

UNITED STATES INTERNATIONAL TRADE COMMISSION

In the Matter of:
RIPE OLIVES FROM SPAIN

) Investigation Nos.:
) 701-TA-582 AND 731-TA-1377 (FINAL)

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Place: Washington, D.C.
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UNITED STATES OF AMERICA
BEFORE THE
INTERNATIONAL TRADE COMMISSION

IN THE MATTER OF:) Investigation Nos.:
RIPE OLIVES FROM SPAIN) 701-TA-582 AND 731-TA-1377 (FINAL)

Main Hearing Room (Room 101)
U.S. International Trade
Commission
500 E Street, SW
Washington, DC
Thursday, May 24, 2018

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

1 APPEARANCES:

2 On behalf of the International Trade Commission:

3 Commissioners:

4 Chairman Rhonda K. Schmidtlein (presiding)

5 Vice Chairman David S. Johanson

6 Commissioner Irving A. Williamson

7 Commissioner Meredith M. Broadbent

8

9

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11

12 Staff:

13 William R. Bishop, Supervisory Hearings and Information
14 Officer

15 Tyrell T. Burch, Program Support Specialist

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17 Jordan Harriman, Investigator

18 Aimee Larsen, International Economist

19 Joanna Lo, Accountant/Auditor

20 David Goldfine, Attorney/Advisor

21 Elizabeth Haines, Supervisory Investigator

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1 APPEARANCES:

2 Congressional Witness:

3 The Honorable Doug LaMalfa, U.S. Representative, 1st
4 District, California

5

6 Embassy Appearances:

7 The Embassy of Spain

8 Washington, DC

9 Elisa Garcia Grande, Economic and Commercial Counselor
10 (Head of the Office)

11

12 Delegation of the European Commission

13 Washington, DC

14 Sibylle Zitkom, Senior Legal Advisor, Delegation of the
15 European Union to the United States of America

16 Sergio Pavon, European Commission, Brussels

17

18 Opening Remarks:

19 Petitioners (Carolyn B. Gleason, McDermott Will & Emery LLP)

20 Respondents (Matthew P. McCullough, Curtis, Mallet-Prevost,

21 Colt & Mosle LLP)

22

23

24

25

1 APPEARANCES (Continued):

2 In Support of the Imposition of Antidumping and

3 Countervailing Duty Orders:

4 McDermott Will & Emery LLP

5 Washington, DC

6 on behalf of

7 Coalition for Fair Trade in Ripe Olives

8 Tim Carter, Chief Executive Officer, Bell-Carter Foods,

9 Inc.

10 Felix Musco, President and Chief Executive Officer,

11 Musco Family Olive Company

12 Scott Hamilton, Chief Financial Officer & Vice

13 President of Supply Chain, Musco Family Olive Company

14 Dennis Burreson, Vice President of Field Operations,

15 Musco Family Olive Company

16 Jennifer Lutz, Vice President, Economic Consulting

17 Services, LLC

18 Carolyn B. Gleason, David Levine, Raymond Paretzky and

19 Benjamin O. Kostrzewa - Of Counsel

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1 APPEARANCES (Continued):

2 In Opposition to the Imposition of Antidumping and

3 Countervailing Duty Orders:

4 Sandler, Travis & Rosenberg, P.A.

5 Washington, DC

6 on behalf of

7 Association of Food Industries, Inc.; Acme Food Sales Inc.;

8 Mario Camacho Foods; Atalanta Corporation; Acorsa USA Inc.;

9 Schreiber Foods International, Inc.; Rema Foods, Inc.;

10 and Mitsui Foods, Inc.; (collectively, "AFI")

11 Helen Avella, Business Development Manager, Atalanta

12 Corporation

13 Shawn Kaddoura, President and CEO, Mario Camacho Foods,

14 LLC

15 Steve Devine, Senior Purchasing Manager, Mitsui Foods,

16 Inc.

17 David Rockwood, Chief Operation Officer, Rema Foods,

18 Inc.

19 Kristen Smith, David Craven, and Emi Ito Ortiz - Of

20 Counsel

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25

1 APPEARANCES (Continued):

2 Curtis, Mallet-Prevost, Colt & Mosle LLP

3 Washington, DC

4 on behalf of

5 ASEMESA and the Spanish Producers

6 Mike Seidel, Director of Category Management,

7 Performance Food Group

8 Joseph Somers, Vice President, Informa Economic IEG

9 Thomas J. Prusa, Department of Economics, Rutgers

10 University

11 Matthew P. McCullough, Daniel L. Porter, and

12 Christopher A. Dunn - Of Counsel

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14 Rebuttal/Closing Remarks:

15 Petitioners (David Levine and Raymond Paretzky, McDermott

16 Will & Emery LLP)

17 Respondents (Matthew P. McCullough and Christopher A. Dunn,

18 Curtis, Mallet-Prevost, Colt & Mosle LLP)

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1 P R O C E E D I N G S

2 (9:30 a.m.)

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

4 CHAIRMAN SCHMIDTLEIN: Good morning. On behalf
5 of the U.S. International Trade Commission, I welcome you to
6 this hearing in the final phase of investigation number
7 701-TA-582 and 731-TA-1377 involving ripe olives from Spain.

8 The purpose of these final investigations is to
9 determine whether an industry in the United States is
10 materially injured or threatened with material injury, or
11 the establishment of an industry in the United States is
12 materially retarded by reason of imports of ripe olives from
13 Spain.

14 Schedules setting fort the presentation of this
15 hearing, notices of investigation, and transcript order
16 forms are available at the public distribution table. All
17 prepared testimony should be given to the secretary. Please
18 do not place testimony directly on the public distribution
19 table.

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

24 The speakers are reminded not to refer in their
25 remarks or answers to questions to business proprietary

1 information. Please speak clearly into the microphones and
2 state your name for the benefit of the court reporter.

3 If you will be submitting documents that contain
4 information you wish classified as business confidential,
5 your requests should comply with Commission Rule 201.6.

6 Mr. Secretary, are there any preliminary
7 matters?

8 MR. BISHOP: No, Madam Chairman.

9 CHAIRMAN SCHMIDTLEIN: Very well. Will you
10 please announce our first Congressional witness?

11 MR. BISHOP: Our first Congressional witness is
12 the Honorable Doug LaMalfa, United States representative
13 from the 1st District of California.

14 CHAIRMAN SCHMIDTLEIN: Welcome, Congressman.

15 STATEMENT OF THE HONORABLE DOUG LAMALFA

16 MR. LAMALFA: Well, good morning, Madam Chair
17 and members of the Committee. I'm pleased and honored to be
18 here today and to enjoy this experience with appearing
19 before the Commission. It's very interesting and an honor
20 to do so and representing the issues or moving forward with
21 today. So appreciate the opportunity to testify.

22 Again, on behalf of the California ripe olive
23 industry, in connection with the Commission's injury
24 investigation in the anti-dumping and countervailing duty
25 action against ripe olives from Spain.

1 I'm Congressman Doug LaMalfa. I represent the
2 1st District of Northern California, which includes the
3 Northeast corner of the state, 11 counties, very rich in all
4 types of ag products. We have tree fruit and tree nuts,
5 olives, cattle, dairy, many types of grains, just you name
6 it and it's just about you'll find it up there. Wine,
7 wineries, wine grapes.

8 So what we have with the table olives has been
9 an important long time industry. Actually when I grew up
10 around where I lived in Oroville as a kid had trees in our
11 own backyard and a lot of that activity going on as a young
12 person.

13 So we know that table olives are prevalent in
14 Tehama County, Glenn County, and Butte, my own home county
15 of my district, which runs along the Sacramento River,
16 primarily in the Sacramento Valley.

17 So members, the California ripe olive processors
18 and nearly 900 table olive growers that Chris-cross this
19 beautiful inland valley of California represent really
20 what's good and cherished about agriculture in this country.

21 A great many of the ripe olive orchards are
22 multigenerational farms, kind of similar to my own rice
23 farm. We're on our fifth generation there. And so we know
24 what it means to be part of that land, what it -- the depth
25 that those families feel for the connection they have with

1 their land and their legacy. These hard working farmers and
2 families just want to continue to do what they do and do
3 well.

4 The processors in groves in history are
5 justifiably proud that their California ancestors invented
6 the ripe olive processing method and over the course of more
7 than a century, turned ripe olives into a product wide by
8 identified as native to California.

9 The industry's equally proud of the U.S.
10 institutional and retail markets they built through
11 ingenuity and perseverance over many generations.

12 This commendable sector of agriculture is now at
13 risk. The California ripe olive industry has watched with
14 growing concern in recent years as unfairly subsidized
15 Spanish ripe olives have been dumped into the market and
16 have taken their customers, first in the U.S. institutional
17 segment and more recently in the retail segment.

18 These customers, having really been created by
19 the California industry, not the Spanish industry, are being
20 lost one after another to unreasonably low Spanish prices.
21 At its peak, the U.S. industry had over 20 processors and
22 1100 American olive growers farming more than 370,000 acres.
23 Today, this industry has declined to two processors, 900
24 growers, and fewer than 19,300 acres.

25 Having worked closely with the industry since I

1 took office in 2013, I can assure you that every facet of
2 the industry from grower to processor to the allied sectors
3 believe that the trade -- that without trade relief, the
4 U.S. ripe olive sector will cease to exist.

5 This industry has -- excuse me, this industry
6 has no place else to turn. Unlike their Spanish
7 competitors, the U.S. producers receive no government
8 support. Virtually all their sales are made in the U.S.
9 market.

10 That a relatively small sector of American
11 agriculture comprised almost entirely of small and
12 medium-sized entities would incur the extraordinary demands
13 of U.S. import relief proceedings itself speaks volumes
14 about their fear for their survival.

15 Thousands of jobs depend on the continued
16 success of the California ripe olive industry, not just in
17 my district or in my own state, but throughout the United
18 States, from shipping companies, to ag chemical suppliers,
19 to olive farm laborers, to the local stores and restaurants
20 where workers shop and eat, get the billboards on the
21 highway luring them in from Interstate 5, which is also part
22 of ag tourism, a growing sector as well. These and
23 countless other related U.S. jobs may be lost if the
24 Commission declines to accord the relief the U.S. ripe
25 olives industry so critically needs.

1 For the sake of the century-old American
2 industry and thousands of U.S. jobs, I ask the Commission to
3 please confirm material injury by reason of these Spanish
4 imports and put the U.S. ripe olive industry on a path to
5 recovery so it can thrive again in a fair marketplace as it
6 has before.

7 So with that, I thank you, members of the
8 Commission. And I really appreciate this opportunity to
9 testify here today you in giving thorough consideration of
10 the case. And if there's anything that my office can do for
11 you and any other questions or follow up, we'd be more than
12 happy to do it.

13 CHAIRMAN SCHMIDTLEIN: Thank you very much. Are
14 there any questions for the Congressman? All right, thank
15 you very much for your appearance.

16 MR. LAMALFA: Thank you again for the time.

17 CHAIRMAN SCHMIDTLEIN: Mr. Secretary, will you
18 announce our embassy witnesses.

19 MR. BISHOP: Our first embassy witness is Elisa
20 Garcia Grande, Economic and Commercial Counselor with the
21 Embassy of Spain.

22 STATEMENT OF ELISA GARCIA GRANDE

23 MS. GRANDE: Good morning, I'm Elisa Garcia. I'm
24 the Economic and Commercial Counselor at the Spanish Embassy
25 here in Washington, D.C.

1 The government of Spain would like to thank the
2 International Trade Commission for the opportunity to orally
3 present its comments concerning the anti-dumping and
4 countervailing investigation on ripe olives originating in
5 Spain, carried out by the United States of America.

6 First of all, even though we understand the
7 obligation of the national authorities to attend the demands
8 of their domestic industry, as well as their right to resort
9 to the trade defense instrument, the government of Spain
10 would like to express its total disagreement with the
11 decision of the United States authorities of carrying out
12 these particular investigations, more specifically, the
13 countervailing procedure.

14 From the pre-initiation consultation through the
15 preliminary phase and final phase up to now, the government
16 of Spain has provided more than enough explanation orally
17 and in writing about the non-countervailable nature of the
18 European Union and Spanish schemes that support our
19 agri-food industry as well as on the arguable existence of
20 material injury and causal link.

21 Nonetheless, the United States authorities
22 decided to start the investigation and to continue it after
23 the preliminary stage was ended against all the solid
24 evidence provided to the United States authorities.

25 The government of Spain regrets this misuse of a

1 legitimate tool as the trade defense instrument by the
2 United States. In doing so, the United States authorities
3 are unfairly affecting the Spanish table olive sector, which
4 has been traditionally exporting to the United States,
5 proving to be a reliable trade partner being able to
6 establish solid ties with the economic agents of a market
7 with the highest standards as of the United States.

8 By inappropriately aiming at the Spanish
9 exports, the United States is not only harming the sound and
10 fruitful relationship between these two trading partners,
11 but is serving no purpose in the case of applying definitive
12 duties as the actual causes of any injury allegedly being
13 suffered by the U.S. domestic industry are caused by other
14 factors, not by the Spanish exports.

15 We are confident that the ITC in view of the
16 high level of cooperation shown from the Spanish side in a
17 full, transparent, and honest manner. And based on all the
18 evidences that will be exposed next, which show the
19 inexistence of the minimum requirements demanded by the
20 world trade organization agreements, will finally dismiss
21 the continuation of these investigations.

22 We are convinced that it is possible to find an
23 alternative and satisfactory solution that benefits both
24 sides and these will lead to a better and closer cooperation
25 between the two countries.

1 Once having said that, and focusing on the area
2 of competence of the ITC, this intervention will strictly
3 focus on the -- sorry -- on the dubious existence of
4 material injury according to the public information made
5 available to the interested parties on the fact that the
6 alleged injury being suffered by the United States domestic
7 industry has not its roots caused in the Spanish exports, as
8 well as on the questionable existence of a threat of injury
9 by the Spanish exports.

10 In order to solidly ground the case, the
11 government of Spain commissioned an independent report to
12 analyze the situation of the United States domestic industry
13 and an eventual effectation (sic) deriving from the Spanish
14 table olives imports.

15 This document prepared by Informa Agribusiness
16 Consulting was already uploaded in the ITC system. The
17 staff from this firm will intervene later on during the
18 petitioner's time in order to present in a concise and
19 clarifying manner the main conclusion they have reached.

20 But before going into the detail, the government
21 of Spain would also like to express its great disappointment
22 with the way the ITC has been recently carrying out its
23 investigation. As already claimed in our pre-hearing brief,
24 the ITC did not satisfy the World Trade Organization
25 obligation of releasing non-confidential summary of the

1 pre-hearing report.

2 The public version of this document was released
3 only one day before of the deadline to submit our
4 pre-hearing brief, leaving no material time to properly
5 analyze it.

6 And finally, the ITC did not assure an equal
7 treatment to all interested parties. Since it released the
8 confidential version of the pre-hearing report, seven days
9 ahead of the already-mentioned deadline.

10 As a consequence, the government of Spain also
11 urges the ITC to proceed during the rest of the ongoing
12 procedure in dually observance of the U.S. World Trade
13 Organization commitments and to ensure the rights of defense
14 and equal treatment to all intervening parties.

15 That having said, the government of Spain would
16 like to express in the first place that according to the
17 public information made available to the interested parties,
18 the petitioner situation do not seem to be that of material
19 injury. Regarding to the information we have had access to
20 that lacked the provision of a non-confidential summary as
21 we have just claimed, the economic and financial indicators
22 analyzed by the ITC show a mixed trend, which would not
23 support the existence of material injury.

24 Indeed, some indications seem to show a negative
25 trend, meanwhile others have a positive behavior. So it

1 could not be concluded that the United States domestic is
2 suffering any material injury in the terms that the World
3 Trade Organization agreement's demand.

4 And even if that were the case, Spanish exports
5 into the United States could not have been the cause as they
6 decreased during the period 2015, 2017. What we also
7 observed is that any origin substitution in favor of Spanish
8 exports.

9 In any case, there is no increase of the Spanish
10 exports at the expense of the United States domestic
11 industry during the analyzed period. Additionally, it is
12 essential to underline that Spain has practiced price above
13 the rest of competitors and with an upward trending during
14 this time.

15 Taking a closer look to price behavior, it is
16 important to stress that the ITC did not support in its
17 preliminary report contrary to the petitioner's claim the
18 existence of price suppression or depression.

19 In view of the previous elements regarding
20 Spanish exports volume and prices, and considering that the
21 United States domestic consumption remain relatively flat in
22 recent years, we wonder how it can be assumed that Spanish
23 exports can because any injury to the United States domestic
24 industry.

25 However, the ITC did seem to confirm in its

1 preliminary determination the existence of price
2 underselling. In this regard, the representative from
3 Informa Agribusiness Consulting will later on explain in
4 detail several other factors that have gone unnoticed by the
5 ITC and that from our perspective, clearly explain why Spain
6 can practice lower prices, but not unfair prices than its
7 United States competitors.

8 We ask the ITC to carefully analyze them during
9 the remaining of the procedure. In any event, we will
10 briefly introduce these elements because they clearly prove
11 the inexistence of a causal link between the alleged injury
12 and the Spanish exports.

13 Firstly, while Spain has widely spread the table
14 olives mechanical harvesting, the United States had to
15 resort to manual harvesting as the latter is quite more
16 expensive and labor costs are higher in the United States,
17 this enable Spanish raw material production to be more cost
18 effective than the United States.

19 Furthermore, olives production in the United
20 States is less profitable than other crops. This has
21 resulted in the cessation of table olive growing activity
22 and a shift to other more attractive crops such as olive
23 oils or almonds.

24 Therefore, the United States area devoted to raw
25 table olives has consistently diminished over time.

1 Consequently, U.S. ripe olives processors have been facing a
2 raw olives scarcity. What has forced them to import raw and
3 semi-processed table olives.

4 Sourcing raw material from foreign countries
5 further increments production cost as acknowledged by the
6 petitioners. Even though United States processors have the
7 -- resorted to raw or semi-processed olive imports, capacity
8 utilization has remained quite low around 60 percent.

9 This figure has clear financial implication for
10 the United States domestic industry versus other foreign
11 processors such as Spain. Our country's processing industry
12 has traditionally been able to run at the percent of the 80
13 percent or above. Therefore, being in a better position to
14 take advantage of the economies of scale.

15 Just to sum up, the United States processors
16 have been facing for many years now raw material scarcity
17 and are subject to higher production costs that inevitably
18 forces them to apply higher prices than competitors as
19 Spain.

20 On the contrary, our country sectors enjoy
21 multiple competitive advantages such as constant and
22 sufficient supply of raw material. A high number of
23 companies, many of them higher specialized, which increases
24 competitiveness among them and in comparison to foreign
25 competitors.

1 And the will to continuously invest and research
2 development and innovation projects to continue at the
3 forefront of this sector globally.

4 Therefore at the United States domestic
5 processors' position is explained by inherent factors to its
6 sector and not by the Spanish export as it has been wrongly
7 and unfairly claimed.

8 In this context, it has been also recalled that
9 the Spanish imports only replace the non-subject imports of
10 the United States market. Thus, they did not have an impact
11 on the situation of the domestic industry.

12 The ITC should therefore analyze those other
13 imports since they accounted for 25 percent of total imports
14 and were priced three to five percent lower than the Spanish
15 imports in both 2016 and 2017.

16 Eventual measures could not be either based on a
17 potential threat of injury posed by Spanish exports since
18 the Spanish raw olive production has not experienced an
19 increase in the last years. It is even expected to decrease
20 in the marketing year 2017/18 compared to 2014, '15 period.

21 The Spanish industry capacity utilization
22 remains quite stable, close to 80 percent. Spain doesn't
23 count on relevant ripe olives stock. The main exports
24 destination is the European Union market, whose consumption
25 is expected to increase in the next years. Spanish exports

1 are high diversified and volumes in at the United States
2 have experienced a downward trend in the last years.

3 To conclude, we would like to recall that the
4 Spanish table olives sector has proved to be a reliable
5 source of ripe olives in terms of quality, quantity,
6 delivery times compliance, and range of products
7 availability of all in the food sectors.

8 The definitive imposition of anti-dumping and
9 countervailing duties would go against the World Trade
10 Organization provision contained in the anti-dumping and
11 countervailing agreements as there is a dubious existence of
12 material injury.

13 In any case, if the ITC ultimately determine the
14 existence of material injury, the causal link could not be
15 solidly proved. The United States processing industry is
16 troubled by inherent condition and factors on which Spanish
17 exports have nothing to do.

18 Apart from unfairly hitting the Spanish sectors,
19 a definitive imposition of measures would not provide an
20 effective solution for the United States domestic industry's
21 economic and financial situation. If that were the case,
22 United States consumers would be forced to resort to other
23 foreign sources of lower reliability than Spain and more
24 aggressive in prices since the United States processing
25 industry would continue to be enabled to satisfy the United

1 States market demand and will continue to operate at a lower
2 competitive level.

3 The first quarter of 2018 is illustrative
4 example of the foregoing. In comparison to the same period
5 of 2017, Spanish ripe olives exports have dramatically
6 decreased, following the imposition of unjustified
7 provisional measures. However, what has taken place has
8 been an origin substitution that has mainly benefited
9 countries as Morocco, Egypt, or Turkey.

10 Especially relevant is the case of Morocco, one
11 of the leading candidates to substitute the volumes that
12 presumably would be lost by Spain as a consequence of
13 eventual definitive measure. This country increased its
14 ripe olives export to the United States 33 percent when
15 compared to the first quarter of 2017.

16 On top of this, Morocco's exports price has
17 followed the relevant decline since 2015, placing it
18 significantly below the Spanish prices. It has proven to be
19 a less reliable source of table olives in terms of quality
20 or supply in comparison to Spain and its production capacity
21 is expected to notably increase in the near future, as
22 indicated in the pre-hearing report.

23 Meanwhile, United States domestic sales have
24 been decrease. All of these challenge, the proposed and
25 effectiveness of this investigation by the United States as

1 the government of Spain has been claiming since the
2 initiation.

3 Therefore, we ask the ITC to carefully assess
4 the arguments we have pointed out during this intervention
5 and in our pre-hearing brief. And in due observance of the
6 World Trade Organization provisions to conclude the
7 inexistence of the necessary requirements to adopt a
8 positive determination what would mean the fair and
9 definitive closure of the anti-dumping and countervailing
10 procedures on the ripe olives originating in Spain. Thank
11 you.

12 CHAIRMAN SCHMIDTLEIN: Thank you very much Ms.
13 Garcia for that very comprehensive statement. So I do want
14 to apologize that the staff report was not -- the public
15 version of the staff report was not posted pursuant to the
16 deadline, it was a day late. From my understanding there
17 was a key member of the Staff that had a medical emergency
18 right around the time it was due to that delayed the
19 Commission getting that posted. I understand that you were
20 able to file your prehearing brief on time.

21 In the future when that happens just so you know
22 you may request an extension of time to file that brief. It
23 is within the discretion of the chair to grant that and I
24 can assure you I would have granted it had you asked for
25 more time to submit comments. Just so you know. Are there

1 any questions for Ms. Garcia? No? Alright, again, thank
2 you very much.

3 MS. GARCIA: Thank you.

4 CHAIRMAN SCHMIDTLEIN: Mr. Secretary, will you
5 announce our next embassy witness?

6 MR. BISHOP: Our next embassy witnesses are from
7 the delegation of the European Commission. They include
8 Sibylle Zitko, Senior legal advisor from the Delegation of
9 the European Union to the United States of America and
10 Sergio Pavon, DG Agriculture with the European Commission,
11 Brussels, Belgium.

12 STATEMENT OF SIBYLLE ZITKO

13 MS. ZITKO: Good morning. My name is Sibylle
14 Zitko. I'm the Senior Legal Advisor at the delegation at
15 the European Union here in Washington. I would also like to
16 introduce my colleague Mr. Sergio Pavon from Brussels from
17 the European Commission's Director General for Agriculture.
18 Mr. Pavon would be happy to answer any questions you may
19 have following this intervention. We are very happy to have
20 our experts here from Brussels.

21 The European Commission would like to thank the
22 United States International Trade Commission for the
23 opportunity to speak at this hearing. We attach great
24 importance and concern to this case. We fully support the
25 position of the Spanish Government. As my colleague who

1 spoke previously I will focus my remarks on injury
2 allegations today. We have separately made the case for
3 this department regarding antidumping and CVD allegations
4 are completely unfounded.

5 Regarding the injury allegations, we believe that
6 U.S. Domestic Industry is not suffering material injury and
7 any difficulty that the Domestic Industry may experience is
8 not caused by Spanish imports but by other factors. We thus
9 believe the ITC should terminate this investigation and
10 honor this WTO obligation.

11 I would like to highlight the following concerns,
12 first regarding the determination of injury. We take note
13 that the ITC in its Prehearing Staff Report finds that the
14 volume of Subject Imports from Spain decreased by more than
15 6 percent between 2015 and 2017. Therefore there is no
16 significant increase of imports as required for article 3.2
17 of the WTO Antidumping Agreement but imports decreased.

18 Second, regarding price effects. In regard to
19 price effect of the Subject Imports, the ITC did not find
20 undercutting and established that Spanish imports did not
21 depress or suppress the prices of the Domestic Industry.
22 However, the ITC found significant underselling. The
23 established absence of undercutting and price depression and
24 suppression in our view clearly indicates that of a causal
25 link. The significant underselling indicates cost

1 increases or other intrinsic difficulties unrelated to
2 imports.

3 Third, regarding the situation of the Domestic
4 Industry. According to the information available to us the
5 Domestic Industry does not suffer material injury under the
6 requirements of Article III of the antidumping agreement.
7 Most indicated a short, positive trend. In particular,
8 market share capacity, capacity utilization and production
9 increase. Furthermore, net sales revenue per ton and gross
10 profits also increased.

11 The decline in operating income, we believe, is
12 due to increasing costs which would also explain the
13 above-mentioned underselling. In any event, the decrease of
14 Spanish import volumes combined with an increase of Spanish
15 Import prices puts into question any causal link between
16 Spanish imports and any difficulty the industry may be
17 experiencing. In these circumstances Spanish Imports cannot
18 cause material injury. There are clearly other factors that
19 cause these difficulties and these other factors should be
20 accurately taken into account and assessed in this
21 investigation.

22 Fourth, regarding the assistance of these other
23 factors. The important other factor is the availability of
24 raw material. Respondents to the questionnaires stated that
25 the supply of olives is negatively affected by the erratic

1 and volatile domestic olive crop sizes and yield as well as
2 environmental factors such as drought or decreasing acreage.
3 In this context it is important to recall that acreage
4 decreased by 10 percent between 2013 and 2016 and yield was
5 down 9 percent per acre in 2016 as compared to 2015.

6 The impact of non-Subject Imports has also not
7 been addressed however they account for around 25 percent of
8 total imports and their prices were around 5 percent lower
9 than Spanish Import prices. It is also highlighted that
10 Spanish Imports merely replaced other imports despite the
11 higher prices which further substantiates providences
12 domestic raw materials supply.

13 With regard to cost, the prehearing Staff Report
14 mentions that hourly wage increase resulted in modest
15 increase of labor costs. Furthermore, SGNA and other
16 expenses also increased. In this context the impact of the
17 investments made to increase capacity on the financial
18 situation of the Domestic Industry should have been taken
19 into account in the analysis in our view.

20 Given the impact of these other factors on this
21 situation of the Domestic Industry cannot be attributed to
22 Spanish Imports. In conclusion, the U.S. Domestic Industry
23 is not suffering material injury as required by Article III
24 of the WTO antidumping agreement. Any difficulty the
25 Domestic Industry may be experiencing does not constitute

1 material injury and is certainly not caused by Spanish
2 Imports but by other factors.

3 In the absence of material injury and the causal
4 link the AD and CVD investigations must be terminated. Any
5 other cause of action would in our view be in clear
6 violation of U.S. WTO obligations. Finally, I would like to
7 also convey our concerns as my colleague already mentioned,
8 one where the ITC displayed the public version of the
9 Prehearing Staff Report only one day before the deadline to
10 submit prehearing briefs and appreciate your remarks and
11 take that into account. And to ensure that the public
12 version of the Prehearing Reports does not contain
13 meaningful and now confidential summaries of confidential
14 information as required by WTO law.

15 We have also raised these concerns in previous
16 investigations and now in our prehearing brief and we feel
17 this is a serious due process in light of our concerns and
18 we would like to take this into consideration. Thank you
19 very much for your attention and we will be happy to try and
20 answer any questions you may have.

21 CHAIRMAN SCHMIDTLEIN: Thank you very much, Ms.
22 Zitko. Do the Commissioners have any questions? Okay,
23 thank you very much for appearing here today.

24 We will now move to opening remarks.

25 MR. BISHOP: Opening remarks on behalf of

1 Petitioners will be given by Carolyn B. Gleason of
2 McDermott, Will and Emery. Ms. Gleason, you have 5 minutes.

3 OPENING STATEMENT OF CAROLYN GLEASON

4 MS. GLEASON: Good morning, Madam Chair and
5 Members of the Commission. I'm Carolyn Gleason of
6 McDermott, Will and Emery, Counsel to Petitioner, The
7 Coalition for Fair Trade in Ripe Olives. You will hear
8 today from the CEOs of the Industry's two processors, Bell
9 Carter Foods and the Moskow Family Olive Company who will
10 recall for you how over the course of a century their
11 families helped invent what is now known everywhere today as
12 the California Ripe Olive and then built every customer now
13 in the preeminent U.S. Market.

