've been able to do.

And so I think that is one of the biggest things, is given the right planting and growing conditions, the varieties that we have today available to the sugar beet grower gives them the opportunity to produce more per acre. Once again, if the sunshine and the rain comes at the right time, we can produce pretty nice crops.

COMMISSIONER WILLIAMSON: Thank you. What about one-anything like that on the cane side?

MR. LANDRY: Domestically--oh, Todd Landry. I'll speak for Louisiana. We are going to plant our 220th crop--220 years that sugar cane has been in Louisiana. We've pretty much planted cane everywhere we can. So I don't think we'll have a great increase in acreage. But probably through a variety of development and new technology we could have some increase, but as far as acreage expansion we wouldn't have it in Louisiana.

COMMISSIONER WILLIAMSON: Okay. Thank you.

MR. SNYDER: I think as a beet grower--John Snyder--as a beet grower, I would concur with David Berg's comments about the new technology and the seed breeding has helped our production.

Also we're using a lot of other techniques to increase production--fertilizer placements, harvesting techniques that are better today than they used to be, and several other things to make ourselves more efficient and more productive.

COMMISSIONER WILLIAMSON: Okay, thank you.

MR. O'MALLEY: Brian O'Malley again at Domino. I think if you look at, you know, the support prices for sugar that started with, you know, many, many sugar programs back, those price levels have not really changed over time.

Substantially they've stayed relatively constant.

So what you have now is sugar in the U.S. is where it is. It's not at a price level that encourages expanded acreage or expanded production. I think somebody else before mentioned, and it would be true also with a sugar mill, they're very expensive, very high-capital intensive to be able to expand acreage and put in more milling capacity and things like that. It just wouldn't be justified at these price levels. The return wouldn't be there.

COMMISSIONER WILLIAMSON: Okay, so the change is going to come through efficiency and yields.

MR. BERG: One last comment, Commissioner Williamson--David Berg, again. I bring up my predecessors before. They were proud when we reached 500,000 acres planted. It was kind of a big hurdle to get over. Today we are less than 400,000 acres planted.

So we have continually reduced our acres at American Crystal, and I think that's true in many parts of the beet sugar industry.

COMMISSIONER WILLIAMSON: Okay, thank you.

My time has expired, but can I just get one last question in? Thank you for those answers. How does the timing of the Mexican cane harvest compare to the U.S. beet and cane harvest? And is this an important condition of competition in this case?

MR. BUKER: This is Bob Buker. It is such an unimportant factor that I don't pay any attention to it, because we all ship year-round. So we do pay attention not to the timing of the harvest, but what actually--you know, when it's finished how big was it each year? So we all watch the size. But you can think of this as a continuous supply, basically.

COMMISSIONER WILLIAMSON: And is that also true with say Brazil on the world market? I know we're quite different from--

MR. BUKER: The Brazil is an opposite time of year from the cane in the U.S., but again it's a continuous thing, you know. The market, the old saying is, buy the rumor sell the fact. So the market is reacting before things happen, you know. So they're always looking ahead. So think of it as a continuous sort of situation.

COMMISSIONER WILLIAMSON: A continuous rumor mill. Mr. O'Malley?

MR. O'MALLEY: Yeah, I would say that the harvest season tends to be very similar. But from a cane refiner's standpoint, the need to have a steady supply over the course of the entire annual year, there is some consideration.

So for example if all the sugar is coming at once, you know, that puts some burden on how do you use it?

How do you allocate it properly, and things like that. So generally if all the sugar was produced for our refineries at the same time, there would be--you know, it would create storage issues. So to some degree there is some influence on the need to have a steady supply over the course of the year.

That's where some of those WTO countries become very important to us.

COMMISSIONER WILLIAMSON: Okay. Thank you for those answers. I have no further questions.

CHAIRMAN BROADBENT: Let's see. Commissioner Johanson.

COMMISSIONER JOHANSON: Thank you, Chairman Broadbent.

Respondents have quoted from statements in American Crystal Sugar Company's Annual Reports to the effect that payments to shareholders in fiscal year 2012 and in fiscal year 2013 on a per-acreage basis were high from a historical perspective--and that is found at page 47 of the prehearing brief.

How shall we factor this information into our analysis of the industry's financial performance during the period of investigation?

MR. CANNON: Those are the payments to the growers, right? So the grower-owners of the co-op receive payments in the form of patronage.  This is the performance of one operation, and payments to their growers, and you look at the industry as a whole.

So when you look at the industry as a whole on a fully integrated basis and you add up the profit and loss experience of growers, millers, and refiners, and beet processors, that gives you a picture of the profitability of the industry and not of payments by one producer to its shareholders, which indeed may have increased, as they stated in their annual report, from one period to another.

MR. BERG: David Berg, American Crystal.  The chart on the slide projector here shows that, yes, there were some significant profits in the 2011-2012, declining in 2012-2013, and crashing to a loss in 2013-2014.  The two years that were cited in the opponents' brief do indicate high sugar prices in the world market, which had elevated domestic sugar prices to some extent as we've established from the other chart that was in that brief.

Yes, sugar prices were high and it resulted in good payments to growers in those two years.  And then the world market began to soften, and then we had the surge in imports from Mexico.  Sugar prices collapsed and our payments to our growers for the year that we just finished last--two weeks ago, August 31st, and for the prior year were dramatically lower and below our cost of production.

COMMISSIONER JOHANSON: Okay, thanks for your answers. You have argued that the need for USDA intervention to remove over a million tons of sugar from the market in crop years 2013 and 2014 is itself evidence of Material Injury under Section 771.7(d) of the Tariff Act of 1930.,

How do you respond to Respondents' contention that you misinterpret the statute and that the statute does not require any import relief if USDA is required to expend funds under an Agricultural Support Program? And you can look at pages 47 to 49 of their brief for this argument.

MS. HILLMAN: Commissioner Johanson, with all due respect to their brief, what they are basically saying in their brief is because it is something that you simply consider, it means nothing at all. They would simply have you read this provision out of the statute because it doesn't tell you exactly what you consider it to be, or exactly how you consider it.

I think if you look at the legislative history of this provision, if you think about the testimony that you heard from Congressman Peterson this morning, I think it is very clear what the Congress intended when they enacted this provision.

You have to remember, this provision is one of two phrases with respect to what do you do about injury to an agricultural industry? You know, one of the provisions says that you may not--I mean, it is a "shall not," you shall not determine that there is no injury just because the prices are above the price support level.

So they are clearly indicating to you that you are to be concerned about the price level. The second provision is the one that we're now debating, which says that in the case of agriculture products the Commission "shall"--again, it's not discretionary--"shall consider any increased burden on governmental income or price support."

And what they're saying is it doesn't tell you which way it cuts. It doesn't tell you whether it cuts in favor of injury or it doesn't tell you whether it cuts against injury. But the legislative history on it is very clear that it cuts in favor of injury.

Again, as I mentioned, the House Ways and Means Committee when they enacted this provision said: Since the intervention of the support program in the market is one of the factors that the ITC shall consider, the necessity for such government intervention could be sufficient alone for a showing of injury.

So clearly the Congress is intending that you count that as a sign of injury. If prices have fallen so low, if they have fallen below the price support level, they have fallen so low that it requires government intervention, that in and of itself is telling you that this industry is injured. The government had to come in and buy that sugar from them at a below-cost price, at a loan-forfeiture price, that in and of itself is telling you this industry is injured. And that is exactly what happened during your Period of Investigation.

COMMISSIONER JOHANSON: Are you aware of any other investigations, other than the 1980 Sugar Case involving Canada where this tariff provision has come under consideration by the Commission? I don't know of any right off the top of my head.

MS. HILLMAN: Commissioner Johanson, I would love to answer that in the post-hearing brief. The answer is: Yes, we have looked at it and I unfortunately cannot remember exactly the cases. So if I could, I would like to respond to that in the post-hearing brief.

COMMISSIONER JOHANSON: Okay. That would be great, thank you. I'll look forward to reading it.

Page 59 of the Prehearing Staff Report indicates that Mexican importers are more likely to sell sugar on a spot basis than U.S. producers, who in turn are more likely to use long-term contracts.

In a situation where world sugar prices are falling, would this difference lead to apparent underselling simply because the Mexican sugar is being sold at levels closer to current prices?

MR. CANNON: No. The long-term contracts are basically half of the sales, and the contracts re-set throughout the year. So in any given month, or any given quarter, you have a mixture of spot prices, short-term contract prices, and long-term contract prices that are being newly set in that period.

And so the impact of some portion of the prices lingering from a long-term contract is not very great. And therefore it's fair to look at those U.S. prices versus import prices. And in addition to that, a significant portion, not as much but a significant portion of the import prices are also contract prices.

COMMISSIONER JOHANSON: But then again, a larger percentage of Mexican sales are spot prices, so it could cut either way.

MR. CANNON: It's correct, but think of our data set. You're not simply collecting data from one U.S. seller who is negotiating in one month of the year and resetting long-term contracts. You collected in the questionnaire contract prices, and there were like literally thousands. There were so many that we couldn't report them all. And the staff I think decided that maybe the exercise was just an undue burden on us.

But what that really showed was that those contracts, those individual contracts, move through every single month throughout the period. So all those monthly data represent a mix of spot, short-term contract, and long-term contract. And the long-term contracts, as you heard the testimony, essentially reset every time they have to compete with the Mexican spot price.

So the next spot price sets my long-term price, and therefore a large portion in any month is current. It's current price.

COMMISSIONER JOHANSON: All right. Thank you for your response. And that concludes my questions.

CHAIRMAN BROADBENT: Commissioner Schmidtlein?

COMMISSIONER SCHMIDTLEIN: Yes, thank you. I actually have a couple of questions.

I just want to make sure I understand the relationship of the--the relationship between raw and refined sugar prices. So maybe it would be best if one of the fact witnesses perhaps spoke to this.

I would assume there's some relationship between them. What is that relationship? Does one influence the other? And if so, which one? And how does that actually operate in the market?

MR. O'MALLEY: Okay, this is Brian O'Malley from Domino. Yes, in fact the spread between refined selling prices and raw sugar prices is what a cane refiner is most concerned about. So ultimately we are, from a selling perspective we are always trying to achieve the best price that we can by being competitive in the marketplace and constantly seeking business from existing customers and, in some instances, new customers.

COMMISSIONER SCHMIDTLEIN: And when you say "we," are you talking about refiners?

MR. O'MALLEY: Yes, I'm talking about a refiner, yeah, the sales people that sell refined sugar.

COMMISSIONER SCHMIDTLEIN: Okay, uh-huh.

MR. O'MALLEY: Their job is to sell at market prices, basically--

COMMISSIONER SCHMIDTLEIN: Right.

MR. O'MALLEY: --I mean, as it was stated earlier. In a commodity like sugar, there is very little premium. You can get a slight premium sometimes based on where you're located, or, you know, a particular plant, you know, from, a freight standpoint and things like that, but in general the price is the price.

So you meet a price, and when you sell that price then, particularly on a contract, you then take, you go to the raw sugar department and they will actually assign a raw sugar value o that based on what they can buy it at, and then that becomes the margin for that sale.

Now ideally you would like the margin to be at a certain level, but when that margin compresses there's still time where you need to sell that even though the margin is less than what you would hope for. But in the period of this investigation, we saw in many instances where that margin got so compressed that it was below--the price would not cover the variable costs, which includes the raw sugar, which includes, you know, all of the other variable inputs that go into making the sugar.

So as a result of that, you can never go--you can never sell at a level that you're below your variable costs because under those circumstances the more you sell the actual more that you lose. So you at least want to have some variable profitability, but in this Period of Investigation in many instances we got below that.

COMMISSIONER SCHMIDTLEIN: So in normal circumstances that you're describing then, the price of refined sugar is driving the price of raw sugar? Because then they're going back and demanding, okay, this is what we will pay for raw sugar because this is all I'm getting? Is this to simplify it?

MR. O'MALLEY: No, I think the markets can go in--they don't always go in tandem. You can have situations where the raw sugar price is increasing and the refined price is going down. You can have periods where one is going down at a different rate, or up at a different rate than the other. They're not always in tandem.

During the Period of Investigation, sugar was coming in from Mexico and competing direct consumption for refined sugar, and it was also being entered in as S&R going into raw sugar mills, or to other customers, nonrefiners who were further processing that sugar and also selling it.

So it wasn't a situation where one was causing the other. They were both kind of independently working at their own--based on their own economics.

MR. BUKER: This is Bob Buker. If I could have answered your question, I'd have retired rich 30 years ago.

(Laughter.)

MR. BUKER: There's no mathematical, you know, formula, but they sort of can influence each other. Because if the price of raw sugar goes up, then the price the refiner can make--has to have to make a profit, the price of sugar goes up. But if it isn't, because somebody is selling refined sugar in, then the refiner doesn't buy the raw sugar and the price of raw sugar can drop.

So they influence each other. They do. Both of them influence the other.

MR. O'MALLEY: I think that's a good point. I'll just add to that. Like for example, you know, these would be more aggregate discussions, if you will, not on any particular transaction, but for example if you're running into a situation where you're consistently finding that selling prices that you can get in the marketplace, you cannot cover your variable costs because the raw sugar price is too high--because, you know, a lot of the other variable costs are kind of constant. It's labor, it's packaging materials, things like that.

So if that margin gets spread too much and it becomes negative, you will not be buying raw sugar because you can't resell it at a profitable rate. You know, the more you would be selling the more you would be losing. So to the extent that you are not buying it, the price will tend to fall to encourage you to buy it.

So there is that kind of causal relationship that happens. If you're not able to sell the sugar because it's not profitable, eventually you might find somebody that now has to move the sugar and they reduce the price.

COMMISSIONER SCHMIDTLEIN: And so can you just spit it out for me there? In this case where we had Mexican sugar imported by a limited number of refineries, how was that affecting the price across the market?

MR. O'MALLEY: Okay. Well it wasn't just refineries that were buying the sugar, okay? We have many customers that buy sugar from Mexico, and in some cases they can buy sugar from Mexico and actually send it to our refineries to be tolled into sugar for them. And other customers who hedge the raw sugar market based on the No. 16 market and impacting the price of that market.

It's not just the refiners that set the price. It's the overall price is being set by a much bigger subset of market participants.

COMMISSIONER SCHMIDTLEIN: I think where my disconnect is is the regulated nature of this market and the fact that you have--that U.S. producers can't meet the demand. Your allotment is generally more than what you produce, and you're not being displaced.

So how is that--you know, and so how was that affecting the prices at which the U.S. producers were being able to sell at?

MR. O'MALLEY: I think what might be helpful is maybe we can try to give it in a post-brief, if you will, and we can try to spell out some of the circumstances of how that happens.

COMMISSIONER SCHMIDTLEIN: Okay. I mean, would-- and again this might be--

MR. BUKER: This is Bob Buker, but it's not a regulated market for Mexico. So when Mexico brings that stuff in here in a flood, it just--and they're selling it both to the end users and to the refiners as a raw material, it just ruins both prices.

So if you're a domestic producer, you've still got to move your crop. You just do it at a much, much, much lower price either way, whether you're selling whites or raws. So whether you're beet or cane. And because Mexico was totally unregulated, and then it came in in a flood and it wrecked every aspect of the price. I mean, that's what happened. I don 't know how lawyers describe it, but--

COMMISSIONER SCHMIDTLEIN: Putting aside the Mexican imports in this particular period, just in general under the sugar program would you say domestic producers compete with each other?

MR. BUKER: This is Bob Buker. We compete intensely with each other.

COMMISSIONER SCHMIDTLEIN: And so this is where--like how does that work, given--in a normal circumstance, given that you don't produce enough to meet demand, your allotment is more than what you produce, so it seems like you're going to sell what you produce, right? Because the U.S. producers are allotted 85 percent. TRQs can't encroach on that. Your allotment is more than you produce. So where is the competition? Do you see what I'm saying? On an aggregate basis.

MR. O'MALLEY: Yeah. This is Brian from Domino again. The domestic growers, okay, beet and cane, all of what they produce, assuming that they don't exceed their allotment, will be sold.

COMMISSIONER SCHMIDTLEIN: Uh-huh. Right.

MR. O'MALLEY: The cane refiners have what we call the ability--that's where the swing capacity comes in. You have the ability--cane refiners can buy sugar from the TRQ. They can buy sugar from Mexico. KAFKA. Other places that the sugar can come from. The USDA can move those volumes up and down based on overall, you know, supply and demand situations that they monitor on a regular basis.

So the cane refiners' business is where that slack capacity comes in. Some years it could be operating at 90 percent capacity. Then it could drop down to 85 percent capacity, or whatever. It's that--that's where the swing comes in. And the raw sugar prices that in our case that we get from our own integrated mills is, you know, they're a separate organization. So we buy sugar from them just the same as we buy sugar from the TRQ or from Mexico or wherever. The market sets what that price is. It's not something that we just, you know, we can't tell the growers what the price is, nor can they just--you know, the market is what all of the market participants determine it to be.

So we're buying raw sugar on an arms' length transaction, and we're selling sugar to customers, and it's ow those two things match up is what a cane refiner has in terms of its margin.

That's why in my testimony, or maybe after the testimony, I said we don't really care so much--we care, but we don't really care whether the raw sugar price is high or low; we care what that margin is. That's all we're looking at on a regular basis every day.