14 It is no exaggeration to say that unfairly priced
15 Spanish Ripe Olives have brought these two companies to
16 their breaking point. The Spanish Ripe Olive Industry has
17 been saturating the food service market for years through
18 unfair pricing, relegating the U.S. Industry to a small
19 portion of that segment and the Spanish Industry is now
20 using that very same unfair pricing strategy to induce one
21 major U. S. retail customer after another; from Walmart, to
22 Kroger to others to ship their retail purchases to Spanish
23 Ripe Olives.

24 As Spanish underselling and market share have
25 expanded, U.S. Processors have increasingly struggled to

1 make ends meet and no longer have any latitude to invest in
2 the future. Growers too have faced mounting losses. While
3 we are not challenging the excision to exclude growers from
4 the Domestic Industry in this final phase, the fact remains
5 that California Growers are still the primary and preferred
6 source of raw product to the U.S. Processors.

7 As Spanish prices have increasingly constrained
8 market prices and consequently constrained grower returns,
9 many growers have had no choice but to pull acreage and have
10 done so over time in unmistakable inverse proportion to
11 Spain's expanding low-price presence in the U.S. Market.

12 Respondents offer a litany of claims to deflect
13 responsibility away from their own de-price under-pricing
14 and rolling injury. You will no doubt hear them say for
15 example that the U.S. Industry's harm is attributable to
16 California's so called "structural problems", a phrase they
17 liberally throw around to describe the U.S. Industry's
18 alleged raw product short falls. Yet the data on the record
19 confirmed that U.S. processors are capable today of
20 entirely replacing Spanish Imports.

21 Just think about it this way. If U.S. processors
22 were truly unable to meet U.S. demand then surely Spanish
23 suppliers would be charging premium prices not the deep
24 cut-rate prices they are now using to undersell U.S.
25 Processors and compromise U.S. jobs. You may likewise hear

1 Respondents argue that any link between Spanish and
2 California ripe olives in the U.S. Market is "attenuated"
3 because Spain's marketing activities are allegedly focused
4 on institutional, not retail buyers.

5 That claim is equally contradicted by the record
6 which confirms an aggressive pattern of Spanish underselling
7 in the retail market. should there be any doubt about the
8 Spanish industry's steely-eyed strategy in U.S. retail, its
9 web page WWW.haveanoliveday.edu will put that to rest. It
10 gives a glimpse into the industry's ongoing, multimillion
11 dollar, government financed, U.S. Advertising Campaign
12 featuring Jose Andres, the catch phrase "have an olive day"
13 with olives from Spain and Spanish Ripe Olives front and
14 center. That marketing campaign has run in full page media
15 ads, New York Times included and is being readied for
16 television ads in major U.S. Cities.

17 This and Spain's expanding underselling practices
18 at retail can hardly be considered a "attenuated link to the
19 U.S. retail center. You may also hear Respondents repeat
20 the claim made before that the U.S. Market shipments in 2017
21 had "nothing to do" with the trade case.

22 Local Spanish media tell exactly the opposite
23 story. Spanish olive growers have been up in arms in the
24 media over cancelled U.S. ripe olive contracts and
25 reorganized Spanish processing facilities. The Spanish

1 industry considers the impact of this case to be
2 intolerable and yet has been quick to dismiss the
3 destruction it has been raining down on the U.S. Industry
4 for years as a mere "structural shortcoming" of California's
5 own making.

6 Members of the Commission, the California
7 Industry is at a tipping point. This is a small sector of
8 American agriculture and cannot possibly compete against the
9 persistent dumping practices and government aid of a sector
10 considered by Spain to be among its most important.
11 Thousands of U.S. jobs and so much more are at stake if
12 these unfair practices cannot be corrected. We ask that
13 you affirm material injury to give this U.S. created
14 industry the chance it needs to carry on. Thank you.

15 MR. BISHOP: Thank you, Ms. Gleason. Opening
16 remarks on behalf of Respondents will be given by Matthew P.
17 McCullough of Curtis, Mallet-Prevoust, Colt and Mosle. Mr.
18 McCullough, you have five minutes.

19 OPENING STATEMENT OF MATTHEW MCCULLOUGH

20 MR. MCCULLOUGH: Good morning. For the record my
21 name is Matthew McCullough with the Law Firm of Curtis,
22 Mallet-Prevoust, Colt and Mosle appearing on behalf of the
23 Spanish Industry.

24 The traditional data collected by the Commission
25 in this final phase proceeding for the 2015/2017 Period of

1 Investigation showed no material injury by reason of Subject
2 Imports. In terms of volume, over the POI Subject Imports
3 on both an absolute and relative basis declined. The
4 Domestic Industry's market share was higher at the end of
5 the period than at the beginning. The record also shows
6 that different import sources including Spain are competing
7 with each other rather than with the Domestic Industry.

8 In terms of price the record continues to show no
9 price suppression or depression. Domestic prices
10 consistently increased, kept pace with costs over the POI.
11 The Domestic Industry's gross profit margin actually
12 improved. Subject Imports underselling also had no adverse
13 price effects. Even when underselling occurred the
14 Domestic Industry's quantities and prices were stable or
15 increasing. The Domestic Industry increased its prices for
16 every single one of the pricing products examined and was
17 increasing its prices by more than the changing costs.

18 Finally, Subject Imports had no adverse impact on
19 the operations of the Domestic Industry. Although some
20 metrics decreased over the POI, others increased. Most
21 importantly those indicators showing decreases can be
22 explained with contest that Petitioner ignores. The bottom
23 line is the Domestic Industry has generally consistent
24 operating margins and improving gross profit margins.

25 Such facts belie any claims of material injury

1 from Subject Imports. Petitioners response is a remarkably
2 sanitized account of the record. Their brief ignores such
3 critical facts that explain the Domestic Industry's present
4 condition as if they do not exist at all. There is
5 literally not a single direct use of the words "labor,
6 water, drought, environmental regulation", or even
7 "almond"; but each one of these terms is fundamentally
8 linked to the Domestic Industry's situation.

9 A single remarkable assertion found in
10 Petitioners brief captures the depth of denial and you heard
11 it again in opening remarks. They claim the Domestic
12 Industry has ample capacity to supply the entire U.S.
13 Market, whether based on unused production capacity,
14 inventories or the ability to supplement with imports of
15 semi-processed olives. I urge the Commission in its final
16 phase to test these assertions.

17 Unused capacity to produce ripe olives is
18 completely meaningless if you do not have raw olives to
19 produce them. Petitioners admit they would need 52 thousand
20 acres to supply those raw olives. They only have 19
21 thousand acres down year after year for more than a decade.
22 Petitioners know exactly what caused and continues to cause
23 that decline.

24 First and foremost is the reality of competing
25 land use and principally almond and olive oil production

1 that are wildly more profitable than table olives. Second
2 is a combination of forces including chronic labor
3 shortages, water scarcity and environmental regulations; all
4 of which make growing table olives in California
5 specifically a difficult choice. Setting aside Petitioners
6 absolute silence on these issues, their response appears to
7 be "but what about all these inventories?"

8 Well, what inventories are we talking about? The
9 inventories that were flat over the entire POI, the
10 inventories that caused the Domestic Industry to import
11 provisionally prepared olives from Spain during the POI
12 including nearly 16 thousand short tons in 2015 alone?
13 Those inventories? No. The record shows that the
14 inventory situation is not as unique to the POI nor does it
15 demonstrate that the Domestic Industry has the ability to
16 meet demand in the market with those inventories.

17 As far as importing even more provisionally
18 prepared olives, Petitioner readily admits that this is not
19 an economically viable option, both in the certified
20 Petition and in sworn testimony before the staff in the
21 prehearing in the preliminary phase. So no, the Domestic
22 Industry is nowhere near capable of supplying this market
23 either from California olives or from imports and that has
24 caused their present condition.

25 The Commission should be extremely skeptical of

1 any assertions made here today that these issues are not the
2 problem. The staff heard those absolute denials after the
3 staff conference but we are all well beyond that now. These
4 issues are all too well documented even from Petitioners
5 themselves to dismiss.

6 In closing, the record is clear. There is no
7 material injury by reason of Subject Imports nor is there
8 any threat by reason of Subject Imports. Perhaps by almonds
9 and olive oil from California but not ripe olives from
10 Spain. Any explanation for the present or imminent
11 condition of the Domestic Industry begins and ends with
12 circumstances surrounding domestic table olive acreage and
13 the economics of California agriculture. All of the answers
14 are right there. Thank you.

15 MR. BISHOP: Thank you, Mr. McCullough. Would
16 the Panel in support of the imposition of antidumping and
17 countervailing duty orders please come forward and be
18 seated. Madam Chairman, all members of this panel have been
19 sworn in. this Panel has 60 minutes for their direct
20 testimony.

21 CHAIRMAN SCHMIDTLEIN: Thank you.

22 You all may begin when you're ready.

23 STATEMENT OF TIM CARTER

24 MR. CARTER: Good morning Commissioners and
25 Commission staff. Thank you for the opportunity to speak

1 with you about the harm to our U.S. ripe olive industry
2 caused by Spanish imports. I am Tim Carter, chief executive
3 officer of Bell-Carter Foods, a family-owned California
4 company started by my great grandfather in 1912.

5 As a fourth generation olive producer, I take
6 great pride in the rich history of our company, our top
7 quality olives, generations of workers and their families
8 and the communities we have helped sustain for my entire
9 life and for generations before me. As you may know from
10 our petition and our testimony during the preliminary
11 investigation, the process for making ripe olives was
12 developed in California over 100 years ago.

13 I am proud to say that my family and the
14 Bell-Carter business have played a prominent role in
15 establishing and development the U.S. market for ripe
16 olives. In fact, because of the role California has played
17 in creating ripe olives, are known everywhere as California
18 style olives, even by the Spanish competitors who have
19 dumped and subsidized the very market that we created.

20 Some of you have had the opportunity to see
21 olive orchards and our plant in Corning, California, but let
22 me recall for you a few industry basics for those of you who
23 haven't. The basic steps from orchard to market remain
24 essentially the same as when my grandfather started making
25 ripe olives over a century ago.

1 Olives picked unripe from the trees are not
2 edible without further processing. The growers pick their
3 olives, mostly still by hand. We buy them, ship them to our
4 plant, process them and package them. The curing process
5 uses different solutions in baths, oxidations and quality
6 assurance checks that give our olives their smooth texture,
7 remove their bitterness, darken their color and bring out
8 their natural mild taste and essential character.

9 Although we are able to get olives for
10 processing from multiple sources, our preferred and primary
11 source is our own California growers. The bargaining
12 arrangements with the California growers historically have
13 allowed growers and processors to operate profitably. But
14 the prices we processors are able to pay for raw olives, the
15 primary cost driver for our production, is limited
16 ultimately by the prices we are able to obtain for our
17 finished products in the marketplace.

18 For us and for the growers that supply us, the
19 market for ripe olives dictates our revenues, profits,
20 losses and ability to stay in business. The United States
21 is by far the largest market for ripe olives. We sell
22 nearly all of the production here and have only minor
23 opportunities for export sales. The ripe olive industry
24 sells into two broad market segments, the institutional or
25 food service segment, and the retail market.

1 The institutional segment includes
2 restaurants, commercial producers of fruit, products like
3 frozen pizzas and institutions like schools and hospitals.
4 The retail segment is further subdivided into retail sales
5 and private label retail sales. Our U.S. industry first
6 began to experience the negative impact of cheap imports of
7 Spanish ripe olives in the institutional segment of the U.S.
8 market.

9 Although the U.S. industry built this
10 institutional market, the Spanish industry has gained a
11 dominant share of the segment by selling into at prices we
12 simply have not been able to match. We have lost all but a
13 small portion of the institutional market, although we feel
14 strongly we could win back institutional customers if fair
15 pricing were restored.

16 Unfortunately, the opposite is happening. We
17 are now losing share to low-priced imports in the U.S.
18 retail market. Over the past few years, we have lost a
19 number of long-standing, crucially important retail
20 customers because they are opting for cheap Spanish product.
21 We are struggling now to maintain our share of the retail
22 private label segment, which the Spanish producers have
23 targeted with their unfair, low-priced strategy.

24 This is especially concerning for a company
25 like Bell-Carter, with a high proportion of institutional

1 and retail private label sales. Basic economics explains
2 our industry's dilemma. We have done our best to keep
3 prices for our olives at high enough levels to cover costs,
4 including the cost of raw olives so our growers can stay in
5 business.

6 But at prices that cover our costs, we are
7 significantly undercut by ripe olives from Spain. The
8 result has been substantial loss of sales and customers to
9 those lower-priced imports. When we lower our prices to try
10 and keep our customers from switching to cheap Spanish
11 imports, we see our profits erode and are not able to pay
12 our growers enough for them to stay in business. In short,
13 we are in a lose-lose-situation that we cannot afford any
14 longer.

15 Our experience has shown us that once a
16 customer flips from domestic ripe olives to low-priced
17 Spanish imports, it is very difficult to get these customers
18 back. The sad reality is that without the legal remedy we
19 are seeking here, we stand little chance of ever regaining
20 these customers, though we know they love our product.

21 Even when we have managed to hold on to our
22 customers, that business has increasingly been at risk
23 because Spain's ever-declining prices and growing volumes
24 have infected the entire market. As import volumes from
25 Spain climb and downward price pressure continues to

1 increase, we can't keep our prices high enough to pay
2 growers what they need to stay in business and to cover our
3 operating costs to survive as an industry.

4 I have read with alarm and dismay what
5 Respondents and their consultants have said, and I want to
6 make sure you understand the history and facts. The
7 Respondents claim that the shrinking grower base in
8 California constrains the capacity of domestic sales and
9 that imports of ripe olives from Spain are the result of
10 this constrained capacity.

11 This is a false claim. Dumped and subsidized
12 ripe olives from Spain are the cause of the shrinking grower
13 base in California. Once more, this is not a capacity
14 constraint for the domestic producers. While we prefer
15 olives from California to maintain a short supply chain and
16 support the domestic economy, that's about 85 percent of our
17 supply.

18 We also have and will continue to consistently
19 purchase raw olives from other sources around the globe. We
20 routinely purchase olives from Mexico, Argentina and Spain,
21 and have from time to time purchased from other sources in
22 Egypt and Portugal. All of these sources have ample supply.
23 The world, you could say, is awash in table olives.

24 What is most troubling about this false claim
25 that domestic producers can only purchase olives from

1 California is that the Respondents know it is a false claim.
2 They have all sold one or both of the domestic producers raw
3 table olives and they all source raw table olives from
4 around the globe. It's a global market that we all
5 participate in. So yes, the grower base in California is
6 shrinking as a result of subsidized and dumped ripe olives
7 from Spain, not the other way around.

8 But this fact, no matter how you spin it, does
9 not constrain our capacity and the Respondents know it.
10 Respondents would also have you believe that Bell-Carter's
11 financial issues are of our own making, or that we are
12 negatively impacted by things like water issues. I can
13 assure you this is not true.

14 Waste water fines are not an issue. In spite
15 of what the Respondents would have you believe, we spend
16 more on ground coffee than we do on waste water fines. Our
17 margins are compressed from unfair competition plain and
18 simple. Because of cheap imports from Spain, we are
19 struggling to generate enough revenue to sustain our
20 business in the short term, much less invest in the future.

21 With fair pricing, Bell-Carter could get our
22 finances back on the right track and we could afford to pay
23 California olive growers what they need to stabilize their
24 own finances, invest in modern crop maintenance, enhance
25 their harvesting techniques, and significantly increase

1 their efficiencies.

2 Without trade relief, however, we continue to
3 make the best ripe olives on earth and -- excuse me.

4 Without trade relief, however, even though we continue to
5 make the best ripe olives on earth and U.S. consumer demand
6 is stable, we simply cannot compete with Spanish ripe olive
7 imports that have targeted our customers in all segments of
8 the U.S. market with lower and lower unfair pricing.

9 We are forced to bring this action because our
10 industry came to the painful conclusion that absent relief
11 from the unfairly low-priced ripe olives from Spain, the
12 sector we invented and built will not survive for much
13 longer. We think we may have begun to see the positive
14 impact of bringing this action, because the filing our
15 petition in 2017 seems to have stemmed the loss of U.S.
16 market share to dumped and subsidized imports from Spain.

17 This confirms for us that bringing this costly
18 and time consuming trade relief action was the right
19 decision for our industry's survival. But unless we get the
20 full relief afforded by the AD and CVD laws, this could be
21 our last hurrah. Commissioners, this U.S. industry has a
22 great history. We have prospered for generations through
23 innovation, hard work, quality products and steadfast
24 commitment to our customers.

25 While that same approach should be enough to

1 carry us forward to a bright future, it has proven to be no
2 match against unfairly dumped and subsidized competition
3 from Spain. We are losing the fight and critically need the
4 remedies promised under our anti-dumping and countervailing
5 duty laws to stay in business. Thank you for your concern
6 and attention.

7 STATEMENT OF FELIX MUSCO

8 MR. MUSCO: Good morning Commissioners and
9 Madam Chair, and thank you for the chance to add my comments
10 to those Tim Carter just presented. I am Felix Musco,
11 president and CEO of Musco Family Olive Company. Like Tim,
12 I cannot be prouder of the generations of hard work and
13 commitment that have gone into founding and building our
14 family-owned olive business.

15 My grandfather from Italy made his way to
16 California in the 1930's and founded our business in Orland,
17 California in 1942. Like Tim, I am greatly saddened that we
18 have reached such a crossroads where in the absence of
19 decisive U.S. government, we will be the last generation to
20 keep our industry alive.

21 I'm similarly distressed and personally
22 offended by Respondent's efforts to discredit the very real
23 harm the U.S. ripe olive industry has experienced, and to
24 deflect responsibility onto our industry when it is their
25 unfair pricing practices that are systematically destroying

1 our industry, segment by segment. I welcome the chance to
2 set the record straight.

3 For context, let me start with a little
4 background on the Musco business. In the early 1980's under
5 my father's leadership, we built a state-of-the-art olive
6 processing facility in Tracy, California. Just east of the
7 San Francisco Bay Area. Some of you have had the chance to
8 see our Tracy plant. We're quite proud of what we have
9 built there, with energy efficient, environmentally friendly
10 operations, and a number of innovations implemented over the
11 years.

12 We hope to be able to keep investing in these
13 innovations, but that will be possible only if we get the
14 trade relief we are now asking for with this legal action.
15 We also have olive receiving facilities in Lindsey and
16 Orland, California. At the Orland plant, we also make some
17 specialty olives.

18 These facilities are located in the Central
19 Valley, in the same farming communities where many of our
20 raw olive suppliers live and operate their olive orchards.
21 Now that cheap Spanish imports have taken away all but a
22 small share of the U.S. institutional segment, today our
23 business is nearly all retail, and we are proud to offer
24 consumers two of the leading olive brands in the
25 marketplace, the California and Pearls brands.

1 Like Bell-Carter, our business is the
2 processing and selling of ripe olives. Ripe olives
3 represent more than 90 percent, 95 percent of our company's
4 production. Make no mistake, our company's present and
5 future business rises and falls on ripe olives. Like
6 Bell-Carter and the Spanish producers, we pack our ripe
7 olives in a variety of package sizes, hull, sliced and
8 chopped.

9 Whatever Respondents might say, we have the
10 capability and capacity to serve the U.S. market with every
11 type and style of ripe olive, in whatever sizes and volumes
12 required. We have never lost or shorted any customer
13 because of an inability to provide a particular size, type,
14 package or volume of ripe olives.

15 Our company in the U.S. industry have several
16 natural advantages, and accordingly we're the birthplace and
17 long-standing home of the California style ripe olives at
18 issue in this proceeding. We have the know-how,
19 long-established reputation, quality and proximity to the
20 all-important U.S. market to continue building revenues and
21 jobs for this truly American industry.

22 What we do not have, however, is the capacity
23 to withstand the increasingly unfair import prices from
24 Spain, and the government benefits that prop up that
25 industry year after year. Every dimension of our industry

1 is now feeling the consequences of those cheap, subsidized
2 imports from Spain.

3 For example, we're struggling to pay our
4 growers enough to cover their farming costs and support
5 their families. We know that the suppliers in the
6 California olive growing community, many of whom have been
7 in the industry for multiple generations, have been exiting
8 this sector, are barely making ends meet with their olive
9 orchards. If this trend continues, we'll no longer have a
10 U.S. source of supply of ripe olives.

11 It is personally insulting to hear Respondents
12 suggest that their dumped and subsidized imports into our
13 market have nothing to do with these circumstances. They
14 list a number of other issues as reasons for our financial
15 conditions, from waste and water, drought, acrylamides,
16 labor, even the California fires that did not touch olive
17 areas.

18 These are all insignificant issues, and ones
19 that every agricultural industry faces, including the
20 Spanish industry. The reason for the harm to the U.S. ripe
21 olive industry is cheap Spanish pricing, plain and simple.
22 I am confident that if their unfair trading tactics are
23 reversed by this case, we will see direct benefits to our
24 own revenues, and we'll be able to pay fair prices to our
25 growers, who can then make the necessary investments in

1 their farms.

2 Imported raw olives are not cost-prohibitive
3 for us, as Respondents claim. In fact, they serve as a
4 viable supplement supply to our California raw olives for
5 Musco's processing operations. Musco and Bell-Carter
6 participate in the industry bargaining process with the
7 California Olive Growers Council to set the industry price.
8 That process has traditionally been fair and aimed at
9 maximizing returns for all involved.

10 But our mutual breakeven points depend on the
11 prices we can obtain from our finished products in the
12 marketplace. Given the downward pressures on all segments
13 of the U.S. ripe olive market caused by cheap, subsidized
14 imports from Spain, no bargaining arrangement in the world
15 could be effective enough to allow any of us to make the
16 money we need to remain viable if this is allowed to
17 continue.

18 Reading Respondents' brief, you might think
19 Musco was weathering the storm of declining U.S. market
20 prices just fine. This is not true, as our banks certainly
21 know. In fact, the build-up of our inventories resulting
22 from low-priced Spanish imports forced us to change banks a
23 couple of years ago.

24 Because of what Spain has done to our market,
25 the outlook is very grim. We are seeing significant

1 disruption within our sales operations, where the low prices
2 offered by Spanish suppliers have already cost us some of
3 our longest-standing customer relationships and other
4 revenue losses. I won't go into the details here in the
5 public hearing, but I direct your attention to our petition
6 and our questionnaire response.

7 You can see that we have already lost share in
8 the food service market segment. We have more recently been
9 losing vital retail customers to cheap imports from Spain.
10 Spanish ripe olive exporters have been strategically
11 targeting the retail segment with their low pricing. If
12 this continues, it will cripple the industry and they know
13 it.

14 Even when we have managed to hold onto our
15 customers, we have been forced to lower prices to compete,
16 often resulting in losses for our company. As Tim noted, we
17 think we have started to see some benefits from this case,
18 as importers have had to start paying preliminary
19 anti-dumping and CVD duties.

20 Even with a preliminary duties though, we are
21 seeing unfair prices for Spanish imports in the retail
22 segment. This also impacts our branded sales volume, as
23 purchasers opt out for cheaper imports. If the anti-dumping
24 and countervailing duty relief is not made permanent, I am
25 certain that unfair pricing pressure from Spanish imports

1 will accelerate.

2 The growing price squeeze has already sharply
3 curtailed our ability to invest in the future. Our
4 remarkable innovations at our Tracy plant will not be
5 sustained under current circumstances unless we get relief
6 we are seeking in this case. If we are unable to keep our
7 facilities in top condition as in the past, and keep
8 innovating new product and market concepts, our place in the
9 market will even further erode.

10 While this industry has been built on
11 self-reliance, innovation, unrelenting hard work, in the
12 sense of fairness this Spanish industry is not playing by
13 the same set of rules. We know that our Spanish competitors
14 have been using unfair pricing and government resources to
15 take our U.S. market share. There is no other way that they
16 have been able to accomplish that.

17 We can compete successfully with fair prices,
18 but we are losing out to unfairly dumped and subsidized
19 imports. Thank you for your attention today, and thank you
20 for carefully reviewing the record that the ITC team has
21 worked so hard to complete. The facts show that we are
22 materially injured, and face a threat of more of the same.

23 Because of dumped and subsidized imports of
24 Spanish ripe olives, we ask you to vote for an affirmative
25 final determination, so that we can obtain the legal relief

1 and need to survive as an industry. Thank you so much.

2 STATEMENT OF DENNIS BURRESON

3 MR. BURRESON: Good morning, Commissioners. I
4 am Dennis Burreson. On behalf of the ripe olive industry,
5 we thank you and your team for impressive energy the
6 Commission has been giving to our case.

7 As you have already heard this morning, this case
8 will define the future of our industry. By way of
9 introduction, I am the Vice President of Field Operations
10 for Musco Family Olive Company, and I am also an independent
11 long-standing olive grower.

12 I began working in the olive industry about 40
13 years ago, and I have been farming olives for over half of
14 my life. Today my family and I farm over 1,300 acres in
15 California, of which more than 400 acres are dedicated to
16 table olives.

17 We farm 300 acres of walnuts, 400 acres of
18 almonds, 100 acres of prunes, and 100 acres of blueberries.
19 My sons are now running much of our family farming business.

20 I serve as the Vice Chairman of the California
21 Oliver Committee, and I chair its Research Committee. I
22 also am the Chair of the industry's International Trade
23 Committee, our own ITC, which serves under the authority of
24 the California Olive Association and advocates for the
25 growers and the processors of California ripe olives.

1 Having been in the olive industry for almost four
2 decades, and having had the privilege of knowing nearly
3 every one of the table olive growers up and down the state,
4 I can speak with both breadth and depth on the real concerns
5 that are keeping growers awake at night.

6 Their first and foremost concern: Unfair Spanish
7 imports. It has been obvious for years. If there is any
8 table olive grower in California that does not believe
9 unfairly low Spanish ripe olive prices has been destroying
10 our industry, I have yet to meet him.

11 Let's be clear. No one in our grower community
12 is saying that table olive growers, like all farmers,
13 haven't faced their share of normal financial pressures over
14 the years, from production costs to weather-related impacts,
15 to yield fluctuations. It's a challenging occupation, no
16 doubt about it.

17 But our century-old California table olive sector
18 has historically been able to navigate those pressures
19 through good years and bad. These pressures are not the
20 root cause of our economic decline. Unconscionably
21 low-priced competition from Spanish imports is what is
22 driving us out of business.

23 If there is any doubt about that, let me urge you
24 to look back to the late 1990s and early 2000s when
25 California table olives stood at 36,000 acres. And then

1 take a close look at our acreage decline from that point
2 forward. Now, superimpose onto that downward acreage trend
3 line, another trend line tracking the Spanish industry's
4 rocketing inroads into our U.S. institutional sales.

5 You will see an unmistakable inverse relationship
6 between the two lines, as our institutional customers have
7 progressively been seized by unfairly priced Spanish olives
8 year after year. U.S. acreage has progressively declined by
9 proportionate amounts.

10 The correlation between increased Spanish volumes
11 and declining California acreage continues on through the
12 present, with Spain's unfair inroads playing out today,
13 primarily in U.S. retail shelves, since it's already largely
14 accomplished what it set out to do with our institutional
15 customers.

16 As unfair Spanish competition has accelerated,
17 our growers have had no choice but to pull trees, plant
18 alternative crops, sell acreage, or exit the industry
19 altogether. A great many of the growers exiting the
20 industry have run family table olive farms three and four
21 generations old. Even as one of the largest long-standing
22 and most efficient table olive growers, I was recently
23 forced to pull 40 acres of table olives due to unfairly low
24 Spanish prices.

25 Those trees had been productive for over 100

1 years and were every bit as efficient as our 15-year-old
2 olive trees. It was emotionally wrenching for me and my
3 sons to have to pull those trees, made all the more so by
4 the unfair market prices that drove our decision.

5 So with all due respect to our Spanish
6 colleagues, we find their argument that the California
7 industry has only itself to blame for the declining acreage
8 to be not only ironic but cavalier, since it was their
9 unfair pricing practices that drove our tree-pull and exit
10 decisions in the first place.

11 Respondents seem to believe that our exiting
12 growers jump precipitously into new tree crops. This is
13 hardly the case.

14 When a grower takes the momentous step of
15 converting to alternative tree crops, they need thousands
16 and thousands of dollars per acre to accomplish this. Any
17 newly planted trees won't produce profitable yields for many
18 years, and the significant lag time between planting and
19 yields requires its own large financial outlays for proper
20 crop management.

21 Conversions from tree crop to tree crop are
22 therefore never easy decisions, financially or otherwise.
23 When a grower weighs the significant near- and mid-term
24 costs to pulling trees, his or her assessment is necessarily
25 informed by the trade outlook.

1 Anyone who doesn't think trade practices guide
2 the planting decisions of American agriculture hasn't been
3 paying much attention to the current trade debate across the
4 Nation. U.S. farmers are more cognizant of international
5 trade developments than virtually any other sector of
6 American commerce. When they feel the impact of trade
7 practices, they'll let you know about it. And ours have
8 done just that for many years.