MR. BUKER: This is Bob Buker. You know, the USDA, with all this system of allocations on foreign imports, they manage that market so there's more sugar in the marketplace than there is demand. So there's always an excess supply. So you always have to compete, then, because it's not like if I don't sell it the buyer isn 't going to find the sugar.

So a buyer comes between Domino and United, and they ask for bids. And it's not like they're not going to have enough sugar. Between us there's more than enough sugar. Even though we don't meet our allocation, the USDA has always made sure there's extra supply in the market, and so you have to fight for those customers. And they bid it out. So we bid. Everybody bids back and forth every day with every customer.

MR. BERG: This is David Berg. USDA generally runs the sugar program so very raw numbers is 15 percent stocks, ending stocks, at the end of any given year. Meaning sugar that won't be moved.

COMMISSIONER SCHMIDTLEIN: Um-hmm.

MR. BERG: I'm not going to sit on that. I mean, I need my storage capacity emptied out so I've got room for the new crop of sugar.  So our sales staff knows that they have to make sure that they, in an orderly fashion, market everything that we've got.  And some customers are much more attractive to market to than others.  They'll take it on time.  Their specifications are consistent with yours.  The logistics make sense.

We want to sell to the people that we want to sell to, so therefore we'll go after them.  And we, as Bob says, compete intensely to get that business.

COMMISSIONER SCHMIDTLEIN: I'm sensitive to the time and to the lunch hour, but I appreciate your answers. I would invite you in the post-hearing to--you know, this is a complicated subject I think at least for us.  You know, I'm not an economist.  But to sort of lay that out.  Because in my view, obviously what's driving the price of sugar in the U.S. is the issue in this case, at least from my point of view.  So understanding how that market works and how the price gets set, and then now the Mexican price came in and affected it is pretty important.

MR. GORRELL: Commissioner Schmidtlein, if I may just one minute.  I agree with nearly everything that Mr. O'Malley--

COMMISSIONER SCHMIDTLEIN: Identify yourself, please, sorry.

MR. GORRELL: Oh, I'm sorry, it's Mike Gorrell from Imperial Sugar. I agree with nearly everything that I heard from Mr. O'Malley and Mr. Buker. I think Mr. O'Malley in particular caught the essence of the challenge for the cane refiners that rely on imports very well, and the way the pricing works and that sort of thing.

I would just like to add a couple of things to this. If you look at the aggregate, right, and I haven 't seen the final report from the ITC, but the initial report laid out clearly that the domestic refined sugar production capacity in this country was about 13.3 or 13.4 million tons production capacity. And that's across all sectors--beet sector, refiners in Florida and Louisiana, and also refineries in the Southeast, the Best Nation Refiners.

To that you have to add under the program with the Mexican sugar coming in another 1.2 million tons of sugar per year, of refined sugar in this market. So if you add those two together you have about 14-1/2 million tons of refined sugar in this marketplace.

We only use 12 million tons. Now there may be about a half a million tons of slack capacity in the beet sector. That's our swag at it, but that's why initially I suggested that the beet sector is running at about 90 percent capacity utilization rates. I heard some rates from Mr. O'Malley that we don't quite agree with, as you heard on my earlier testimony. But that is the free capacity in the marketplace and why I am certain that, you know, we do not need as much refined and direct-consumption sugar coming from Mexico as has been coming in in the Period of Review.

As for the price dynamic, the price dynamic is very clear in the experience that we've had in the marketplace, that the Mexican refined and direct-consumption sugar were driving down the prices. All right?

As those prices were being driven down--and I mentioned earlier on the difference, you know, the refining margin went down by 82 percent over this period, whereas the refined sugar price went down by 56 percent.

As that refined sugar price was being driven down by these Mexican imports, it's like a tidal wave coming at you when you're a cane refiner. And so we obviously had to bid at lower and lower prices just in order to be able to survive, because those refining margins landed at a spot which was completely unsustainable. And we talked about that in the February-March hearing. It landed at a spot where companies were closing down refineries in 2005 and 2004. We closed a refinery in Sugarland. Anshar closed a refinery in Brooklyn at those sort of margin levels.

At some time, you hit a floor. And the first floor that you hit in the U.S. market, if you look at the economics of those three industries, the beet sugar industry as a loan rate, national average loan rate at 24.09 cents per pound--I may be off by a couple of points, but it's around 24 cents a pound. The national average raw sugar, can raw sugar loan rate is 18.75 cents per pound, but that represents raw sugar in places like Louisiana, Florida, Texas, or Hawaii. By the time it gets to the cane refiner, it lands at about 21 cents per pound. There is literature. I think Dan actually wrote it or published it that does the conversion between raw sugar at the origin and raw sugar at the refinery.

And so the first thing to go, and the first floor to hit is that 21-cent-per-pound raw sugar price. And when the sugar price goes below 21-cents-per-pound, and I think Dan is the best person in the room to talk about it because he was doing it for a decade, when the raw sugar price goes to at or below 21 cents per pound, that is the signal to the USDA: Houston, we've got a problem and we've got to start sorting that problem out.

`And historically the first thing that the USDA does is find ways to remove raw sugar from the system. And so that's when it really hits the cane refiners, because the refined sugar price continues to get driven down by the Subject Imports, but at some point the raw sugar price hits the floor. And that's where Mr. Buker and Mr. O'Malley said, well, it's sort of correlated but not always correlated, it's in that case where the refined sugar price keeps going down but you hit that floor and the USDA starts removing raw sugar from the system by one of many mechanisms that they utilize to remove raw sugar from the system where you break the correlation. But quite often there is a correlation, as Mr. O'Malley explained so well.

COMMISSIONER SCHMIDTLEIN: All right, I appreciate it. Thank you very much.

Thank you.

CHAIRMAN BROADBENT: Thank you. I just had a couple of clean-up questions here.

Mr. O'Malley, I forgot to ask you to respond, just to your assessment of the Suspension Agreement and whether Dominos will be able to survive under the existing Suspension Agreement.

MR. O'MALLEY: Yeah, after the Suspension Agreement went into place things got better for us from that point forward.

CHAIRMAN BROADBENT: Okay, so you're supporting it?

MR. O'MALLEY: Yes.

CHAIRMAN BROADBENT: And then I just had one more question for the group. I don't know who wants to answer it, but could someone just give me a detailed sum up of why U.S. prices were so much higher from 2008 to 2011?

MR. BERG: David Berg, American Crystal. You simply cannot ignore the effect of the world market. I'm thinking about in our strategic planning at American Crystal each year we have a person who is trained in economics, and he has his own model. I believe that when world sugar prices are above 18 cents a pound it will influence domestic U.S. prices. And there's a coefficient that goes with that number. The closer it is to 18 cents, the less impact it has.

We had world prices that touched 30 and higher cents per pound. That was one reason that domestic prices went higher. I'm just going to grab the Philippines because I believe it's the most distant source of TRQ sugar that comes to the U.S. market normally.

In a world market situation where prices are high like 30 cents a pound, the Philippines looks around and says, I can sell sugar to China, or I can sell sugar to Indonesia, or some other place that's much closer to me than San Francisco, California, or New Orleans, Louisiana. I don't have to absorb the freight cost.

So therefore I will divert that sugar from selling it in a TRQ situation, I will sell it to a more local place. That's marginal. That's incremental. I mean, in some cases you heard about them, the TRQ countries saying I want to make sure that I will continue to have access to the U.S. market even if I don't ship when prices have gone done and the U.S. was asking they not ship sugar.

So long story short, the world market was a major impact. The tragic incident in Savannah, Georgia, took out some refining capacity in 2008. And there are not that many refiners left and losing one of them for a period of time has an impact.

Mr. Gorrell also talked about the LSR refinery in Louisiana, which was a startup operation and took longer than expected to get up to full speed.

There was a grain market runoff in 2008-2009 and there were a few incremental acres pulled away from sugar beets, which was a small impact. All those factors rolled together to create an elevated price situation. But by far the biggest one I think was the world market.

And then, then the world market responded the way markets always do and prices were high and production began to grow again in some of the larger exporting countries and prices began to go down. Some of the domestic problems were resolved. Yes, we had a pretty fair crop in 2012 domestically, and we talked about this yesterday at the Cassidy Levy offices. To me it felt like a truck that began to go downhill. U.S. prices were like a truck that was rolling downhill.

We have always seen prices go up and prices go down, but USDA would have the ability to put its foot on the brake and slow the truck down. When USDA no longer could control all the sources of supply domestic in the TRQ and now Mexico, and it couldn't control Mexico, it had no braking mechanism. So prices went down.

World market runup, nice strong prices domestically, world market began to go down, the truck was rolling downhill, and when I said before we did not return to normal. We returned to something that was far below normal because the USDA had no mechanism that it could brake that runaway truck from going downhill.

MR. BUKER: This is Bob Buker. I look at it a little more simplistically. A major portion--not a majority, but a major portion of the refining capacity is in Savannah, Georgia and New Orleans. Now while this was before the period under investigation, it answers your question.

Katrina hit New Orleans. Took a lot of capacity offline. And then Savannah blew up, took it offline for a couple years, essentially. You can't have that much capacity go out of the market in the United States and not have a major problem.

MR. O'MALLEY: The other thing is, under the current sugar program, if you will, if you just look at the average price for say raw sugar, and let's just say, call it

22 cents a pound.  So if the world sugar market is trading at 11 cents a pound, and maybe that's 14 cents a pound on equivalent basis to the 22, any movement from say 11 to 12 to 13 to 10 is going to have no impact on the U.S. market because it's trading at the 22 cents.

Once the world market goes up and crosses the, let's just say for right now that the U.S. market doesn't move and then the world market, in order to attract the TRQ sugars to the U.S., which we need, the price has to go up when that happens.  Otherwise, they're not going to send it here.

You know, if the market is 36 cents in the world and we're still at 22 cents, no TRQ sugar is coming to the U.S.  So that's why, once the world price gets higher, it pushes the U.S. price higher. Once there's that disconnect and the world price is trading below the U.S. price at a level that is more than the freight, the U.S. market doesn't move with that world price.

CHAIRMAN BROADBENT: Okay.  All right, it looks like no more Commissioner questions.  Does the staff have any questions?

MS. HAINES: Elizabeth Haines.  Staff has no questions.

CHAIRMAN BROADBENT: Okay.  Thank you.  I want to thank all the witnesses--oh, excuse me.  Respondent questions?

MR. ROSENTHAL: Respondents have no questions.

CHAIRMAN BROADBENT: Okay. Thank everyone for coming today. And, hang on one second, I think we will break for lunch. Let's see, what time do you guys want to come back? Two-thirty? Would that be enough time? Two thirty would be great. If you folks would, come back after the lunch break at 2:30. We will resume then.

The room is not secure, so please don't leave confidential business information out. And I want to thank you again for coming.

(Whereupon, the Commission meeting was recessed, to reconvene at 2:30 p.m., this same day.)

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

2:33 p.m.

MR. BISHOP: Will the room please come to order?

CHAIRMAN BROADBENT: Are there any preliminary matters for the afternoon session, Mr. Secretary?

MR. BISHOP: Madam Chairman, the panel in opposition to the imposition of the anti-dumping and countervailing duty orders have been seated. All witnesses have been sworn.

CHAIRMAN BROADBENT: Thank you, Mr. Secretary. I want to welcome the afternoon panel to the ITC, and I want to remind witnesses to speak clearly into the microphone and state your name for the record. You may begin when you're ready.

MR. ROSENTHAL: Paul Rosenthal, Kelley Drye, on behalf of the Respondents. We'll start this afternoon's testimony with Mr. Tim Jones.

STATEMENT OF TIM JONES

MR. JONES: Good afternoon. My name is Tim Jones, and I'm the senior manager of Procurement and Operations at Just Born, Incorporated. Just Born is a third generation family owned and operated candy manufacturer based in Bethlehem, Pennsylvania, with nearly 600 employees. Just Born has been in business for over 90 years. We are one of the more than 600 members of the National

Confectioners Association, and are also appearing today on behalf of the Sweetener Users Association.

While you may not be familiar with our company name, I am sure you know our popular Peat's brand of marshmallow candies. In 2009, we opened our first Peat's retail store at the National Harbor in Maryland. We now have two other retail stores in Bethlehem, Pennsylvania and in Minneapolis, Minnesota.

We also produce other brands of candy that you are familiar with, such as Mike and Ike, Hot Tamales, Goldenberg's Peanut Chews and Teenie Beenie (ph) Jelly Beans. I am proud to say that all of our candies are produced here in the United States.

Since joining the company in 2007, I have been responsible for procuring all of the sugar that is consumed by Just Born in its operations. I am also responsible for developing and managing supplier relationships, analyzing commodity trends and forecast information, and supporting new product development. As a result, I have firsthand knowledge of the U.S. sugar market.

In April 2014, I had the pleasure of testifying before the Commission staff during the preliminary phase of this case, and I appreciate the opportunity to testify before you today. Just Born opposes the petition, and we disagree with Petitioners' claim that sugar imports from

Mexico are injuring the domestic industry.

As I testified last year, Just Born is a significant purchaser of refined sugar and therefore it is imperative that our company has access to a consistent supply of reasonably priced sugar in the U.S. market. With U.S. consumption significantly greater than the volume that can be supplied by domestic growers and refiners of U.S. sugar beets and sugar cane, imports play a vital role in ensuring that all of the demand for sugar in the United States is satisfied.

Given its location, Mexico is a logical choice to supply sugar to the U.S. market. Imports from every country other than Mexico are restricted by tariff rate quotas, and have declined during the past few years, causing a shortage in the supply of sugar in the U.S. market.

As a result, imports from Mexico ensure that U.S. demand is met. Imposing restrictions on Mexican imports will significantly harm our company, as well as many other U.S. companies that depend on a consistent, reliable supply of sugar. While Petitioners claim that the increase in imports from Mexico caused the decline in U.S. prices during the Period of Investigation, I strongly disagree.

The higher prices experienced in 2010 and 2011 were the result of a world sugar shortage, and the restrictive U.S. sugar policy which exacerbated the effects of the worldwide sugar shortages by limiting domestic production and imports. The lower market prices during the 2012-13 and the 2013-14 crop years are in line with historic levels of pricing and did not cause any harm to the domestic industry.

Indeed, as someone who has been a buyer in the market for a number of years, the post-NAFTA integration of the U.S. and Mexican markets has been quite beneficial to the U.S. sugar industry. During the Commission's Period of Investigation, our company has not had any experience or opportunities to purchase sugar from Mexico. We have not been offered any Mexican sugar, nor has the pricing of Mexican sugar ever entered into our negotiations with our U.S. supplier.

In addition, I am unaware of any competitors that were offered low prices for Mexico during the Period of Investigation. Just Born purchases sugar from a single U.S. supplier. All of our purchases are based on long-term contracts, and once a contract is signed, prices are locked for at least a year and cannot be renegotiated.

We single source our sugar because of the type of sugar that is required for our products, as well as logistics. We only purchase refined cane sugar for our products. In our experience, refined cane sugar reacts well with certain of our products compared to refined beet sugar.

Thus, refined cane sugar and refined beet sugar are not entirely interchangeable, as Petitioners have claimed.

The proximity of our U.S. supplier to our factory also provides us with lower transportation costs. I estimate that it would cost approximately six cents per pound to deliver Mexican product to the Northeast. Given the higher transportation costs, Mexican imports of refined sugar do not compete with domestically produced sugar in the Northeast.

Based on my knowledge of the U.S. sugar market, I do not believe imports from Mexico are injuring the domestic industry, and urge the Commission to reach a negative determination in this investigation. Thank you.

MR. ROSENTHAL: Mr. John Brooks.

STATEMENT OF JOHN BROOKS, JR.

MR. BROOKS: Good afternoon Madam Chairman and Commissioners. Thank you for the opportunity to speak to you today. My name is John Brooks, Jr., and I am the chief operating officer at Adams and Brooks, a candy manufacturer headquartered in Los Angeles, California. Our company was founded by my grandfather, Emmitt (ph) Brooks and his partner, Paul Adams, who overcame the challenges of getting a new business up and running in 1932 during the Great Depression.

Fortunately, my grandfather and his partner had a superb recipe for caramel corn to help them get started. They found a niche, selling their product to patrons waiting in line outside movie theaters. This was at a time before movie theaters routinely offered popcorn for sale to their customers. In fact, some go so far as to credit my grandfather and his partner with establishing the practice of selling and eating popcorn at the movies.

Since its humble beginnings as a one product retail store, our company has continued to grow to become a multinational corporation, operating three manufacturing facilities, two in the United States, in Southern California and a third in Mexico. Our company has also expanded its product offerings over time.

The most popular candies sold by our company today include Peanuttels (ph), butter toffee peanuts, cashews, almonds, sunflower kernels and snack mixes. Coffee Real, a coffee candy made with real coffee and real cream, available right here in Washington, D.C. at Trader Joe's, FairTime (ph) Taffy, available at CVS Stores, Cup of Gold, Big Cherry and Good News chocolate bars, and finally a wide variety of lollipops including whirlie pops, twirl pops and unicorn pops. We sell these lollipops to the most famous and popular amusement parks.

CHAIRMAN BROADBENT: Are there any samples around?

(Laughter.)