9 As many offices in our legislative and executive
10 branches can attest, our growers and processors for over two
11 decades have voiced their increasing concern about Spanish
12 import volumes.

13 Our sector urged important, sensitive treatment
14 under TTIP and the various TPA measures for just this
15 reason. So despite Respondent's assertion otherwise, the
16 primary driver in our growers' decision to pull trees has
17 not been greed, but rather the sad conclusion that Spanish
18 ripe olive suppliers are relentlessly committed to taking
19 our U.S. market, using whatever unfair prices are necessary
20 to get that done.

21 To the Respondent's statement that the California
22 industry, quote, "knows only too well that table olive
23 growers are converting their Manzanilla Olive production
24 from ripe olives to olive oil," we can only assume this is
25 part of a strategy aimed at throwing every possible

1 diversion out there with the hope that something sticks.

2 Again, with all due respect, whatever may or may
3 not be possible in Spain with the benefit of government
4 subsidies, to my knowledge no California table olive grower
5 is selling Manzanilla Olives for olive oil at commercial
6 volumes. Our grower community considers Manzanilla Olives
7 to be physically and economically unsuited to olive oil.

8 Water costs are yet another red herring invoked
9 by our Spanish colleagues. While it is true that table
10 olives in both California and Spain face weather issues from
11 time to time, table olive trees have low water needs
12 relative to other tree crops. Because California table
13 olive production is located both in the northern and
14 southern regions of our very long state, our industry has
15 generally been able to avoid supply issues related to
16 weather.

17 The overriding problem in our industry is not
18 weather, but unfairly low-priced Spanish olives. We note
19 the Spanish industry is contending, too, that U.S. grower
20 yields have shown, quote, "unusual and significant
21 fluctuations in recent years."

22 No one debates the phrenology of an olive tree
23 involves alternate bearing years, which can be in two-year
24 cycles for some farms, and four-year cycles for others,
25 depending on pruning, irrigation, and spray-thinning

1 practices. Even with this reality, however, if you study
2 the most recent five-year period, make sure you fully
3 account for any variability in both the two- and four-year
4 cycles, you will see unquestionable injury from Spanish
5 imports.

6 Despite Spain's impact on our acreage level, our
7 table olive yields are actually almost triple those achieved
8 in Spain--four times per acre here versus one-and-a-half
9 there. If we can't achieve grower returns sufficient to
10 cover the cultural practices needed to smooth out our
11 production years, that yield advantage will disappear, along
12 with everything else in the table olive sector.

13 A word, finally, about grower labor costs. Apart
14 from what may be true in certain other agricultural sectors
15 across America, our table olive growers do not face problems
16 in labor availability or shortages, primarily because we are
17 a comparatively small sector of agriculture. But what holds
18 true to crop management costs holds equally true for labor
19 costs. Our labor costs are predictable and entirely
20 manageable if California ripe olives can be sold at fair
21 U.S. market price.

22 With U.S. market prices continuing to be
23 compromised by unfairly traded Spanish imports, our growers
24 have increasingly struggled to cover the full gamut of
25 production costs.

1 Madam Chair, as you know from the staff
2 conference and your various team visits to California, our
3 growers are deeply invested in this action. They are
4 coordinating in every possible way with the two processors,
5 contributing their resources, time, and information. Every
6 one of our growers knows that in the absence of relief, the
7 table olive grower community, like our ripe olive
8 processors, will have no future. And like our processors,
9 our growers rest their hopes and future with this agency and
10 the Department of Commerce. If the U.S. ripe olive industry
11 can be accorded the relief it needs, and market prices can
12 be restored to the fair levels, you will see, as we have
13 seen in other notable California sectors over time, a
14 rebound in California table olive profits, investments, and
15 acreage.

16 Madam Chair, and members of the Commission, we
17 urgently ask for your help in saving our industry and
18 putting us back on the road to good health. Thank you for
19 your kind attention.

20 STATEMENT OF RAYMOND PARETZKY

21 MR. PARETZKY: Madam Chair and members of the
22 Commission, my name is Raymond Paretzky and I am speaking
23 today on two legal issues.

24 First, Respondents have attempted to hide the
25 impact of their unfairly traded imports by pointing to other

1 reasons that U.S. producers are suffering injury, such as
2 supply limitations of nonsubject imports. Others are
3 speaking to the factual flaws in these arguments. I would
4 like to stress that under the statute, while the Commission
5 must ensure that it is not attributing injury from other
6 factors to the subject imports, the Commission need not
7 isolate the injury caused by other factors from injury
8 caused by subject imports, nor does the Commission need to
9 find that subject imports are the principal cause of injury,
10 nor does the Commission need to weigh injury from subject
11 imports against other factors.

12 Rather, the Commission needs to find that subject
13 imports are "a" cause of material injury. As the Commission
14 correctly stated in its preliminary determination, quote,
15 "The existence of injury caused by other factors does not
16 compel a negative determination."

17 Second, although the data collected by the staff
18 for the POI strongly supports affirmative findings of
19 present and threatened material injury, the Commission
20 should additionally examine certain data over a longer
21 period than typical to provide a baseline and capture a full
22 picture of industry developments.

23 The Commission's preliminary determination
24 specifically recognized that a longer time period may be
25 warranted. And in our comments on the draft questionnaires,

1 we requested a five-year POI. While the questionnaires
2 generally reflect a three-year POI, you collected certain
3 data going back to 2013, allowing you to consider a longer
4 time period for key indicia.

5 The Commission has noted that for olive trees,
6 larger and smaller crop yields tend to alternate. Data
7 collected by staff in the preliminary phase bear this
8 observation out: as the reported olive harvest pinballed
9 from 91,000 tons in crop year 2013 to 37,000 tons in 2014,
10 to 78,000 tons in 2015. These significant variations have
11 continued, as the harvest declined to 67,000 tons in 2016
12 before increasing back to 90,000 tons in 2017.

13 Thus, the average for the three-year period 2014
14 to '16 was 60,000 tons, while the average for the five-year
15 period of 2013 to 2017, was 72,000 tons, a difference of 20
16 percent.

17 This variability is a major reason U.S.
18 processors and the Olive Growers Council use five-year
19 average olive size distributions as the basis of their
20 annual price negotiations. Indeed, Respondents agree that a
21 proper examination of developments in this industry requires
22 consideration of a longer period.

23 The Government of Spain, for example, began its
24 prehearing brief's assessment of imports by considering the
25 time period 2013 to '17, acknowledging that subject imports

1 increased sharply over that period, but attempting to
2 explain away the impact of this import surge.

3 Counsel for the Spanish Producers used 2013 as
4 the start-year for their discussion of the decline in
5 California table olive acreage. And AFI stressed that,
6 quote, "Olive yields and production are highly variable from
7 year to year," and that over the Period of Investigation and
8 for years before that California has had significant
9 fluctuations in its olive crop yields.

10 Even though U.S. processors can source ample
11 foreign supplies of raw olives, as they have testified,
12 because California has been their main source of supply over
13 the past five years they have of course been affected by
14 these natural fluctuations.

15 In past cases, the Commission has considered
16 longer POIs, or data periods, when warranted by conditions
17 of competition. Orange juice from Brazil is one example
18 where the Commission found that the industry was subject to,
19 quote, "unpredictable domestic production cycles due to
20 natural factors often faced by agricultural products."

21 In this case, as I noted, the Commission
22 recognized that it would be useful to collect five years of
23 data for key indicia such as shipments, market share, and
24 profitability.

25 As our next speaker will discuss, the case for

1 material injury caused by subject imports is overwhelming,
2 regardless of whether pre-POI data is considered. However,
3 because raw olive supply is subject to considerable
4 year-to-year fluctuations, the Commission in making its
5 final determination should additionally consider the 2013 to
6 '14 data collected by staff at the Commission's direction.

7 Thank you, very much.

8 STATEMENT OF JENNIFER LUTZ

9 MS. LUTZ: Good morning. I'm Jennifer Lutz of
10 Economic Consulting Services.

11 You have heard from the industry witnesses about
12 the conditions of competition in the U.S. ripe olive market,
13 and I just want to supplement the discussion a little.

14 The ripe olive product is defined by a Federal
15 Marketing Order. So because ripe olives, whether U.S.
16 produced or imported, are processed to the same standards,
17 they compete largely on the basis of price.

18 Importers and purchasers confirmed this,
19 overwhelmingly reporting that subject imports in domestic
20 product are always or frequently interchangeable.
21 Purchasers also confirmed that price is a very important
22 factor in making purchasing decisions.

23 Twenty of twenty-four responding purchasers
24 identified price as one of the top three factors considered
25 in purchasing decisions. And 21 of 24 responding purchasers

1 considered price to be very important, with the remaining 3
2 considering it to be somewhat important.

3 A majority of responding purchasers found U.S.
4 and Spanish ripe olives to be comparable on all factors
5 identified in the purchaser questionnaire, except for two
6 factors, one of which was price: 12 of 16 responding
7 purchasers found the domestic product to be inferior to the
8 subject imports with respect to price, meaning that the
9 subject imports were priced lower than the domestic product.

10 It is surprising how much of Respondent's brief
11 is devoted to a discussion of the growers, which they argued
12 at the preliminary and the Commission found, were not part
13 of the industry.

14 It is also remarkable how Respondents treat the
15 decline in U.S. olive acreage as a factor completely
16 unrelated to subject imports, despite considerable argument
17 at the preliminary investigation as to the effect of the
18 unfairly traded subject imports on prices paid to the
19 growers for raw olives, and growers' decisions on whether to
20 continue to produce table olives.

21 With respect to demand for ripe olives, there are
22 three main market segments or channels of distribution:
23 Institutional, private-label retail, and branded retail. As
24 you've heard, subject imports initially entered the
25 institutional segment, which is now saturated with subject

1 imports.

2 Subject imports have more recently made inroads
3 in the private-label market at the expense of the domestic
4 industry. In fact, the prehearing report states that,
5 quote, "A plurality of purchasers reported increased
6 purchases from Spain, with a majority of these purchasers
7 citing increased purchases of Spanish ripe olives for their
8 private-label business." Correspondingly, a plurality of
9 purchasers reported decreasing purchases from U.S.
10 producers.

11 While there is less direct competition in the
12 branded retail segment, that segment is not insulated from
13 the effects of the subject imports. The Mario Brand was
14 purchased by a Spanish producer, and thus competes directly
15 in the branded segment.

16 In addition, subject import competition in other
17 segments, particularly the private-label segment, places
18 significant pressure on prices commanded by branded products
19 as they appear on shelves right next to private-label
20 products. And the domestic industry has some specific
21 examples of this pressure.

22 As you have just heard from Mr. Paretzky, we
23 think that it is appropriate for the Commission to consider
24 a five-year period with respect to certain key indicia for
25 which it collected data for a longer period. My discussion

1 is based on a five-year period where such data are
2 available.

3 The volume of subject imports is significant and
4 increased substantially from 2013 to 2017 on an absolute
5 level relative to total imports, relative to U.S.
6 consumption, and relative to U.S. production.

7 According to U.S. import statistics, subject
8 import volumes grew in each year from 2013 to 2016, from
9 26,500 short tons in 2013 to 35,100 short tons in 2016, an
10 increase of over 32 percent.

11 Subject imports declined slightly in 2017, the
12 year in which the Petition was filed, to 32,800 short tons.
13 The increase in the volume of imports occurred in a mature
14 market where consumption has been generally flat to
15 declining.

16 Subject imports are significant relative to total
17 imports, with subject imports constituting the largest
18 single source of imports. Imports from Spain accounted for
19 58 percent of total imports in 2013, rising throughout the
20 period to 76 percent in 2017.

21 Subject imports increased relative to U.S.
22 consumption, with subject imports gaining market share from
23 both the domestic industry and nonsubject imports over the
24 2013 to 2017 period.

25 U.S. production of ripe olives declined over the

1 period, as subject import volumes increased. Subject
2 imports as a percent of U.S. production were significant,
3 and increased from 2013 to 2017. By the various measures
4 considered by the Commission, the volume of subject imports
5 is significant.

6 Subject imports have entered the U.S. market at
7 very low prices, and have taken away market share from the
8 U.S. producers over the 2013 to 2017 period. The pricing
9 data collected by the Commission confirmed the industry's
10 experience that subject imports are consistently sold at
11 significantly lower prices than the domestic product, with
12 increasing instances and margins of underselling.

13 The pricing data are consistent with Petitioner's
14 characterization of the behavior of the subject imports in
15 the market. Subject imports had been focused on the
16 institutional segment, and have captured a significant
17 portion of that segment through low pricing practices.

18 More recently, subject imports have increased
19 their impact on the private-label sector. The pricing and
20 volume patterns for Product 2, the private-label product,
21 demonstrate the effect of the low prices offered by the
22 subject imports.

23 Purchasers have noted the importance of price in
24 purchasing decisions, and several purchasers have confirmed
25 switching purchases to subject imports on the basis of

1 price. Instances of lost revenues where domestic producers
2 were forced to lower prices in order to avoid losing
3 additional volume to the subject imports were also
4 confirmed.

5 The data collected by the Commission show that
6 the domestic industry is suffering material injury. The
7 industry has recorded declines in a number of indicia.
8 Production and capacity utilization have fallen over the
9 period. While Respondents claim that the large inventory
10 levels are misleading because, quote, "the size of the
11 inventories will vary dramatically over the course of the
12 year," end quote, they fail to note the data in the
13 prehearing report showing processors' monthly inventories,
14 demonstrating that the high inventory levels are not simply
15 a matter of timing.

16 Respondents claim that the domestic industry's
17 excess capacity is, quote, "functionally nonexistent"
18 because California growers cannot supply additional raw
19 olives. This claim is meritless.

20 While they may prefer to use domestic raw olives,
21 as you have heard, they can and do supplement with imported
22 raw olives which are widely available from a variety of
23 sources.

24 The industry experienced declines in its
25 employment indicia, with the number of PRWs, total hours

1 worked, and hours worked per PRW, declining over the
2 three-year period. Unit labor costs increased over the
3 period.

4 The processors' financial condition has
5 deteriorated as well. Net sales volumes declined over the
6 period, and while the data collected by the Commission
7 appear to show an increase in gross profit margins, this
8 reflects some accounting issues that took place during the
9 period as described in the prehearing report.

10 A review of the industry data with this in mind
11 suggests that the industry experienced a decline in gross
12 profit margins, and corresponding increase in cost of goods
13 sold as a percent of net sales, providing evidence of a
14 cost/price squeeze.

15 The industry recorded deterioration in operating
16 income, which you have for a five-year period, as well as
17 just the three-year period reflected in the report, net
18 income and cash flow, both absolutely and as a percent of
19 net sales.

20 The industry reported significant declines in
21 capital expenditures and R&D expenses, and the industry's
22 return on assets declined.

23 The processors report that the subject imports
24 had significant effects on investment and growth and
25 development, including cancellation, postponement, or

1 rejection of expansion projects, denial or rejection of
2 investment proposals, reduction in the size of capital
3 investments, negative impacts on the return on specific
4 investments, rejection of bank loans and other negative
5 effects. Further negative effects of imports are
6 anticipated and detailed in the questionnaire responses.

7 While the industry is suffering current material
8 injury by reason of the subject imports, it is threatened
9 with further injury. We address the threat factors in more
10 detail in our prehearing brief, but I will summarize the
11 findings.

12 The domestic industry is vulnerable. The ripe
13 olive processing industry operates with very thin profit
14 margins. And declines in operating and net profitability
15 are apparent throughout the POI.

16 The industry in Spain increased its capacity over
17 the period, and is expected to continue to do so in 2018 and
18 2019. Capacity utilization declined over the period, and is
19 expected to decline even further in 2018 and 2019, resulting
20 in significant excess capacity.

21 Subject import volumes are significant and have
22 increased since 2013, as I described before. The industry
23 is highly export oriented and has significant volumes of
24 shipments to third-country markets that could be directed at
25 the U.S. market.

1 Subject imports are entering at prices that are
2 likely to have suppressing or depressing effect. The
3 pricing data shows significant subject import underselling
4 which is likely to continue to have an adverse effect on
5 U.S. processors' prices.

6 Importers hold significant inventories of the
7 subject merchandise in the United States. The record
8 demonstrates that there is the potential for product
9 shifting, with 5 of 10 responding producers reporting that
10 they are able to shift to alternative product.

11 Subject imports have and are expected to continue
12 to have negative effects on the domestic industry, as you
13 have heard from the witnesses, and seen reported in the
14 company questionnaires. The questionnaire responses
15 describe the significant actual and anticipated negative
16 effects of the subject imports in some detail.

17 The record shows that the domestic ripe olive
18 industry is materially injured and threatened with further
19 injury by reason of the subject imports. I would be glad to
20 answer any questions.

21 MS. GLEASON: Madam Chair, members of the
22 Commission, that concludes petitioners' presentation for
23 now. We reserve the balance of our time for rebuttal
24 remarks in conjunction with our closing statement.

25 CHAIRMAN SCHMIDTLEIN: Okay, all right. Thank

1 you very much. I'd like to thank all the witnesses for
2 being here today. We very much appreciate your appearing to
3 help us understand this case. I am first in line this
4 morning for Commissioner questions. So I want to talk about
5 two issues that are related, but they're also separate.

6 So starting with this question about the
7 domestic industry's capacity to meet demand. And in your
8 brief and in the testimony, you all have talked about the
9 fact that there is a global market for raw olives. And Mr.
10 Carter, I think you specifically talked about this, and that
11 you all participate in it.

12 And in the brief you talk about the fact that,
13 if there's a shortfall in domestic production of raw olives,
14 that you can source those raw olives from imports and that
15 you do that, which I assume that Bell-Carter does it, as
16 well as the other company, is that correct?

17 MR. MUSCO: That is correct.

18 CHAIRMAN SCHMIDTLEIN: Okay. So my question is,
19 given that this is a global market and that you're able to
20 source your raw olives, either domestically or through
21 imports -- and there is apparently an ample supply of
22 foreign imports to do that -- how is processing in the
23 United States then impacted by the crop cycle that we've
24 been talking about?

25 Because one of the key issues in this case is,

1 what is the appropriate length of the POI? And if I
2 understand the argument with regard to the POI, it's, you
3 should use a five-year POI because there are alternating
4 crop cycles here, where one year you have a big harvest and
5 the next year it's smaller.

6 But if the processors here are able to source
7 raw olives from anywhere in the world almost, I mean, you
8 know, from the countries that are producing raw olives, and
9 there is an ample supply of it, how is the crop cycle really
10 impacting processing? And therefore, why should we care
11 about that in determining what the POI should be? So I
12 don't know if this is a question for the lawyers or for the
13 fact witnesses? I'll let you all decide.

14 MR. PARETZKY: Well, I'll start out with the
15 simple answer that I gave in my testimony as well. This is
16 Raymond Paretzky. The processors have relied on
17 California-produced olives for the lion's share of their
18 supply throughout the period that you are reviewing,
19 throughout the period through which they've been injured.

20 So it matters when you look at their actual
21 data, their shipments, their profitability, all the indicia,
22 that is what happened. The fact that they do supplement
23 with other sources--they always have--they do, even when
24 there's enough supply domestically, because like any good
25 manufacturer, they wanna have multiple sources of supply.

1 But they are contractually obligated to buy all
2 of the California production and so they do. And the upshot
3 of that is that the lion's share of what they have purchased
4 during the POI has been California. Unfortunately, they
5 have a lot of excess capacity because they've lost so much
6 share they're losing customers to the subject imports.

7 However, if they were able to win back those
8 customers, if fair pricing was restored, then they could
9 produce more olives. And if they needed to supplement a
10 greater proportion of their olives from outside of
11 California during the time period that it takes the
12 California growers to ramp back up, increase their acreage,
13 increase their yield to supply them, then they're fully
14 capable of doing so.

15 CHAIRMAN SCHMIDTLEIN: Okay, but in y'all's
16 brief at Page 10, you talk about the fact that U.S. growers
17 would need to farm approximately 52,000 acres to fulfill
18 demand from U.S. processors to serve the U.S. market. But
19 table olive acreage has declined from 36,000 acres, and that
20 was in 2003--so a fairly long time ago--to just 18,000 acres
21 today. So I assume that over the past three years, I don't
22 know what the number of acreage has -- if it's gone down
23 from 36 to 25 -- so haven't they been importing --

24 In other words, you're saying they've been
25 relying on California olives all of this time, but it looks

1 like, if they wanted to meet all of U.S. demand, they
2 would've had to have imported raw olives even during the
3 last three to five years, correct?

4 MR. PARETZKY: That's correct. And I think one
5 of the witnesses testified that there's really been a --
6 during that period that you're discussing is when we were
7 losing institutional customers and during that time, it was
8 subject imports of olives, especially institutional
9 customers was going up, and there was an inverse decline in
10 acreage that has continued during the POI.

11 I believe in 2013 it was something like 23,000
12 acres. You can get that from the witnesses. And that has
13 continued to go down while subject imports have been going
14 up during that time, and have started taking increasingly
15 from private label retail customers.

16 So I don't see that as an inconsistent with what
17 we've been saying. It's all been part of a pattern that's
18 been driving the California growers out of business because
19 of the prices that have prevailed in the market. And loss
20 of customers.

21 CHAIRMAN SCHMIDTLEIN: But if we're going to say
22 that the reason we're using a five-year POI is because of
23 the crop cycle and the alternating years, presumably all of
24 these imports are not on the exact same crop cycle, right?
25 In terms of when their harvests are bigger and when they're

1 smaller. So that's my point.

2 What I'm talking really here about is, how do
3 you justify using a five-year POI if the reasoning is, it's
4 because it's linked to this crop cycle, but the reality is,
5 your purchase of raw olives is not dependent on the U.S.
6 crop cycle. And it hasn't been because we haven't had
7 enough acreage in production. Do you see what I'm saying?

8 MR. PARETZKY: I do. But I think if you look at
9 the actual data, you'll see that we have had enough acreage
10 to supply, what we've been able to produce in the market.
11 What we've been able to sell in the market, it's been 90% or
12 whatever it is, California supply consistently year after
13 year, there have always been imports.

14 But the fact is, you know, we always have as a
15 starting point, we're required to buy that California
16 supply. So it goes up and down. I gave the figures myself
17 for the last five years, I have it going up and down, in the
18 years when it's up, we're buying all of that, and of course
19 this isn't a perishable product in the traditional sense.

20 You can put it up, keep it for a year, you know,
21 smooth out the fluctuation some, so there is some ability to
22 do that, but we're still affected by the requirement that we
23 purchase that California supply. I mean as you see, with
24 the imports you can smooth out supply issues.

25 They're subject to the same kinds of

1 constraints, whether, you know, whatever it is, pesticides,
2 environmental, but you know, you can get it from Egypt one
3 year and from Argentina another year. So you can smooth
4 that out.

5 But because your California's still first and
6 foremost the source of supply, both contractually and
7 because of the long ties to the California Growers and
8 because that is an economical option. Obviously, to get it
9 there from your own backyard, it's always the first choice
10 for at least the vast majority of what you're purchasing.
11 So those crop fluctuations do have an impact.

12 Also, it may cost more to get the imports. It's
13 no cost-prohibitive, but it's gonna raise costs in certain
14 instances and, obviously that's something that's gonna cause
15 fluctuations as well. And that's why looking at it over a
16 longer five-year period enables you to take that into
17 account and see what's really been going on in the market.

18 CHAIRMAN SCHMIDTLEIN: So what happens to the
19 petitioners' case if the Commission only looks at three
20 years?

21 MR. PARETZKY: I think the case still is--and I
22 said this in my testimony--there's still plenty of evidence
23 of injury even over the three years. You know, subject
24 imports only declined in the last year of the POI, and we
25 attribute that to the petition being filed, the effect of

1 the petition, and the processors do have some evidence to go
2 with that.

3 It's clear that the filing of the petition had a
4 major impact and in fact, I heard one of the European
5 witnesses in their introduction, maybe it was the Embassy
6 witness or the government of Spain, say exactly that. That
7 imports took a sharp decline and Spanish producers lost
8 contracts as a result of what happened, but the Commerce
9 Department coming up would be a prelim.

10 Market share has really moved very little during
11 the three-year POI, but you've still had massive
12 underselling. If the imports weren't responsible and could
13 compete without the underselling, they would. But clearly
14 they can't. And the market has been declining with the --
15 and the market share for the U.S. has not gone up even in
16 the three years and even when the Commerce Department
17 determination is taken into account. I mean you look at
18 the financial indicia, you still see, even during the three
19 year POI, you still see massive evidence of effects of the
20 subject imports, both the pricing and the financial indicia,
21 support that.

22 CHAIRMAN SCHMIDTLEIN: Okay. All right. My
23 time is up. Vice-Chairman Johanson.

24 VICE CHAIRMAN JOHANSON: Thank you, Chairman
25 Schmidtlein. And I would like to thank all of you for

1 appearing here today. On Page 9 of your brief, you
2 mentioned that importing raw olives to supplement U.S.
3 growers' crop causes the domestic ripe olives' processors to
4 sustain greater costs.

5 It strikes me as odd that the imported raw
6 product is apparently more expensive for you than U.S. raw
7 olives, but when it comes to importing processed ripe
8 olives, you experience these as less expensive than your
9 ripe olive output. Could you please address this issue?

10 MR. CARTER: Yes, this is Tim Carter. Thanks,
11 this is a good question. It's a complicated answer, but let
12 me break down to the four factors that we use to decide what
13 raw olives to purchase.

14 The first one is an apples-to-apples comparison
15 of cost. So farm gate pricing may be very different from
16 one country to another and coast farm gate costs could be
17 more expensive. For example, to get raw olives from
18 Argentina, they need to be cleaned, destemmed, maybe
19 size-graded, put into a storage solution, then of course,
20 there's freight to get them up to California.

21 Compare that to just trucking it from a farm in
22 California to the plant. But those costs that were incurred
23 in the foreign country are eliminated domestically. So to
24 get an apples-to-apples cost comparison, you have to get
25 them to the same state. So usually what we use at

1 Bell-Carter is the olives as they go into processing, which
2 is a little bit further downstream than the farm gate. So
3 an apples-to-apples basis, that's sort of the first way we
4 look at the cost of different countries versus California.

5 And the second basis is sort of the global price
6 costs fluctuations, which includes supply and demand issues
7 or the cost to farm per ton exchange rates. So in any given
8 year, on an apples-to-apples basis, one country can be lower
9 than another country in cost, but then higher the next year.
10 And I'm including California in that.

11 And then the third factor is stability of supply
12 versus cost. So the domestic industry may be able to get
13 cheaper fruit, again on an apples-to-apples basis on any
14 given year from a particular country, but that would be most
15 likely purchased on the open market. And it may not be
16 available to us the following year.

17 Compare that to the typical contracts in
18 California or Mexico where we contract with growers on a
19 per-acre basis, not a per-ton basis. So whatever they grow
20 on their acreage, we purchase from them year in and year
21 out.

22 And then the final factor in making these
23 decisions, how much we buy on the open market from which
24 countries? How much should we contract for year in and year
25 out? And from which countries is our demand? And really

1 the stability of demand.

2 Because our volume is declining, what's happened
3 is our supply base is largely reduced to the fixed contract
4 business. So we feel that if we eliminate any of those
5 fixed contracts, those fixed contracts are predominantly in
6 California, those growers are quite likely to pull their
7 trees out, and that would no longer be available to us.
8 Plus the benefits of the short supply chain and supporting
9 the local market.

10 So I guess it's a long answer to the question.
11 85% of what Bell-Carter--and I think it's pretty close with
12 Musco--what we purchase is from California today, which is
13 why we're hoping for the five-year POI because of the way
14 the crop fluctuates. As far as the costs go, I mean I think
15 the main factor, what we should probably follow up on is
16 showing you an apples-to-apples cost comparison over the POI
17 from the different regions so you can see how costs compare
18 and fluctuate from year to year.

19 VICE CHAIRMAN JOHANSON: Thank you, Mr. Carter.
20 Yes, if you could put some of that in writing, I'd
21 appreciate it. I find it a little confusing.

22 MS. LUTZ: I'm sorry, just to add. This is
23 Jennifer Lutz. I think that Mr. Carter addressed the raw
24 material costs of the raw olives issue, but I don't think we
25 should forget that one of the reasons that the finished

1 product comes in at lower prices is because it is sold at
2 dumped and subsidized prices. So I just don't wanna lose
3 sight of that. It's not some structural advantage they have
4 in Spain. They are selling at dumped and subsidized
5 prices.

6 VICE CHAIRMAN JOHANSON: Thank you, Ms. Lutz and
7 Mr. Carter for your responses. On Page 10 of your
8 prehearing brief, you note that all of the acreage has
9 declined by half since 2003 and you attribute that to the
10 impact of subject imports.

11 The AFI respondents provided an article from
12 Modern Farmer at Exhibit 14 of their brief that talks about
13 the popularity of almonds as an alternative to table olives.
14 It does mention low prices for olives at one place in the
15 article. But the article mainly focuses on water and labor
16 costs differences between the two crops.