MR. BROOKS: I am the third generation of our family to work at Adams and Brooks. My father, John Brooks, Sr. serves as the president, and last year celebrated his 50th anniversary of working full time at the company. Compared to my father, I am a short-timer, having worked at the company -- if you recognize summer jobs, I worked as a student -- for only the past 30 years.

I started as a 15 year old maintenance mechanic's helper, and since then I have worked in virtually every job in the company. As a result, I am familiar with all the various operations and processes that are vital to our business.

My current responsibilities include process design and product development, overseeing marketing activities, managing and developing our information technology systems and, most importantly for purposes of today's hearing, overseeing all purchases of sugars and sweeteners for our company's U.S. and Mexican operations. I've had this responsibility for over the last decade, and have been personally engaged in maintaining contacts with our U.S. suppliers.

Our U.S. operations, located in Los Angeles and San Bernardino, California, both utilize liquid sugar. Our Los Angeles facility has been in operation since 1965, while our newer facility in San Bernardino opened in 2012, as our company expanded operations. We can use either beet or cane sugar. Plant origin for us is immaterial for the processes conducted at our U.S. facilities.

At our Mexican facility, which located in Tijuana and has been in operation since 1990, we utilize dry, granular sugar. Although I have served as that facility's senior executive since 1998, I am not in direct contact with sugar suppliers for that operation, as I am in the United States. Nevertheless, I am in constant contact and consult closely with the individual responsible for purchasing sugar for our Mexican facility.

With respect to purchase of liquid sugar for our U.S. facilities, our company conducts business with two primary suppliers. One of those suppliers is a company that refines domestically grown sugar beets and produces a variety of products including liquid sugar. Our second supplier is a business that could be commonly described as a melthouse, meaning it has no affiliated growing or refining operations.

Rather, it purchases dry sugar in the open market and resells it in various forms to its customers, including in liquid form to Adams and Brooks. Because it has no affiliated upstream operations, our melthouse supplier has the flexibility to purchase sugar from a variety of sources, including domestic beet or cane sugar, as well as cane sugar from Mexican producers.

In the many years that I have personally interacted with our melthouse supplier, I have never been offered the opportunity to purchase a low-priced Mexican origin sugar. To the contract, our company purchases liquid sugar that, irrespective of the source, is offered at prevailing market prices.

This is consistent with the nature of any commodity market, and with what one would expect from a rational seller within that market. In fact, the quotes we received in 2013 from our two suppliers for deliveries in 2014 are contrary to the domestic industry's argument that Mexican sugar was sold in the U.S. market for less the prevailing prices. Our domestic beet supplier supplied -- quoted us a more favorable price than our melthouse supplier.

Despite our melthouse supplier's flexibility in sourcing sugar at the lowest price available on the open market, it was the domestic supplier who offered me the best price. Based on my experience purchasing sugar for our company, I've seen absolutely no indication that the price of Mexican imported sugar had the impact on the market alleged by the Petitioners.

Imports from Mexico play a vital role in ensuring an adequate supply of sugar in the U.S. market for companies like Adams and Brooks, that are dependent on stable supplies of reasonably priced sugar to operate their businesses and provide consumers' choice and value from products manufactured in the United States.

For these reasons, I urge the Commission to reach a negative determination in this investigation. Thank you.

MR. ROSENTHAL: Mr. Thomas Earley.

STATEMENT OF THOMAS EARLEY

MR. EARLEY: Good afternoon Madam Chairman and members of the Commission. My name is Tom Earley. I am vice president of Agralytica, which is an economic consulting and market research firm specializing in food and agriculture. I also have over 40 years of experience working on sugar and sweetener markets, similar to many in this room. I'm also the economist for the Sweetener Users Association, and I'm here today on their behalf.

SUA membership includes a broad range of food and beverage manufacturers, along with the trade associations that represent these firms. Today I plan to focus on the evidence that the domestic sugar industry has not in fact been injured by imports of dumped Mexican sugar.

Recent developments in the market, and particularly the decline in prices in the 2012-13 and

2013-14 crop years are attributable to government policies, excess supply in the combined U.S.-Mexican sugar sector, and the normal working of commodity markets, and not the imports from Mexico.

I'll start with the effect of government policies. The basic framework of current protection for U.S. sugar producers has been in place since the early 1980's, and the sugar program in various forms dates back to the 1930's. However, the U.S. sugar program, like all other commodity programs operated by the federal government, does not guarantee producer profitability.

The Congress recognizes that there is significant price variability in agricultural commodity markets, and that crop and livestock producers will sometimes not make a full return on their investment in their enterprises. In fact, the crop insurance programs that are now the principle safety net for most U.S. farmers, have a significant deductible before farmers can receive any indemnity.

For most crops, farmers must suffer a shortfall of at least 15 to 25 percent before they are eligible for any insurance payment, and that is before payment of the insurance premium, which can be significant. But the sugar program goes beyond most other U.S. crop programs, in establishing a floor in market prices that the government will defend by purchasing and disposing of excess sugar. In this respect, it is much more favorable to U.S. producers than other crop programs.

It's important to understand that for more than 25 years, U.S. sugar prices stayed in a high but comparatively narrow range as shown in the first figure up here, Figure 1. USDA officials responsible for the sugar program during that period managed it in a manner designed to ensure that it met the standard of providing adequate supplies at reasonable prices, and avoiding cost to the government.

There were inevitably brief periods of higher prices, as you can see on the chart, due to market developments or external events. There were also periods of weak prices. In 2000, for example, the Commodity Credit Corporation acquired 1.1 million tons of sugar forfeited under the price support loan program at a cost of hundreds of millions of dollars. But over time, the market stayed more or less in balance.

The last few years have been a departure from that norm due to two factors. One, large swings in world market sugar prices and two, modifications to the U.S. sugar program made by the 2008 farm bill and continued in the 2014 bill. Changes in that law, coupled with the merging of the U.S. and Mexican sugar and HFCS (ph) through the beginning of 2008, under the NAFTA, introduced a might higher potential for price volatility, both within years and from year to year.

Despite the increased number of factors to be monitored and accounted for, the law reduced USDA's ability to adjust import levels to manage that volatility. It included restrictions on the Secretary of Agriculture's ability to increase the minimum import quota until the marketing year was half over.

This bias towards tighter supplies created great uncertainty, prevented some refineries from being able to fully use their capacity, and at times caused some foreign quota holders to sell their sugar to other countries rather than in the United States.

Let me turn now to the effect of market forces. It should be noted that the Mexican government maintains equivalent barriers to imports from third countries, to ensure that they do not undermine prices in the integrated Mexican and U.S. sweetener market. Within that integrated market, it is market forces that have determined the volume and price of sugar and corn sweeteners sold during the period of interest.

There was really no difference between a Mexican mill selling at a price that met competitive conditions in the marketplace, and a U.S. beet processor selling at a price that enabled him to sell part of a large crop to new customers normally served by coastal cane sugar refiners.

Market forces can of course be tempered or exacerbated by government actions. USDA's management of this modified program starved the U.S. market of sugar the first few years under the 2008 bill. In 2010, some importers even resorted to paying the normally prohibitive Tier 2 import duties to get access to 200,000 tons of over quota sugar needed by their companies.

The result was record high prices for refined sugar in the U.S. market as you can see in the chart, that first chart, particularly in 2011 and portions of 2012, as shown in Figure 2. Those prices were on a rising volume of U.S. production. Then a TRQ increase in the spring of 2012 turned out to be more than the market needed, setting the stage for lower prices in 2012-13.

Sugar and corn sweetener markets in the United States and Mexico operate very efficiently, with the various participants responding rapidly and predictably to market signals. Rising prices incentivize increases in acreage and production, and falling prices do the opposite. The acreage adjustment process is quicker with an annual crop like sugar beets, but even sugar cane has to be replanted every three or four years. So there is an annual opportunity for growers to reassess their desired scale of production.

The market signals during the initial years under the 2008 farm bill encouraged U.S. and Mexican producers to expand, and they did. The high prices of those years were about equally due to the rise in sugar prices and the characteristics and management of the U.S. sugar program, that drove domestic prices to the highest levels achievable with the 16 cent tariff law on over quota imports.

Figure 2 also shows that wholesale market prices for sugar during the six seasons covered since the legislation was enacted averaged 41.8 cents, almost 50 percent higher than the 28 cent average under the provisions of the 2002 farm bill. The average refined sugar price under the 1996 farm bill that preceded it was even lower, at 25 cents per pound.

Prior to the filing of the American Sugar Coalition cases in March 2014, the U.S. beet sugar prices were 26-1/2 to 27 cents, within the traditional range experienced under the U.S. sugar program when world sugar prices are below U.S. support prices.

U.S. and Mexican farmers responded predictably to the rise in prices over the 2008-09 to 2010-11 period, by expanding production. Combined production in the two countries rose by half a million tons, short tons raw value in 2011-12, and 2.7 million tons in 2012-13. Combined stocks in the two countries at the beginning of 2012-13 were already high at 3.1 million short tons raw value, up more than 800,000 tons from the year earlier.

With big crops in that crop year 2012-13, total supplies were 23.7 million short tons raw value in the two countries, up almost three million tons, despite a sharp decline in U.S. imports from TRQ holders. It was a combination of this overall excess supply and the erosion of world market prices that drove prices down in both countries. The precipitousness of this price decline is evident in Figure 3, as you see up there.

It's been demonstrated time and time again that farmers respond to price signals. Between the 2008-09 and 2012-13 seasons, we saw a significant increase in U.S. sugar production in response to favorable prices, as shown in Table 1.

Acreage and production of sugar beets and sugar cane growers. Beet sugar production increased about 22 percent, and cane sugar output went up about 18 percent. Imports fluctuated only between 3.1 and 3.7 million tons over the period covered by the 2008 farm bill. But there is no evidence that the decline in market prices in 2013 was caused by these imports.

In fact, there is almost no correlation between the volume of monthly imports from Mexico and U.S. price levels. This is shown in Figure 4, where correlation coefficients are in the teens in the box in the upper left-hand corner. I did also calculate correlations with lags between imports and price levels, and the coefficients were even lower than shown there.

Mexican sugar imports have actually been a minor factor in the evolution of U.S. prices. Petitioners observe that the U.S. sugar prices were lower during 2013 and early 2014 when compared to prices in prior years. This ignores the fact that U.S. sugar prices in the 2009-2012 period spiked higher due to the combination of a world sugar shortage, the more stringent provisions in the 2008 farm bill, and the way in which that sugar program was initially administered by USDA.

The world sugar supply tightened sharply in 2008-09 and 2009-10, due to unusually small sugar cane crops in India, Thailand and Brazil. The deficit between consumption and production over these two seasons totaled more than ten million metric tons, according to USDA estimates illustrated in Figure 5. World stocks fell by that amount and world market raw sugar prices rose to their highest level since the last major world shortage in 1980.

This by itself pushed up U.S. sugar prices, as shown in Figure 6. But U.S. prices only need to be three to five cents above -- higher than world prices to cover transportation costs and attract sugar to the U.S. market. However, since restrictive import quotas maintained by USDA kept out much needed raw and refined sugar, the gap between U.S. world prices widened to about 20 cents per pound, giving U.S. sugar producers an extremely large windfall several years in a row.

Pricing of sugar in the U.S. market is straightforward in some ways, but complicated in others. There is a reasonable degree of transparency in sugar pricing over time. However, volumes may be forward contracted at one point, pricing agreed several months later, with actual delivery occurring many months after that in the future.

Comparing export or import values from government trade data to reported spot prices can be very misleading. There is also the problem of how characteristics of different sugar products are actually tracked in official government statistics. Only about 30 percent of Mexico's production is fully refined. The balance is Estandar, with varying degrees of purity. Some of the Mexican sugar entering the United States under the tariff code for refined sugar, with polarization of 99.5 or higher, is refined sugar and some is Estandar. Of the latter, some is further processed and some is used directly in products.

Estandar entering in the other tariff lines, i.e. below 99.5 polarization, may be going to coastal refineries, to other facilities for further processing like into liquid sugar, or directly into products. This makes comparison of U.S. prices for refined or raw sugar -- to U.S. prices for refined or raw sugar challenging.

The Commission needs to be very careful in its interpretation of the data that has been submitted, and ensure that it accords with commercial realities in the U.S. sweetener market. As noted earlier today, both governments have taken steps to deal with excess supplies stemming from the production response to years of high prices.

USDA spent a net $259 million to remove over a million tons of sugar from the U.S. market over the course of two marketing years. Let me put that in perspective. That represented only four percent of the wholesale value of food use of sugar in fiscal year 2013, four percent. That's a significantly smaller ratio than government budget support for wheat, corner -- wheat, rice or cotton, typically about ten percent of the value of the crop in recent years. So keep that in mind. What we spent on sugar was not -- was actually less in relation to the value of the crop.

Mexico also diverted hundreds of thousands of tons of sugar to the world market in 2013-14, at lower prices than it could obtain in the U.S. Steps such as these and the normal working of market forces can be counted on to maintain balance in the market.

In summary, in the absence of the suspension agreements, where we are now would be well within the parameters of how the government managed U.S. sugar market normally behaves. It is important for the Commission to keep this broader context in mind, as it considers whether imports from Mexico can be blamed for the U.S. sugar industry's occasional subpar returns.

As I demonstrated earlier, there is no correlation between the volume of imports from Mexico and U.S. refined or raw sugar prices. In my opinion, the combination of U.S. sugar policy and program management, a world sugar shortage that pushed U.S. prices to record levels, the resulting supply response and the normal working of commodity markets are the primary causes of the decline in prices for the historic highs seen earlier in the cycle, not imports from Mexico. I'll be happy to answer questions later. Thank you.

MR. ROSENTHAL: Mr. Hudgens.

STATEMENT OF BRAD HUDGENS

MR. HUDGENS: Good afternoon. I am Brad Hudgens of Georgetown Economic Services. I will address Petitioners' arguments concerning volume and price. Given that most of the data in the Commission's record are confidential, I am limited as what I can say publicly. I have prepared confidential handouts highlighting some of the key evidence in this case.

I will discuss what I can publicly on these slides, and ask that you refer to the slides and to our prehearing brief for more specifics.

Let's begin with the first statutory factor, volume. Petitioners argued in their brief that imports from Mexico increased by more than one million tons from crop year 2011-12 to crop year 2012-13, and that this increase was "devastating" to the U.S. producers.

Petitioners fail to mention, however, that the U.S. producers themselves were responsible for this increase. As you can see in Slide 1, the increase in imports from Mexico is attributed to U.S. producers. The parts of the bar that are shaded in green represent the growth in imports resulting from purchases by U.S. producers.

The identity of these producers are listed in the title of Slide 2. As you can see from this slide, there are only a small number of U.S. producers responsible for the growth in imports from Mexico. Please compare the two bars in this chart. The first bar represents the growth in imports from Mexico due to purchases by these U.S. producers. The second bar represents the growth in total imports from Mexico.

As you can see, there is no doubt that the U.S. producers are responsible for the growth in imports from Mexico.

The Commission asked these producers why they imported from Mexico during the period. Their responses are indicated in Slide 3. As you can see, these responses clearly establish that the U.S. producers imported sugar from Mexico to meet their own production requirements. One response also indicated that the producer imported from Mexico to obtain "higher quality product." In no way did these responses indicate that U.S. producers increased their imports from Mexico due to price.

As indicated in Slide 4, these U.S. producers increased their imports from Mexico to replace imports from other sources. These data are confirmed by data presented in the staff report, showing that total imports remain relatively flat during the period.

Although Petitioners argue that imports from Mexico "surged" from crop year 2011-12 to crop year 2012 to '13, total imports increased only by 47,000 tons, while U.S. producer shipments increased substantially more during that same period.

As you can see in Slide 5, the increase in total imports accounted for a very small percent of the increase in consumption. Please refer to Slide 6. This chart demonstrates that as U.S. producers' shipments increased during the period, U.S. producers gained, as opposed to lost market share at the expense of imports. This factor is the opposite of what is usually argued in a trade case to demonstrate volume effect.

Imperial Sugar argued in its prehearing brief that the volume of imports of refined sugar are significant and have caused adverse price effects during this period. The record directly contradicts this claim.

I would like to spend a few minutes discussing the trends of both raw and refined sugar imports from Mexico. The staff report breaks out imports from Mexico by raw and refined sugar in Table 4-3. The import data show that imports increased for both raw and refined sugar during the period.

These data are based on harmonized tariff schedule definitions, which distinguish raw and refined sugar by polarity degrees. The vast majority of imports from Mexico are Estandar, which have polarity ranges that overlap the definitions of both raw and refined sugar.

U.S. producers import substantial volumes of Estandar classified in both raw and refined sugar categories for the same purpose: to use in their refineries to produce refined sugar. Please refer to Slide 7. These data indicate that the U.S. producers accounted for the increase in imports of raw sugar during the period. Now that trend is not surprising.

But as you can see in Slide 8, U.S. producers also accounted for all of the increase in refined sugar during this period. Thus, the U.S. producers accounted for the increase in imports from Mexico regardless of the type of sugar being imported.

Slide 9 demonstrates that the majority of imports of refined sugar from Mexico are imports destined for further processing. In fact, as indicated in the blue shading in the bars, refined sugar destined for consumption, that is the sugar that's sold to the industrial producers of sugar-added products or food service providers or grocery store chains, those shipments declined during the period.