17 These are themes in the submission of
18 Agribusiness Consulting at Pages 16 to 21 of their brief.
19 Did these other factors diminish the importance of subject
20 imports in the decline in all of acreage in the United
21 States?

22 MR. BURRESON: This is Dennis Burreson.
23 Basically, as I said in my testimony, I personally have
24 pulled out forty acres and did plant almonds in that block.
25 That decision was a hard decision and they were literally

1 120-year-old trees. And it was driven simply, absolutely
2 because in my opinion of the unfair pricing.

3 The consideration there was in putting almonds
4 in, they take more water. I had to think of that as I made
5 the decision. As I indicated as well, that there's a time
6 lag, a significant time lag before it becomes profitable, if
7 you will. I think also that an orchardist's mentality is
8 significantly different than a row crop mentality.

9 You really try to look to the long run. A
10 120-year-old tree is still as productive as a 15-year-old
11 tree. My sons have taken over, as I said, in the operation.
12 I truly believe that that takes a lot. Because that
13 120-year-old tree was very productive and would continue to
14 be so.

15 And again, as you make the decision with
16 almonds, the practical part of that is their life is
17 twenty-five years, twenty-six years, twenty-seven years.
18 Nothing's really happening for the first five, six years.
19 So you better hit it right at the right time, because you've
20 got a defined life to it. And going back to the olive,
21 there is not that defined life, so I took them out because
22 of pricing.

23 VICE CHAIRMAN JOHANSON: Mr. Burreson, I
24 appreciate you being here today. I think it's very useful
25 to give us more background on olive production. In one of

1 the briefs of the respondents, and it might've been
2 Agribusiness Consulting, they talk about the price
3 differential between almonds and table olives. And what
4 they present, it seemed to be a fairly large price
5 differential for when you sell these products into the
6 market. Does that play a role in the decision of some olive
7 farmers to switch to almond production?

8 MR. BURRESON: Certainly. I mean, certainly,
9 you're looking for a return. You're looking for a
10 bottom-line return. You're looking for a return on your
11 investment. But again, olives have been, for forty years
12 have been very--most of those forty years have been very
13 good--and I wanted to stay with them.

14 The mentality is not to take them out. It's to
15 hold your breath as long as you can. And I did. I held it
16 as long as I could. But the pricing that I was getting for
17 olives--again, my opinion, because of the unfair
18 pricing--the subsidies that are coming on the Spanish
19 product, I made the decision to take it out.

20 When you are taking that chance on almonds or
21 anything else for that matter, you're to some degree chasing
22 results. You're chasing history. You don't wanna do that.
23 Olives have a much longer history, have a much longer life.
24 It's not a recent phenomena.

25 What's recent to growing olives is the fact

1 that, over the last ten years or fifteen years, we're
2 talking about here is the steady stampede, if you will, of
3 unfairly priced imports from Spain. I mean in my mind
4 there's no question about why I've been getting reduced
5 prices. Or getting prices that weren't capable of
6 providing me with the return on my land that I wanted.

7 VICE CHAIRMAN JOHANSON: Mr. Burreson, my time
8 is expired, but I wanted to follow with just one question.
9 From what I've read in the briefs, it's very common for all
10 the farmers to have diversified production. You mentioned
11 you grow prunes, you grow walnuts, perhaps one other fruit
12 or nut which I don't recall. That is done in order to
13 diversify your production and to make up for losses in one
14 product over the different years. Is that correct?

15 MR. BURRESON: No, it's to keep my sons busy.

16 VICE CHAIRMAN JOHANSON: They must be busy with
17 all that production.

18 MR. BURRESON: Sorry. No, you make decisions --
19 I do -- it's kind of like a portfolio I guess, you know.
20 I've always thought of olives personally as a nice solid
21 bond investment as opposed to -- you know, I'm not so
22 certain that almonds aren't kind of a start-up kind of deal,
23 it's kind of scary in its own regard. So olives are stable
24 to me.

25 I think, truly think that it's a -- My

1 grandmother said, "You can't make a silk purse out of a
2 sow's ear." And to me that means you take and make the best
3 utilization of your land that you can.

4 Certain soil, certain land, certain things lend
5 themselves better to--be it walnuts or almonds or
6 olives--and olives have the distinct ability to do well in
7 many soils. And to me, it's a good solid thing I'm happy to
8 have 400 acres I wanna keep the family. My grandsons, my
9 sons, we wanna keep them desperately.

10 VICE CHAIRMAN JOHANSON: And it's my impression,
11 almond production has jumped fairly significantly in recent
12 years.

13 MR. BURRESON: Absolutely.

14 VICE CHAIRMAN JOHANSON: Okay. So this is more
15 of a growing sector?

16 MR. BURRESON: Absolutely.

17 VICE CHAIRMAN JOHANSON: Okay. Thank you. I
18 appreciate your comments.

19 MR. BURRESON: Thank you.

20 COMMISSIONER WILLIAMSON: Okay, thank you. I
21 wanted to express appreciate to all the witnesses for coming
22 today. I especially wanna thank Mr. Carter and Mr. Musco
23 for the opportunity we had to visit your operations in the
24 fall. And I also wanna thank Mr. Burreson for being here.
25 I remember very vividly, it was quite early in the morning,

1 but it was just fascinating visiting your farm and seeing
2 how you're keeping your sons busy, you know?

3 MR. BURRESON: Best time of day.

4 CHAIRMAN WILLIAMSON: Very good. One question,
5 Mr. Burreson, you talked about, I think, maybe it was like a
6 two-year and a four-year cycle. So what my big question is,
7 you have this alternating productivity of trees and I'm
8 trying to think of how important really is that?

9 I mean do people plant different trees at
10 different times to even that out? And you talked about, it
11 may not just be every other year. And so when we talk about
12 this, yet the crop varies very much from year to year. So
13 I'm just trying to figure out how to -- what's the make of
14 this?

15 MR. BURRESON: Yes, thank you, Commissioner.
16 Dennis Burreson again. Yeah, the phenology, or the olive
17 tree grows its crop on the past years' growth. So when, if
18 there is a large crop on a given year, the tree is putting a
19 lot of energy into growing that crop. Which causes there
20 not to be a lot of new growth for the following year's crop.
21 So that's the nature of an evergreen olive tree is to
22 alternate-bear.

23 However, you can do things to cause that to not
24 be so profound, such big swings. In fact, as a grower, it's
25 in your best interest to try to mitigate that. And you do

1 that through -- spray-thinning is a chemical way of doing
2 it, to remove some of the fruit during the heavy years. You
3 do it through pruning. You can prune to reduce that crop,
4 if you will, or to encourage new growth for the following
5 year.

6 All those things are wonderful and you do 'em
7 all and things are going along fine and then Mother Nature
8 interrupts everything and says, well, you know, we're gonna
9 have some rain at bloom or we're gonna have a frost or we're
10 gonna -- you know, there are a number of things that will
11 disrupt that pattern and so, to that degree, when I look at
12 things, I tend to do my budgeting in five-year increments.
13 That's how I look at it. I tend to treat the different
14 areas, the different fields, the 400 acres that we have in
15 ten different kind of plots, if you will. And so the
16 attempt is to try to even those years out a little bit.

17 COMMISSIONER WILLIAMSON: So are we talking
18 about -- so can you say if the entire industry is on a
19 cycle? Or is it that individual farms, or even individual
20 trees on farms are in a different cycle? And so in the end,
21 why do we have such variations in the crop?

22 MR. BURRESON: No, it's by region, if you will.
23 I mean, you know, we have a growing region -- the two
24 growing regions are 350 to 400 miles apart. There can be
25 significant environmental conditions that exist in those two

1 areas from year to year.

2 But generally speaking, Commissioner, the
3 results, if you will, in a given area, are going to be the
4 same for the growers within that area, while you can say,
5 yeah, tree to tree, it can be different, but generally
6 speaking, one orchard is gonna be similar to another orchard
7 in the same growing area, assuming that the cultural
8 practices that the people are engaged in are good.

9 You know, now to the degree that you're not
10 getting the monies you need as a grower to provide the
11 cultural practices that you should be performing, i.e.,
12 pruning, irrigating, spray-thinning, etcetera, you can, in
13 fact -- it's fair to say that there could be greater swings
14 up and down, and the Grower X may not do as well as Grower
15 Y. Because of his or her ability to provide those cultural
16 inputs.

17 I think, too, that you know, when we're talking
18 about four tons to the acre that we get versus a ton and a
19 half or so that is in Spain, a lot of Spain's acreage, and
20 I'm not here to talk about that, but a lot of it is not
21 irrigated. And when you have that, you know, you're gonna
22 have certainly lower tonnages and weather conditions are
23 actually probably not gonna have as much of an effect on a
24 lesser amount than they are in something that is vigorous.

25 I would consider if things are being done

1 properly, cultural practices in California, that's why I
2 know that prior to this--I've been forty years in this--the
3 yields at any five or ten year period have been three to
4 three and a half tons to the acre, 3.6, but most recently,
5 as the acreage has declined, the tons per acre have
6 increased. That's not surprising to me.

7 That's -- it's the, quote-unquote, growers that
8 are able to survive that are doing the right cultural
9 things. The better growers is another way of saying it.
10 The ones that are more efficient are the only ones that have
11 been able to survive. And so you do see as the acreages
12 decrease, the tons per acre now are slightly over four tones
13 to the acre, as opposed to historically more like three to
14 three and a half.

15 COMMISSIONER WILLIAMSON: Yeah, thank you. That
16 leads me to turn to the processors. And we've already been
17 discussing the imports of unripened olives just for
18 processing. But what I was wondering, even though our table
19 harvest have declined significantly over the years, domestic
20 producers have imported fewer raw table olives and become
21 more reliant on declining domestic supply.

22 So we've spent a lot talking about these being
23 able to import, you know, unripe olives for processing. But
24 it doesn't seem like you've -- your dependence on that is
25 actually gone down. So I'm wondering what do we make of

1 that?

2 MR. CARTER: This is Tim Carter. A lot of the
3 olives that we import, and this is raw or bulk olives that
4 we import for processing in California, are purchased on the
5 open market. What we purchase in California is all
6 long-term contracts. And so as volume has declined, which
7 is why we're here, we have limited the amount of tons that
8 we buy on the open market to make sure we preserve our
9 long-term contracts. As volume rebounds, hopefully it
10 will, then we'll start importing more bulk olives on the
11 open market.

12 COMMISSIONER WILLIAMSON: Okay. And I guess the
13 increased productivity of the domestic farms, I mean, is
14 that a factor -- I mean, there's so many different factors,
15 things going on here?

16 MR. CARTER: Yeah. Because of the alternate
17 bearing cycle, it's a market with a lot of variables to
18 weigh. Absolutely a more productive grower base in
19 California will push off the need to import raw olives from
20 the open market.

21 COMMISSIONER WILLIAMSON: Okay. Just curious,
22 how long -- these unripe olives that you would be importing,
23 what's the sort of shelf life of those? I mean, how long
24 can you -- can you keep those around from season to season
25 or?

1 MR. CARTER: We like to process them within the
2 first 24 months, but they can be held for 36 months.

3 COMMISSIONER WILLIAMSON: Uh-huh. Okay.
4 Thanks. What is the response to the arguments of the
5 respondents on page 8 of their -- of AFI's brief that
6 Spanish industry provides a greater range of sizes than is
7 available domestically? And who does that matter to?

8 MR. MUSCO: Yes, thank you for the question,
9 Commissioner. My name is Felix Musco. Our response to that
10 is we have a much fuller line of olives in Spain. We not
11 only have the full line-up of all the products that are
12 consumed in the U.S., that are produced in Spain, we also
13 have a portfolio of the different European and Mediterranean
14 countries which would be examples of -- Greece, Italy, et
15 cetera.

16 In addition to having a more robust line-up of
17 products, our -- the California industry supplies products
18 to all channels with both the Packers brands like the
19 Lindsay brand, Early California brand, or Pearls brand. In
20 addition to a full supply of private label. So the -- it's,
21 actually, we have much more diversified portfolio to the
22 market place.

23 COMMISSIONER WILLIAMSON: Okay, thank you.
24 Okay, so you're saying a purchaser who wants jumbos are --

25 MR. MUSCO: We have it all.

1 COMMISSIONER WILLIAMSON: Okay.

2 MR. MUSCO: Yeah. Everything on the shelf, we
3 supply them. And only do we have that particular item, but
4 we supply it to them under their private label and also our
5 brand. So both sides of the business.

6 COMMISSIONER WILLIAMSON: Okay. To what -- my
7 time has gone way over, so I'll get the questions later.
8 Thank you.

9 CHAIRMAN SCHMIDTLEIN: Commissioner Broadbent?

10 COMMISSIONER BROADBENT: I want to welcome the
11 panel. Thank you for coming today. It really helps to have
12 you here. Did anybody bring any visual aids on the product
13 at all? There they are, yeah. Thank you. Maybe the
14 Secretary could bring them up.

15 MR. PARETZKY: This is Raymond Paretzky. I
16 would have brought the institutional-sized ones as well, but
17 they were very heavy.

18 COMMISSIONER BROADBENT: I don't know how much
19 our Secretary's been working out, whether -- let's see.
20 First of all, what -- how did demand start to decline? Do
21 you guys have a sense on what's going on with demand in this
22 product? Thank you.

23 MR. BISHOP: Sure.

24 MR. MUSCO: The general demand for ripe olives
25 in the U.S. marketplace is relatively stable. It does

1 follow somewhat trends that are typical in canned fruits and
2 vegetables and it changes year to year, but it's relatively
3 stable consumption, both in the food service and retail
4 marketplaces.

5 COMMISSIONER BROADBENT: So it's not declining?

6 MR. MUSCO: It's declining at -- it's to me I
7 call it -- it's stagnant. It depends what you're looking
8 at.

9 COMMISSIONER BROADBENT: Uh-huh. Just out of
10 curiosity, have the steel and aluminum Section 232 tariffs
11 have any effect on sourcing steel for cans?

12 MR. MUSCO: No, not at this moment. There is,
13 you know, warnings from our suppliers that there could be
14 price increases and probably will, but nothing's been
15 implemented as of date.

16 COMMISSIONER BROADBENT: Okay. Do you source
17 your cans primarily domestically or from imports?

18 MR. MUSCO: The --

19 COMMISSIONER BROADBENT: For the steel?

20 MR. MUSCO: -- the company we buy our cans from
21 is a domestic company, yes.

22 COMMISSIONER BROADBENT: Okay. Good.

23 MR. MUSCO: But I would assume their sourcing
24 comes from multiple countries.

25 COMMISSIONER BROADBENT: Okay. Ms. Gleason,

1 great to have you back at the Commission. I always thing of
2 clean peaches when I see you, so I -- and I know you have a
3 very diverse practice.

4 MS. GLEASON: And other products, right?

5 COMMISSIONER BROADBENT: I know. And I know
6 you've had a lot of experience with the EU. And I just
7 thought it was curious their objections to our transparency
8 and our due process. And it's really the first time I've
9 heard that for a witness to come and spend so much time.
10 What is your reaction on that? You know, I think that maybe
11 there was just a misunderstanding there, but how does it --
12 for example, how does it compare to when we're responding in
13 the EU?

14 MS. GLEASON: I did find that comment ironic. I
15 saw the Commission was highly responsive in saying had they
16 asked for an extension, it would have been accorded, but as
17 you may or may not know, when we were in negotiations in
18 TTIP on regulatory convergence and so forth, our A number 1
19 concern with the European Union is in their procedures.
20 There's relatively little transparency and relatively little
21 opportunity for public input of any kind.

22 COMMISSIONER BROADBENT: Okay. Okay, back on
23 the orange juice case, Ms. Gleason, the commission included
24 additional years in the period of investigation because the
25 industry's production cycles were unpredictable due to

1 natural factors, which meant that we were having trouble
2 finding a normal baseline year for import levels. So we
3 just saw a lot of variation imports and domestic shipments.
4 It doesn't seem like there is such an issue in this three
5 year POI. Why should the commission deviate from its
6 practice in this and other Ag cases like sugar by using a
7 five-year POI?

8 MS. GLEASON: I'll start this, Commissioner
9 Broadbent, and then throw it to my colleague Mr. Paretzky.
10 In fact, if you look at crop years 2015, 2016 through 2017,
11 2018, there has been rather substantial variability in crop
12 yields from basically 77,000 short tons to 66 to 90. And if
13 you look at the full five-year period, the starting year
14 yield 2013, 2014 is roughly comparable to the 2017, 2018
15 yield.

16 MR. PARETZKY: This is Raymond Paretzky. Yeah,
17 I think that the cyclical nature of an industry is not
18 always apparent in, you know, one particular variable. I
19 think what we've seen from the crop yield, you know, it has
20 a tremendous impact on the costs on the ability to supply
21 economically, you know, the shipments are a function of
22 demand, the overall shipments. The imports went up a lot
23 and then flattened during the POI, but, you know, that
24 doesn't give you a full picture of what's going on in the
25 market without looking at the cyclical performance of the --

1 of all aspects, the supply part of it as well.

2 And you know, as we've said, the California
3 processors have so many ties to the California growers that,
4 you know, notwithstanding the fact that they can purchase
5 raw supply on the world market, as I think Mr. Carter very
6 ably explained just now, there's a lot of considerations
7 that go into that that make it, you know, they need to be
8 protecting their growers. They have these contracts. And
9 so it introduces a lot of variability into their results and
10 their performance.

11 MS. LUTZ: This is Jennifer Lutz. I'd just also
12 like to add that looking at the five-year period gives the
13 Commission a better basis for which to evaluate some of
14 respondent's claims because from their briefs, you would
15 think that they couldn't rely on imported olives at all,
16 therefore, production of the processed product would vary
17 widely from year to year based on the crop. And when you
18 look at the longer period, you can see that we don't see
19 those variations.

20 And I believe at the prelim, they spent a fair
21 amount of time talking about how, oh, well, of course we
22 needed to increase imports because there was a small crop.
23 So they were just filling that void. And I think looking at
24 the five-year period gives you a better basis on which to
25 evaluate some of those claims.

1 MR. MUSCO: This is Felix Musco. I'd like to
2 add to that. And thank you for asking the question,
3 Commissioner. There's two very important factors that are
4 in a sense hidden in the three-year numbers.

5 Basically, the -- and 2015 is when the subject
6 imports picked up a lot of business in the domestic market
7 on the retail side. And when that happens, there's a very,
8 very substantial amount of what we call pipe fill. So to
9 get the product into the distribution system takes maybe
10 three to four months of extra product just to start the
11 customer off. So it basically inflated 2015 sales.

12 And so when you look at -- and then in 2017, you
13 have the impact of the trade action, which caused a lot of
14 commotion in the marketplace and caused customers to respond
15 accordingly and to purchase less imports.

16 So those three years, even though we are
17 standing tall on them and can feel that we have extremely
18 strong case, if you add the two years previous to that,
19 things become very, very crystal clear.

20 For example, the subject imports are saying
21 their sales have not increased. If you look at 2013 versus
22 '17, their sales went from 29,000 tons to 32,000 tons in
23 '17. '17, again, decreased because of the trade action. So
24 if you go from 2013 to 2016, you go from 26,000 tons to
25 35,000 tons. So that's basically 10,000 ton increase in

1 just a matter of four years.

2 So they -- the imports cremated the U.S. marketplace if you
3 go back five years.

4 Then the other argument that is absurd is that
5 their pricing has not been competitive. Their pricing, is
6 half the price of what pricing needs to be to have an
7 industry that's alive in the U.S. literally.

8 If their share of total imports, the subject
9 imports share of total imports in this market went from 2013
10 from 57 percent to 2017 to 77 percent. So 57 percent to 77
11 percent of total ripe olive imports into this market in five
12 years, nobody achieves those numbers in sales.

13 So we all know it's a commodity product. It's
14 all the same quality. And the only way that could have
15 occurred is only due to price.

16 So the three years is great. We understand
17 that's the proper traditional way of doing it, but with
18 agriculture because of the tree and even as we have the
19 opportunity to rebound and thrive, we'll still be relying
20 the great majority on California fruit. So that's 80
21 percent and the rest will be supplemented.

22 That's the best metrics because then you can
23 have the perfect inventory supply and also you can go to
24 off-season countries like Argentina. So we get -- we can
25 have basically fruit every six months, instead of every 12

1 months.

2 But basically, I think when you go two years,
3 it's crystal clear that Spain got all their market share and
4 a great deal increase because of price. And it's also
5 crystal clear that they have sold a lot more product in the
6 U.S.

7 COMMISSIONER BROADBENT: Okay, thank you, Mr.
8 Musco. My time's elapsed.

9 CHAIRMAN SCHMIDTLEIN: Okay. Thank you. So Mr.
10 Musco, I'm sorry, I didn't quite follow you on the 77
11 percent. Where are you getting -- what numbers are you
12 talking about?

13 MR. MUSCO: Okay. So I need my glasses, but --

14 CHAIRMAN SCHMIDTLEIN: Is there a table in the
15 staff report or is this an attachment?

16 MR. MUSCO: So it's basically the percent of
17 Spanish -- oh, the table is table 1.

18 MS. LUTZ: It -- I'm sorry, this is Jennifer
19 Lutz. It's table 1 from exhibit -- do you know what the
20 exhibit number is? It was attached to our brief. It's
21 subject imports as a percent of total imports.

22 CHAIRMAN SCHMIDTLEIN: Oh, I see. Okay.

23 MR. MUSCO: Yeah.

24 CHAIRMAN SCHMIDTLEIN: Okay. So you were -- I
25 thought -- okay. You weren't talking about market share

1 then. Okay. And were those imports displacing other
2 imports? Is that what your point is? Okay, here it is.

3 MR. MUSCO: Yes, that's correct.

4 CHAIRMAN SCHMIDTLEIN: I see. So they're
5 displacing imports from Morocco according to this table
6 mostly.

7 MR. MUSCO: Correct.

8 CHAIRMAN SCHMIDTLEIN: Okay.

9 MR. MUSCO: And I did misquote the numbers a
10 little bit. It was -- I need my glasses on, but it's the
11 2017 for example is 75 percent.

12 CHAIRMAN SCHMIDTLEIN: Right, right. Okay,
13 okay. So one question I had based and I'm not sure if Mr.
14 Musco, if you're the best person to answer this because it
15 may be APO. We did collect data on pricing from Morocco and
16 the pricing data shows that Morocco is underselling both the
17 U.S. and Spain, the U.S. in all instances and Spain in a
18 vast majority of instances.

19 So one question I had was why -- then why --
20 given that this is -- that you all argue this is a commodity
21 product, it's sold on price, why is Spain displacing sales
22 from Morocco if Morocco is the lower-priced product?

23 MR. CARTER: This is Tim Carter. Spain has been
24 in the industry for -- in the ripe olive industry for longer
25 here in the United States they've established a firm

1 beachhead. Whereas Morocco has less experience in the
2 industry, less infrastructure here in the United States.
3 And that will result in more variable quality levels, lower
4 service levels, and they just frankly don't have the sales
5 teams here in the U.S. So for them to make a sale for the
6 most part for them to make a sale, something from the U.S.
7 has to travel to Morocco sort of looking for olives. All of
8 that is likely to add up to having to be lower priced than
9 their Spanish competition, but we don't see the actual --

10 CHAIRMAN SCHMIDTLEIN: But I see like Morocco
11 sells mostly to distributors. So if -- again, I guess I'm
12 not quite understanding. If it's -- you know, the sales are
13 based on price, right? Spain is also selling to
14 distributors, although that's going down in terms of their
15 shares of reported shipments.

16 MR. CARTER: So the way a food service
17 distributor generally works is they have sourcing agents who
18 will leave the U.S. and go out into the world to source the
19 product that they sell. That's different than a lot of the
20 other channels, let's say like the retail branded channel.

21 We have people at Bell-Carter who would go look
22 for other products, but it's not nearly the sort of the
23 function that it is in an import.

24 So if an importer does go to Morocco to source
25 Moroccan ripe olives, and then to Spain, they could bring

1 them in that way. So that would explain why most of their
2 sales are to importers.

3 CHAIRMAN SCHMIDTLEIN: Right, but I guess my
4 question is they obviously Morocco has -- in 2013 according
5 to you all's table, had a percent of total imports that was
6 31 and a half percent in 2013. So they were making those
7 sale, right?

8 And when you look at our pricing data, which is
9 over, which is guess is, yeah, three years. So it starts in
10 2015, you know, you see that they're already -- we didn't
11 collect pricing data for '13 or '14 at least in this staff
12 report. You see the percentages going down, right? So
13 they're losing sales. They had these sales and they're
14 losing those sales?

15 MR. MUSCO: Madam Commissioner --

16 CHAIRMAN SCHMIDTLEIN: And my question is why if
17 this is a commodity product --

18 MR. MUSCO: So --

19 CHAIRMAN SCHMIDTLEIN: -- and the pricing
20 product data shows that they are under selling?

21 MR. MUSCO: I believe that every bid reverse bid
22 auction we've been in, which is how all -- well, virtually
23 all large purchasers of olives ripe olives in the U.S. bid
24 out the product, who is awarded based on the lowest bid.

25 So when even a California supplier is bidding

1 against Morocco, I have examples and I think this is
2 something we could respond back, but we have examples that a
3 large purchaser that would buy Moroccan fruit over ours for
4 a penny. We had it be exactly at the right price.

5 So I believe that the pricing data that is there
6 is not completely representative of what actually is
7 happening in the marketplace, that the number one
8 overwhelming fact is that if someone's volume is increasing
9 in the U.S. marketplace for ripe olives, it is due to low
10 price, period.

11 So I think it's something that we need to get
12 back to you. We spent some time in this, but it's a
13 phenomenal growth and it's -- and it must be due to price.

14 MS. LUTZ: Madam Chair, this is Jennifer Lutz.
15 I'd just like to add, I think that I want to tread carefully
16 because of any proprietary data, but the import statistics
17 that we're talking -- sorry, the import statistics that
18 we're discussing are based on a subset of the numbers that
19 subject imports could enter under. And we think they're the
20 ones that, you know, everything that enters under those
21 numbers is subject imports, but there may be some imports
22 coming particularly from Morocco from under other numbers.
23 And I think there may be something on the record on that,
24 which we can address post-hearing.

25 CHAIRMAN SCHMIDTLEIN: So you're saying that

1 table 1 might not be accurate in terms of the numbers?

2 MS. LUTZ: We think that there may be some
3 imports entering under another HGS number, but that HGS
4 number may not reflect only the subject merchandise.

5 CHAIRMAN SCHMIDTLEIN: Okay. All right, let me
6 ask you another question about price then and the pricing
7 products in the staff report for the U.S. product and the
8 Spanish product. When you look at the four pricing products
9 over those three years, it shows that U.S. prices increased.
10 And in two of the products, Spanish prices increased in and
11 two of them, Spanish prices decreased.

12 So can you explain why we see U.S. prices
13 actually going up in these pricing products when we have
14 demand as you said being stagnant or even declining slightly
15 and you have all of this underselling by the Spanish
16 product?

17 So I know we didn't find price depression in the
18 prelim or price suppression, but sort of in the terms of
19 what's going on in the market, why is the U.S. price not
20 being -- it doesn't look to be affected by the underselling
21 of the Spanish product based on these pricing products?

22 MS. LUTZ: Well, there are certainly some data
23 issues there. Prices did increase modestly during the
24 period. Costs increased as well. And you can see the
25 declining overall profitability of the industry.

1 And as I mentioned, there are some accounting
2 issues that we can address post-hearing because there's
3 really no way to discuss it publicly that may impact your
4 assessment of this.

5 As to the pricing data for --

6 CHAIRMAN SCHMIDTLEIN: So before we go on, so
7 the accounting issues you're talking about are in the
8 financial information --

9 MS. LUTZ: Yes.

10 CHAIRMAN SCHMIDTLEIN: -- for the domestic
11 producers?

12 MS. LUTZ: Yes.

13 CHAIRMAN SCHMIDTLEIN: Okay. Okay.

14 MS. LUTZ: The -- so prices did increase
15 modestly. Costs increased. We believe Spanish prices
16 largely increased as well. The pricing data, I think, show
17 at least for one of the products the introduction of a very
18 low price supplier. And I don't want to say anymore because
19 it's confidential, but we can discuss that in the brief.

20 CHAIRMAN SCHMIDTLEIN: Okay, all right. I would
21 invite you to do that and specifically why it doesn't appear
22 that at least in terms of trends, that the Spanish price is
23 having an impact on the U.S. price. If you could address
24 that point.

25 All right, my time is up. So Vice Chairman

1 Johanson?

2 VICE CHAIRMAN JOHANSON: Thank you, Chairman
3 Schmidtlein. On page 11 of petitioner's brief, there's a
4 suggestion that low price exports from Morocco in the
5 Spanish market caused Spanish producers to export more
6 olives to the U.S. market. How do Moroccan olives
7 underselling Spanish olives in the Spanish market figure in
8 this U.S. investigation?

9 MR. PARETZKY: This dates back to a claim that
10 the respondents made in the prelim where they complained
11 about this. And you know, we were just very struck by it
12 and think that -- you know, this is what their defense was
13 that, well, you know, we need to sell at unfairly low prices
14 in the U.S. because our home market is being affected by
15 unfairly low prices from Morocco.