This is important, because sugar intended for consumption, which is represented by Products 2 to 6 in the Commission's questionnaire, declined during the period. Imperial Sugar has argued that the underselling in those products was the cause of growth in imports from Mexico. But as you can see, imports from Mexico intended for consumption declined during this period.

Slide 10 shows the breakout of total imports from Mexico based on whether the imports are intended for consumption versus destined for further processing. As you can see, the trends are the same as those for refined sugar. The data indicate that if the Commission were to subtract the imports by the U.S. producers, imports from Mexico would show a decline during this period.

Thus, the Commission record establishes that the purchasers, the industrial producers of sugar-added products, the food service providers, the grocery store chains, did not shift their purchasing patterns from domestic product to imports from Mexico during the period.

The entire increase in imports from Mexico during the period was caused by the same U.S. producers, that indicate support of an affirmative determination. Ironic is the most understated term that I can think of to describe this position taken by the producers.

I would like to now turn to the second statutory factor, price. Petitioners argue that underselling by imports of Mexican sugar increased during the "surge period," and that this underselling increased as Mexican producers attempted to dispose of surplus production in the U.S. market.

The information that I've just presented with regard to volume refutes this argument. First, the increase in imports from Mexico is due to the increase by a small number of U.S. producers and second, the volume of imports from Mexico intended for consumption and accounted for by the Products 2 to 6 declined during the period.

Other record evidence proves that the growth in imports was not due to underselling by imports. As you can see in Slide 12, the staff report indicates that the vast majority of the volume of imports from Mexico oversold, not undersold the domestic product.

Please refer to Slides 13 through 17. To the degree that there was any underselling in these products, imports from Mexico accounted for a small and declining share of the volume of those products. In these charts, the volume of imports from Mexico is represented by the dotted green line, while the volume of U.S. producer shipments is represented by the blue line.

For all products, imports from Mexico accounted for a very small share of the total volume for these products sold in the U.S. market.

Please refer to Slide 18. For each of the products, I aggregated the monthly volumes on a crop year basis and calculated the percent change in volume over the three year crop period, the three crop years, and these data indicate that imports from Mexico declined significantly in all five products, while U.S. producer shipments increased in all but one of the products.

These data confirm the information presented in Slides 8 and 9, that show imports from Mexico intended for consumption did not increase during the POI.

I would like to now address a few points regarding Product 1, which is sugar less than 99.6 percent polarity sold to refiners. First, it is sold for the Commission -- it's important for the Commission to understand that the growth in volume for this product was not a result of imports from Mexico competing with U.S. produced sugar for these sales.

Rather, this growth reflects the business decisions of a small number of U.S. refiners that had been historically dependent on imports of raw sugar to meet their own production requirements, to switch from one import source to another import source.

The market share tables in the staff report and the refiners' own questionnaires confirm that the growth in imports from Mexico of Product 1 merely replaced TRQ imports during this period. It is particularly compelling evidence that of the over 100 lost sales and lost revenue allegations made by Petitioners in this proceeding, there was not one allegation made against any of the U.S. refiners that was responsible for this growth in imports from Mexico, and whose data are reflected in Petitioners' pricing chart for Product 1.

The Commission record also indicates that the U.S. producers increased their sales of Product 1 during the period, so that there was no volume effect with respect to Product 1. In the prehearing brief, Petitioners argue that the aggregate average prices of Mexican sugar fell further and faster than the average U.S. prices or TRQ import prices during the same period.

They argue that this particular decline was "dragging the entire U.S. market down." They cite to Mexican AUVs declining from $801 per ton in crop year 2011-12 to $504 per ton in crop year 2012-13, and to $469 per ton in crop year 2013 and '14.

Slide 19 demonstrates that these price declines were a result of a product mix issue and not to aggressive pricing by Mexican producers. As I discussed earlier, the increase in imports from Mexico was virtually all due to the U.S. producers importing more Estandar, which is destined for further processing.

The additional sugar imported by these producers substantially altered the product mix of the imports from Mexico. As you can see in this chart, while imports intended for consumption, which have a higher AUV accounted for a majority of the total imports from Mexico in the first year of the period, imports intended for consumption accounted for a small and declining share in the second and third years, as imports destined for further processing increased significantly over the period.

This change in product mix directly correlates to the decline in Mexican import prices. As the product mix substantially changed from higher AUV product to lower AUV product during this period, Mexican import AUVs overall declined at a more rapid rate.

In sum, the pricing data gathered by the Commission demonstrate that imports overwhelmingly oversold the domestic product on a volume basis. For all pricing products, the data indicate that Mexican imports accounted for a small and a declining share of the total volume for those products sold in the U.S. market.

Thus, the pricing data clearly refutes Petitioners' contention that the U.S. producers lost volume and market share due to low priced imports from Mexico. Thank you.

MR. ROSENTHAL: After that complete and utter refutation of the Petitioners' case, one wonders why we need to go on. But as they would say on late night television, wait, there's more, and I'm not going to offer you any Ginsu knives. I'm going to offer you the testimony of Mr. Hermann and myself.

STATEMENT OF JOHN HERMANN, ESQ.

MR. HERMANN: Thank you, Paul. Good afternoon Madam Chairman and members of the Commission. My name is John Hermann. I'm with Kelley, Drye and Warren. In Mr.

Rosenthal's opening remarks this morning, he observed that this is an extraordinary hearing. That's certainly true regarding the manner in which this case has proceeded, as well as the alignment of the Petitioners in the Mexican industry in support of the suspension agreements concluded at the end of last year.

A further example of the extraordinary nature of this case is the extent to which the United States and Mexican governments have worked together, in cooperation with private parties in both countries, to seek to ensure stability in each country's sugar and sweetener markets, as well as in the bilateral trade of those products.

Recognizing the need for an entity to identify and quickly resolve any frictions that might arise in agricultural trade between the two countries, the U.S. and Mexican governments agreed to establish a Consultative Committee on Agriculture or CCA, through a memorandum of understanding in April 2002, signed by then-Agriculture Secretary Venemann (ph) and then-U.S. Trade Representative Zelick (ph), as well as their Mexican counterparts.

A press release issued by USDA announcing the creation of the CCA stressed that it would include a rapid response team to deal with trade frictions when they first emerged, as well as an early warning and consultation process to identify potential irritants to the bilateral trading relationship.

In 2007, in advance of the January 1, 2008 elimination of quantitative restraints on the volume of sugar and high fructose corn syrup trade between the two countries, the United States and Mexican governments created a Sweeteners Working Group under the CCA. The Sweeteners Working Group has proven to be an important forum through which officials in the U.S. and Mexican governments, in tandem with industry leaders, have worked closely to ensure stability in each country's sugar and sweeteners markets.

Whether through the Sweeteners Working Group or otherwise, the Mexican government has demonstrated its commitment to taking actions to ensure the stability of the U.S. sugar market on three occasions during the last ten years. First, the Mexican government increased the supply of refined sugar to the United States, following the reductions in U.S. sugar cane refining capacity in 2005, as a result of Hurricane Katrina.

Second, in 2008 the government of Mexico again intervened to increase the supply of refined sugar to the United States, following an explosion and fire that resulted in significant damage to a refinery operated by Imperial Sugar near Savannah, Georgia.

Third, following higher than expected sugar production in the United States in 2012-13 crop year, the

Mexican government rapidly responded to a request from senior U.S. government officials by diverting substantial quantities of sugar to third country markets. Mr. Carlos Rea (ph), the Director General of FISA (ph), a trust fund responsible for the operation of sugar mills owned by the Mexican government, testified at the preliminary conference that he received a request for assistance from senior U.S. government officials in August of 2013, and that by October 2013, just three months later, the Mexican government had acted to divert 700,000 metric tons of sugar from government-owned mills that was destined for the United States.

In addition, the Mexican government worked with privately held mills in Mexico, in an effort to divert an additional 400,000 metric tons of sugar that otherwise would have entered the United States. In its post-conference brief, the Mexican Sugar Chamber placed information on the record concerning the diversion of 700,000 metric tons by the government-owned mills, as well as information, contract information concerning diversion of 132,000 tons from the privately owned mills.

So the record at this point contains information concerning the diversion of at least 832,000 metric tons, as a result of these efforts.

These efforts, these three efforts reflect an exceptional level of cooperation and engagement by the Mexican government. On several occasions, and irrespective of whether there was any formal agreement, to ensure the smooth functioning of the U.S. sugar market. These efforts not only helped to stave off oversupply of the U.S. market, thereby protecting the American producers; they show that imports from Mexico pose no threat.

There is no reason to believe that these efforts by the government of Mexico will not continue in the future, significantly preventing any threat of disruption in the U.S. market due to Mexican imports.

Several other factors demonstrate that Mexican sugar imports do not threaten the domestic industry. Mexican sugar production fell from 8.15 million short tons raw value in crop year 2012 to 7.04 million tons on 2013, a 13.7 percent reduction. Further, USDA estimates that Mexican sugar production will remain at about seven million tons in both the 2014 and 2015 crop years.

USDA also estimates that U.S. imports of Mexican sugar will decline from their peak of 2.06 million tons in crop year 2012 to 1.4 million tons in crop year 2014, a decline of 33 percent and that Mexican imports will remain relatively stable at 1.5 million tons in the 2015 crop year.

While these estimates assume the continued operation of the suspension agreements, the decline in sugar production in Mexico in and of itself will reduce Mexico's capacity to export sugar to the United States. In addition, recent commentary by Mr. Juan Cortina (ph), the president of the Mexican Sugar Chamber at an industry conference, suggests that additional developments that will reduce Mexico's capacity to export sugar to the United States.

Specifically, Mr. Cortina indicated that Mexico will terminate its importation of U.S. reexport sugar, resulting in the use of Mexican sugar at border facilities in Mexico, producing food and beverage products for exportation from Mexico to the United States.

USDA also projects a significant reduction in Mexican sugar inventories, with Mexico's ending stocks as a percentage of total use falling from 34.1 percent in crop year 2012 to approximately 18 percent in the 2014 and 2015 crop years, a decline of nearly 50 percent.

USDA's most recent projections, which supplement those included in Table 7-2 of the staff report, are reproduced in Exhibit 18 of our prehearing brief. Finally, USDA projects significant growth in sugar consumption in Mexico, increasing from 4.79 million tons in crop year 2013 to 5.19 million tons in crop year 2014, and to 5.26 million tons in crop year 2015, an increase of nearly ten percent over the three-year period.

For these reasons, the imports of sugar from

Mexico do not threaten the domestic industry with injury. Thank you.

MR. ROSENTHAL: In concluding our presentation this afternoon, I'd like to review the domestic producers' arguments with respect to the statutory factors underlying the Commission's analysis, and discuss how the record refutes those arguments.

First, volume. I thought I heard Mr. Cannon and Ms. Hillman actually, earlier today, concede that there is no volume argument left. I will have their direct quotes for you perhaps in rebuttal. I wrote them down on little cards, and you will have them in the transcript. And if I'm mischaracterizing their comments, I'm sure I'll have the chance to hear about that from them in rebuttal.

But if they haven't thoroughly conceded that argument, they should, and I'll tell you why now. First, the petitioner's assertion that the increase in Mexican imports "has come at the expense of the US producers," as you've heard from our witnesses is simply not correct.

The record is clear that the domestic producers' share of the US market increased over the period of investigation, due to increases in US production and shipments. And I'm gonna refer to Mr., um the confidential slides occasionally too, so you may want to have those handy.

So take a look at Confidential Slide Number 6 from Mr. Hudgens' presentation. Second, as discussed by Mr. Hudgens a few minutes ago, US producers played a key role in the increased volumes of Mexican sugar imports.

The significance of the US producers' purchases in accounting for the increased subject imports is not obvious from your sheet tables in the Commission staff report, but it is readily apparent from the careful review of the responses to the Commission's Importers Questionnaires, as shown in Confidential Slide Number 1.

While the petitioners attribute their declining financial condition to subject imports, the US producers that increased their purchases of Mexican sugar had no incentive to increase their purchases if they had any reason to believe it would injure their businesses.

To the contrary, as shown in Confidential Slide Number 3, the US producers that imported did so because of inadequate domestic supply and superior quality of the imports from Mexico, not as Mr. Hudgens emphasized, price. Price was not mentioned once.

If you had a chance to review our post hearing brief, you didn't have to go past Page 1 to see the quote that we had there from Pogo the Cartoon Character, that said famously, 'We have met the enemy and he is us.'

Well, first of all, as you've heard earlier and

I'll repeat, we don't believe there's any injury but to the extent there's any injury here, it's a self-inflicted wound. As mentioned, the domestic producers to the extent there is blame to go around, I would argue there isn't, because what happened is a result of natural market forces and perhaps the USDA management of the sugar program, to the extent that there is blame to go around, it is blame that is not to fall on the Mexican imports.

Third, with respect to volume, Imperial Sugar argues that increases in the volume of refined sugar imports to Mexico, "Caused harm to the refiners such as Imperial, who've had to compete with these low priced imports." Again, this is not correct.

The responses to Commission's Importer's Questionnaires demonstrate that the increased volumes of refined sugar imports from Mexico were actually further processed in the United States. They were not for direct consumption.

Indeed, the questionnaire responses received by the Commission demonstrate that imports of refined sugar from Mexico, for direction consumption in the United States, declined over the period of investigation. As you can see from Mr. Hudgens' Confidential Slide Number 10.

It's not surprising, therefore, that purchasers such as Mr. Jones, were not buying Mexican sugar and the subject imports lost market share. So the key points we really want you to consider, with respect to volume, are summarized in Confidential Slide Number 11, which you didn't get referred to earlier.

There's some narrative there, and I want you to take a look at that, and I'm not, I can't repeat what's on that slide, but in the own words of the petitioners you can see why the volume that's being complained of is not injurious.

I want to go to the question of price now. With respect to price, the domestic producers' arguments are equally flawed. They claim that increasing volumes of low-priced Mexican sugar responsible for declining prices in the US market and again, I think I heard the petitioners and their counsel earlier say that it's not a volume case anymore, we abandon that, it's a price case. We'll hear if I'm characterizing this correctly.

So, on price, Mr. Earley just made clear that the decline in US prices during the period of investigation reflects a return to normal price levels following a period of record high prices in 2010 and '11.

Second, the pricing data gathered by the Commission demonstrate that Mexican imports were not responsible for the declining prices and in particular, the record establishes one, the vast majority of volume of

Mexican imports on which the Commission collected data oversold the comparable US product, as you've heard from Mr. Hudgens.

Two, the volume of Mexican import for all the pricing products declined significantly over the period of investigation, as Mr. Hudgens emphasized, and, the third part on this subpart is that, for those pricing products, where there were significant declines in prices during the period of investigation, the volumes were so small that they could not have been a major impact or provide a major impact in the prices. Several of those points go directly to the questions that Commissioner Schmidtlein asked about earlier.

Next, Mr. Earley testified that there's no correlation between the volume of imports of Mexican sugar and the prices in the US market, and fourth, there's an absence of any connection between the presence of Mexican sugar in the US market and the price declines.

I do have a slide that I'd like you to take a look at here. That's the USDA quote which says basically that the price declines were started by the US beet sugar prices, not imports, beet sugar prices by US producers were the reason why prices began to decline and those prices were matched by the imports from Mexico.

Further, Slide 2 here confirms that view. Mr. Farmer, by the way, we, not that we feel lonely, but a lot of the petitioners -- a lot of the witnesses who testified at the preliminary hearing no longer are available for us for some reason, I'm not sure why that is. I'm being facetious, they've, they're now endorsers of the suspension agreement. Mr. Farmer is one of those, but he's also an honest man and he testified at the preliminary conference and after suspension hearing about this, who leads the price decline?

And I know this is a crucial question and every one of you commissioners asked about that, and as he said, the Mexican producers are not the price leaders, they're the price takers and, with respect to imports of refined sugar, the majority of refined sugar produced in the US market is sold far in advance of the delivery period, and essentially it is the domestic industry setting the prices in advance and the Mexican industry has price takers coming in after the fact.

This is very consistent actually with the petitioners' claim that Mexico sells most of its sugar exports in the US on either a spot basis or through short-term contracts, so that's one area where I think the petitioners and respondents are consistent.

As a result, Mr. Farmer stated that Mexican imports do not have a material impact on prices received by US growers or refiners. And by the way, he confirmed those comments on Slide 3.

This is worth studying. We didn't make this up. This is not one of our witnesses. This is an independent importer, trader and refiner in the United States.

Fourth, US producers resoundly and comprehensively rejected petitioners' lost sales and lost revenues. I've done a few of these cases over the years and I cannot recall an incident where there was such a high percentage of rejected allegations. I refer you to Mr. Hudgens' Confidential Slide 20. That same slide includes excerpts from responses received by the Commission, several of the petitioners' lost sales and lost revenue allegations. And these responses make it clear that the Mexican imports did not have the pricing effects of the US market asserted by the domestic producers. Those responses, by the way, are not particularly surprising given the responsibility of a small number of US producers for the increase in the subject imports.

I would like you to turn to Confidential Slide 22, which we didn't really, or Mr. Hudgens didn't really talk about, and I want you to study this as we have, at least on the lawyers and the economists here. Again, I would argue that this pretty well refutes the arguments concerning pricing during the surge period.

And so, the price declines in the period of investigation did not result from the presence of low-priced imports in the market. To the contrary, the evidence is overwhelming that the US producers, not the Mexican producers, are the price leaders in the US market. And again, I go back to Commissioner Schmidtlein's question, US industry controls 85% of the market. They increased their sales and their prices despite the allotment issue.

Isn't it logical to assume that they are the price leaders here? And I'm extending her question a little bit, but that was where she was going, and the answer is yes. The Mexican producers are the price takers, the US industry are the price leaders, and we have plenty of evidence on the record to support that.

The final statutory factor I wanted to talk about is impact. It's not surprising, given the lack of volume and price effects of the imports that there's really no direct negative impact on a domestic industry.

First, as you, I would say no direct or indirect. I don't want Mr. Cannon to say, he said direct. There's no adverse impact on the domestic industry as a result of the imports from Mexico.

Mr. Jones and Mr. Brooks testified that imports of Mexican sugar play a vital role in the US market in supplementing production, and by the way, the US producers who imported said exactly the same thing. They need the imports to insure adequate supply of raw sugar to keep their refineries operating at a reasonable level of capacity utilization, as well as to insure the demand for refined sugar is met.

And again, take a look at Confidential Slide 22. Excuse me, the quote on Slide 23. In fact, if there's one slide that I would like you to take home and sleep with, it is Confidential Slide 23. This excerpt is from the questionnaire response of a prominent US producer that was submitted during the preliminary phase of the Commission's investigation.

No doubt this error in ethicacy was caught by counsel and it wasn't repeated in the final questionnaire, but it is very, very telling. Let me have a time check, please. In that case, I'll conclude. And I'm hoping we'll get some questions on what I was going to say. Thank you.

CHAIRMAN BROADBENT: Thank you. I want to thank all the witnesses for coming today and taking time out of their work to be with us. We will begin our questioning with Commissioner Schmidtlein.

COMMISSIONER SCHMIDTLEIN: Thank you, Madame Chairman. I'd also like to thank the witnesses for coming today and their counsel. Mr. Jones, I wanted to start with something that you said during your direct testimony, and you can correct me if I'm wrong. But I thought I heard you say that your company doesn't buy Mexican sugar and that you buy only from the US single source, US producer?

MR. JONES: Yes.

COMMISSIONER SCHMIDTLEIN: And that you've not ever had anyone mention the price of Mexican sugar in your negotiations or discussions.

MR. JONES: Correct. That's correct.

COMMISSIONER SCHMIDTLEIN: So am I, would I be correct in assuming that it's your view that this, the importation of Mexican sugar and Mexican sugar in general doesn't have any impact on the price of US sugar? The price of sugar in the US market?

MR. JONES: From perspective, no. I deal with one US supplier. We talk about and negotiate price based on what the Number 16 market is, and the Futures market are for the period in which we're negotiating, and that's it.

COMMISSIONER SCHMIDTLEIN: But in general, then, do you, is there some other way in the aggregate that the price of Mexican sugar is affecting the price of US sugar?

MR. JONES: Not that I'm aware of.

COMMISSIONER SCHMIDTLEIN: Not that you're aware of. So, I don't mean this in any disrespectful way, but then, why did you take the time to come and oppose the petition?

MR. JONES: I think I'm concerned about the suspension agreements, because then we go back to a more closely managed stock-to-use ratio, wherein the history of that period when I started doing sugar early in 2008-9 time frame did not work out very well. I mean stock-to-use were tight and the prices rose to a level that were not sustainable and not able to be sustainable by our company.

COMMISSIONER SCHMIDTLEIN: And so what is it, is it he restricted supply from Mexico --

MR. JONES: I think the restricted --

COMMISSIONER SCHMIDTLEIN: -- under the suspension agreements?

MR. JONES: Yes. Uh, yes, the potential restricted supply.

COMMISSIONER SCHMIDTLEIN: And explain to me, how does that affect what you're concerned about?

MR. JONES: The stock-to-use ratio at the 13.5% with the dynamics in the market with the way, the weather, you know, whatever could lead us into a path where their stock-to-use would end up lower than that. And then the USDA has the limited --

COMMISSIONER SCHMIDTLEIN: And then does that affect the price? Or --

MR. JONES: -- access to change that.

COMMISSIONER SCHMIDTLEIN: And that affects the price of sugar eventually, okay. So, a restriction on the supply of Mexican imports affects the price of sugar in the US market?

MR. JONES: Yes.

COMMISSIONER SCHMIDTLEIN: So an increase in the supply of Mexican sugar doesn't affect the price in the US market?

MR. JONES: It's supply and demand, yeah, if there's greater supply, there's gonna be, the price is potentially gonna go down, the other way around as well. Vice versa.

COMMISSIONER SCHMIDTLEIN: Okay. So, so it would, an increase in supply from Mexico does affect the price in the US market?

MR. JONES: Potentially.

MR. ROSENTHAL: Commissioner Schmidtlein, I want to clarify, because I've -- we've had a lot of discussions about this, and I think there's a difference between what he's saying with respect to -- he's not being offered Mexican sugar to compete with his domestic supplier.

And his domestic supplier is not saying, he's not saying, 'You know what? I can get Mexican sugar more cheaply, in fact, in the Northeast.' But what he testified to was, he really can't get Mexican sugar very efficiently there because of transportation. I don't think he was saying, and I want to restate what he was saying so it is clear.

It's not that the supply of Mexican sugar or supply of any sugar doesn't affect the price, but he's negotiating with his supplier. He is just looking at, what are the indices, what are the prices in general in the marketplace, and that, those prices don't distinguish whether it's Mexican, TRQ, US pricing. This is what the price per sugar is and that is basically what they based their negotiations on.

COMMISSIONER SCHMIDTLEIN: No, I know, but his concerns with the stock-use ratio under the suspension agreements and the suspension agreements apply to Mexico, not to any country in general.

And so, what I'm trying to get at is to really understand how this, and this goes back to my conversation at the end with petitioners' panel. You know, how is price set in this market in terms of -- and how do the market allocations affect that and the fact that the US producers are restricted, or the TRQs are restricted, you've got -- so, but I mean I, you know, to say that the stock-use ratio that's affected by the suspension agreement with Mexico can affect the price, because it's restricting supply, but then to argue that, that it doesn't affect supply; otherwise, like an additional supply, you know the restriction affects it, but not a supplemental, seems inconsistent to me.

MR. ROSENTHAL: I want to correct that, because I don't think he said additional supply doesn't affect the price. If he did say that, that is not what he's told me and I don't think he'd want to have that on the record.

Well, he said supply and demand affect the price, and clearly, any restriction will increase the price and any increase will decrease the price, but I think he's saying is that, when he's negotiating his prices with his customer, I should say supplier, the source of the supply is not an issue.

They're negotiating based on what are the, what seem to be the overall market prices, and I think Mr. Earley will be able to answer your question about how those prices get set with a little bit more precision, because he has a little bit more of a macro view. I think Mr. Jones is trying to explain when he does the negotiation he's indifferent to where products are coming from, he just basically negotiating on what is the prevailing market price.

COMMISSIONER SCHMIDTLEIN: Okay. Would you like to --.

MR. EARLEY: Tom Earley. Just a little bit of background on the stock-to-use ratio. On USDA for 15 years or more, has targeted an ending stock-use ratio 14.5% within the range of 13.5 to 15.5. Um, the concern about the suspension agreements is that the -- we already have the limit on the TRQ imports and can't be changed for six months.

The suspension agreements allow enough, in theory, allow enough Mexican sugar in to get the 13.5%, except no one expects Mexico to fill that quote, in fact USDA was estimating that there would be a hundred thousand ton shortfall on that Mexican allocation over the last couple of months, they revised that to about seventy-five thousand.

So instead of 13.5%, the market is thinking it's gonna be 12.5 or 13%. That is very low level that will tend to result in high prices. That's, I think, what Tim's concern is with the suspension agreement.

CHAIRMAN BROADBENT: Can you talk a little bit about what we were discussing at the end of the petitioners' panel, in terms of the relationship between, you know, I guess in general. How price is set? The relationship between the price of raw sugar, the price of refined sugar, how the fact that the supply is so tightly regulated through market allocations. How does that affect competition, you know, and therefore the price? I know we don't have much time, so if you could just do it in a minute and ten seconds.

MR. EARLEY: Yes, the raw sugar price is pretty much determined by what's being allowed in the form of imports of raw sugar through the tariff-rate quota. And any adjustment that the USDA makes on that or in imports in Mexico would affect that. Refined sugar prices depend on how tight the overall market is, and what's happened with the suspension agreement is -- can I have my price chart, Grace, the one that has the all the sugar prices on it?

Okay, you can see the blue line on top is the refined sugar price, wholesale. The red line is raw sugar price. Well, those margins are very high during that period of 2009 to 2012. Over on the right, when you put in place the suspension agreements, the US refined price shot up to about eighteen cents, eighteen, nineteen cents over the world refined price. If there weren't a second tier duty, the difference would be two or three cents over what it would cost to move world market refined sugar in here.

But as soon as you make the supply so tight, like with a 13% stock-use ratio expected, all the power shifts to the sellers, the sellers are able to extract -- it's like a quota rent. They're able to extract every cent of that sixteen cent second tier duty from the buyers because buyers have no option to get any refined, other refined sugar they'd have to pay a sixteen cent duty over the world refined price.

So that's the dynamics of how the market is working. Currently it's also how it worked during 2009, 10, 11, when we had a secretary of agriculture who didn't are how high the price went. He was willing to keep -- he was from Minnesota -- and he was willing to keep supplies so tight that it drove the US refined price twenty cents above the world price. That's how the market works in a minute and ten.

COMMISSIONER SCHMIDTLEIN: My time is up, but I'll follow up. Thank you.

CHAIRMAN BROADBENT: Could you kinda -- part of the conditions of the competition here is, of course, the farm bill and what it did in 2008 and what it did in 2013. Can you kind of walk me through what was going on there and how it affected prices?

MR. EARLEY: Yeah, I think in 2008 the domestic producers were worried about the effect of NAFTA, and so they went to the Congress and said, 'We need more ammunition,' and they got a small increase in the support level, but mostly they wanted to constrain USDA's ability to increase quotas.

Historically, USDA would look at the supply-demand situation at the beginning of the year, you know, in the summer before the market year began and they would say, 'Well, it looks like we're gonna need, maybe we'll need 1.6 million, 1.8 million tons of raw sugar imports. Well, let's start at 1.6, be a little cautious,' and they set it right at the beginning of the year and then if we needed more later, they would increase it.

The 2008 bill had a provision that had it set at the minimum and Secretary of Agriculture couldn't change it until April, so we went through a half a year with inadequate raw sugar supplies at times. And uncertainty about what the USDA would do in the spring in terms of it making more raw sugar available to refiners, so it, particularly in the first three or four years under the bill, it kept prices very high. Those were the two main things, but we also had the feed stock flexibility program, as sort of a backstop to sop up sugar if there was excess supply and the last thing was they added a provision that any sugar required by USDA could not be resold for food use.

In previous episodes where there were forfeitures, USDA took the sugar in, held it until prices recovered and then sold it -- was able to sell it back into the market. Producers didn't -- they said, 'Well, we don't want that hanging over the market. Let's just make sure they can't sell it back.' And so those were the main dynamics that were since the passage of the bill, if that answers your question.

CHAIRMAN BROADBENT: So that, that was in 2008?

MR. EARLEY: That was the result of the 2008

Farm Bill.

CHAIRMAN BROADBENT: Okay, and then --

MR. EARLEY: That all applied for six years, up through 2013-14. And the 2014 bill is exactly the same.

CHAIRMAN BROADBENT: So they just rolled over the 2008 bill to 2014?

MR. EARLEY: You know, they didn't ask for an across-the-board increase. They were apparently happy with the 18.75 cent raw sugar loan rate, and the 24 cent refined price, so I don't think they can complain about the support level.

CHAIRMAN BROADBENT: Okay. Do you consider raw sugar to be defined, is there a distinct definition of raw sugar versus refined sugar? Is there a clean definitional break there? Would the best definition of raw sugar simply be sugar for further refining or consumption or, and could you define the exact same polarity? Are there instances where the same polarities can either be considered raw or refined? What is the break?

MR. EARLEY: In addition to polarization, the other key measure is color. There is a color standard that defines how if you melt the sucrose in a liquid solution, how transparent is it, basically. You can have differences in color that are more important than the degree of polarization. For example, you could have a high polarization of raw sugar but still had a high color and you couldn't use it in Sprite or something like that.

So it's, I guess I think of it more as a continuum. There is not a clean cutoff. Most refined sugar in the U.S. is 99.8 or higher. A lot of the specifications that the big food manufacturers have specify a minimum of 99.8 polarization and certain minimum/maximum level of color. But again, it depends on the application as said if you were making brownies you're not worried about color so there's other, you could use a higher color, higher polarization of sugar.

CHAIRMAN BROADBENT: Okay. Why would non-subject suppliers of sugar ever fail to fill their TRQ's given that U.S. prices are usually much higher than other markets?

MR. EARLEY: We started the current quota system in 1982 based on who supplied us during 1976 to 1981 and since those shares are fixed, since that time a lot of those countries have either stopped producing sugar, particularly in the Caribbean or their internal consumption has grown to the point where they don't have an exportable surplus. Some countries have actually imported sugar. There is a big price differential. They'll import from another country in order to be able to export their own sugar to the U.S.

In a lot of the cases a lot of the demand for sugar is now in Asia for imports and there is a higher price in Asia than in the World Market sales, there is a higher price in Asia. So there is a whole range of reasons almost half of our forty suppliers either supply nothing or don't fill their quotas.

CHAIRMAN BROADBENT: Say that again.

MR. EARLEY: Almost half of our suppliers, I think it's about eighteen of them, either supply nothing or do not fill their quota each year.

MR. ROSENTHAL: Chairman Broadbent, as we were sitting here this morning somebody showed me a news report from the Philippines indicating that I believe, and we will get this in the post-hearing brief, but they announced that they weren't going to be exporting sugar I believe because they had such high demand in their home market and so that's further confirmation that even though there might be countries who are eligible to ship under the TRQ here there are reasons why they won't and it has nothing to do with the price of imports from Mexico.

CHAIRMAN BROADBENT: Okay. Mr. Jones, you're with Just Born and you've been in business ninety years?

MR. JONES: Just Born has been in business for ninety years, yes.

CHAIRMAN BROADBENT: What's the derivation of the name?

MR. JONES: The Born Family emigrated from Russia in the 20's and they started a shop in Brooklyn. Their tagline was "These candies are Just Born".

CHAIRMAN BROADBENT: And their been there for ninety years? That's great.

MR. JONES: They started in Brooklyn and in the 30's moved to Bethlehem Pennsylvania where we are today.

CHAIRMAN BROADBENT: Good. How important is it for your company to have alternative sources of supply as you go through your manufacturing.

MR. JONES: It would be beneficial to have competitive sources of supply but where I am located geographically, it doesn't make sense for us from a freight standpoint to get the supply anywhere else than where we do with our single source right now.

CHAIRMAN BROADBENT: Who do you buy it from right now?

MR. JONES: I would like to keep that private.

CHAIRMAN BROADBENT: Understood, yes.

MR. ROSENTHAL: So Just Born has nothing to do with your location in Bethlehem?

(Laughter)

CHAIRMAN BROADBENT: Should Estandar receive a price discount from refined sugar if it is used in human consumption given its lower polarity?

MR. EARLEY: I would expect it to sell for a lower price. Again, different forms of human consumption can be used. Some Estandar is pretty high polarization at 99.6 and would probably sell for a similar price refined. I guess I would say it depends. I mean, no one's going to pay more than they have to if you're the customer buying it. It depends on what the alternatives for the Estandar seller are. If his only other alternative is sell it as raw sugar than the buyer has leverage so I think it's a negotiation.

CHAIRMAN BROADBENT: Understood. Okay. Mr. Williamson.

MR. WILLIAMSON: Thank you. To express my impersonation to the witness as my testimony, following on this last question. Since, I guess sometimes Estandar is further processed compared to raw sugar, so could one argue that it should cost more than raw sugar?

MR. EARLEY: Is the question about Estandar?

MR. WILLIAMSON: It depends.

MR. EARLEY: Well, cost and production, I've done a lot of work on cost and production for multiple crops. It's a slippery concept. I would say that even in Mexico, each company's production cost is going to differ and in Mexico I would expect the cost of refined to be higher than Estandar. Comparing it to raw sugar, you know, I mean even raw sugar in the forty countries we could potentially import for their production costs are hardly there. They are probably in the range of fifteen cents to thirty cents. So I don't think there is a single answer to your question. Say it again, maybe I misunderstood it. So Estandar?

MR. WILLIAMSON: So given that Estandar is used, compared to raw sugar, isn't Estandar used to -- might be considered further processed.

MR. EARLEY: No, I guess I take it back. Estandar is made in a cane mill just as raw sugar is. So then the process is the same. There is a question of you can take multiple strikes of sugar out of liquid when you crystallize it. You can take the sugar out and you can do that more than once, so it is a question of how far you can go trying to remove the molasses. The production cost of making Estandar in Mexico would be higher than the production cost of making a raw sugar in Mexico but it's hard to make the intra-country comparison.

COMMISSIONER WILLIAMSON: And I guess for a processor or refiner, the cost of refining Estandar, is it any different than the cost of refining raw sugar?