16 And so our point in making this was, well, if
17 that's what they're problem is, then the remedy is to bring
18 an unfair trade remedy case in the EU, not to export their
19 problem to the United States.

20 VICE CHAIRMAN JOHANSON: Okay.

21 MS. LUTZ: I would just add --

22 CHAIRMAN SCHMIDTLEIN: Your microphone, please?

23 MS. LUTZ: Apparently I'm stuttering with my
24 finger here. The -- I think the quote was more meant to
25 show that this is a commodity product that competes on the

1 basis of price. I don't think there's anything saying that
2 they shipped larger volumes because they were losing share.
3 More that there were many claims certainly at the prelim
4 that the Spanish product was more widely available, they had
5 a better selection, et cetera, et cetera. But when they
6 were discussing their home market certainly, it all comes
7 down to price.

8 VICE CHAIRMAN JOHANSON: Okay, thank you, Mr.
9 Paretzky and Ms. Lutz.

10 On pages 14 to 16 of the Spanish producers'
11 brief, they make some arguments about the ability for table
12 olive producers to send their olives to olive oil
13 production. And that this might explain a reason why U.S.
14 production of ripe olives is down.

15 Can you please comment on their analysis of the
16 different California varieties and their suitability for oil
17 processing?

18 MR. BURRESON: This is Dennis Burreson. Thanks
19 for that question Commissioner. As I said in my brief, I
20 know of no olive grower, table olive grower in the state of
21 California that sells or takes in commercial volume -- I'm
22 not suggesting there isn't, you know, someone with a plot of
23 trees in the Bay Area or something that, you know, takes and
24 puts the oil up and puts it into a small bottle and sells it
25 as Manzanilla oil.

1 But on any kind of commercial volume and
2 dealing with table olive acreage, it just -- it makes no
3 sense. We can't -- if you remember, at least for some of
4 us, I think some people were out in California and actually
5 saw the way that the table olive, or I'm sorry, the way that
6 the olive oil industry has been developed out there, that if
7 you didn't know better you might mistake and think you're in
8 a vineyard, because the trees are set up much like a grave
9 vineyard and they're mechanically harvested with an over the
10 row type of a harvester, collecting the olives without any
11 concern for damage to the fruit because it's going to be
12 crushed for oil.

13 The table olive growers, the orchards first of
14 all are not set up that way so, you know, you're not going
15 to be able to go in and mechanically harvest them the way
16 that these new orchards have been set up. If you do try to
17 accomplish that mechanically, the economics don't even come
18 close.

19 So no, again if I understand your question
20 correctly, no there are not table olive growers that are
21 converting their orchards to olive oil, or for that matter I
22 really -- I'm hard-pressed to think -- I don't know of any
23 table olive grower that has put in olive oil acreage in a
24 modern form. I don't know of that either.

25 VICE CHAIRMAN JOHANSON: Okay, thank you Mr.

1 Burreson. That answers my question. I appreciate your
2 response. On page eight to nine of your prehearing brief,
3 you note that U.S. producers are obligated to purchase 100
4 percent of U.S. growers' output, and that it is expensive to
5 supplement these with imported raw olives.

6 How reliable of a measure then is capacity
7 utilization in this context? Isn't your capacity
8 utilization determined to a large extent by the size of that
9 year's crop? This is a point, by the way, which is made by
10 the Spanish producers at page 31 of their brief.

11 MR. CARTER: So I think there was a comment
12 about cost and a question about capacity utilization. The
13 cost of importing versus ripe goes back to those four
14 factors that I discussed earlier. It can be more expensive
15 and it can be less expensive to import olives from other
16 countries, if you look at it on an apples to apples basis.

17 As far as capacity utilization, a big crop in
18 California, which we are required to buy, can be produced
19 all in that year, which we utilize for capacity but leave
20 the plant empty the next year for you can pack part of it in
21 the first year and the remaining part the subsequent year.
22 The olives can be held in storage for quite some time before
23 they're run through the plant.

24 VICE CHAIRMAN JOHANSON: Thank you, Mr.
25 Carter.

1 MS. LUTZ: This is Jennifer Lutz. I would
2 just add that the feasibility and whether or not it's
3 economical to use imported raw table olives depends both on
4 the cost of the imported olive but also the price at which
5 you can sell the finished product, and with the dumped and
6 subsidized prices from the Spanish ripe olive producers,
7 it's just not generally economical to bring in, you know, to
8 operate at full capacity if you can't sell it at prices that
9 cover your costs.

10 VICE CHAIRMAN JOHANSON: Okay, thank you Ms.
11 Lutz. Okay. I now have a question which I should know. I
12 assume it's addressed somewhere in all the materials that I
13 read. But when we talk about olives as being an alternate,
14 having alternate years, that is just for individual trees is
15 that correct, and not for the entire olive crop coming out
16 of California?

17 MR. BURRESON: This is Dennis Burreson again
18 Commissioner. Yes, it's true for an individual tree, but
19 it's also true for an individual orchard, which is also true
20 for an individual area, growing area. So growing areas will
21 tend to fall into the same pattern. A grower's -- many
22 times a grower's attempt will be to disrupt that pattern by
23 pruning or spray-thinning or, you know, to cause it to be
24 something different. But generally speaking, that's just
25 plain the phrenology of the tree and of the orchard and of

1 the specific area.

2 VICE CHAIRMAN JOHANSON: So what I'm getting
3 at is the whole issue of the crop in California going up and
4 down each year. I know it would follow the same pattern due
5 to weather and water, etcetera. But as far as actual
6 production of individual trees, I mean that would even
7 itself out; is that correct?

8 MR. BURRESON: No, no. I don't -- again, an
9 individual tree is going to, you know, it's reflective of
10 the orchard. So you know, the orchard, the orchard itself
11 is going to, you know, move up and down relative to the
12 production that it had the prior year. If it -- if it had a
13 heavy crop, I mean it's not to say that again, a given tree
14 within that orchard, assume there's 200 or 100 trees to the
15 acre, it's not to say there won't be a tree or two or ten or
16 whatever within that that may be different than what the
17 majority of that acreage is.

18 But generally speaking, that acreage and that
19 orchard is going to be the same. I mean it's going -- it's
20 either going to be an on year and it's going to have, have
21 had a lot of new growth last year and therefore it's got a
22 lot of fruit this year, or it's going to be an off year
23 because it had a lot of fruit last year. It's got very
24 little new growth and a light crop this year.

25 All that being said, weather conditions, as

1 well, you know, environmental conditions as well as a
2 grower's individual attempt to mitigate that, those big
3 swings, can affect it. But generally speaking, the orchard
4 is going to move in the same direction, regardless of if a
5 given tree in there is better or worse than another one.
6 It's definitely going to move together.

7 VICE CHAIRMAN JOHANSON: Okay. I guess what
8 I'm getting at is the ability of California producers to
9 supply the processors year to year, due to fluctuations in
10 the market.

11 MR. BURRESON: Yeah. I'm saying, I guess I'm
12 going to say that at this point in time, with only, you
13 know, with 18,000 acres if that's where we're at, if we
14 still had the 36,000 acres I would say, you know, there's
15 definitely an ability to. But because we've been reduced to
16 18,000 acres because of the unfair pricing coming in, it has
17 created probably, you know, has created a challenge for the
18 processors, that would otherwise not be there.

19 I think that again though, that the orchards
20 that are there, that are remaining again, we are proving an
21 ability to provide four tons to the acre, which is
22 significantly greater than you'll find in Spain, and I think
23 that going forward if pricing is such to the grower, that he
24 can do, he or she can do the cultural practices to --

25 I can, I personally can tell you that I can

1 achieve and have achieved seven and eight tons to the acre.
2 So I think that the ability to supply the industry is there.
3 I mean it's there and waiting to, you know, waiting to
4 become relevant again.

5 MR. PARETZKY: And Commissioner, this is
6 Raymond Paretzky just to supplement to Mr. Burreson's
7 testimony. If in a given year the growers aren't able to
8 supply the processors with everything they need, you've
9 heard both processors testify that they can get raw olives
10 on the world market. The world is awash in raw olives, I
11 believe Mr. Carter said. To supplement their supply, they
12 have, you know, an enormous amount of excess capacity in
13 their plants.

14 If the market would make it economically
15 viable, they could buy those raw olives that they need,
16 whatever they couldn't get from the California crop from any
17 given year and could process them. Mr. Carter said before
18 that, you know, that just hasn't been economical given
19 what's been happening. He's given his priority to his
20 contracts to the California growers, but they have the
21 ability to source them elsewhere.

22 You know, to the extent that not every
23 California grower has been able to invest and produce the
24 kinds of yields that Mr. Burreson is describing.

25 MR. MUSCO: And to just add to the comments,

1 this is Felix Musco, it is very easy. So in California if
2 we do have a high crop one year and a low crop the following
3 year, it's very easy to store that product in our tanks and
4 run the previous crop for the current year. That's one
5 thing to keep in mind, and then somewhat of a proprietary
6 discussion, but it's -- I think we're all pretty familiar
7 with it. Going to Argentina is really how our company has
8 been getting our supplement supply, and that's off season
9 and it does have some very strong strategic advantages with
10 accommodation of the California crop, for both quality and
11 cost and supply.

12 As far as general supply of the U.S. packers
13 for the marketplace, we've never -- we've never had a short
14 issue with a customer that was due to actual supply of
15 olives. I've been with the business for over 30 years.
16 We've never shorted a customer once, and the ability to
17 supply our current customer base under the current situation
18 is not an issue, and the ability to supply the market if
19 we're blessed and we are competing with fair pricing in the
20 future will not be an issue.

21 We can -- what happens, we plant new modern
22 acreage in California, and at the same time we would
23 supplement that with strategic product from overseas,
24 whether that be from Argentina, from Egypt, from Spain, from
25 Australia. Olives are grown all around the world. So the

1 combination of both is not a supply issue.

2 MS. LUTZ: This is Jennifer Lutz. I also
3 think that if you look at the record, either on a three year
4 or a five year basis, you'll see that the processors'
5 production and shipments did not follow the crop cycle.
6 It's, you know, it's much smoother than that.

7 VICE CHAIRMAN JOHANSON: All right. Thank you
8 all for your responses. My time has long expired.

9 COMMISSIONER WILLIAMSON: Okay, thank you.
10 Sort of following on that, how do you manage your inventory
11 levels, and do you report inventories -- and do your
12 reported inventories include both carry out and processed
13 ripe olives?

14 MR. CARTER: Speaking for Bell-Carter, we
15 manage our finished goods inventory levels to sort of, you
16 know, ideally a three month supply of finished goods, and
17 usually when we talk about finished goods, we're talking
18 about the bright cans. If it's going into a private label
19 customer, we'll put the label on it right before it ships.

20 As far as the raw product, further back in the
21 production process, that would be stored and we have a big,
22 you know, farm of tanks where all the olives come in during
23 harvest season and they're stored there essentially until we
24 need them. So we like to keep the olives stored as far back
25 in the process as possible, until we need them.

1 As far as what was reported, I need to ask
2 Jennifer.

3 (Off mic comments.)

4 MS. LUTZ: I believe that -- oh, I'll defer to
5 the company witness.

6 HAMILTON: This is Scott Hamilton with Musco,
7 and I'm in Supply Chain. So yes, we do report our
8 inventories of both finished goods and bright, as well as
9 the raw olives stored in the tanks. I'll just expand on our
10 inventory management practices, which is we will run through
11 our cannery what we need, but with a little bit longer
12 window than what Tim described.

13 That's usually so that we can manage through
14 the periodic maintenance shutdowns that we have in our
15 plant. But we generally follow the way that Bell-Carter
16 does it.

17 MS. LUTZ: Can I just ask for some
18 clarification? Are you talking about inventories in general
19 or the inventories reported in the U.S. processors'
20 questionnaires?

21 COMMISSIONER WILLIAMSON: Actually kind of
22 both. I mean the Respondents have raised some allegations
23 about our inventory levels.

24 MS. LUTZ: Right, I saw that.

25 COMMISSIONER WILLIAMSON: And if they're

1 technical questions, we can sort those out post-hearing.

2 MS. LUTZ: Yeah, okay. We'll check on that.

3 COMMISSIONER WILLIAMSON: Okay. But I guess
4 the question is also that we've observed that the industry
5 maintains relatively high levels of inventories, and that
6 this has been true throughout the Period of Investigation.
7 So this isn't -- so it's not just a question -- it's not
8 just a question of subject imports as by the nature of the
9 business, do you have to maintain relatively large
10 inventories?

11 MR. MUSCO: I think the simple answer on that
12 is yes, you know, because you receive the product. It's
13 basically, you know, the majority of our products is coming
14 in once a year. Because of that, you need to -- you always
15 have to have quite a bit of inventory.

16 COMMISSIONER WILLIAMSON: Okay, and I assume
17 it's -- your inventory levels sort of follow the same
18 pattern year to year, seem to be working off the -- working
19 it down or --

20 MR. MUSCO: There's a lot of things that, you
21 know, kind of go with that, especially over the period we're
22 speaking of. I think it's something maybe we refer
23 post-hearing, but the pressure of the subsidized and product
24 that's also being dumped here, we're losing share. So it
25 gives pressure to the grower; the grower pulls trees. It's

1 just kind of a vicious cycle. That's why in this particular
2 situation you are seeing the industry with an excess of
3 inventory.

4 COMMISSIONER WILLIAMSON: Okay, yeah. To the
5 extent post-hearing you can document or substantiate that,
6 that would --

7 MR. MUSCO: Great.

8 COMMISSIONER WILLIAMSON: That would be
9 helpful. The other question, I think I heard conflicting
10 answers. How long do you hold -- how long can you hold the
11 raw olives before they're processed? Is it one year or is
12 it two to three years?

13 MR. MUSCO: It's one year is -- we hold our
14 olives between one year and two years. It depends.
15 Recently, we've been holding our olives more often for two
16 years, because of our -- because of the inventory
17 situation we found ourselves in because of the increased
18 volume of imports and also just the different crop
19 fluctuations.

20 Again, I think that's something we kind of --
21 it's probably better to spell out post, so we can really
22 maybe put a couple of charts together so it's clear.

23 COMMISSIONER WILLIAMSON: Good, thank you.
24 That would be helpful. I'd like to ask this sort of big
25 picture question to Ms. Lutz. If we go with just the three

1 year Period of Investigation rather than the five years as
2 you suggest what -- how do we factor into our conditions of
3 competition the information you provided about what happened
4 in the -- say, in 2013, '14, and maybe post-hearing what
5 precedent for doing it that way?

6 MS. LUTZ: Well, I think that certainly when
7 the petition was filed, the three-year period that would be
8 covered by that, although the Commission used a four year
9 POI in the prelim, demonstrates that that is when the big
10 jump in subject import volume took place, and the increase
11 in market share, which I think is relevant to the
12 Commission's consideration.

13 The industry continued to be injured even as
14 market share stabilized a little more, as you have evidence
15 through the lost sales and lost revenue data and the
16 declining profitability. So I think that there is a good
17 case for injury using a three-year period, but you collected
18 the data for a five year period and I don't know of a reason
19 not to consider it. It doesn't contradict what's in the
20 three year period; it just provides a more full picture.

21 COMMISSIONER WILLIAMSON: Okay. So it's more
22 a question when, could you say when the injury started as to
23 what's been the impact of the injury during the Period of
24 Investigation?

25 MS. LUTZ: Well, where one of the most visible

1 signs of injury and the increase in subject imports that
2 took place at the expense of both the non-subject imports
3 and the domestic producers.

4 COMMISSIONER WILLIAMSON: Okay, okay. Thank
5 you. I was just wondering, what is the reason the industry
6 saw an overall decline in apparent consumption from 2015 to
7 2017? Is there something going on in the U.S. market about
8 how we're consuming olives?

9 MR. CARTER: We don't have great data because
10 -- of course we know what the domestic sales are, but we
11 sort of then use foreign imports as a proxy for sales. I
12 want to -- I believe the biggest user of ripe olives in the
13 United States is suffering a decline in their business.
14 That's a sandwich shop.

15 But that's -- that is somewhat offset by the
16 increase in pizza. Small and medium-size pizza chains are
17 growing. So it's hard to really say that there is a
18 decline, though there probably is a low single digit
19 percentage decline in consumption, and it would largely be
20 due to food service.

21 COMMISSIONER WILLIAMSON: Okay. Is there any
22 -- what impact does the -- we're becoming a nation of
23 foodies. So what impact has the sort of specialty olive
24 trend had on the consumption of the subject olives? Is it
25 significant enough to make a difference here?

1 MR. MUSCO: We do different research to see
2 where this correlation between different products is, and
3 there's very little correlation between the consumption, at
4 least in the retail market, between the consumption of
5 specialty olives and canned ripe olive. Canned ripe olive
6 is, you know, it's a very different flavor. It's very mild.
7 It's typically pitted and it's kind of a product that's been
8 a habit product for families for generations, mostly
9 families with kids at home.

10 When we look at our Nielsen and syndicated
11 data, we don't see a strong correlation between a person
12 buying a Kalamata and then exchanging it for a ripe olive.
13 So I'd say there's very minimal.

14 COMMISSIONER WILLIAMSON: Okay.

15 MS. LUTZ: This is Jennifer Lutz. I think
16 that in my mind at least, the ripe olive is used more as an
17 ingredient. It's a pizza topping, it's used in enchiladas,
18 it's put in sandwiches. Whereas specialty olives are more
19 of a snack in and of themselves, not throwing into a recipe.
20 So they're serving different purposes.

21 COMMISSIONER WILLIAMSON: Okay, thank you.
22 I'm just thinking about my home consumption of the two so --

23 (Off mic comment.)

24 COMMISSIONER WILLIAMSON: Oh thank you. Okay.
25 Anyway, my time has expired, so thank you for those answers.

1 CHAIRMAN SCHMIDTLEIN: Commissioner Broadbent.

2 COMMISSIONER BROADBENT: Thank you. I had a
3 child who is now grown, who would always eat his vegetables
4 if I put a piece of olive on top of it. So I was using
5 those stripe things, and I'm reading our trip report, which
6 I missed. I felt so bad to miss the trip out to your
7 region, especially when Congressman that we had today was
8 talking about Ag tours and it sounded like kind of a good
9 place to go.

10 But it was great for you to host everybody,
11 and the thing they did mention was that you cured these,
12 that you cure olives in lye. Is that correct?

13 MR. MUSCO: Yes, that's how the industry --
14 the entire industry cures the ripe olive, correct.

15 COMMISSIONER BROADBENT: And they're still
16 safe for children?

17 MR. MUSCO: They're still safe. We wash them
18 out quite a bit.

19 COMMISSIONER BROADBENT: Okay, all right.

20 MR. MUSCO: It just basically takes the bitter
21 properties from the product, and then it goes through quite
22 a bit of clean water washes.

23 COMMISSIONER BROADBENT: Okay, good. And then
24 is there any validity to the argument that we have sort of
25 older fields that were planted a long time ago, that don't

1 lend themselves to mechanical harvesting and we're doing it
2 by hand more often than maybe the European competition?

3 MR. MUSCO: I think Dennis can get in more
4 details on this, but it's interesting. We've been studying
5 mechanical harvesting in California for quite a bit. One
6 negative is when you shake that tree, really it loses its
7 life and it loses also its yield. So for example,
8 California we're up to close to four tons per acre, whereas
9 the trees that we've been mechanically harvesting will be
10 less than that, moreso in the future because of damage with
11 the roots.

12 You can mechanical older trees, and Dennis can
13 get into details of that. However, we're not convinced that
14 mechanical harvesting really brings on the long term a more
15 profitable industry.

16 MR. BURRESON: This is Dennis Burreson.
17 That's proprietary, Felix. I'm teasing. But no, you -- I
18 have converted an orchard that's a 25 year old orchard and I
19 know Commissioner Williamson was there and saw the orchard.
20 So is that possible? Absolutely. But certainly to Felix's
21 point, it's difficult to suggest that you can -- you can
22 take a tree and do to it what you need to do to it to get
23 the fruit off.

24 I mean there's a reason why almonds are not --
25 that the life of an almond tree is 25 or 30 years. I think

1 it has something to do with that tree being shaken many
2 times once or twice a year. That's true also with walnuts.
3 Olives historically have had a very long life. Olives
4 historically have not been mechanically harvested.

5 So I would suggest the jury's still out in
6 that regard. But no, I guess that's about what I'd say
7 about it.

8 MS. GLEASON: I might just add, Commissioner
9 Broadbent, this is Carolyn Gleason, that the mechanized
10 harvesting in Spain and the various other production
11 investments in Spain have been made possible in primary part
12 by government assistance from the EU, from the Government of
13 Spain and from the regional governments.

14 MR. CARTER: This is Tim Carter. I just
15 wanted to add one brief statement. We're talking about
16 table olives. If you -- which are picked unripe. If you
17 talk about olive oil olives, which are a different variety
18 and are picked at a much more mature state, then mechanical
19 harvesting becomes more viable for the longer term.

20 It's still -- the life of those trees isn't as
21 long as a table olive tree, but it becomes more economical
22 for olive oil.

23 MR. BURRESON: This is Dennis Burreson again,
24 and I would say that you could. If the prices were such to
25 me as a grower, if unfair pricing was done away with and

1 prices were such that when I did an ROI and said oh okay,
2 I'm going to plant an orchard and it's going to have a 30 or
3 40 year life, a new olive orchard if you will.

4 Well, I can make that decision. But with
5 pricing the way it is, and again to the point Tim just made,
6 we don't have the benefit of having been subsidized in that
7 area and we don't, you know, and we're not getting the price
8 for it.

9 COMMISSIONER BROADBENT: Ms. Gleason, you
10 discuss in your opening statement about the Spanish
11 marketing campaign "Have an Olive Day." Would our domestic
12 ripe olive industry benefit at all from that marketing
13 campaign?

14 MS. GLEASON: So far, the Spanish ripe olives
15 that are encroaching on U.S. sales are encroaching on U.S.
16 built customers. We don't see it yet. The campaign is very
17 pointedly skewed to Spanish olives, and so it remains to be
18 seen. We made the point primarily to underscore that any
19 attempt to argue that Spanish olives are somehow hands-off
20 in the retail sector is obviously belied by that campaign
21 and by their pricing.

22 COMMISSIONER BROADBENT: Okay, but the market is
23 still pretty segmented, right? If you look on--I think it's
24 Table 2-1 where the imports go to the distributors?

25 MS. GLEASON: Yeah, I'm going to defer on the

1 segmentation to the company CEOs, but my point was more than
2 to argue that the Spanish industry is somehow not focusing
3 its marketing activities on the retail sector isn't correct,
4 isn't substantiated by the record.

5 COMMISSIONER BROADBENT: Okay. And then how does
6 our marketing order system work? Do we have advertising
7 campaigns associated with that? And do the Spanish people,
8 are they involved at all?

9 MR. MUSCO: Our marketing--this is Felix Musco.
10 Thank you for the question, Commissioner. Our marketing
11 order is based of our California growers and the packers,
12 and it has a very modest budget for advertising, mostly to
13 keep the website going, photography for recipes, some PR.
14 And, yes, it's not government funded.

15 COMMISSIONER BROADBENT: Okay. Alright, I think
16 that concludes my questions. I appreciate you all being
17 here. It was a really interesting hearing.

18 CHAIRMAN SCHMIDTLEIN: Okay, thank you. I just
19 had a couple more questions. Again, going back to the
20 pricing tables and the underselling and the loss of market
21 share that the Commission relied on in the prelim opinion,
22 which as I think one of the witnesses has talked about
23 really happened from '14 to '15 of the four years that were
24 considered in the prelim, so my question is: Given that we
25 see the underselling continue in the pricing products

1 through '16 and into '17, why do we not see the Spanish
2 imports continuing to increase in their market share?

3 So in other words, why did it all happen between
4 '14 and '15, and even though they continue to undersell, you
5 don't see that market share change all that much from '15 to
6 '16, and '16 to '17?

7 MS. LUTZ: This is Jennifer Lutz. I think that
8 some of that--some of the explanation is found in Table 2-1
9 of the staff report that we were talking about. If you look
10 at importers--and this is public--the share of importers'
11 U.S. commercial shipments to retailers of branded product,
12 and particularly a private-label product, those increased
13 pretty substantially. And I think a lot of the story in
14 recent years is competition at the private-label segment.
15 And we have--you have purchaser questionnaire data on that.

16 You've heard--we've provided information in the
17 Petition and in the briefs about these losses and the lost
18 revenues at these customers. And losing sales at these
19 customers, which tend to be higher margin, the branded
20 product and the private-label tend to be higher margin than
21 the food institutional, losing sales at that level has a
22 bigger profit impact on the domestic industry.

23 So while the market share may not have shifted,
24 the participation in different segments is moving into
25 segments that more directly affect the higher profit

1 segments of the domestic industry's market.

2 CHAIRMAN SCHMIDTLEIN: So do we have--because
3 when you look at that table, you see the percentage of
4 shipments has shifted somewhat in terms of what goes to
5 distributors for U.S. importers of olives from Spain to
6 retailers, right? So you see there's an offset there. The
7 percentage going to distributors goes down, and the
8 percentage going to retailers go up. So is the margin--you
9 mentioned institutional, which is a much smaller number, for
10 distributors is the margin a smaller margin than for
11 retailers? So in other words, is that an offset there?

12 So you're saying, well, the market share is not
13 shifting, but inside the total market share number they're
14 pushing more to retailers. That's having a bigger impact.
15 And you mentioned institutional. But institutional is not
16 the product--you know, the vast majority was going to
17 distributors before.

18 MS. LUTZ: Right, although a large portion of
19 that is institutional product. And I don't believe the U.S.
20 producers sell to distributors so much. It's more--but I
21 don't have the data in front of me. So, but the increased
22 presence, particularly in the private-label segment, has
23 definitely had an impact on the domestic industry. I can
24 try to sort through the numbers for posthearing when I
25 actually look at all the numbers.

1 CHAIRMAN SCHMIDTLEIN: Okay. Alright, that's
2 probably more useful to have you address it in posthearing.

3 MR. MUSCO: This is Felix Musco. Just to add to
4 the question, Madam Chair, is I do think a big part of
5 making these numbers not clear is the pipe bill. So when
6 you get a new customer, there's a lot of distribution
7 inventory that needs to be built up before it actually gets
8 to the customer. And I think adding that to our post
9 detail would be appropriate.

10 CHAIRMAN SCHMIDTLEIN: Okay, alright. I would
11 invite you to do that, as well.

12 And the last question I had, which you may have
13 addressed it and if you haven't you could address this in
14 the posthearing, again, if you'd like. It relates to their
15 argument with regard to nonsubject sources and whether or
16 not they would just replace.

17 So in other words, if there were to be a
18 permanent order put on imports from Spain, they argue that
19 that would be filled by nonsubject sources and not the
20 domestic industry. So I don't know if you wanted to address
21 that now, or if you'd prefer to address it in the
22 posthearing.

23 MR. MUSCO: This is Felix Musco. Thank you,
24 Madam Chair. I think it's an excellent thing for us to
25 address posthearing. But just a few comments.

1 The subject imports have extremely well built-up,
2 large, and efficient facilities, both institutional-sized
3 containers and also retail. When you go to the other
4 countries, and when you go to any other country other than
5 the U.S. and Spain, you will not find retail manufacturing
6 systems that are built up, whatsoever. So if a country
7 wants to put in hundreds of millions of dollars into retail
8 equipment, et cetera, it's going to take a lot of time.

9 They also have to have the right varieties. The
10 current correct varieties that are accepted in the U.S. are
11 basically Manzanilla variety, and a Hojabelanca variety.
12 These other countries do not--they may have some of that
13 variety, but very, very small acreage.

14 So the idea, if we're able to compete with their
15 pricing, that we'd just have another country here the next
16 day is completely false.

17 MR. PARETZKY: Madam Chair, this is Raymond
18 Paretzky. I would also like to say that, besides the
19 factual answer that Mr. Musco just gave, you know, this is
20 an argument that one always hears from respondents. I mean,
21 you know, if it wasn't us it would be somebody else, but I
22 don't think that under the law that's really a viable
23 defense. You know, they're the ones who have been selling
24 at unfair prices and have been causing us injury. To say
25 that, well, if you stop us then other countries are going to

1 come in and they're going to sell at unfair prices and cause
2 you injury? That's not really a viable defense that the
3 dumping and countervailing duty laws recognize.

4 CHAIRMAN SCHMIDTLEIN: Well it has to do with
5 attribution, and there is a--the Third Circuit has asked us
6 to consider in commodity like-products whether or not the
7 subject product would be replaced with. So that's the
8 reason for the question.

9 Okay, so the last question I have is about prices
10 and how they are impacted by the industry's cost. So is
11 this an industry where generally you can pass on your
12 increase in cost? Or not? So in other words, do prices
13 reflect trends in costs? Or does it just depend on what
14 demand is doing?

15 MR. CARTER: This is Tim Carter. It used to be
16 an industry where we could pass on our costs. You know,
17 when we would ask for price increases from our customers, we
18 would document the cost increases that would support the
19 price increases and that would be how they got through.

20 For the last couple of years, we haven't been
21 successful with that because of the low-priced Spanish
22 alternative in the market. So present day, no, it is not
23 that type of market.