MR. EARLEY: It should be a little lower because there is less impurities in it to take out.

MR. HUDGEONS: Commissioner Williamson, this is Brad Hudgens. The record indicates that the U.S. Refiners have comingled the raw sugar and Estandar so it's used in the same process interchangeably comingled so there should not be a price difference based on that.

MR. EARLEY: Yes, I guess I would agree with that. When they unload the ships, all of this goes into one big pile and they take it out with bulldozers so it is hard to separate. COMMISSIONER WILLIAMSON: Yet there is some Estandar that people use directly, right? Treated almost as refined. MR. EARLEY: I have no direct knowledge of that actually.

COMMISSIONER WILLIAMSON: Mr. Hudgens, did you?

MR. HUDGENS: (Inaudible)

COMMISSIONER WILLIAMSON: Into your mic.

MR. HUDGENS: I think the record does show that there are a small volume of raw sugar that is intended for consumption that is very, very minute.

COMMISSIONER WILLIAMSON: Okay, thank you. Can you respond to the Petitioner's arguments that it is appropriate to compare the prices reported or sales by U.S. Producers with the import purchase cost data reported by refiners that import?

MR. HUDGENS: I'll start with that and others can add a bit. The first thing that I would say is it goes against Commission practice to do that. We've been in previous cases where the Commission would not analyze or would not compare the direct reported prices with the U.S. Producers first arm's length transaction sales because they were at different levels of trade. The Commission has ruled very recently and very clearly on that.

But I also have a few comments regarding that chart that Mr. Cannon talked about and my comments are a bit more broader than even if the analysis is more appropriate or not. But the one thing that's very clear is that the raw sugar started to have a decline starting in 2011 so those data, can you show that graph? That's refined. So the imports did not show a significant growth until October of 2012, so the degree to which underselling were influencing the prices of the product one, don't account for the significant price declines you have in product one from 2011 through 2012.

Then the other thing that I might say about this data is that all of the pricing data in this product series are made by U.S. Producers who are very large producers who have a significant amount of product, power in the market and also have been identified as price leaders by the purchasers in the Commission Staff Report, so the degree to which there is any market power or degree to negotiation, it would be among those small number of producers who are able to exert through negotiations lower prices in their sourcing of imported raw material inputs.

MR. ROSENTHAL: I just want to add, we would be happy to have the Commission change its practice with regard to that and despite what Mr. Cannon said, this case doesn't look at all like bolted shelving or some other analogies on this ground or others. The most important factors are the ones that Mr. Hudgens identified last, which was not your practice issue but rather what is the proper comparison and what is happening with this particular set of portraitures and this particular time period.

MR. HUDGENS: May I add one other point in that these data, they are imports from producers who were not, they were not going to U.S. Millers in terms of getting competing bids. They were dedicated because of their own production facilities. Sometimes it's because of where their refineries are located. Sometimes it's because they don't have grower affiliations like other refiners do so they are dependent and have historically been dependent on imports so the degree to which there never was the option that they were going to buy from a U.S. Producer versus an import from Mexico.

The only choice there was that they were to switch from one import source to another import source. So the comparison is a little bit off there because these producers who were recording the pricing data in this particular APO handout were not purchasing from other U.S. Millers and getting competing bids so the price comparisons in that sense aren't really fair.

COMMISSIONER WILLIAMSON: Okay, so I'm going to say this, not really. How should we deal with them then?

MR. ROSENTHAL: I would say, regardless of how you are going to make these comparisons in the future between direct and indirect imports, in this particular case it is not appropriate to change your methodology because of the facts Mr. Hudgens cited, that and we'll expand upon that in our post-hearing brief because there are some constraints because of confidentiality.

COMMISSIONER WILLIAMSON: Okay, thank you. I would appreciate seeing that. You argued that prices have returned to historic levels after a spike in crop years 2010-11 and 2011-12. However, your comparison is based on nominal prices. How will the data look adjusted for inflation? Not that we've had a whole lot of it but

MR. EARLEY: Well, I think if you adjust for inflation, you would want to look at both the prices and the production costs of the producers and I would argue that those two lines would just go down parallel to each other, clearly the constant nominal price will have declined in real terms. But there have been fantastic efficiency gains and productivity gains in both the U.S. beet and cane sector that allowed them to remain profitable in nine years out of ten and despite a constant support level and market prices being where they were.

You know, you saw that acreage chart that the producers had where it showed U.S. Acreage declining down to 2007-08 and Mexico rising. U.S. acreage declined because they didn't need as much acreage because they were producing more and more on the acreage they had. They production during that period where acreage was declining on that chart averaged 7.9 million tons. Now we are producing eight and a half, almost nine million tons on less acreage. So there's been, I hand it to the industry. They do a fabulous job of controlling their costs.

COMMISSIONER WILLIAMSON: Okay, thank you.

CHAIRMAN BROADBENT: Commissioner Johanson.

COMMISSIONER JOHANSON: Thank you Chairman Broadbent and I would like to thank you all for appearing here today, both the witnesses and the counsel. You all argue that the Commission should not deem the 89.9 percent increase in Subject Import volume to be significant because Subject Imports displaced non-Subject Imports instead of domestically-priced sugar.

How do you reconcile this argument with evidence that the average unit value of Subject Imports was lower than the average unit value of non-Subject Imports in years 2012 through 2013 and 2013-2014?

MR. ROSENTHAL: Paul Rosenthal. I will start on that and I will let others, including Mr. Hudgens supplement that. Once of the important things to look at is how the product mix changed dramatically in this period and what you'll see is that what the same U.S. Importers were importing were different products. I'm going to try to find the right shark for you, hang on one second.

Try Slide Nineteen of the confidential handouts. You'll see that the AUV's there demonstrate a major change in the product mix so instead of at the beginning of the period most of the imports were intended for consumption, by the end of that period only a tiny fraction of the imports were intended for consumption and most were intended for further processing. That is not only a difference in the product mix of imports of Mexico but the contrast between Mexican and TRQ Imports which were of a different type.

COMMISSIONER JOHANSON: Alright, thank you for your response. I'll have to look at that a bit further. It's quite a bit of numbers to tinker out there. You all have argued that the Sugar Program maintains high prices for sugar in the United States yet isn't the very premise of this case, that being the only foreign or domestic supplier with unrestricted access to the U.S. Market, Mexican Imports disrupted U.S. Market and injured the Domestic Industry with low-priced imports?

MR. ROSENTHAL: Commissioner Johanson, yes, that is the premise but obviously we disagree with that and your question calls into plain view some of the questions that you and others asked in the morning and why are, you know, can we separate the Imports from Mexico from World prices, et cetera. So I think it's worth talking a little bit about that in total contact.

COMMISSIONER JOHANSON: That goes back to our next question, so you need to --

MR. ROSENTHAL: They are related and among the points are that, well, a couple. Number one, if you go back and you look at the trends going up and down I think. Grace if you could go back to maybe figure one on Mr. Earley's charts? So you see how imports, sorry, so the pricing of wholesale and raw prices follow the same patterns as world raw pricing? You heard from some of the Petitioners reluctantly admit that when world prices go up, U.S. prices go up.

They were hesitant to acknowledge that gravity exists with respect to pricing and that when world prices go down, U.S. prices go down too. But that is the fact of the matter. That's true in every product, but it's certainly true in this one as well. There is an effort made by the professor from UC Davis to suggest well, yeah that may be true that world prices went down when and U.S. prices went down but they went down further or the gap closed when Mexico came into the market, but once again that analysis fell to account for the fact that the products mix changed quite a bit number one.  Number two, that the pricing or that the Importers were doing the importing here were not basing their decisions on importing based on price but what they said was based on the need and the quality.

So, I would argue that yes there's an increased presence of Mexican Imports but according to the Importers themselves, some of them who are in this room today, those imports were beneficial.  Not detrimental to the interests of the Domestic Industry.

COMMISSIONER JOHANSON:  But getting into arguments of the Petitioners of this morning, there is a Mexican product which is the only product in the market, as stated by the Petitioners, that is unrestricted.  There are restrictions on the marketing of U.S. and British sugar and also you have GRQ's with other countries.  Mr. Earley, it looks like you would like to address that?

MR. EARLEY:  Yes.  My apologies to the stenographer.  I keep forgetting to enter my name.  But you know the marketing allotments are a bit of a red herring. They don't really constrain U.S. Marketing.  I mean we consume twelve million tons.  Eighty-five percent of that is roughly ten million tons.  We produce less than nine million tons.  Over the course of the year, the individual company allocations are reallocated to who has the sugar or who doesn't.

So, you can't really say that the U.S. guys are constrained. They're not. They can produce what they want but if they produce ten million tons then they have a problem. But under nine million tons or low nines they don't have a problem so in that respect Mexico is not different. So I would make that point first of all and you have another point.

MR. ROSENTHAL: I do, but go ahead and finish because I want to get to another slide.

MR. EARLEY: So, I guess the other thing that sort of was in the background of my testimony is these markets work. People have responded to the high prices and it happens in the world market. Every time you have one of those big spikes, India expands, Brazil expands, everyone expands, prices collapse which they have now and we have ten cent and twelve cent sugar. After a couple of years you work your way out of that.

We have also had a decline in petroleum prices to which sugar is linked through the renewable fuels so that's another big factor. So I think if we were, didn't have the suspension agreements and had prices, declining sugar prices in the twenties, twenty-five to thirty cents, everyone would adjust to what the market needs. You know, we have had -- can I talk about demand? Its option in the U.S. has been rising two hundred thousand tons a year. Almost two hundred thousand tons a year for the last four or five years and no matter what anyone says about how bad sugar is for you, Americans keep eating sugar and will continue to eat it and there is partly substitution for HFCS as our per capita consumption has gone up each of the last five years.

It's not just population growth. People keep eating sugar so this comes to a different point which is a threat but I think that demand growth here and in Mexico will accommodate growth and sugar production in both U.S. and Mexico if prices are not forced outrageously high.

MR. ROSENTHAL: Can you go to the slides and picture the quotes from the USDA, my slides and Mr. Farmer. I recognize the point you're making. There's more Mexican volume here, and why aren't they the cause?

The first point is because they're not displacing the U.S. They're displacing TRQ. The second point is that, which the U.S. industry neglects, and that is that the U.S. industry, the domestic producers expanded their production dramatically.

If you go back to the confidential slides by Mr. Hudgens you will see that, except for a tiny proportion accounted for by imports, the vast majority, the highest percentage of the increased apparent domestic consumption is accounted for by the expansion of the domestic industry.

And that goes to the points by Mr. Farmer. The beet sugar industry is much bigger in the U.S. They account for much more volume and control much more of the pricing than anybody else. They are the price leaders, and the Mexican imports are the price takers. That is confirmed by USDA. It's confirmed by anybody in this market.

So why would one attribute a volume of Mexican product that isn't taking market share as the cause of this? Why would one do that when it is well recognized that the domestic industry is the price setter? That is where our concern is with respect to the Petitioners' arguments.

COMMISSIONER JOHANSON: Thank you for your response. If I could ask you all to addresses this in your post-hearing brief, the whole issue that I spoke with the Petitioners about this morning is that short of the commodity, but with the sugar program in the United States, with the TRQs, the Petitioners basically contend without saying so directly that it doesn't necessarily operate like a commodity product in the market.

Mr. Earley, you stated that the marketing allotments do not really affect supply--let me take that back. You mentioned that they do not have as much of an impact as one might think. I forget exactly what you stated.

MR. EARLEY: They don't constrain sales.

COMMISSIONER JOHANSON: Okay. Would you mind addressing that a bit more in the post-hearing brief? Because that's something that I think is significant about this product. I've worked with a number of agricultural products and this operates quite differently than the average agriculture commodity in the market. I think that would help me better understand what is perhaps going on here.

MR. EARLEY: Sure.

COMMISSIONER JOHANSON: Okay. Thank you.

CHAIRMAN BROADBENT: Commissioner Kieff?

COMMISSIONER KIEFF: Thank you very much. I join my colleagues--and I know we're late--in appreciating everybody. I know we're late in the day. I'll try to be quick, if I could, to just build on prior discussions.

Let me direct this if I could, please, to Mr. Rosenthal. And then if you think your fellow panelists can best contribute, I leave it to you to make the call.

Let me also say at the outset that I want to ask you about the morning discussion with respect to some pink sheets of paper. And I will then not get into details.

Am I correct in understanding that you have access to their pink sheets?

MR. ROSENTHAL: We have one copy, so we may have to share this.

COMMISSIONER KIEFF: That's fine. At least you have it. And I welcome this in the post-hearing, if you prefer, but I am of the impression that a focus of the morning discussion, one focus, was your opponent in effect saying that the overselling data doesn't amount to much, and we should be especially persuaded by the underselling data.

Do you have a factual disagreement with them? Or do you have a legal disagreement about the significance of their data? Right now I don't want to get into the details of the data, especially since it's confidential. I just want to understand the nature of the disagreement first.

MR. ROSENTHAL: I would say--Paul Rosenthal--I would say the answer is "both." And Mr. Hudgens opaquely, because of the confidential nature of the data, explained why we differ with them factually. But I also think, from a legal point of view, it would be improper to make the kinds of comparisons that you heard the Petitioners suggest because we think it would be unfair. And so we will expand on that in our post-hearing brief.

COMMISSIONER KIEFF: That would be great. I think just a direct discussion of what significance we should put on the overselling and underselling data, a direct discussion of the facts, and then a direct discussion of the legal significance, if any, of those facts. That would be very helpful.

MR. ROSENTHAL: Certainly.

COMMISSIONER KIEFF: I will then yield the rest of my time, and I think we have covered a great deal. So I look forward to reading the post-hearing briefs by both sides, and just--I believe I have been very transparent already today with the questions that are on my mind. And so while they were primarily uttered during the morning session, input by any of you is absolutely welcome. There's just no need to repeat them. And you'll have the benefit of the time and transcript later to in a relaxed way, on both sides, provide feedback.

Thank you, both.

MR. ROSENTHAL: Thank you, Commissioner. I was chafing at the bit to answer some of those, but I'll take a more relaxed fashion.

COMMISSIONER KIEFF: I mean, if there's a brief...

MR. ROSENTHAL: No, I can restrain myself. Thank you.

(Laughter.)

CHAIRMAN BROADBENT: Commissioner Schmidtlein.

COMMISSIONER SCHMIDTLEIN: Okay. So I want to go back to the question about direct imports. And I was going to ask Mr. Rosenthal why Product One was conspicuously absent from your brief. And then I thought it was because the skunk ate it after he made his appearance, but now I think it's because you think this is at a different level of trade.

And so I wanted to see if my understanding of that is correct, if that's your position?

MR. ROSENTHAL: That's part of it. And part of it is because we think that the nature of who is doing the importing and the lack of competition involved in that Product One importation makes this a little more squirrely, not skunky.

(Laughter.)

MR. ROSENTHAL: And so again I think it's probably best addressed more comprehensively in the post-hearing brief. But it is a little bit of both. And honestly, we're not, as you heard us, at least Kelley Drye, argue in other cases, I do think it would be a good thing for the Commission to take a different view of direct importation-- because you see more and more of that now. And it is certainly something we argued just in Bolted Shelving the other day, and when it comes to big box stores, et cetera. But this is a different kind of direct importation for further processing. And it doesn't necessarily have the same kind of analysis to it that I think you would employ when you're selling to a WalMart for further sale.

COMMISSIONER SCHMIDTLEIN: Well are there other costs that should have been added in? Is that why you believe it's at a different level of trade? I mean you heard Mr. Cannon explain what's been adjusted per the information requested on the questionnaire. Is there something--like tell me what else should have been added to make that a--

MR. ROSENTHAL: It's not an added-cost issue. It is the nature of the importer and the purpose for which it is being imported, and the lack of competition. And I'll try--I mean Mr. Hudgens explained a little bit of that before, but we'll explain more in our post-conference brief.

COMMISSIONER SCHMIDTLEIN: So you think maybe if there had been competition the price might have been lower? They could have gotten a lower price?

MR. ROSENTHAL: No, I would say that the--the fact is that they are--they tend to be companies with market power, and they are not competing against other domestic refiners, if you will. The comparison of their pricing doesn't align well with comparisons of their competitors.

There's almost like a--you're comparing almost Mexican imports to Mexican imports, not to domestic prices is what it amounts to.

If Mr. Hudgens wants to explain more publicly, I'll give him a chance, but otherwise I think it would be better to explain more in their post-hearing brief.

MR. HUDGENS: This is Brad Hudgens with Georgetown

Economics Services. One issue that we would like to elaborate more on in the post-hearing brief is the fact that the majority of the U.S. sales are based on a long-term contract basis, and most of the Mexican imports are on a spot basis. So just in that nature there is a lag in some of the price comparisons.

And also the point that I made earlier is that in terms of it having any--those data having any impact on the domestic producers' prices is attenuated by the fact that those producers were not purchasing product from the millers that provided those pricing data. They were never a part of an option to buy from those millers.

So they only could source either from Mexico or from other import sources. And that's been very clear throughout both their importer and their producer questionnaires.

COMMISSIONER SCHMIDTLEIN: So let me follow up. Why wouldn't, though, the fact, if they're getting lower priced product from Mexico that they're then refining and then selling onward, right, which is competing in the U.S. market, presumably they're able to offer a lower price because they've gotten a lower-priced input.

Why doesn't that affect the price that they are then competing with? Right? So other refineries are also selling to whoever, distributors, institutional users, bakeries, you know, why wouldn't that be passed through and that affect the price of sugar in the U.S. market?

Because you just said they have market power. So they're bit players.

MR. HUDGENS: They're big players.

COMMISSIONER SCHMIDTLEIN: So they're selling--and they're not exporting that refined sugar that they further process with that input? So why doesn't that impact the price of sugar in the U.S.?

MR. ROSENTHAL: We're not saying it doesn't impact the price of sugar. We're saying that when you're trying to do a comparison of these pricing products you need to have them being compared with the proper competitors.

COMMISSIONER SCHMIDTLEIN: All right. So let's say we're not going to do a price analysis--

MR. ROSENTHAL: (Overtalking) --that is what our argument is on that.

COMMISSIONER SCHMIDTLEIN: Okay, but this further question about what is the impact? I mean it's obviously undisputed that this product came in. You know, whether or not it displaced whatever it was, but it did come in. These people who imported it have market power, according to you. They're refining sugar. They're not exporting. It's competing in the U.S. market for sales to other users with product that's being made from domestically sourced sugar.

Why isn't that impacting the price at that end?

MR. ROSENTHAL: For two reasons. Number one, the reason why you collected this data in this fashion was to be able to figure out whether they're underselling the domestic prices. And what was said to you is that there really isn't a fair comparison for your underselling purposes.

So apart from that, we're not telling you to ignore the prices of imports from Mexico. We're not suggesting that. But we're saying you cannot compare the import prices for further processing there. If you want to argue that the domestic producers relying on imported raw material might be competing more vigorously against domestic producers who rely on domestic raw material, that's a different type of comparison.

And to my knowledge, you haven't done that and you don't have the data to do that.

COMMISSIONER SCHMIDTLEIN: But I guess as a matter of economics, what's the answer? I mean, we have two economists here, right? Does it impact, as a matter of economic theory? Would it be impacting?

MR. ROSENTHAL: I'll let them answer in a second, but I would say as a matter of Commission practice and common sense what the raw material cost is really matters less than what the refiners are selling that in the marketplace for.

If you are a domestic beet sugar refiner and you are selling at a lower price than the refiner who relies on Mexican product, I would argue that there isn't any impact whatsoever. And by the way, you heard from Mr. Brooks say that he was getting a lower price for beet sugar, liquid beet sugar in California from a domestic supplier than he was getting from Milthausen in California. But that was the proper level of comparison.

And unfortunately, or fortunately, you just don't normally have that data here. I'm not telling you to ignore the price. I'm just saying you can't use the --

COMMISSIONER SCHMIDTLEIN; Well I'm not doing a price comparison for underselling, but I'm looking at what U.S. producers are paying for their less than 99.6 polarity sugar. And I'm looking at what these guys who have market power are paying, and I'm asking is this passed through? Because at the end of that process they're selling into the U.S. market. And this goes back to my original question about the diff--you know, the relationship; between the price of refined sugar and the price of raw sugar. Is there no connection?

MR. EARLEY: Tom Earley, Agralytics. It is helpful to step back. And we have, as I mentioned before, a 12 million ton market. 5 million tons of beet sugar; 7 million tons of cane sugar. Of the cane sugar, 3-1/2 is domestic, in round numbers; 3-1/2 are imported.

So of the cane sugar sector, you have some players who are totally vertically integrated, and you have others who don't have connections to domestic sources of supply.

So how it affects--how a price of purchased raw sugar S&R affects the refined sugar price depends in part on who is buying it.  It would also be affected by the time of year.  Basically, as others have stated and Mr. Farmer stated, the price of refined sugar is basically established by the beet sugar industry.

So there is sort of a known level of pricing out there, a lot of forward pricing.  Beet guys continue to sell during the course of the year, so they're the competition for the cane refiners.

So if you are a refiner and you're paying, let's say you're paying 23 cents for domestic raw sugar, and you're paying 22 cents for imports, you're not going to necessarily cut your refined sugar price.  You're going to keep that extra penny if you can.  You know, why give it away if you can be competitive at the 23 cent raw cost level?  I think there's no automatic way that the cost side is directly reflected in the sales price side.

Over time, on average it's going to be, taking into account competition, you know, with the various sellers. But there's not a real direct linkage.

MR. ROSENTHAL: I know your time is up, but I know you also don't want to go to another round of questions--

COMMISSIONER SCHMIDTLEIN: But we will--

(Laughter.)

MR. ROSENTHAL: But again, you heard from even Mr. Cannon who said the reason these processors import is because they need the product. So no question about that.

And then the question is: What price are they getting it at? And what are they selling it for?

Mr. Cannon also said that they--this is in defense of the domestic producer--he said, and then they have to, in order to be competitive they have to sell that product at a competitive price. No argument there.

But why is it the assumption that the competitive price is not being set by the domestic beet sugar industry? That's what USDA says. That's what Mr. Farmer says. That's what you hear from everybody else who's in the marketplace.

COMMISSIONER SCHMIDTLEIN: Well here's my question, then. Because--and this goes back to something that, Mr. Earley, I think you said a little bit earlier, which was, or maybe it was you, Mr. Rosenthal--that they control the market. They control the market, right? They have an allotment for 9 million short tons, or 10 million.

They produce 9 million, right? That's 85 percent. They can't meet demand. So this is my question: Why would people who are in control of the market, there's enough demand to go around, they've got plenty of allotment, why would they drive the price down? Right? They are in control of the market. Isn't it in their interest to keep prices high in such a regulated market?

MR. ROSENTHAL: You would think. And I love the question. I mean, I've asked the same question. These guys--I would differ with the notion "controlling the market." They have--

COMMISSIONER SCHMIDTLEIN: Those were your words, not mine.

MR. ROSENTHAL: Did I say those exact words?

COMMISSIONER SCHMIDTLEIN: Somebody at that table did.

MR. ROSENTHAL: They have a dominant position in the market. And you heard the domestic producers say, but we can compete very strongly. So they know they'll eventually sell everything that they produce, but it doesn't mean that they will sell when they want. And sometimes they may have--they don't want--sometimes they overproduce. That is a fact.

The implication that was provided earlier that they always, or they don't always meet their allotment, a lot of times they have much more than their allotment and they want to sell everything they can as early as they can and at the highest price they can. But they compete amongst themselves, I think they said very, very vigorously. That price competition, as far as I know, and they're not engaging in any collusion, they're not engaging in any collusion, and so they're competing hard. And they set the price in that competition, knowing they'll sell everything, but it doesn't mean that they're going to sit back there and say we're not going to sell it for less than X because we know ultimately we will sell everything.

COMMISSIONER SCHMIDTLEIN: Okay, and just for the post-hearing, I mean my last question is this surplus. You know, the argument that the U.S. created this downward pressure through their own, you know, bumper crop, how does that work with the allotments? Right? How does that work in the competition? That was really my question, the competition between them, the allotments, the 85 percent versus the 15. And I'll let you answer that--just in the interest of time.

MR. ROSENTHAL: We will. And to the extent there is an implication that this is a lot more rigidly controlled and there's no flexibility in the joints, and you can't go over a certain amount, I think that's a misimpression and we'll try to correct that in the post-hearing brief.

COMMISSIONER SCHMIDTLEIN: Okay. Thank you.

CHAIRMAN BROADBENT: This might be for Mr. Herrmann, or Mr. Rosenthal. How do you respond to the staff report statement on page B-15 that indicates that majorities of producers, importers, and purchasers all indicated that the availability of Mexican sugar in the U.S. have had a material impact on the price of sugar in the U.S. market over the Period of Investigation?

Doesn't this indicate that U.S. prices were adversely affected by Subject Imports?

MR. ROSENTHAL: There is plenty of information in the staff report and in your Petitioners Questionnaires that has--which reaches exactly the contrary conclusion. We put some of that in our prehearing brief and we'll be happy to supplement that. But we believe that is not what we regard as the overwhelming evidence of the record.

We certainly know that the producers feel that way, and some of the other entities named, but that's not our view of what the record reflects.

CHAIRMAN BROADBENT: But that's what they said in the surveys, right?

MR. ROSENTHAL: I'll let Mr. Hudgens supplement that, but you saw in some of our confidential exhibits the responses by producers and in some cases producers about what the reasons were for importing, and what the impact of the imports were. And they don't support the statement you made.

CHAIRMAN BROADBENT: Okay. Back on the same question, just I want to ask it once more, I was struck by your chart that shows that the historical price stability between 1981 and 2008, but shouldn't the Commission account for inflation when assessing U.S. prices over the course of the decades?

I know we've asked that before, but I just want to hear it once more.

MR. EARLEY: Tom Earley. I'm not a trade practice expert so I don't know whether there's anything in your guidance that says one way or the other. I would say, no, I think you just look at the period of interest and the data you got on the period of interest and the underlying economics, and what the expectations are for the U.S. and Mexican sectors going forward, and base it on that. I guess I don't see how inflation would play into a decision, frankly.

CHAIRMAN BROADBENT: Okay, I--

MR. ROSENTHAL: I'm sorry, Chairman Broadbent. Just like you look in other cases at the cost/price squeezes, I don't know why you would increase the price by inflation in this particular case if you're looking at a series. And that also takes into account the dramatic reduction in cost that Mr. Earley referred to previously.

CHAIRMAN BROADBENT: Okay. That's good.

And then my final question. You argue that Subject Imports simply replace Nonsubject Imports, but isn't it just as accurate for us to find that Mexican prices drove down U.S. prices and made the U.S. market unattractive to traditional TRQ exporters?

MR. EARLEY: You know, I think the bigger factor for the TRQ exporters--could I please have my multiple priceline chart up again? Mr. Hudgens pointed out that, if you look at the bottom line, world raw sugar cane prices, and the red line--I'm color blind, so I'm assuming that's red--which is the raw cane sugar price, you can see how they were 10 cents apart. And then in early 2012 they were 7 cents apart. By October, the gap between those two lines was down to about 3 cents. And it was the declining differential between the U.S. raw sugar price and the world raw sugar price that disincentivized TRQ sellers from shipping to the U.S.

I mean, if it's going to cost me money, if you're shipping from one of the African countries, or the Philippines, or some more distant locations, the freight cost, they'll make more money selling it on the world market to a nearby market. I think that was the bigger factor.

CHAIRMAN BROADBENT: Right. Okay, good.

MR. ROSENTHAL: Excuse me? I have to--again on this point, look at who are the purchasers of the TRQ sugar? Who are the purchasers of the Mexican sugar? They're the same companies. And the idea that Mexico drove out the TRQ imports I think is an inaccurate way to look at it.

The U.S. purchasers--the U.S. producers, some of them in this room, make choices. And in some instances the TRQ folks decided they couldn't supply, or wouldn't supply, and you heard Mr. Earley say that about half the countries don't even bother anymore, but why is it not the proper assumption to make that because the U.S. beet sugar industry is leading the price down, that the U.S. processors who are competing against the beet industry, and some of them could be one and the same, aren't simply doing their best to buy whatever is available in this declining market to compete with the U.S. beet industry?

To me, the assumption that because all prices were declining has to be blamed on Mexico which took no more market share is an incorrect assumption. And especially when you have evidence of people in the marketplace saying they are buying product on the spot market to compete with the domestic beet sugar industry who is setting the price. This evidence can not be ignored.

MR. EARLEY: Could I make one more point on the difference between the price of TRQ sugar and S&R? Tom

Earley from Agralytics. TRQ holders know at the beginning of the fiscal year, the beginning of the marketing year, that they can sell 1.4 million tons into the U.S. So--and the people who want that sugar, the refiners, are talking to those export origins before that year even begins. They want to book that sugar.

You know, if you're Domino you want to get the sugar. Don't let Imperial get it. If you're Imperial, I've got to have that sugar. I've got to go out and talk to these people. So a lot of the TRQ sugar is contracted for early in the marketing year, even before the marketing year, because it's a known quantity.

And it may be price. It may be hedged against the No. 16. But whatever pricing is established is done, you know, by the fall. The imports in 2013 from Mexico, the surge period, I think a lot of that was more just on a spot basis and you are in a declining market.

So when you look at comparing those prices, keep that in the back of your minds that TRQ surely would have been contracted for the most part. The subsequent purchases of S&R by refiners were in a declining spot market for the most part. So I think that's an important consideration.

CHAIRMAN BROADBENT: Commissioner Williamson.

COMMISSIONER WILLIAMSON: Thank you. Just to follow up, you were saying the Mexican--you mentioned the surge period. You were talking about the Mexican surge. Now what was the cause for the surge?

MR. EARLEY: Well as I mentioned in 2012, 2013 I haven't seen any of these secret documents so the surge is calendar 2013 we are talking about, or calendar 2012?

MR. HUDGENS: I'll answer that. You look at our confidential slides -- this is Brad Hudgens, Georgetown Economic Services. Either the -- as we indicate throughout the first few slides that the surge period was predominantly or solely the reason for that was U.S. producers switched their sourcing from TRQ countries to Mexico and as you look at the reasons they did that had nothing to do with price.

COMMISSIONER WILLIAMSON: What was the reason?

MR. ROSENTHAL: Take a look at the confidential slide number three.

COMMISSIONER WILLIAMSON: Okay, okay so this is what you were arguing earlier. Let me throw a quick question out, in 1975 I first got into trade policy and went to Geneva and there was a case involving I think Canadian, I think it was Canadian eggs and basically I think it was Article 11 or 12, if you have a simple domestic supply management program and you are operating that you have the right to manage imports and that was the system that we had.

In the NAFTA agreement and I guess basically after 2008 we had no management of Mexican imports other than those consultations. Wasn't that sort of a disaster waiting to happen?

MR. ROSENTHAL: Well when you consider that the two countries were under NAFTA committing to a free trade regime the consultative working group I think has done a fantastic job up until recently maintaining free trade and yet at the same time avoiding market disruption so I think that has worked better than just about any one of the bilateral working groups that I have ever seen.

It really does -- they really do talk, they really do work out problems and frankly as much as I think that the domestic and Mexican industries truly love managed trade, this is kind of the absent the suspension agreement the closest thing to managed free trade --

COMMISSIONER WILLIAMSON: I always thought that was the natural order of things but it is another matter, okay.

MR. EARLEY: Yes, I guess I would just like to point out that if the United States, in the short time market, Mexico in shorter times is probably 5 million, something like that. If the Mexican industry because of gaining access to the U.S. market was intent on capturing a big part of the U.S. market, you think that they would understand their capacity to refine sugar, as a refined sugar raising country.

They have not made any change. They have been producing 1.7 million tons of refined sugar for years. I just don't think that record points to a situation where Mexico has some devious plan to you know, overwhelm the U.S. market.

COMMISSIONER WILLIAMSON: I wasn't saying that I was just sort of saying that you have got a large market and you don't have these and there are restrictions all around except for one producer who is expanding the acreage and all and is likely going to run into a problem.

MR. ROSENTHAL: Interesting enough you don't hear the pictures here complaining when there is an explosion at a refinery or Hurricane Katrina upon the Mexican industry helped to supply the U.S. needs at that time. It was a good thing for everybody that the Mexican industry was available to help. And even now if you look at what the producer importers are saying they can't supply the U.S. market in Mexico for that supply and they would be out of business if anything happened.

COMMISSIONER WILLIAMSON: Yeah I always find it interesting the forecast --

MR. ROSENTHAL: But why Commissioner is this industry and this is -- too bad Mr. Kieff is here but I am going to ask his questions in the post-hearing brief but why is this industry entitled to have only one unfettered source of import supply and every other source be restricted? Is there something ordained that entitles this industry to be free of any import competition save one source? I don't think so.

COMMISSIONER WILLIAMSON: Also a question, why do you have managed supply, do you manage everybody?

MR. ROSENTHAL: But the idea is no they are not trying to manage supply.

COMMISSIONER WILLIAMSON: Okay.

MR. ROSENTHAL: And maybe the domestic industry wants to manage supply and has wanted to do it forever but that is not what the announcement was all about.

COMMISSIONER WILLIAMSON: Okay well that was part of my question.

MR. ROSENTHAL: But those of you who worked on that were actually probably surprised that for the first time 15 years after the agreement was reached that there was free trade in sugar in 2008 but thought that was going to happen about 15 years earlier.

COMMISSIONER WILLIAMSON: Okay, well I don't want to extend this but the reason in part while I was asking this is because we visually you are saying that I think one of your problem with the suspension agreement was that you were afraid it wasn't going to be managed provided you had adequate supply and I was just -- it made me think is there a way to do that.

Let me go back to more mundane questions. How can I reconcile your argument that prices returned to normal levels with the domestic industries version of financial condition towards the end of the period of investigation?

MR. EARLEY: Tom Earley, it's not the first year that companies in the industry have lost money. There have been other years where they have had adverse economic conditions particularly probably more on the cane sector than the beet sector. There have been a number of beet firms that went out of business or had to be acquired and a number of cane mills that went out of business because they weren't competitive, so I think there's plenty of history of players even in this supported market part of the industry in years where they don't make money so I just don't think it's an aberration.

They can have a year or two where they lose money and you know, the best year for low prices is low prices and users adjust and eventually markets do work.

COMMISSIONER WILLIAMSON: Okay.

MR. ROSENTHAL: Commissioner Williamson?

COMMISSIONER WILLIAMSON: Yeah?