24 CHAIRMAN SCHMIDTLEIN: Okay. Okay, thank you
25 very much. That concludes my questions, and so we will go

1 to Vice Chairman Johanson.

2 VICE CHAIRMAN JOHANSON: Thank you, Chairman
3 Schmidtlein.

4 I want to talk a bit about the issue of the
5 period of time for the Period of Investigation. I realize
6 some other Commissioners have raised that today, but I just
7 had a question of my own.

8 On page 12 of your prehearing brief, you cite two
9 past investigations where the Commission looked at a Period
10 of Investigation of five years. First of all, if you have
11 other examples of instances in which the ITC has looked at a
12 period of other--at a period of five years, I'd appreciate
13 it if you could inform us about those.;

14 Second, while I understand that the import
15 picture may look different based on a three-year, or a
16 five-year Period of Investigation, I think that the factors
17 that the Commission considers when deciding the length of
18 the Period of Investigation is more focused on cycles and
19 variability of conditions within U.S. production.

20 In other words, please explain to us what it is
21 about the domestic industry that is changing such that it
22 requires us to look at a five-year rather than a three-year
23 Period of Investigation.

24 MR. PARETZKY: Commissioner, this is Raymond
25 Paretzky. We will be happy to give you more detail on that

1 and see if we can find more precedents for the posthearing.

2 I would just at this juncture reiterate what I
3 said before, that because of the relationship between the
4 processors and the suppliers where the processors do--you
5 know, are contractually obligated to purchase whatever the
6 supply is, that there has been an impact on them as a result
7 of the supply variability during the POI, the dramatic
8 increases and decreases that we've seen in terms of the
9 California olive supply. And that has made itself felt in
10 their results and in their ability to function in the
11 market. And I think that is something that the data over
12 the five-year period bear out.

13 VICE CHAIRMAN JOHANSON: Alright, thank you, Mr.
14 Paretzky. I look forward to any other information that you
15 can provide.

16 What evidence supports the assertion on page 14
17 of your brief that the decline of subject imports for 2016
18 to 2017 was largely attributable to the filing of the
19 Petition in June 2017?

20 MR. MUSCO: I think that in a sense needs to be
21 put together after posthearing because a lot of it is
22 confidential information and customer specific. But just in
23 general, there's a lot of discussions in the marketplace
24 about the trade action come June '17. And the customers
25 were very concerned about what the duties may or may not be,

1 and became quite conservative on their--when they could be
2 on purchasing of the subject imports.

3 VICE CHAIRMAN JOHANSON: Alright, thank you, Mr.
4 Musco. I look forward to reading anything that you can
5 provide in the posthearing brief.

6 I want to touch on the issue of labor, which has
7 not been discussed at great length today--at least I don't
8 recall that. Respondent AFI and Importers argue that
9 domestic raw olives have high labor costs. And this is
10 caused in part by lack of migrant workers in the U.S.
11 market.

12 How do you respond to these allegations of the
13 Spanish Producers?

14 MR. BURRESON: Thank you for that question,
15 Commissioner. This is Dennis Burreson. Our response is
16 that historically, depending on the year, I mean we've had--
17 without dating myself--we had the Beccero program, and then
18 we had a Guest Worker Program, and there always seems to be
19 some program. Today's program is H2A, I believe is what the
20 title of it is. And there's been some--that's already
21 started, particularly in our area, in the olives this last
22 year.

23 Also, olives tend to be kind of the last thing
24 that is harvested in a given season. And I guess the short
25 answer is, I do not know of, in my years, I'm trying to,

1 trying to remember a crop of table olive grower that is
2 properly, you know, is doing the proper cultural practices,
3 doesn't have an orchard that's not been pruned for a very
4 long period of time--in other words, an orchard that's
5 properly maintained so that it is picker-friendly, if you
6 will, I don't know of one that's not been picked.

7 I mean, they get picked. The labor is there.
8 It's more a question of allocation in terms of where pickers
9 go, at what time as orchards are developing, et cetera. So
10 the short answer is, again, that's not a problem.

11 VICE CHAIRMAN JOHANSON: When are olives
12 harvested? You said they're among the last trees, or the
13 last agricultural products that are actually harvested?

14 MR. BURRESON: Yeah, within a given season, year.
15 Typically, table olives are harvested from about the middle
16 of September to the first week in November. So your grapes,
17 your, you know, oranges, et cetera, are completed at that
18 time, which has the--it creates--if you imagine all that
19 other is done, there's a pretty good pool of labor available
20 towards the end of a growing season, if you will.

21 VICE CHAIRMAN JOHANSON: Okay, thank you, Mr.
22 Burreson.

23 Mr. Musco?

24 MR. MUSCO: Yes, Commissioner. Just, I think,
25 Dennis, if you could--I don't have it handy, but I believe

1 the cost on a per-ton basis really hasn't fluctuated much.
2 So the effect of labor in California has had no--has had
3 very small impact on our total cost of goods. And it
4 definitely has not affected supply. I mean, the product--
5 there's never been a year where we have not been able to
6 get the product off the tree when we want it off the tree.

7 VICE CHAIRMAN JOHANSON: Okay, thank you for your
8 responses.

9 Could one of you please comment on Respondent's
10 claims, repeated in footnote 3 on page 5-2 of the staff
11 report, that shipping costs to the East Coast of the United
12 States are twice as high for California producers than they
13 are for Spanish producers? Does that look correct to you?
14 Or are you familiar with that?

15 MR. HAMILTON: That's a little bit proprietary,
16 but--and it's very technical. We'll pull the numbers and
17 get them into our brief.

18 VICE CHAIRMAN JOHANSON: Okay, thanks. And I
19 have just one more question, and this is for Mr. Burreson.

20 I'm just curious. This might not figure into the
21 investigation, but I'm just curious, you mentioned the high
22 productivity of U.S. olive producers. And you stated that
23 U.S. olive productivity is substantially higher than that of
24 Spain. Why is that the case?

25 MR. BURRESON: Thanks, Commissioner. This is

1 Dennis Burreson. I believe it's because of cultural
2 practices. I believe it's because of, you know, this is a
3 pitch for California, I guess, I believe it's because of the
4 Valley that we find ourself in. It's like a greenhouse.

5 And if you do the right things culturally, if you
6 prune, if you irrigate, if you spray thin, et cetera, you
7 get a very vigorous tree. On the other hand, if you are
8 dry-land farming--and I think a significant amount of that--
9 if we were not doing those things, you know, there's two
10 ways you can kill an olive tree. You can burn it, or you
11 can drown it, or pull it out. But I mean you cannot--it's
12 going to still produce some fruit, but not very much,
13 because it hasn't been fed, it hasn't been nurtured, it
14 hasn't been taken care of.

15 If you do those things, you will get good
16 production. I believe that, along with perhaps there's some
17 variety issues, et cetera, over there, but that's my answer
18 to it.

19 VICE CHAIRMAN JOHANSON: Alright, thank you, Mr.
20 Burreson. I appreciate you appearing here today, and I
21 appreciate the rest of you as well. That concludes my
22 questions.

23 COMMISSIONER WILLIAMSON: Okay, just two quick
24 questions. If orders were imposed on Spanish olives, would
25 you still be losing olive-growing acreage to other products?

1 And if so, can your business survive if you keep losing
2 domestic olive growers?

3 MR. MUSCO: Commissioner, could you repeat the
4 beginning of the question? I'm sorry.

5 COMMISSIONER WILLIAMSON: So if we were to impose
6 orders on the dumping and countervailing orders on Spanish
7 olives, would you still be losing olive-growing acreage to
8 other products, the trend that we've seen? And if that were
9 the case, could your business continue to survive if the
10 domestic olive-growing acreage is falling--continues to
11 fall?

12 MR. MUSCO: Thank you, Commissioner, for the
13 question. This is Felix Musco. If we had really to the
14 consequence of fair trade, the industry would be planting a
15 lot of acreage very quickly in California. And it would be
16 planted utilizing the sophistication of know-how we have
17 today. And so it would be more dense planting, more modern
18 planting. Some of it I'm sure would be mechanical
19 planting.

20 So it would be the first thing the industry would
21 do, would be kicking off a campaign to get a lot of new,
22 young, vigorous trees in the ground.

23 To answer your second question: If that did not
24 happen, I believe we could definitely still supply the
25 marketplace. However, not as profitable. Because having

1 the majority of your base come from California is important,
2 but more important would be to have a combination of
3 vigorous California orchards plus supplement supply. From
4 our vantage point, the supplement supply would come from a
5 counter-season country like Australia, or Argentina.

6 COMMISSIONER WILLIAMSON: Okay. Thank you. Ms.
7 Gleason?

8 MS. GLEASON: I would just add, Commissioner
9 Williamson, that grower plantings will of course be dictated
10 by grower returns. And add further to that, that
11 Respondents imply that trade issues have never, ever crept
12 into the mind of these growers, when in fact within the
13 ripe-olive industry the Spanish import problem has defined
14 that industry.

15 The ripe-olive industry has been coming back to
16 Washington on this issue. They have testified before this
17 Commission on this issue prior to this proceeding. So trade
18 issues, and trade steps that are taken there, too, but
19 definitely set a cloud and a prism through which planting
20 decisions are made.

21 COMMISSIONER WILLIAMSON: Okay. Thank you. And
22 I can't enter a discussion about agriculture in California
23 without a question about water. And since AFI did say that-
24 -claimed that water restrictions are cost factors that
25 affect the U.S. olive processors, but not Spanish

1 processors, I was wondering if you could address that.

2 Mr. Burreson has already talked about that the
3 olive tree I guess takes relatively less water than a number
4 of other tree crops, but--

5 MR. MUSCO: Water supply has never been an issue
6 in California. There's been a drought. There's been
7 droughts in Spain. There's been droughts all over the
8 world. So you can have a drought every once in awhile. The
9 cost of water is very immaterial. And contrary to the
10 argument that California doesn't have any water, we actually
11 have more water than Spain, than the subject imports. And
12 all of our orchards are irrigated. Whereas, in Spain very
13 little of the orchards are irrigated. That's why we get
14 four times per acre here in California, where in Spain
15 they're getting close to a ton-and-a-half per acre. So
16 water is not an issue in California.

17 COMMISSIONER WILLIAMSON: Yes?

18 MR. BURRESON: This is Dennis Burreson. I might
19 add to that. Another very important issue is the
20 conversion, if you will, without getting too much into the
21 minutiae, but California in orchards, and certain specific
22 to all, where trees used to be flood-irrigated. If you can
23 imagine, you've got in many cases a dirt ditch. This goes
24 back, again I'm dating myself, goes back to a dirt ditch and
25 you're putting a bunch of water into the dirt ditch, and

1 then you're flooding the field with this water. That still
2 does happen in places in Spain, and in other areas.

3 That doesn't happen here. That practice is
4 virtually gone. What happens now is that it goes
5 particularly with olives, it goes into--think of your own
6 gardens, drip lines. It's just dripping out a half a gallon
7 an hour, or a gallon an hour. And that's probably one of
8 the reasons, too, why an olive doesn't take as much as an
9 almond, which tends to, you know, double-line drip for
10 instance, or single-line drip doesn't work so well there.
11 It needs to have more water. Its root base is a little
12 different.

13 So we are--I would suggest that there's got to be
14 close to 80 percent of the olive trees in California are now
15 being serviced by double-line drip, which is outrageously
16 more efficient and uses very little water comparatively.

17 COMMISSIONER WILLIAMSON: Thank you for those
18 answers.

19 CHAIRMAN SCHMIDTLEIN: Commissioner Broadbent?

20 COMMISSIONER BROADBENT: Just a quick follow-up
21 on that. So in your fields you have different types of
22 fruit trees and so forth. If there's a drought, do you
23 have--how do you prioritize between the crops?

24 MR. BURRESON: Thank you, Commissioner. This is
25 Dennis Burreson. That hasn't really happened to myself

1 personally. I've seen that--or I've seen that situation
2 occur. And the reality is, an almond tree, for instance--
3 I'm going to provide you with a comment. I was told not to
4 do this, but, you know why they're "A-monds" and not
5 "AL-monds"? Because to get them off the tree you have to
6 knock the "L" out of them.

7 (Laughter.)

8 MR. BURRESON: Anyway... Sorry for that.

9 COMMISSIONER BROADBENT: That explains something.

10 I never knew why--

11 MS. LUTZ: We asked him not to do that.

12 (Laughter.)

13 MR. BURRESON: I know.

14 COMMISSIONER BROADBENT: We have a low bar for
15 humor in these cases.

16 (Laughter.)

17 MR. BURRESON: But back to the point, an almond
18 tree, when you deprive it of water, it's not going to
19 survive. If you cut the water off, it's not going to
20 survive. An almond--I'm sorry, a walnut tree is similar.
21 Prune tree, similar. They're deciduous trees. That's part
22 of their phenology. An evergreen stores water--and again,
23 I'm not totally qualified to say this, but I would tell you
24 that an olive tree is a semi-arid tree, and an olive tree
25 will survive without water, and it will live to fight

1 another day.

2 So you may make your decision to some degree
3 based on, you know, as an orchardist you have the mentality
4 that looks a heck of a lot further down the road than a
5 row-crop mentality. So the decision might be there. And
6 there are studies to indicate you can do deprivation, or you
7 can back off of water and it will still be all right.

8 So the short answer I guess is you will look at
9 it. You will take a look at it and allocate it. But I'm
10 going to go back to what Felix said. It's not an issue.

11 COMMISSIONER BROADBENT: Okay, thank you very
12 much.

13 CHAIRMAN SCHMIDTLEIN: Alright, I think that
14 concludes the Commissioners' questions. Do staff have any
15 questions for this panel?

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

18 CHAIRMAN SCHMIDTLEIN: Okay. Do Respondents have
19 any questions for this panel?

20 MR. McCULLOUGH: No.

21 CHAIRMAN SCHMIDTLEIN: Okay, thank you very much.
22 Alright, that brings us to our lunch hour. So we will take
23 an hour and reconvene at 2:10. Let me remind you that this
24 hearing room is not secure, so please take your documents
25 and confidential information with you.

1 And with that, we will stand in recess until
2 2:10.

3 (Whereupon, at 1:10 p.m., Thursday, May 24, 2018,
4 the hearing was recessed, to reconvene at 2:10 p.m., this
5 same day.)

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

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

4 CHAIRMAN SCHMIDTLEIN: All right, good
5 afternoon. Mr. Secretary, are there any preliminary
6 matters?

7 MR. BISHOP: Madam Chairman, I would note that
8 the panel in opposition to the imposition of anti-dumping
9 and countervailing duty orders have been seated. All of the
10 witnesses have been sworn, and this panel has 60 minutes for
11 their direct testimony.

12 CHAIRMAN SCHMIDTLEIN: Okay. Thank you all
13 very much. You may begin when you're ready.

14 MR. McCULLOUGH: Thank you. It's a very large
15 panel today. I'm going to dispense with introductions up
16 front. We'll have each witness introduce themselves when
17 they present. But why don't we start with Joe Somers.

18 STATEMENT OF JOSEPH SOMERS

19 MR. SOMERS: Good afternoon Madam Chair and
20 Commissioners. My name is Joseph Somers. I'm a vice
21 president at Informa PLC in the Agrobusiness Consulting
22 Group. I've worked with Informa since 2002. Prior to that,
23 I worked for 25 years at the U.S. Department of Agriculture
24 in the Foreign Agricultural Service.

25 Slide. I am here today to discuss a study

1 that Informa did to assess the U.S. table olive industry.
2 Using data gathered from a variety of public sources, we
3 assess the U.S. table olive supply and demand situation,
4 taking into accounts trends in area production, consumption
5 and imports. Although the focus of this case is on the
6 years 2015 to 2017, Informa included a number of additional
7 years in its study because they are informative in
8 explaining trends. In my following comments, I will review
9 some of the major findings.

10 Slide please. The first area that we focused
11 was California Table Olive Area. If you look at the chart,
12 you can see that Table Olive Area has declined by almost 50
13 percent since 2003. What we did is we looked at what are
14 the reasons that the area was cut in half. What we found in
15 our research is one of the major reasons is higher labor
16 costs vis-a-vis other crops, difficulties in adopting
17 mechanical harvesting, other crops were more profitable
18 which they shifted to, and limited labor availability.

19 Slide. First, as I indicated, we found that
20 labor costs are very high for table olives. The study
21 analyzed the production costs of table olives, almonds and
22 olives for oil production using UC-Davis Agricultural Issue
23 Center studies. These studies are done periodically on a
24 number of products produced in California.

25 Since table olives are primarily

1 hand-harvested, table olive harvest costs are much higher
2 than for other crops that are mechanized, such as almonds
3 and olives for oil production. Harvest costs for table
4 olives, for example, are more than six times greater than
5 for olives. If you look at the slide highlighted in yellow
6 is where the focus is, the harvest costs are that high
7 because of labor.

8 The problem with mechanical harvesting table
9 olives is many of the groves have low density and thick tree
10 trunks. This tree make-up leads to lower harvest efficiency
11 and greater potential fruit damage if harvested
12 mechanically. One comment I wanted to make about olives for
13 oil production is back in about 2007 or 2009, there were a
14 number of new olive orchards planted for olives for oil and
15 they used a different kind of variety called the Arbequina
16 variety, which has groves that are high density and planted
17 and pruned so they can be harvested mechanically.

18 Slide. Also it's important to note labor
19 costs are expected to increase. California passed
20 legislation to raise the minimum wage annually from \$10 per
21 hour in 2017 to \$15 per hour in 2023. In addition,
22 California passed legislation to grant farm workers the same
23 right to overtime pay as Californians in other industries.

24 For example, currently farm workers are paid
25 overtime for more than ten hours of work in a day or 60

1 hours work week. That is going to be changed eventually to
2 an eight hour day or 40 hour work week. So this will
3 skyrocket costs if hand-harvesting continues. Another
4 factor to consider is labor availability. The California
5 Farm Bureau Federation conducted a survey in 2017, where 55
6 percent of the Respondents indicated they were experiencing
7 labor shortages. Because table olives are labor-intensive,
8 finding farm workers is vital.

9 Slide. Now what we looked at what are the
10 crops that table olives could shift to. The main crop that
11 we found was almonds. We used the same studies that we did,
12 UC-Davis for both table olives and almonds, as well as
13 olives for oil, and matched the returns. You can see that
14 the net returns are significantly higher for almonds and
15 olives for oil production, mainly because they're
16 mechanized, while table olives are mechanized.

17 Some table -- and another thing that's
18 important to note is some of the table olive production
19 takes place on diversified farming operations, which means
20 growers grow other crops besides table olives. That can go
21 two ways. One is they are adept at producing other crops,
22 so they can easily shift, or on other hand they can absorb
23 the losses from table olives.

24 Slide. As I mentioned, we think the major
25 area which shifted was table olives to almonds. You can see

1 that the trends in California almond acreage has doubled
2 since 2000. It has increased from 500,000 acres to almost
3 -- to about a million acres. What we did is we examined the
4 change in area, where both table olives and almonds are
5 produced. We specifically looked at data for Tulare, Tehama
6 and Glenn counties, which are major table olive-producing
7 areas.

8 When we added up what the changes were during
9 the 2003 to 2015 period, we found that table olive area
10 declined by 14,000 acres, while almond area increased by
11 40,000 acres. Since they're both grown in those counties,
12 it can easily be assumed that there was a shift to almonds.

13 Slide. Also, other things to note regarding
14 production. California table olive production is cyclical,
15 and if you look at the slide you can see the difficulty it
16 is for processor to be considered reliable suppliers and get
17 a consistent domestic supply. Production fluctuations can
18 range from 19,610 tons all the way up 171,720 tons.

19 If you look at the chart on the left, you
20 can't see it so well, but you can see that there's a
21 declining trend there with a dotted line. So what we did is
22 to remove the volatility and production and smooth out
23 production highs and lows. The study group production at
24 the five-year periods. If you look at that data on the
25 right, you can see that production is clearly declining

1 over a long period of time.

2 Production is in decline primarily the result
3 of declining table olive area as producers switch to other
4 crops and not imports from Spain. The shrinking domestic
5 production is causing processors to lose sales and revenues.

6 Slide. We also looked at consumption.

7 There's a couple of ways to estimate consumption. The
8 Economic Research Service of the USDA estimates apparent
9 consumption for olives, but they include stocks in their
10 data, and essentially that -- we don't that represents
11 actual consumption. What we did is we took U.S. domestic
12 sales of California table olives, as reported by the
13 California Department of Agriculture, and added to them
14 imports reported by the Foreign Agricultural Service of the
15 USDA.

16 We think that is more representative of what's
17 going on in terms of consumption. Based on that,
18 consumption has been about 185,000 tons. What is important
19 to note is imports account for 74 percent of U.S. table
20 olive consumption. What that implies is processors account
21 for only about 26 percent of consumption. This is a
22 relatively small share, makes it difficult for processors
23 to be viewed as reliable suppliers.

24 Another thing to note is that California
25 processors primarily produce black olives, great black

1 olives. More than half the imports are green olives, also
2 including specialty olives. U.S. buyers who want to get a
3 wide range of products will probably look at foreign
4 suppliers that can provide all products to them that they
5 may be looking for.

6 Slide. We also looked at imports. This data
7 was based on the USDA's Foreign Agricultural Service GATS
8 data. We used the seven HS codes that have been used in the
9 preliminary documents that were provided for this case. We
10 focused on those seven codes. If you look at the data
11 there, you can see that imports, as far as the total is
12 concerned, have been flat, all from -- the U.S. imports are
13 flat during that period.

14 Now if you're looking at 2013 to 2017, Spain's
15 share increased from 58 to 76 percent, but what is important
16 to note is if you look at Morocco, their share declined from
17 32 percent to eight percent. It's obvious that the shift
18 must have been from Morocco to Spain, and did not impact
19 U.S. processors.

20 Slide. We also looked at quarterly import
21 prices, again using FAS USDA GATS data. Looking at those
22 prices, U.S. ripe black olive import prices from Spain have
23 trended upward since the second quarter of 2015, and were
24 above competitors in all major competitors in calendar years
25 2016 and '17. At the same time, import prices from Morocco

1 dropped sharply in the second quarter of 2015, started
2 rising again in the first quarter of 2016 but remained below
3 those prices of Spain.

4 Slide. So in conclusion, California
5 processors' sales and revenues reflect declining production
6 and not imports from Spain. Domestic production is
7 declining because growers are switching to other more
8 profitable crops such as almonds. It is also important to
9 note it is difficult for California processors to be viewed
10 as reliable suppliers.

11 Because domestic production is steadily
12 declining, California processors only account for about 26
13 percent of domestic consumption, and they produce primarily
14 black ripe olives. When U.S. consumption is very
15 diversified, 55 percent of the imports are green olives
16 including specialty olives. U.S. imports of ripe black
17 olives from Spain in terms of volume are not taking market
18 share from California processors, because if you went back
19 to that other table, you can see that Spain, imports from
20 Spain for 2015 and '16 were the same, and they declined in
21 2017. Thank you.

22 STATEMENT OF TOM PRUSA

23 MR. PRUSA: Good afternoon. My name is Tom
24 Prusa. I'm professor and the chair of the Economics
25 Department at Rutgers University. I'm here today to discuss

1 some of the economic issues that are relevant for your
2 deliberations. The first issue meriting discussion is the
3 conditions of competition. First and foremost, as Mr.
4 Summers has just spoken about, the U.S. industry has a
5 chronic inability to obtain a reliable source of raw olives.

6 Mr. Somers' presentation relied on public
7 data, mostly produced by the USDA or UC-Davis. I will use a
8 different source to discuss the raw olive supply shortage,
9 Bell-Carter's end of the year letters to its customers.
10 Over a series of years, Bell-Carter tells detail of supply
11 shortages and the reasons for the shortages. The letters
12 are particularly instructive. This might be the only case
13 that I've been involved in in nearly 20 years where many of
14 the Respondents' main arguments are based on public
15 statements by the Petitioner.

16 In fact, Bell-Carter's public letters are more
17 revealing as to the domestic industry's problems than
18 anything found in the Petitioner's 36 page legal brief. In
19 a late 2015 letter, Bell-Carter talks of insufficient
20 supply. Let me quote: "The increases are largely
21 attributed to reduced acreage from growers converting their
22 land from olives to more profitable nut crops. This is
23 further compounded by the ongoing drought and increased
24 labor costs."

25 Interestingly, neither labor nor the drought

1 received any attention in the Petitioners' brief. 2015 was
2 hardly the only year Bell-Carter wrote about the small olive
3 crop size. In 2014, Bell-Carter stated the three year
4 average harvest, that is 2017 through '13, was 24 percent
5 lower than the annual consumption rate, that the 2014
6 harvest was down by 50 percent.

7 Bell-Carter further stated that "California
8 table olive receipts equate to 38 percent of annual ripe
9 olive consumption." In that same letter, Bell-Carter spends
10 a lot of time explaining how Mother Nature was creating a
11 serious raw olive supply problem. In light of Bell-Carter's
12 public statements on this issue, and in fact dozens of press
13 articles, it is remarkable that the Petitioners' brief only
14 uses the term Mother Nature and drought when describing the
15 crop in Spain.

16 The Petitioners' brief would have one believe
17 the effects of California drought are irrelevant. By the
18 way, the severity of the drought was even worse than
19 Bell-Carter's letter stated. Public data sources indicate
20 that the 2011 through '14 drought was the dryest since
21 recordkeeping began in 1895. Yet Petitioners' brief
22 considers it so inconsequential they don't even mention it.

23 As discussed in the staff report, olives are
24 naturally an alternating type crop, meaning a large crop is
25 usually followed by a small crop. Because year to year ripe

1 olive demand does not vary like supply, processors must hold
2 inventory so as to ensure their ability to deliver product
3 to customers. As seen in the slide, this is exactly what
4 Bell-Carter tells its customers in the 2014 letter.

5 Notice that Bell-Carter talks of "adequate
6 fruit inventories." There is no mention of Bell-Carter
7 being burdened by excessive inventories. With respect to
8 inventories, it is critical for the Commission to be aware
9 that inventories must be held in a variety of sizes, for
10 instance jumbo, large, medium, small and so on, and also
11 whole, sliced, diced, etcetera.

12 In fact, the only other Bell-Carter letter
13 where there was any mention of excess inventory levels was
14 in 2012. As seen on the slide, as of the writing of the
15 2012 letter, Bell-Carter spoke of its inventory levels being
16 in balance. Other than the 2014 letter, which was displayed
17 on the previous slide, I found no other letter where
18 Bell-Carter spoke about inventories.

19 That I did find in Bell-Carter's letters,
20 however, were strong statements indicating its price
21 leadership in the market, and in fact Bell-Carter's letters
22 confirm what the staff report found when they surveyed
23 purchasers on the question of price leadership. In every
24 letter, Bell-Carter announced to its customer it was raising
25 prices. The exact reason varies from year to year.

1 In 2012, Bell-Carter speaks of tight supply
2 due to the drought. In 2014, it mentions higher fruit
3 acquisition cost, and in 2015 Bell-Carter specifically
4 mentions grower cost. The basic theme is the same across
5 the years. Bell-Carter is able to raise its prices in
6 response to costs. The pricing product data collected
7 confirms what Bell-Carter states in its letters, namely
8 that the domestic industry has consistently raised its
9 prices throughout the period.

10 The Petitioners' brief states that the table
11 olive acreage now stands at less than 20,000 acres, and that
12 about 52,000 acres are actually needed to meet ripe olive
13 demand. In other words, the Petitioner has told you that
14 U.S. crops can meet only about a third of U.S. demand. In
15 its prehearing brief, the Petitioner says that U.S.
16 processors can import raw olives to make up the shortage.
17 They said the same thing this morning.

18 I found these statements curious, as they
19 contradict what they told the Commission previously. For
20 instance, in the petition they stated "Imported olives, raw
21 olives cost about 30 percent more than California-sourced
22 raw olives due to the cost of transportation and packaging."
23 They also complained about the problems sourcing raw olives
24 from import sources at the conference here at the ITC just a
25 year ago.

1 On this slide, I quote their lawyer, who
2 stated industry must rely on domestic raw olives. Mr.
3 Carter described importing raw olives as a "stop gap"
4 measure. As seen on the slide, Mr. Musco's views are even
5 harsher. Given these statements, I was surprised to read in
6 the prehearing brief and hear this morning that the same
7 people are now saying that importing tens of thousands of
8 tons of raw olives is part of their plan.

9 This is just one of the many contradictory and
10 false statements in the Petitioners' prehearing brief. With
11 respect to subject import volume, the record shows that on
12 both an absolute and relative basis they have declined. In
13 terms of tons, the decline was 6.4 percent over the POI.
14 Subject imports as a percentage of U.S. consumption are also
15 down slightly over the period.

16 Let me now talk about pricing. In its
17 preliminary determination in this case, the Commission
18 stated it did not find price suppression or depression of
19 the domestic like product. The same determinations continue
20 to be valid at this stage. The price for each pricing
21 product increased over the period. Furthermore, the staff
22 reports shows that the domestic industry was able to raise
23 its prices by more than COGS.