MR. ROSENTHAL: I just want to go on record. I would love for the domestic industry, every sector of it to be making money, even hand over fist. The fact that they didn't for a part of this period does not mean they have been injured by imports. One of the things that you have heard me say in other cases, especially in cyclical industries is that if you have certainly highly capital intensive industries where you have lots of fixed investments you need to make a lot of money in the up cycle to get you through the down cycles.

This is not as capital intensive as some others you have heard me talk about in the past but it is an agricultural product which is naturally subject to these cycles and as Mr. Earley says when you have the market reacting to shortages there's more planting, when the prices goes down planting gets reduced.

This industry if you go back and look at these slides -- this industry was enormously profitable early on in this investigation. The fact that they are making less money now is not a source of injury. If you look at injury if you look at the overall, in the entire period of investigation they are actually making money and enough money as they continue to come out of the down cycle.

So by the way I am not suggesting that I have anything other than sympathy for when you are not making money, I want them to buy tractors and be able to produce and be productive. I am suggesting that if you were looking at what's happening in this down cycle, you can attribute it to imports from Mexico which shouldn't take any more volume or pricing which was led by the B producers, this is the natural cause of declining world prices and increased supply by the domestic industry because they were the ones who gained market share so again I think this is a normal condition of the agricultural industry and it just so happens that this one is more protected than most.

COMMISSIONER WILLIAMSON: Okay thank you. Let's see, at page 16 of the Petitioner's brief they provide some survey data on cost shares of sugar in final end user products and I was wondering if you agree with this data? If you want to do it post-hearing it's okay.

MR. ROSENTHAL: Let's do that post-hearing if you don't mind.

COMMISSIONER WILLIAMSON: Okay.

MR. ROSENTHAL: Thank you.

COMMISSIONER WILLIAMSON: Over at page 4 of your brief that the sugar price support program eliminates significant downside risk of domestic producers resulting from low prices, what happens when the loan forfeiture rate is below the domestic producers cost of production?

And this is the point you were discussing earlier about injury and fluctuations.

MR. EARLEY: Can you ask the question again, this is Tom Earley.

COMMISSIONER WILLIAMSON: Okay on page 4 of the brief the sugar price support program eliminates significant downside risk of domestic producers resulting from low prices, in other words the well protected as you just described. But what happens when the loan forfeiture rate is below the domestic producers cost of production?

MR. EARLEY: Well you know the Congress defines this program exactly the way the producers want and the sugar part of the Farm Bill is not something that the user side of the industry designed so it's a safety net and it doesn't and as I said in my testimony the program does not guarantee profits, no agriculture program guarantees producer profits and it is there as a safety net so some users are going to be down at that level and some people will lose money.

COMMISSIONER WILLIAMSON: But I guess the government never wanted to lose any money on it.

MR. EARLEY: They would prefer not.

CHAIRMAN BROADBENT: Okay Commissioner Johanson?

COMMISSIONER WILLIAMSON: I'm well over, sorry.

COMMISSIONER JOHANSON: That's okay, thank you Chairman Broadbent. You all highlight that in 2013 at the request of senior U.S. government officials the Mexican government acted to divert 1.1 million metric tons of Mexican produced sugar to third country markets. Why was this action taken if the increase in subject imports that year resulted from a shortage of sugar from domestic and non-subject sources?

MR. ROSENTHAL: Because there was a danger that there was going to be more exports to the U.S., more available than what was really needed, what had been supplied up until that time satisfied demand and there was no more needed in the market and so the idea was let's make sure that it gets diverted which is what happened.

COMMISSIONER JOHANSON: All right thank you Mr. Rosenthal.

The sweetener working group that was established between the government of Mexico and the United States under the consultative committee on agriculture of NAFTA is designed to facilitate cooperation between governments. Did this working group or consultative committee take a formal position on the suspension agreements?

STATEMENT OF JOHN HERRMANN

MR. HERRMANN: Commissioner Johanson this is John Herrmann, Kelley Drye, I am not aware of the sweetener working group taking a position on this case or on the suspension agreements.

COMMISSIONER JOHANSON: All right thanks for your response. You all have argued that U.S. non-subject imports decreased as global exporters shifted to other markets including the European Union in response to high world prices. Please describe the global conditions and prices of sugar in other markets particularly in the European Union during the period of investigation and global supplier motivations for moving there instead of the United States and once again I would like to get back to the whole issue just a wee bit more about world market prices and how they impact what happens here in the United States.

I don't want to beat this horse to death but I think it's an important point.

MR. EARLEY: Yeah this is Tom Earley, I have to look at the actual record on that but in general during that period historically the EU had higher prices than we do but they have been reforming their program and during that period their price was declining currently -- recently, in recent months and I don't know exactly where it is now the wholesale price of refined sugar in the EU was in the low 20's compared to the low 30's here so the -- we will have to give you something in the post-hearing brief to explain these shifts in exports to the EU. I just don't have them fresh in my mind.

COMMISSIONER JOHANSON: That is fine, I look forward to reading about it, that concludes my questions for today, thank you all for appearing here.

CHAIRMAN BROADBENT: Commissioner Schmidtlein?

COMMISSIONER SCHMIDTLEIN: I had one follow-up with Mr.
Earley something you said earlier about the forfeiture price and the cost of production. So from the answer you gave Commissioner Williamson is it your view that the forfeiture price is not below the cost of production for U.S. producers because they had a hand in studying it and why would they set it at that level? Is that -- that's sort of what I thought you were implying, or in other words do you disagree with the testimony you heard this morning that the forfeiture price that was triggered was below the cost of production for U.S. producers?

MR. EARLEY: This is Tom Earley. We don't know their cost of production.

COMMISSIONER SCHMIDTLEIN: You don't?

MR. EARLEY: No we don't. The USDA used to do studies of it and they haven't done anything for probably a decade at this point so the only way to know that is from their financials. I guess I would say that the long rate for beet sugar is 24 cents, .09, the forfeiture level is at the very regionally for beet sugar an average of like 26 cents. That's at the bottom edge of the range of historic prices. Remember I said that the average price is 28 cents under the 2002 Farm Bill so then I think their cost of production is probably in the same ball park as the actual forfeiture level and high mid 20's, 26, 27 cents somewhere in there would be my guess but I have no data.

COMMISSIONER SCHMIDTLEIN: Yeah. Did you want to add something Mr. Rosenthal?

MR. ROSENTHAL: I wanted to add something concerning some comments about the losses allegedly or below the cost of production forfeiture level as Mr. Earley had said earlier. The Congress didn't guarantee profits on this program and as we also heard there are lots of other commodities that get these levels and so -- in a sense there is nothing new there.

But this does go to the question of how to analyze the profitability of this industry. Mr. Cannon made a point of saying that you have to look at operating profits in order to analyze this because that's what the Commission always does and as you know the Congress has legislation recently that say you know what, we know the Commission historically focused on net operating profits but we want you to look at other measures of profitability too including net profits. This is a very good example of a case where you should be looking at net profits, not necessarily just operating profits because of these payments.

You cannot ignore the fact that whatever has happened in the market for whatever reason this industry has had a question against the decline in prices and so this goes to the very unique nature of this industry and I think it would be quite appropriate here to take another look or a look at all the measures of profitability when you are examining the condition of this industry.

One of the disagreements that I have with Mr. Cannon about this is that I don't think that operating profits is the only measure or even the best measure of looking at the condition of this industry.

MR. EARLEY: Can I add something on the beet grower part of the industry which is an important part. You know the proper -- in my view the proper measure of profitability for those farm enterprises is their overall profitability. They are diversified enterprises that rotate crops, they are not just growing sugar beets, they are growing corn, soy beans, sunflower, canola -- I was very skeptical of the cost information, the profitability information in the public staff report because it just talked about sugar beets.

You know how do you know -- how do you separate your farm cost to just the beets when the other two-thirds of your operation is a very profitable corn soybean production in those years? You need to think of beet growers not as just sugar beet growers and diversified farmers producing multiple crops and when you look at that data, keep that in the back of your mind.

COMMISSIONER SCHMIDTLEIN: Okay all right thank you very much I don't have any further questions.

CHAIRMAN BROADBENT: Okay, let's see do the Commissioners have any more questions? Does staff have any questions?

MS. HAINES: Elizabeth Haines, staff has no questions.

CHAIRMAN BROADBENT: Do Petitioners have any questions?

MR. CASSIDY: We have no questions.

CHAIRMAN BROADBENT: Thank you, with that we will come to closing statements. Those in support of the Petition have zero minutes from direct and five minutes for closing for a total of five minutes and those in opposition to the Petition have zero minutes from direct and five for closing for a total of five minutes as well. So we are looking forward to this, we have got a skunk in one side of the ring, I'm not sure who -- what moniker the Petitioners want but you may begin when you are ready.

CLOSING REMARKS OF JENNIFER A. HILLMAN

MS. HILLMAN: Good afternoon, and thank you very much. I would like to thank the Commission for its tremendous patience through this very long day and I would also like to thank the staff for their very hard work on a case laden with data.

I would most of all like to urge you not to let the unusual posture of this case distract you from what I think are the fundamentals that you know very well. I mean while there are some unusual facts here. You have a suspension agreement, such that the US government and the government of Mexico and the producers on both sides of the border have come to you to say that this is what they believe to be the best solution to what would otherwise potentially be a longstanding trade problem.

You have no foreign producers or importers here in opposition. You have only the users, who have come before you to say, in response to Commissioner Schmidtlein's question, 'Why are you here?' I think the answer that you heard, is that they're here because they want lower prices.

Again of that I hope does not distract you from the fundamentals that you need to look at. And I think those fundamentals are very clear. Obviously the statute notes that you must start with, what's the volume? I don't think there can be any dispute here, that the volume in this case is significant. On an absolute basis or a relative basis.

You saw Mexican imports double, you saw them go from a 10% market share to nearly a 20% market share. You saw them go from one million tons to over two million tons.

The one thing that the producers are saying, the users are saying, is, 'Don't look at imports. Don't look at those. Look at the domestic industry, and whether its production went down or its market share went down.' That's not what the statute says. It directs you to look at the volume of imports.

The other thing they don't want you to look at is the fact that USDA had to take a million tons out of the market. At the very least, that should count as some diminution in the volume that the domestic industry was able to ship in for use by humans.

The second statutory factor is price. And again, I think there can be no dispute in this case, that there was price depression. You saw prices dropping by more than $200 a ton over this POI, so I don't think there can be any dispute the prices were depressed. I don't think there can be any dispute the prices were suppressed.

What you have heard is a modest amount of disagreement over underselling, and the majority of that disagreement centers on Product 1. Again, you've heard a little bit about, maybe there's a problem with level of trade. I point you to the definition itself of what is product 1. Product 1 is sugar sold to refiners. So if the purchaser on both sides, whether domestic or imported, is a refiner, there cannot be a difference in the level of trade.

Again, we'll go into whether there's any other differences, which I tell you there are none, but we would suggest to you that once you bring in that Product 1 data, which is the vast majority of imports, what you're gonna see is an overwhelming amount of underselling.

With respect to the refined products, Products 2 to 6, I think once you correct the data to pick up the anomaly in Product 2C, you will find again a preponderance of underselling.

Thirdly, you come to your third factor, which is impact. I think it's virtually uncontested that everyone in this industry is losing money. You heard strong testimony from the growers here today. You have been sitting back here all day long, growers have been here even though they should be on their farms harvesting their product, this is a key time for them. They are in this room and have been here all day because of how strongly they feel about the impact of this case on the potential for them, particularly your family farmers.

So I think on the impact side, you have no dispute. You've now heard the other side said, 'Oh, you should look at net profits, net operating income.' So remember in this industry that those net numbers are affected by a couple of byproducts, molasses and the pulp that's ultimately sold for animal feed.

Nobody is producing sugar in order to

fundamentally make molasses or animal feed. But, those affect the net operating profit, so don't look at those numbers. Use what you traditionally look at, which is operating income, and you will see unequivocally income.

So that leads us to the final question which is, did the imports from Mexico cause this decline in price, cause this loss? And the answer there, I think, is unequivocally yes on all of the evidence that you have on the record. Your own staff report, I will read, 'A majority of producers, importers and purchasers, all indicated that the availability of Mexican sugar had a material impact on the price of sugar in the market.'

You have USDA testimony. You have TRQ import testimony. You have Colin Carter's report that does a very careful study that shows it is Mexican prices, that much more than anything else, drove US prices down. More than any change in US production.

The last thing you heard from Sweetener Users is, 'Oh, no, no, no, you injured yourselves because you imported more sugar from Mexico.' Remember that the domestic refiners have always imported, and they've always imported in the same amounts. You will not see a change in their volume of imports. The only thing that changed is they've started importing from Mexico rather than from TRQ countries because of the low price.

They've been importing all of these years and caused no problem, no catastrophe, no big forfeitures, no payments. All of a sudden, when Mexico comes in at these rock-bottom prices is the first time that you see these huge forfeitures in the industry. Those added up all together are unequivocally a case of an affirmative material injury and we urge you to find so and to make an affirmative determination. Thank you.

STATEMENT OF PAUL ROSENTHAL

MR. ROSENTHAL: My good friend Ms. Hillman tells you to ignore these nonrelevant factors and then, of course, starts off with saying, the US government and the Mexican government want this, and the producers want it, and pay no attention to those arguments by the users. Later she gets to the actual statutory considerations.

But as we stated from the outset, it's not about the sugar program policy, it's about what the statutory factors have been met, and that's what we've focused on today. They've already conceded that the volume hasn't changed, so the major issues are have to do with price and impact.

There is undisputed testimony that the prices in the world went up, and that the US prices went up along with it. When the world prices collapse, now the domestic industry is claiming that somehow that shouldn't have any impact on US producer prices. So gravity should be defied with respect to prices here, and therefore, you have to attribute all of the, or even most of the impact of the declining prices in the US on Mexico, which didn't increase its volume, but not have anything to do whatsoever with the world prices.

And that's despite evidence in the record by objective sources, Mr. Farmer, the USDA, other purchasers in the record who've said the domestic industry, which has the largest share of the market, not a controlling share, but a dominant share of the market, who comes on the market first and sets long-term pricing, that's the folks that set the prices and the Mexicans are the residual suppliers to the markets and meet the prices in the marketplace.

There's overwhelming to the record that the price declines were led by the domestic industry, not by the imports from Mexico. I, I have to say that I was surprised by the argument by Ms. Hillman concerning the statutory factor concerning agricultural commodities. We're gonna spend a little bit more time in our post hearing brief, but number of us and you and she and I, you know, we all worked on Capitol Hill. The Congress knows how to say 'shall' when it wants to 'shall', it knows how to say 'not' when it wants to say 'not' and knows how to say 'should be' rather than 'could be' when it wants to, which is the language it has to do with the agricultural provisions.

Congress didn't say that if there's a support payment made, that there's automatic entry, they specifically declined that. Otherwise, you know, this industry got support payments in hundreds of millions dollars in the year 2000, no imports were involved then.

The cotton industry, many other industries were getting support payments all the time. It shouldn't be considered automatic that if you get those that you have been injured by imports and Congress never intended that to be applied in that way here. We'll expand on that in our post hearing brief.

As I said at the outset, we have a lot of sympathy for this industry. We want them to do well. And we don't want them to suffer any losses, what we do want is for the statute to be applied properly and not to attribute the decline in prices and whatever losses they've suffered inappropriately.

In this instance, the domestic industry expansion, world market price collapse, the choices by producer importers to import based on what they said were their needs, based on what they said was quality, was not the reason for the condition of the domestic industry. I hope you'll take a close look at the confidential slides, 23 would be a nice one to start with. 21, 22, that pretty much sums up our price case and our causation case.

And I very much appreciate your indulgence. Sometimes we went over time in answering your questions, but we want to make sure we had a comprehensive response to your inquiries and very much appreciate the time of staff and the effort of all the staff and the Commissioners' attention. Thank you very much.

CHAIRMAN BROADBENT: Thank you. Yeah, thanks for everyone that participated today and for the folks that came out of town to sit with us, we really appreciate your participation and your attention.

I wanted to mention that Commissioner Pinkert was called out of town to another conference and he will have some questions for post hearing submissions for you to answer. And then again, I want to thank all the counsel and the witnesses.

Your closing statement, post hearing briefs, statements responsive to questions and request to the Commission, and corrections to the transcript must be filed by September 23rd, 2015. Closing of the record and final release of data to the parties will be on October 14th, 2015. Final comments are due on October 16th, 2015, and with that this hearing is adjourned.

(Whereupon, at 5:17 p.m., the hearing is adjourned.)

CERTIFICATE OF REPORTER

TITLE: In The Matter Of: Sugar from Mexico

INVESTIGATION NO.: 701-TA-513 and 731-TA-1249

HEARING DATE: 09/16/2015

LOCATION: Washington, D.C.

NATURE OF HEARING: Final

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: 09-16-2015

SIGNED: Mark A. Jagan

Signature of the Contractor or the Authorized Contractor's Representative

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I hereby certify that I am not the Court Reporter and that I have proofread the above-referenced transcript of the proceedings 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 proceedings.

SIGNED: Gregory Johnson
Signature of Proofreader

I hereby certify that I reported the above-referenced proceedings 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 proceedings.

SIGNED: Larry Flowers
Signature of Court Reporter