24 In the two pricing products where the volume
25 of imports from Spain was the greatest, that is Product 3

1 and 4, the prices charged by the domestic industry increased
2 quite significantly. By contrast, in Product 1, where the
3 volume of imports from Spain was substantially lower than
4 that, of the other pricing products, the domestic price
5 increase was the least of the four pricing products.

6 The domestic price changes at the individual
7 product level are inconsistent with what the Commission
8 normally views as price impacts. Of the retail products,
9 Product 1 is characterized by consistent over-selling.
10 Product 2 is characterized by consistent under-selling.
11 However, so little Spanish product is sold in Product 2 it
12 cannot be meaningful. I encourage the Commission to look at
13 Exhibit 21 of the pre-hearing brief, where the import volume
14 of Product 2 is put into perspective.

15 Another key pricing issue is the role of
16 non-subject imports. As stated earlier, the domestic
17 industry gained volume, market share and raised its price
18 across the board. They did so not only competing against
19 Spain, but against other non-subject countries, most notably
20 Morocco. In fact, when one looks at the data, it becomes
21 clear that the nature of competition is really about the
22 domestic firms having a decided home market advantage, and
23 import suppliers competing against each other.

24 Mr. Somers depicted similar patterns in his
25 report using public data. As shown in Table 3 and 4 of our

1 prehearing brief, Morocco consistently under-sells Spain.
2 Under almost all the traditional metrics the Commission
3 looks at, the staff reports shows no evidence of injury.
4 Capacity, production, shipments, average unit values,
5 productivity, gross profit all show an industry that was not
6 only not injured in 2015, but an industry that grew stronger
7 over the period.

8 The domestic industry pointed to operating
9 income as indicator of subject imports causing material
10 injury. That is a false conclusion. The factor that
11 explains the falling income is lost acreage. In Exhibit 15
12 of the prehearing brief, I perform a pro forma financial
13 analysis based on the financial information the processors
14 submitted to the Commission. I considered how much
15 Bell-Carter and Musco's financial performance would have
16 changed had the U.S. acreage devoted to raw olives in 2014
17 remained constant.

18 This is not the Petitioners' fantasy scenario
19 of 52,000 acres. Rather, I consider a much more modest
20 change. I simply imagine acreage is stable at the level it
21 was shortly before the beginning of the period. This allows
22 me to isolate the effect of lost acreage on the processors'
23 bottom line.

24 Using pricing cost parameters reported to the
25 Commission, I calculate revised production of ripe olives

1 using the same per acre production ratio that existed in
2 variable costs are adjusted with greater volume. Fixed
3 costs are held constant. As shown on the slide, the
4 analysis implies that stable acreage would have resulted in
5 dramatic increase in the domestic industry's operating
6 profit, and importantly it would have meant essentially a
7 flat profit performance over the period.

8 This demonstrates that neither price nor the
9 volume of ripe olive imports from Spain matter. This is an
10 acreage story. The Petitioners' discussion of capacity
11 utilization is particularly puzzling. To begin with,
12 capacity utilization increased over the period. Secondly,
13 capacity utilization is low for structural reasons.

14 U.S. producers could only process ripe olives
15 if raw olives are available. As Mr. Somers demonstrated,
16 forces beyond the domestic producers' control limit the
17 supply of domestically grown raw olives. More to the point,
18 the limited availability of domestically grown raw olives
19 has nothing to do with imports of Spanish raw olives.

20 The Commission must take the structural
21 deficit of raw olives into account when evaluating the
22 importance of the reported capacity utilization and what it
23 means for the domestic industry's ability to increase
24 supply.

25 I also want to comment on the question of

1 inventories. The Petitioners' discussion is very deceptive.
2 In fact, over the three year POI inventories are essentially
3 flat. If measured relative to production, inventories are
4 down over the period. The Petitioners describe inventories
5 without context. How can the Commission conclude that
6 inventories are large without knowing what is normal?

7 The data on the record shows that their
8 current inventories are not large, but rather simply at the
9 norm level for the industry. If one looks back at the
10 inventory data collected at the preliminary stage, one can
11 see that in fact inventories are down, down markedly.

12 If one recalls the Bell-Carter letter, where
13 it is said that inventories are "in balance," one realizes
14 that it must also mean that today's inventory levels are
15 normal. Finally, I note that public data collected by the
16 California Department of Agriculture confirms that current
17 inventory levels are not elevated. The Petitioners' lost
18 sale and revenue allegations are unfounded.

19 The staff report makes it clear that customers
20 that chose to buy Spanish ripe olives rather than
21 U.S.-produced ripe olives did so for reasons unrelated to
22 price. Availability, reliability of supply, product
23 packaging and quality were all cited.

24 Moreover, the Commission must recognize that
25 not all purchasers are the same in this case. Some are

1 quite large and many are quite small. As soon as the
2 Commission considers the volume purchased by each customer,
3 the lost sale allegations essentially disappear. The
4 evidence is overwhelming that nearly all Spanish olives are
5 being purchased for non-price reasons.

6 On threat, it should be noted that ripe olive
7 imports from Spain have been falling over the recent past.
8 Compared to the prior years, imports in 2017 decreased in
9 absolute terms as a share of the U.S. market. As noted in
10 the staff report, most ripe olives are sold pursuant to
11 contracts of one year or longer.

12 Contracts are negotiated in the fourth quarter
13 of the preceding. This means 2017 volumes were essentially
14 determined in late 2016. That the Petitioners and their
15 counsel suggest that the change in 2017 volume from Spain
16 was due to the petition effects casts doubts on their
17 credibility or on their knowledge of the industry.

18 In terms of eminent threat, inventory levels
19 of imported Spanish olives were lower than at the end of the
20 period. The availability capacity -- available capacity in
21 Spain is modest, and there's no evidence that any time
22 during the period has excess capacity in Spain resulted in
23 import surges. Therefore, Spanish capacity is not likely to
24 lead to such surges in the future.

25 Finally, markets outside the U.S. for Spanish

1 olives are growing faster than in the U.S. market, creating
2 less of an incentive to ship ripe olives to the United
3 States. Thank you.

4 MR. BISHOP: Good afternoon. Before this panel
5 continues, I have paused the clock. I found a laptop bag in
6 courtroom A. So if it is anybody's, please come up and see
7 Terrell. Okay? Thank you so much. We're going to restart
8 the clock.

9 STATEMETN OF MICHAEL SEIDEL

10 MR. SEIDEL: Good afternoon, my name is Michael
11 Seidel. I'm here today representing Performance Food Group
12 as the corporate director of category management for our
13 performance food service division. Our corporate office is
14 located in Richmond, Virginia.

15 Performance Food Group, which I will refer to as
16 PFG, is the third largest food service distributor in the
17 United States at \$17.5 billion in annual sales. We sell
18 over 150,000 food service products to over 100,000 customers
19 coast-to-coast from our 70 distribution centers.

20 I started my food service career 21 years ago as
21 a salesman for Sysco. I had 30 to 40 customers who received
22 weekly deliveries, including deliveries of ripe olives. I
23 know the ripe olive market well.

24 At PFG each year, we handle over 8200 tons of
25 ripe olives from both imported and domestic sources.

1 Specifically, we handle imported ripe olives in our PFG
2 brands from Spain, Morocco, and other countries, and we
3 handle domestic ripe olives from Bell-Carter and Musco in
4 our line-up as well.

5 Nationally, 29 percent of all food service olive
6 sales are sold to customers who identify their
7 establishments as pizza or Italian. PFG has a over 60-year
8 legacy in this pizza Italian segment, which allows us to
9 have a 46 percent share of all olives sold to this customer
10 segment by broad line distribution within the market areas
11 that we compete.

12 These customers, along with sandwich shops, are
13 often high volume customers, concentrated with specific size
14 ranges, demanding steady, consistent supply over the course
15 of the entire year. The most frequent type of ripe olive
16 purchased by these customers are the small sliced olives and
17 overall, sliced olives likely comprise 65 percent of all
18 food service sales in this market.

19 In the U.S. market, imported sources dominate
20 this size and segment, not because of price, but because the
21 domestic industry cannot meet the volume requirements in
22 this category, given their own limited production base.
23 This is why the domestic industry is such a limited player
24 in the institutional food service segment.

25 They have to calibrate their sales, given both

1 their overall volume limitations and also their limitations
2 in specific size ranges. They look for customers that best
3 represent and provide the best fit given their limitations.

4 When Bell-Carter or Musco olives enter the
5 equation in our sales, it's typically because some customers
6 want and specified domestic olives for their needs.

7 With only two suppliers in the U.S. available,
8 Bell and Musco, our choices are limited. Simply put, I have
9 to have domestic product for select customers and I do what
10 I can to work with the domestic industry's production
11 limitations, given acreage conditions in California.

12 So frankly speaking, I do not see this trend
13 ever changing, whether it is Spanish ripe olives or some
14 other offshore source, imports will continue to dominate
15 this institutional food service segment.

16 There will be -- there will not be any real
17 shifts in volumes from imported ripe olives to domestic ripe
18 olives as a result of this case. I travel globally and I
19 have viewed olive orchards and processing plants in several
20 countries, countries like Morocco or Egypt are well
21 positioned to take up any supply gap in this market and they
22 already are. Others are not far behind.

23 Where a processing plant is present, the
24 incremental capital investment to produce ripe olives is
25 minimal. Market entry is not that difficult. For example,

1 within the last week alone, I was in Peru looking at olive
2 orchards and I can tell you it would not take much to have
3 Peru enter this market in a more significant way, joining
4 others who are already there.

5 And finally, I want to emphasize that there are
6 the price limits associated with this product. Ripe olives
7 with a California origin represent 9.1 percent of all ripe
8 olives sold in broad line food service distribution. That
9 share's up from 8.8 last year. Yet, there were 3,245 fewer
10 pounds sold overall, which means that the market for ripe
11 olives is flat.

12 There are more than idle concerns that as you
13 push the limits of pricing, that you will actually curtail
14 consumption. These olives are an ingredient on pizzas and
15 sandwiches, and that consumption that curtailing of the
16 consumption can take any number of forms ranging from
17 outright elimination of ripe olives off the menu as an
18 ingredient to just reducing the number of restaurants that
19 serve ripe olives. My understanding is that this kind of
20 contemplation within the food service industry is very real
21 and we have to be mindful of this fact.

22 What I also know is that a reputation for
23 consistency and quality and supply is utmost in purchasing
24 decisions for my company and for our customers. Our
25 customers expect a 99.5 percent order fulfillment. The

1 domestic ripe olive crop is not as annually stable and is
2 plenty as the global supply.

3 Moreover, labor scarcity in California, along
4 with the higher taxes, water cost, and intense environmental
5 regulations create real uncertainties among buyers. I've
6 been there. I've talked to the farmers. I've seen it all
7 types of agriculture products.

8 Buyers see table olive acreage declining in
9 California in response to these forces and they have no
10 doubts. And they have doubts that these factors definitely
11 influence food service distributor purchasing decisions.

12 And I have no doubt that with continuing acreage
13 decline, large retail outlets also view the domestic supply
14 situation with some concern. It's only natural to start
15 thinking about supply chain diversification and limiting
16 exposure to supply risk. So that concludes my testimony and
17 I welcome any questions you may have.

18 STATEMENT OF DAVID ROCKWOOD

19 MR. ROCKWOOD: Good afternoon, my name is David
20 Rockwood. I'm the chief operating officer for Rema Foods,
21 Inc. I've worked in the food import business for the past
22 24 years both at Rema and also Unilever in the Batali olive
23 oil business. Olives and olive oil have therefore been a
24 part of my professional life for many years.

25 Rema Foods is a leading global food importer and

1 supplier, focused on providing both broader commodity-based
2 products and unique specialty items. We are a leading
3 supplier to some of the largest food service distributors
4 and restaurant chains. We also supply private labelled
5 products to retailers throughout the United States and
6 around the world. Our range of products spans over 1,000
7 unique items, providing customized solutions for primarily
8 private label customers.

9 As a leading supplier, it is critical for us to
10 understand both the requirements and the desires of our
11 customers. Because we import all the products we sell, we
12 do not have relationships with domestic olive suppliers and
13 have never been a part of the domestic market. My testimony
14 today will focus on the food service markets and provide
15 some insight into the minds of our customers.

16 Our major products include the ripe olives that
17 are the subject of this investigation. In the U.S. market,
18 we handle ripe olives from Spain, Portugal, and Morocco on a
19 regular basis. On a global basis, outside the United
20 States, we also handle olives from these same sources.

21 In addition, we have started the process to
22 qualify Egyptian product and product from other countries
23 and expect to complete this within the next six months.
24 These other sources represent potential supply options for
25 ripe olives for the U.S. market.

1 Please keep in mind that table olives are a huge
2 global industry. The U.S. industry represents only a minute
3 fraction of all olive production. There are numerous major
4 players outside the United States including Egypt, Morocco,
5 Spain, Argentina, Greece, and Turkey.

6 At Rema Foods, we pride ourselves in our
7 knowledge of this food industry and work to understand all
8 aspects of the food business. We know how markets work and
9 most critically don't work for the various commodities we
10 handle.

11 This is important as we do business with large
12 sophisticated buyers that demand quality and consistency
13 across all products they procure from us. They know the
14 market well, so we have to know the market even better.

15 In the case of ripe olives, competition is
16 intense and the demands placed on suppliers are significant.
17 It is also a complex market with many interrelated market
18 dynamics. Understanding the customer needs and their views
19 of the U.S. market is a critical element in maintaining our
20 business relationship.

21 Our customers particularly, the large buyers,
22 are sophisticated and do all of their homework. They have
23 closely monitored California's annual olive production.
24 These buyers have raised serious doubts about the security,
25 volume, and consistency of supply they can get from the

1 domestic industry. These sophisticated customers realize
2 that they simply can't rely solely upon the domestic
3 industry. A reliable source of supply is very important and
4 an alternate to this reliable source of supply is also
5 critical.

6 U.S. ripe olive production is concentrated in
7 one geographic region. California is a beautiful place, but
8 it's also a land of earthquakes, droughts, and major brush
9 fires that have destroyed major productive equipment and
10 thousands of acres of productive land. The U.S. consumer is
11 one natural disaster away from a major shortage of domestic
12 ripe olives.

13 Prudent retailers, distributors, and wholesalers
14 know this and make sure that they have alternate supplies,
15 not subject to these same types of natural disasters. The
16 need for reliable and alternate supplies is why the
17 institutional food service segment was effectively lost by
18 the domestic industry more than a decade ago.

19 A pizza chain or a sandwich chain must have ripe
20 olives because their customers expect to have ripe olives.
21 Telling customers that olives are missing because of a
22 supply shortage gives customers the impression that the
23 restaurant is disorganized and does not care, which can have
24 serious and devastating effects on the restaurant's
25 business.

1 And alternate source of supply is the more -- is
2 all the more critical as there continue to be serious
3 questions raised regarding the ability of the domestic
4 industry to meet demand.

5 Demand is not simply for the generic ripe olive.
6 It is important to understand the full ramifications of what
7 is meant by "demand."

8 For example, you have to match volume with the
9 different buyers in this market. Given raw material
10 constraints, supplying one large volume buyer may mean you
11 have to give two smaller buyers as the one large volume
12 buyer may consume the supermajority of a particular size,
13 leading to a lack of product for the small buyer. This is
14 why the domestic industry is a very limited player in the
15 institutional food service channel.

16 Demand is also defined by size ranges.
17 Different buyers want different size ripe olives and a full
18 range of these sizes. However, because of a limited raw
19 material production base, the domestic processors do not
20 have the ability to meet demand across all size ranges.

21 Olive trees have alternating growth cycles.
22 Some years, you have a large crop of small olives. Some
23 years, you have a small crop of large olives. And some
24 years, you have a very poor crop overall.

25 This means that in order to fully serve the

1 market, the total annual crop must be larger than the market
2 demand. While the ratio of sizes from year to year may be
3 comparable to the experience of other growing regions off
4 shore, the total volume of California olives is small.

5 For example, food service buyers generally
6 desire smaller sizes, the kind you might see on a sandwich
7 or pizza. We at Rema Foods deliver more than 9,000 tons of
8 small sliced olives to the country's largest food service
9 distributors annually. The domestic industry is not in a
10 position to handle that volume. Buyers know these
11 limitations, which impacts their sourcing decisions. Again,
12 this is why the institutional food service channel fell away
13 a long time ago.

14 Even if the domestic industry were to reverse
15 these supply trends, which seems to be an impossible task as
16 most of the adverse factors are a result of events outside
17 of their control, the impact of any constraints on Spanish
18 ripe olives would be at best transient.

19 Even an absolute ban on Spanish olives would
20 have little, if any, impact on the price and volume for the
21 domestic industry. Rather, that volume would merely
22 transfer to other over seas suppliers, such as Morocco,
23 Portugal, Egypt and others. There's a huge global market
24 for table olives and there are a number of significant
25 players that service global demand outside the United

1 States.

2 I know this because we are involved in that
3 trade. Volumes will shift globally and new sources of
4 supply will be directed here. It's already happening. We
5 are one of the largest importers of ripe olives and we have
6 already undergone a 100 percent transition from Spain to
7 other sources with little evidence that my customers are
8 turning to more domestic product.

9 These fundamental points really crystallize the
10 issue, the domestic industry's challenges have nothing to do
11 with Spanish ripe olives. Thank you for your time and I
12 welcome any questions you may have.

13 STATEMENT OF SHAWN KADDOURA

14 MR. KADDOURA: Good afternoon, my name is Shawn
15 Kaddoura. I'm the president and CEO of Mario Foods based in
16 Plant City, Florida.

17 J. Barolo Mario started Mario Olives in 1937 and
18 we've been involved in the sale of olives the USA market for
19 more than 80 years. Mario Camacho brings a unique
20 perspective as a customer of one of the petitioners and a
21 former customer of the other petitioner.

22 Mario Camacho started out as an olive company
23 and it still is a point of focus of our business. In
24 addition to olives, we supply customers with a broad range
25 products from 10 countries including peppers, capers, olive

1 oil, jams, and mushrooms.

2 At Mario Camacho, we pride ourselves on our
3 relationships with our domestic and international suppliers
4 and customers. And we work hard to make sure the products
5 we sell and distribute are of the highest quality and are
6 delivered without any issues. In order to meet our
7 customers' expectations, we absolutely must have stable
8 supply sources and consistency of product.

9 Unfortunately, changes in the nature of olive
10 industry in California have created present and long-term
11 supply risk and uncertainty that detrimental to our business
12 and customers.

13 Domestic supply of ripe olives is limited to the
14 two petitioners, who are both located in the geographic
15 region in California. For years, we purchased and sourced
16 with the one of the petitioners in this case. Around 2013,
17 Mario started to face supply issues from its California
18 supplier.

19 This supply issue reached a point of crisis in
20 2014 when the -- one of the petitioners advised us that they
21 would only be able to supply 38 percent of the 85,000 metric
22 ton demand for ripe olives and inform us they will no longer
23 have the ability to supply larger sized olives such as jumbo
24 and advised to seek it from other regions, such as Spain.
25 The supply limitation were not limited to 2014, but rather

1 continued into following years.

2 Mario's not the only customer to face issues
3 with domestic supply. It is our experience that other
4 customers in the market as -- are faced with issues
5 resulting from inconsistent domestic supply.

6 For example in 2014, Mario Camacho, in addition
7 to other suppliers from Spain, was invited to participate in
8 a bid for one of the largest retailers in the USA due to
9 issues with one of the petitioners in supplying the
10 retailer's private label.

11 And the drive behind this opportunity was to
12 diversify the source of supply. This was not mere
13 speculation. The customer stated that to us directly as the
14 reason to diversify supply.

15 Although we did not win this particular
16 business, retailer ultimately chose to source a portion of
17 its ripe olive private label from Spain having a supplier in
18 California and a supplier in Spain was detriment for their
19 security of supply.

20 Retailers rely up and turn over for their
21 profit. The absence of product on a shelf means that the
22 opportunity for this -- for a sale is lost. As part of
23 this, retailers also want multiple sources of supply to
24 ensure that in the event of a natural disaster, labor
25 stoppage, or similar issue, product remains on the shelf.

1 And having a multiple source of supply means more than
2 simply an alternate label from the same producer. It means
3 an alternate source of supply with independent production
4 facilities often located in a different geographic region.

5 In another case in 2016, another major retailer
6 provided us with an opportunity to supply a portion of their
7 private label ripe olive due to concerns about the long-term
8 supply from California. This customer was clear, it needed
9 a supply and wanted to diversify supply between California
10 and Spain to minimize the risk.

11 It was not a price issue, it was a supply issue.
12 Mario simply filled the gap in supply from Spain and
13 diversification and risk mitigation was required and
14 demanded by the customer.

15 The petitioners have lost a portion of market
16 share and private label not because of unfairly priced
17 Spanish olives, but because they had been unable to provide
18 a consistent supply of product to the market. When
19 shortages have arisen, petitioners have focused on providing
20 their own brand to the detriment of other brands, including
21 retailer-controlled brands.

22 And I want to emphasize that the two incidents
23 mentioned earlier involve two different petitioners. In
24 addition to supply availability, Mario Camacho has
25 experienced olive sizing issues with domestic supply. In

1 our case, the problem was inability to supply larger sizes.
2 Olive size is important. Customers do not simply order
3 olive based on can size or form.

4 Quite to the contrary, these orders are based on
5 a size of the actual olives. For example, small, medium,
6 large, extra large, jumbo. If the desired size of olive is
7 not available, it is considered in the customer's view a
8 supply issue. However if it is inconsistent in size, it is
9 considered a quality issue. So if the right sizing is not
10 available, it will be viewed as unacceptable and the entire
11 range of olives available will be called into question by
12 customer.

13 The domestic petitioners recognize this and thus
14 they have import additional olives from overseas and Mexico
15 to fill in gaps and availability and sizes.

16 Also, it is a fallacy to claim having enough
17 carryover in form of inventory to the following year would
18 make up for the whole smaller year. It would take multiple
19 years of good, large crop and being at the right size to
20 catch up. Other countries such as Morocco, Egypt, and
21 Portugal have dramatically increased their olive production
22 in a relatively short period of time.

23 California acreage and some farmers are simply
24 not focused on lower profit olives. They have turned to
25 more lucrative and popular products, such as almonds.

1 In conclusion, I would like to highlight the
2 fact that if petitioners win this case, petitioners will not
3 then get the sales that they had been going to Spanish
4 olives. In order to diversify our supply chain and meet
5 market demand, and ensure that we will not deal with the
6 same supply and the domestic quality issues, we will be
7 forced to turn to other countries that are poised to meet
8 the demand that the domestic industry clearly cannot.

9 Thank you for your time and look forward to
10 answering any of your questions.

11 STATEMENT OF HELEN AVELLA

12 MS. AVELLA: Good afternoon. My name is Helen
13 Avella. I am the Business Development Manager of Olives at
14 Atalanta Corporation based in New Jersey.

15 Atalanta was founded in 1945 and specializes in
16 importing cheese, deli meats, grocery, and seafood products
17 from around the world. Our primary olive customers are
18 institutional food service companies.

19 We serve our customers by providing them a
20 single, efficient, and reliable source for a large variety
21 of excellent quality international food products.

22 Most of our customers that purchase Spanish ripe
23 olives from Atalanta are doing so because they want Spanish
24 ripe olives in particular. These customers want Spanish
25 olives because they prefer the quality, consistency, and

1 availability of the Spanish olives.

2 In terms of quality, they prefer the flavor,
3 texture, and consistency of the Spanish olives. In terms of
4 consistency, they prefer Spanish olives because they know
5 that the olives obtained directly from Spain will not vary
6 from year to year, let alone from can to can.

7 In contrast, ripe olives from the U.S. are more
8 variable from year to year. The actual olives may be
9 imported from other countries because of the insufficient
10 growth of the U.S. olives.

11 In terms of availability, our customers are
12 confident that they can receive a consistent and reliable
13 supply of olives because of the stability in the Spanish
14 olive industry, and the absence of any major supplies'
15 issues or constraints.

16 In contrast, the supply from California is
17 problematic. Olives grown and processed in California face
18 a number of serious issues. Initially, California, while a
19 beautiful state, presents significant and frequent
20 environmental challenges.

21 These include brush fires, drought, and allocated
22 water, and labor issues. Brush fires. California has
23 experienced many serious brush fires, destroying hundreds of
24 thousands of acres, including bearing trees, vines,
25 wineries, and other production facilities.

1 For example, the 2016 Sherpa Fire burned more
2 than 7,000 acres, including olive and almond acreage.
3 Drought and allocated water. California, particularly in
4 the agricultural region, has faced strong competition for
5 limited water supplies. This has been exasperated by
6 prolonged drought.

7 In response to this, California carefully and
8 strictly controls water and allocates it among users. While
9 olives are a comparatively low water crop, this is because
10 olive trees compensate for a lack of water by reducing its
11 output and conserving its resources.

12 While the drought may not kill the olive tree, it
13 reduces its production. Water restrictions can also impact
14 processing facilities that use water in the production
15 facilities. Water is a very important part of processing of
16 green into ripe olives.

17 Related to this is also the disposal of the brine
18 and waste water and the environmental ramifications of such
19 disposal.

20 Labor. California has historically used migrant
21 labor to harvest its fruits, nuts, vegetables, and other
22 crops. Labor is particularly critical for the olive
23 industry, as California olive trees are not susceptible to
24 machine harvesting, but rather must be harvested by hand.

25 Due to a broad range of issues, including

1 immigration restrictions, a low unemployment rate making
2 jobs less desirable, and labor-restricting laws, the labor
3 to pick these olives is not available. And to that extent,
4 and to the extent that it is available, it is more costly.

5 Our customers' clear preference for Spanish
6 olives is shown by our consistent sales of Spanish olives
7 even after this case began, in spite of the increase in
8 prices.

9 Atalanta does not purchase U.S. olives. Atalanta
10 is a food import business, and its primary focus is on
11 importing the best foods internationally to sell
12 domestically. If this case will ultimately result in
13 antidumping and countervailing duties on ripe olives from
14 Spain, we will continue to purchase these olives from
15 Spain. We would not shift our purchasing from the
16 Petitioners.

17 Thank you for your time. I would be happy to
18 answer any questions.

19 MR. CRAVEN: Thank you. That ends our direct
20 presentation.

21 CHAIRMAN SCHMIDTLEIN: Okay. Thank you all very
22 much. Again I would like to thank this panel for being here
23 today to help us understand this case. We do appreciate
24 your time.

25 We will begin with Vice Chairman Johanson for

1 questions this afternoon.

2 VICE CHAIRMAN JOHANSON: Thank you, Chairman
3 Schmidtlein, and I would like to thank all of you for
4 appearing here this afternoon.

5 Could you all please begin by providing a
6 response to the Petitioner's arguments for a five-year
7 Period of Investigation?

8 MR. MCCULLOUGH: Yes. This is Matt McCullough
9 with Curtis Mallet. Obviously the Commission has the
10 discretion to look at an extended Period of Investigation.
11 In practice, application of that is quite rare. And I
12 believe it was you, Vice Chairman Johanson, that noted that
13 there is a certain burden to it. You have to show that
14 there is some important cyclical dynamic going on within the
15 industry that warrants looking at that extended period.

16 Obviously the Petitioner in this case didn't meet
17 that burden. It made the request, and the department--
18 "department," geeze--the Commission exercised its discretion
19 and chose not to collect that data. And what we see in
20 these cases is normally that decision is made at the
21 beginning of the final phase. The data is collected and
22 reported in the staff report.

23 I would argue, at this late stage trying to
24 expand the POI is not something that should be done. And I
25 don't think it's necessary. Obviously if this were going to

1 happen, you would have collected additional information on
2 purchaser questionnaires. There would have been comments on
3 what other questions might be asked in the questionnaire for
4 that extended period of time, and that process didn't
5 happen.

6 But again, I don't think it's necessary. And I
7 raised another issue that I think you pointed out, where
8 it's the cycle within the industry. And I think it's
9 important to note that the industry here is the processing
10 industry. The cyclical nature that the Petitioners are
11 talking about is a grower phenomenon. And we've already
12 reached the point when that decision was made that the
13 growers are not part of this industry.

14 And I think you need to think carefully about
15 whether there is a cyclical issue to even consider, given
16 the distinct industries at issue that we're talking about.

17 Finally, this all goes back to some of the
18 conversation that was made about the crop cycle. And I
19 would say that that discussion I don't think is terribly
20 significant. Because you might get some information out of
21 that if you had a static acreage base, if you could see that
22 fluctuation across a baseline, but that's not really what's
23 happening here.

24 You are not seeing any of that. What you're
25 seeing in the variation is a steady decline in the acreage

1 that's happened for more than a decade. And that's what's
2 important here, not the cyclicalilty from year to year of the
3 production.

4 VICE CHAIRMAN JOHANSON: Yes, Mr. Porter?

5 MR. PORTER: Thank you. Vice Chairman Johanson,
6 I want to go back. You asked the Petitioners in the morning
7 to provide some additional cases in which the Commission has
8 used a five-year POI. I just want to note that all of the
9 cases that they cite are very interesting.

10 We went to each of the cases they cited, and
11 here's the interesting thing: The staff report had the five
12 years' of data. And that's the only point that we're making
13 here. We have a staff report right here that has three
14 years of data, and typically that's what the Commission uses
15 for its decision. Not saying they can't use five, but they
16 rely on the staff report.

17 Each and every one of the cases they cited, if
18 you go to the staff report, the staff collected five years
19 of data. And that's why they used the five years of data.
20 I just wanted to make that point.

21 MR. MCCULLOUGH: If I could add one more point to
22 the question, there is a distinction between what should the
23 POI be and what evidence can be looked at as context for
24 understanding what's going in the POI. And I think our
25 position--and certainly there's been plenty of cases where

1 both Petitioners and Respondents have gone back in time to
2 help explain what is going on in the POI. And obviously
3 we're not telling you you shouldn't look at any data before
4 2015, but I think at this point in the decisions that have
5 been made obviously we would view the POI to be 2015 to
6 2017. And certainly if you want to look at historical data
7 you can, as context for understanding the POI.

8 VICE CHAIRMAN JOHANSON: Alright, thank you, Mr.
9 McCullough and Mr. Porter.

10 What is your response to the Petitioner's
11 assertion found at page 14 of their pre-hearing brief that
12 the decline of subject imports from 2016 to 2017 was largely
13 attributable to the filing of the Petition in June 2017?

14 Do you have any comments on this claim of the
15 Petitioners?

16 MR. MCCULLOUGH: Matt McCullough. I think Tom
17 Prusa addressed some of this in his slides--

18 VICE CHAIRMAN JOHANSON: He did, but if you could
19 go a bit further into that. I think it's an important
20 matter to look at.

21 MR. MCCULLOUGH: Sure. I--I--you know, we heard
22 that. Obviously a Petition being filed in June, in an
23 industry that has significant levels of annual and long-term
24 contracts among the importers, and that's right in your
25 staff report, we see no way that the Petition would have had

1 any effect on volumes in 2017.

2 What you saw in 2017 was the shifting among
3 import sources based on business and contractual decisions
4 made much earlier in the year.

5 VICE CHAIRMAN JOHANSON: Alright, thank you, Mr.
6 McCullough.

7 MR. PORTER: I'm sorry, Commissioner?

8 VICE CHAIRMAN JOHANSON: Yes, Mr. Porter.

9 MR. PORTER: Dan Porter, very quickly, Vice
10 Chairman Johanson. The Commission has historically analyzed
11 petition effect with the start of either AD or CBD duties.
12 And I believe that is the practice. So we're not talking
13 about June here. We're talking about when the preliminary
14 CBD duties were imposed, which was much later in time.
15 Because as you know, up until then all of the import entries
16 come in free and clear. So really it's not June we're
17 talking about; we're talking about a much later point in
18 time.

19 VICE CHAIRMAN JOHANSON: Alright, thank you for
20 your comments.

21 The Spanish Respondents make the argument that
22 the supply of raw olives suitable for ripe olives is
23 extremely limited. If this is the case, why don't we see
24 more firms reporting supply constraints in their
25 questionnaire responses?

1 MR. MCCULLOUGH: In terms of when you say
2 "firms," do you mean purchasers?

3 VICE CHAIRMAN JOHANSON: Purchasers, yes.

4 MR. MCCULLOUGH: Reporting supply constraints? I
5 think it would be natural if you have a contract with the
6 domestic industry. They will be able to supply that amount.
7 And the Petitioners this morning made several claims that of
8 course they've never shorted any one of their customers.

9 But perhaps only because they can only serve a
10 limited number of customers. But I would take exception to
11 the claim that they have never shorted customers. Of course
12 you heard testimony from Shawn Kaddoura on this point, and I
13 believe Mike Seidel can offer you some data on this, and it
14 reveals something very (speaking off-mike).

15 MR. BURCH: Excuse me, Mr. McCullough, can you
16 speak into the mike?

17 MR. MCCULLOUGH: Yes, sorry.

18 MR. SEIDEL: Mike Seidel. So our service level
19 in the past 11 months with Musco, when they say they never
20 shorted a customer before, our service level was 92.72
21 percent. So basically 8 out of 100 cases we did not
22 receive. And our customers expect a 99.5 percent fill rate
23 with us. And some customers we pay a penalty if we don't
24 service them 100 percent, or 99.5 percent.

25 And last year Musco's service level with us was

1 96.95 percent, and year-to-date 11 months, Bell-Carter's
2 service level with us is 97 percent, and last year was 98.5
3 percent.

4 VICE CHAIRMAN JOHANSON: Mr. Porter?

5 MR. PORTER: Again, Vice Chairman Johanson, I
6 would like to just, if I may, push back a little bit about
7 your underlying factual predicate, which is that the
8 purchasers did not mention sort of reliability of supply in
9 the questionnaire responses.

10 I mean I'm looking at pages V-23 to V-24 of the
11 staff report and it says that 24 purchasers provided
12 responses, and then it says here: Purchasers identified
13 reliability of supply, among other things, as nonprice
14 reasons for purchasing imported rather than U.S.-produced
15 product.

16 So I'm looking at the staff report. They
17 analyzed all the 24 questionnaire responses, and this is
18 their summary of what the purchasers said. And they
19 identified reliability of supply.

20 So I'm not so sure that the underlying predicate
21 that purchasers didn't identify that, is necessarily
22 accurate.

23 VICE CHAIRMAN JOHANSON: I thank you, Mr. Porter.
24 I will look closer at the staff report for that.

25 My time is about to expire, so I will end there.

1 CHAIRMAN SCHMIDTLEIN: Commissioner Williamson.

2 COMMISSIONER WILLIAMSON: Thank you, Madam
3 Chairman. I too want to express an appreciation to all the
4 witnesses for coming today.

5 There was some testimony this morning about
6 testimony about institutional suppliers' size preferences.
7 And I was just curious. What is it about the industry in
8 Spain that makes it better able to reliably source the
9 volume of specific sizes of olives needed to satisfy
10 institutional buyers?

11 MR. KADDOURA: It's very simple. The size of the
12 crop in Spain is really the key here. So Spain crop size is
13 550,000 metric tons on average versus California, it depends
14 on the year, it could be as low as 18,000, and it could be
15 as high, close to 100,000.

16 So the larger size, it's almost like a larger
17 sample. The more population you're going to have for that
18 specific size. I hope I was clear on that.

19 COMMISSIONER WILLIAMSON: No, that's clear.

20 MR. MCCULLOUGH: If I could add to that,
21 Commissioner Williamson, in Spain as well Hojiblanca is the
22 primary olive used for ripe olives, but it's also a dual use
23 olive for olive oil. And so the acreage, the total acreage
24 of olives in Spain is just fundamentally much, much larger
25 than the base in California. And it gives you much more

1 flexibility to find the sizes you need and then use the rest
2 for olive oil.

3 COMMISSIONER WILLIAMSON: If the domestic
4 industry can source what raw olives from other sources, if
5 you know what your demands are, can't you supplement your
6 sizes that way?

7 MR. MCCULLOUGH: Fair question. And this morning
8 there was a bit of table pounding about--I'm sorry, I've got
9 to talk into the microphone.

10 You know, we heard a lot this morning that
11 Petitioners were insulted by some of the arguments we've
12 made, but honestly all the indignation is on this side of
13 the room. Because what we heard--

14 COMMISSIONER WILLIAMSON: We always have
15 indignation in the morning, and indignation in the
16 afternoon--

17 (Laughter.)

18 MR. MCCULLOUGH: Absolutely. So trust me, ours
19 is--but, you know--and this one, this is the essence of it,
20 but we heard a lot of contradictions today.

21 But this one really goes to the core, because the
22 idea that they can source importer raw olives on a viable
23 basis is flatly contradicted by a certified petition and
24 sworn testimony in the preliminary phase of this proceeding.
25 They have gone in the complete opposite direction to say

1 that it is a completely viable option.

2 So, you know, I think my answer to your question
3 then is, no, they can't. They can't get those sizes,
4 because importing raw olives isn't really a viable option
5 for them.

6 MR. PRUSA: Tom Prusa. I want to add--

7 COMMISSIONER WILLIAMSON: Does the data support
8 that?

9 MR. PRUSA: Yes. As a matter of fact, that they
10 can't. Number one, their statements say it. And in fact
11 the data on the record does not support it.

12 Now they have--

13 COMMISSIONER WILLIAMSON: No, their data does
14 show that they're relying less on imports than they were
15 before.

16 MR. PRUSA: Correct. They are purchasing
17 imports. But I think the one thing that was lost this
18 morning, the decision--so you're taking the olives off the
19 tree. The decision whether an olive is going to ultimately
20 become a ripe olive, that decision has to be made within 24
21 hours of the olive being picked. That decision as to how
22 you're going to--what solution you're going to put the ripe
23 olive in, that determines whether or not it can be used to
24 ripe olive.

25 Once it's in the solution, it was testified to

1 this morning and it's on many, many public records, that
2 once you get it in the solution it can stay in the state for
3 quite awhile. But the idea that you can look forward to
4 what your size problems are going to be, when you have to go
5 back into the past and tell them you need some small olives,
6 when you don't know for sure when the crop is coming, this
7 decision is not dynamic. You have to make the decision to
8 go ripe or go an alternative form, whether it's going to
9 become another type of table olive or some other use, it has
10 to be done almost immediately after it's picked.

11 That decision makes it very difficult to use
12 imports in a large way to solve their supply problems. You
13 can use it to fill in gaps, as was testified previously.
14 Now we hear that they have a model that they think they can
15 use it systematically, and that's not consistent with what
16 they've testified or with the data.

17 Mr. Craven: May I also just add, with respect to
18 your question, I think the testimony we had today was
19 whether they can or can't use the imports to fill in the
20 size gaps, they haven't. Because we have actual testimony
21 from purchasers that were unable to--and were told by the
22 domestic industry, we cannot supply to you a specific size.

23 In addition, in the Bell-Carter--it was to
24 Bell-Carter's statement that was posted in Mr. Prusa's
25 testimony, they even noted there was a particular problem in

1 a phrase he didn't highlight with small slices--small sizes
2 for slicing.

3 So I think whether or not theoretically they
4 could meet this with imports, the simple fact is they
5 aren't. And that is, therefore, I think also a very
6 important point.

7 MR. SEIDEL: And if I could add--Mike Seidel--as
8 a purchaser I'm buying olives from Spain because I want
9 Spanish olives, and my customers want Spanish olives, or I'm
10 buying olives from Morocco. We've used the word "import,"
11 but that's where they're from. But I'm buying particularly
12 Spanish olives.

13 If I'm buying olives from California, I want them
14 to be domestic olives. It makes no sense at all for me to
15 buy an import olive from California.

16 COMMISSIONER WILLIAMSON: Can you tell the
17 difference after it's been processed and sat in a solution
18 for a year-and-a-half? This gets back to the question Mr.
19 Prusa raised. He talked about having to make that decision,
20 but they're talking about keeping the olives for a year,
21 maybe two years, after you process them. I assume--what is
22 it about it that says that you have to--if you don't pick
23 the right one off the tree you're not going to have the
24 supply that your purchaser wants? If you're talking about
25 these inventories, then storing olives for a year or two--or

1 even in the raw form because they said they were storing for
2 a year, and I guess if you process them--

3 MR. PRUSA: Correct, you can store at both levels
4 of production, semi-processed and processed. But this is
5 highlighting the point that it is expensive if they have to,
6 because they can't rely on their domestic crop. They don't,
7 because it's a small crop--and we've heard testified--you
8 need this larger crop to get a diversity of sizes. It's
9 hard to predict from year to year exactly the distribution
10 of sizes.

11 That's involving of the cost involved to why,
12 having a model they seem to think they're going to move to,
13 is going to be a difficult model to make this transition,
14 because you're going to have to hold--there's inventory
15 issues. That's an expensive problem. And they testified
16 that it's 30 percent more expensive to do this.

17 MR. MCCULLOUGH: Commissioner Williamson--

18 COMMISSIONER WILLIAMSON: Okay, you gentlemen are
19 covering it so fast, but go ahead.

20 MR. MCCULLOUGH: You know, this is some of the
21 worst examples of cake-and-eat-it-too. I get that the
22 Petitioner is largely in control of the scope language, but,
23 you know, but for the express exclusions for provisionally
24 prepared olives, they would be covered by the scope.

25 COMMISSIONER WILLIAMSON: What kind of olives?

1 MR. MCCULLOUGH: Of this language. Provisionally
2 prepared, right, olives put in brine.

3 COMMISSIONER WILLIAMSON: It should have been in
4 the scope.

5 MR. MCCULLOUGH: But for the express exclusion
6 language, it's covered by the scope. And so you look at
7 this and you think, you know, okay, legally they can do
8 that, but really this is--you know, the trade law is set up
9 to protect the domestic industry from imports, not to
10 protect the domestic industry's own imports from other
11 imports from the same source. And that's kind of what has
12 been set up here.

13 But going back to what Professor Prusa said, they
14 say they can import olives, and they've done some of that.

15 COMMISSIONER WILLIAMSON: We have the data.

16 MR. MCCULLOUGH: Yeah. No, the data is there,
17 but they clearly can't at the level that they say that they
18 want to. If they would, they would have filled more of
19 their capacity. And they haven't done that.

20 MR. DUNN: Commissioner Williamson, this is Chris
21 Dunn. I just want to look at some numbers to put that in
22 context.

23 The Petitioners' production--I'm going to pick a
24 number, roughly, a very rough number, let's say 50,000 to
25 60,000 tons, in that range. I'm not going to give any

1 proprietary information.

2 That's 26 percent of the market. They have over
3 the POI, the most that they have ever imported is 16,000
4 tons. Now that's striking. That 16,000 tons is unusual to
5 me, and very striking, but their 50,000 to 60,000 tons is 26
6 percent of the market.

7 They're not going to supply the entire market.
8 It's going to take them 100,000 tons of imported olives to
9 do that. They've never done that. They're not going to do
10 that.

11 COMMISSIONER WILLIAMSON: Just one quick
12 question. The 26 percent, how does that--if you look at the
13 C Table, we're showing a domestic share that's larger than
14 that, so are we talking something--

15 MR. PRUSA: Mr. Somers's 26 percent, when he
16 quoted it on his slide in his presentation, that is all
17 table olives, not just ripe olives. So as he said, that
18 includes a lot of green olives in there. His chart was
19 using public data, and so Mr. Somers's data has in some ways
20 a lot--

21 COMMISSIONER WILLIAMSON: Green olives are
22 covered, aren't they? I mean, it's just--black or green
23 depends on how you process them.

24 MR. PRUSA: These are olives that are not
25 processed as ripe olives, and they're not covered.

1 MR. SOMERS: And that's exactly what he said. We
2 were trying to also look at the whole table, all of
3 consumption in the U.S., because the green olives do
4 represent a high proportion.

5 COMMISSIONER WILLIAMSON: But the domestic
6 industry sells green olives, don't they?

7 MR. SOMERS: The domestic industry--

8 MR. MCCULLOUGH: Commissioner Williamson--I'm
9 sorry--when Joe was referring to green olives, he's
10 referring to Spanish green olives, fermented olives, which
11 are not covered by the scope. And that's a continuing
12 confusion in this case, the distinction between black olives
13 and green olives, because there is a green--yes, there is a
14 green ripe olive that is covered by this case. It's almost
15 a unicorn, but it is covered by this case.

16 COMMISSIONER WILLIAMSON: I remember seeing some.
17 I went through the factories. Okay, but you're confusing
18 things now, because you start throwing in something and you
19 don't tell me what it's talking about. And how important is
20 this green, Spanish green olive based on our data and what
21 we're looking at?

22 MR. CRAVEN: The Spanish green olive, as opposed
23 to the fermented Spanish green olive, is a very important
24 olive. It just happens not to be a ripe California olive,
25 and it's not within the scope of the Petition.

1 COMMISSIONER WILLIAMSON: And the consumption of
2 that is also not in our data, either, is it?

3 MR. CRAVEN: Well, no, but it is in his data
4 because his data is based on a different data point. And so
5 his data covers--if you go into the grocery store and you
6 look at the olive section, his data essentially covers the
7 entire olive section. This case covers the bottom two
8 shelves.

9 MR. SOMERS: The reason we included that data,
10 because we thought it was very important, because from
11 people we were talking to, we understand people want a wide
12 type range of products they want to buy, not always just
13 black olives.

14 So we're trying to show what the breadth of
15 consumption is. And if you're looking to buy that wide
16 range, you're going to have to look to a foreign supplier.

17 COMMISSIONER WILLIAMSON: Yeah, and I asked about
18 specialty olives, because that's what I like to eat. But
19 that's not the subject of this case.

20 My time is going way over, so--

21 MR. PORTER: I'm sorry, Commissioner, just one
22 minute? I want to get back to your original question,
23 because we got a little bit off track, okay?

24 We're obviously trying to make arguments, but in
25 a public setting, okay? So when Chris was trying to give an

1 example and he picked a number because it was used in a
2 public setting, and you're saying, well, I'm looking at some
3 number, so let's both look at C-1, okay? All I want to make
4 a point is, what Chris's fundamental point applies equally
5 when you're using the numbers for their factual share of the
6 market.

7 It applies the same. Okay? The fact is, they
8 cannot import the balance in a viable way. That was Chris's
9 point. It's valid whether you use 26 percent or the
10 percentage that are actually there.

11 COMMISSIONER WILLIAMSON: Okay, thank you.
12 Post-hearing, those points about not being able to supply
13 the market, or refusing to supply, if you could sort of
14 provide that data post-hearing.

15 And I'll invite the Petitioners to comment on
16 this, as they said that they never short-supply anybody.

17 MR. CRAVEN: We most certainly will be very happy
18 to supply that information.

19 COMMISSIONER WILLIAMSON: Okay. Thank you. And
20 I'll invite the Petitioners to either comment or supply
21 additional data.

22 Thank you for all those answers.

23 CHAIRMAN SCHMIDTLEIN: Okay. Commissioner
24 Broadbent.

25 COMMISSIONER BROADBENT: Okay. Uh, Mr.

1 McCullough, we spent a lot of time today discussing
2 conditions of competition, particularly in the growing of
3 olives as a raw material. But we've got a domestic industry
4 here that's defined as the processors. Is the emphasis on
5 the conditions necessary or are the injury factors of volume
6 pricing impact enough for the Commission to see injury or
7 no injury?

8 MR. MCCULLOUGH: I think you have enough just
9 with the traditional factors, but without question, the
10 grower issue and the lack of raw material is part of the
11 volume equation. And it does get to whether or not this
12 industry can supply the market and whether they are being
13 affected by imported volumes.

14 COMMISSIONER BROADBENT: Okay. Dr. Prusa, I've
15 seen varying units to measure the volume of shipments,
16 either short tons, dry weight, or metric tons or by cases,
17 as in the pricing data. Do you take issue with any of these
18 metrics?

19 MR. PRUSA: I agree it's confusing. There are
20 -- do I take issue with any of them? I think if you -- the
21 simplest is when everything is converted to the same base
22 and so that's why in the pricing product data, which is
23 different sizes of product, cans and pouches, that the staff
24 did provide information that allowed to convert those to a
25 different unit, a unit weight. And that is a much more

1 useful metric, in terms of trying to think about volume.

2 So I think the key thing is, is it's important
3 for the Commission. There's normally your practice to have
4 a unit that allows you to compare. You know, usually it's
5 tons of steel and three or four product categories, but you
6 have the same unit. In this particular case, because the
7 units are so different -- a case. What's a case? It's a
8 little tiny case or these are big cases of stuff, the amount
9 of olives in it. So I think the one thing that we did is
10 converted it all to the same basis, which allowed you to
11 compare it more easily across the product price, and so I
12 think the key is that you use one that's cross-comparable,
13 across the various tables and things. So I think that's the
14 best advice --

15 COMMISSIONER BROADBENT: So which one do you
16 prefer?

17 MR. PRUSA: I think the idea that we convert
18 everything to tons and since this is the United States,
19 we're using short tons.

20 COMMISSIONER BROADBENT: Short tons, dry weight?

21 MR. PRUSA: Yeah.

22 COMMISSIONER BROADBENT: Okay. Mr. Seidel, are
23 contracts with ripe olives from Spain negotiated in terms of
24 Euros or U.S. dollars?

25 MR. SEIDEL: They are negotiated for us through

1 an importer, who negotiates it based on the Euro.

2 COMMISSIONER BROADBENT: Okay. Mr. Rockwood,
3 can you discuss the process to get certified? You mentioned
4 you're currently certifying Egyptian olives?

5 MR. ROCKWOOD: Thank you for the question. Are
6 you referring to certifying suppliers we work with?

7 COMMISSIONER BROADBENT: Right.

8 MR. ROCKWOOD: Well, we have a process in
9 certifying all suppliers that we deal with. We have a QA
10 director that will have a supplier package, if you will,
11 that will require a lot of questions to be answered on the
12 part of that supplier, in terms of their process, in terms
13 of their security controls, in terms of bioterrorism. We
14 require audits.

15 In the case of olives, in particular, because of
16 certain customer requirements, we actually make visits to
17 the factories to see the production and for those suppliers
18 that we've dealt with for a long period of time, they must
19 have renewed audits, and we will visit them, you know, time
20 and time again.

21 So it's a process where they have to meet our
22 C-TPAT requirements, our FISMA requirements and our internal
23 requirements, plus meet the specs that our customers give to
24 us. Because they'll give us very specific specs that we
25 must validate having been met before we'll do business with

1 them.

2 MR. CRAVEN: Commissioner Broadbent, could I
3 also add that olives are subject to both the Federal Canning
4 Establishment requirement, which is a federal law requiring
5 that any establishment that cans a product must register
6 with the U.S. and including providing its procedures which
7 must then be accepted by the U.S. government. And it's also
8 subject to the Food Safety Modernization Act which requires
9 a degree of traceability.

10 So in any food product, particularly because of
11 U.S. federal requirements, there are significant procedures
12 required prior to any purchase. This isn't a product where
13 you can simply order the product and not worry. Here you
14 have numerous U.S. federal requirements that must be
15 satisfied in order to bring the product in.

16 COMMISSIONER BROADBENT: Okay. Mr. Seidel, do
17 you see restaurants labeling in their menus where the olives
18 come from? Such as an entr e that would say, you know,
19 "including Spanish olives"? Does that have any added
20 marketing value?

21 MR. SEIDEL: We will see some customers call out
22 California. You know, somebody might generically in their
23 menu say Spanish olive, but there's a little bit of
24 additional marketability to the word "California" or folks
25 will consider "grown in the USA" or consider under their

1 kind of local, "buy local" concept. So if it's gonna be a
2 menu mention, it will be for the domestic, California
3 product.

4 COMMISSIONER BROADBENT: Okay. Ms. Avella, do
5 U.S. purchasers appreciate the difference or even care if a
6 ripe olive sold in the U.S. is a processed, raw olive from
7 the U.S. or a processed, raw olive from Spain? Are there
8 any labeling requirements?

9 MS. AVELLA: Atlanta, as a whole, we don't
10 deal with customers looking for domestic product because our
11 customers come to us looking for the best quality of the
12 product that we can import. And for them, as for labeling
13 requirements, all labeling requirements go through the FDA,
14 so all of our labeling requirements on all of our product
15 require the same rules that would apply in all of the U.S.
16 FDA regulations.

17 COMMISSIONER BROADBENT: Okay. Mr. Kaddoura,
18 what would be the reason that you would buy ripe olives from
19 the domestic industry that are processed from raw olives
20 from Spain? Compared to importing the ripe olive from
21 Spain?

22 MR. KADDOURA: If I understood the question
23 correctly, why would I buy from Spain versus California?

24 COMMISSIONER BROADBENT: Yeah, I mean, why would
25 you buy ripe olives where the domestic industry supplies

1 them and they process them, or just -- excuse me. Why would
2 you buy ripe olives from the domestic industry that are
3 processed raw olives from Spain, compared to importing ripe
4 olives from Spain?

5 MR. KADDOURA: It depends. It depends also on
6 customer requirement. I depends on availability. It
7 depends on different factors and the crop availability. So
8 all this together really, it comes down to supply and size
9 availability. That's the driver. There's some customers
10 that will require California. We have customers in the
11 retail that they wanted California. And that's why
12 sometimes we have to go to California.

13 COMMISSIONER BROADBENT: Okay. This would be
14 for anyone. Is the Andalusia region in Spain subject to the
15 same sort of natural weather events and occurrences as
16 California?

17 MR. CRAVEN: I think, at least from our
18 perspective, we're gonna have to add to that in the
19 post-hearing brief after we talk to some Andalusians.

20 MR. DUNN: Let me just -- this is Chris Dunn,
21 Commissioner Broadbent. Spain grows olives basically from
22 Madrid's south, throughout the whole country. You can see
23 them when you take the train from Madrid to Sevilla, you see
24 olives the whole way down. And so it's not just restricted
25 to Andalusia. It's all across the country. Different

1 regions, different microclimates, a much broader base of
2 cultivation.

3 COMMISSIONER BROADBENT: Okay, that's helpful.
4 What do you think is the reason that the industry saw an
5 overall decline in apparent consumption from 2015 to 2017?

6 MR. SEIDEL: I can probably also answer that.
7 I'll speak specific to the pizza segment. So in the last
8 couple of years, there's been an influx of pizza chains like
9 MOD Pizza or Blaze Pizza where you kind of create your own
10 pizza. They come in and within five minutes that pizza's
11 made for you.

12 Those pizzas are smaller than what a traditional
13 size pizza would be, so if they're putting olives on there,
14 it's only on maybe a 10-inch diameter, rather than a 12 or
15 16, it's taking less olives. Because we actually see in our
16 data, we see the same amount where more customers, specific
17 customers, unique customers buying olives, but just less of
18 the olives, and it's traditionally around that pizza format.

19 MR. PRUSA: May I add? This is Tom Prusa. Add
20 more thing. I think it was mentioned this morning. It's
21 APO, but it was mentioned that a large sandwich chain, not
22 inconsequential for the case, has experienced substantial
23 changes in demand for its product. And in turn, that's fed
24 back. That's an example of -- there are some really big
25 buyers, that they can move the needle by themselves. And

1 that was mentioned this morning, but that's I think on the
2 record.

3 COMMISSIONER BROADBENT: Okay, thank you very
4 much.

5 CHAIRMAN SCHMIDTLEIN: Okay. I'd like to go
6 back to this question about supply constraints that
7 Vice-Chairman Johanson was talking about. And I actually
8 have pulled up the purchaser questionnaire. Fortunately,
9 Mr. Seidel, you submitted your questionnaire, it was late,
10 but you did it get it in on Sunday and I see that you're the
11 one who actually completed it. So we do appreciate it, even
12 if it's late.

13 But the question in that questionnaire, having
14 to do with supply constraint, isn't just limited to
15 shortchanging current customers. It's -- "Has any firm
16 refused, declined or been unable to supply your firm with
17 ripe olives since January 1, 2015? Examples include placing
18 customers on allocation or controlled order entry, declining
19 to accept new customers or renew existing customers,
20 delivering less than that quantity promised, being unable to
21 meet volume requests, being unable to provide the types of
22 containers or sizes of olives you request, or being unable
23 to meet timely shipment commitments."

24 So in response to that question, the staff
25 report shows that 19 out of 24 purchasers, which of course

1 doesn't include Mr. Seidel's questionnaire response since we
2 didn't get it in time to include it in the staff report,
3 reported no supply constraints. So going back to the
4 question of, if there is this big problem with supply
5 constraints, which would include, as if you read the
6 question, accepting new customers, why do you think we don't
7 see more purchasers reporting that the U.S. can't meet their
8 requirements?

9 MR. MCCULLOUGH: Matt McCullough. I think it's
10 one thing to say that the domestic industry, as a purchaser,
11 that they supply that purchaser and there's not a problem.
12 Obviously there are some shortages that occur, but in terms
13 of outright denials of supply, the record is the record. It
14 says what it says.

15 I think our point -- one of our points about
16 supply constraints is that there's an outer limit to what
17 this domestic industry can do. And they're operating within
18 that parameter. And you can see that in the data. And it's
19 data that calls, you know, calls into question a number of
20 things, including their inventory levels and whether they
21 can supply out of what are purportedly high inventory
22 levels.

23 And here again you can -- this will be conduct.
24 So if you look at 2014 for example, you had a
25 canning-quality olive crop of 30,000 tons in the United

1 States. In the 14-15 crop year. That precipitated almost
2 16,000 tons of provisionally prepared olives in 2015.

3 While at the same time you can look at inventory
4 data from that period, and this is public data and you can
5 take it all the way back to 2010, inventory levels had
6 basically been flat at a particular level. There clearly is
7 limits on this industry to supply either the volume or the
8 particular size ranges that customers need. And it's within
9 those limits that they operate. So you may have evidence
10 that there's not outright denials of supply. We'll look at
11 that. But our main point is, there is a very finite limit
12 of supply and it's always going to be that way.

13 CHAIRMAN SCHMIDTLEIN: Okay.

14 MR. CRAVEN: Could I also -- Mr. Craven,
15 Sandler, Travis. We'll expand on Mr. Kaddoura's two
16 examples that he provided. But a purchaser isn't always a
17 purchaser. And you have to take into account the size of
18 the purchaser. And in the case of Mr. Kaddoura's situation,
19 we'll discuss how these were very significant purchasers,
20 you know.

21 You can have ten little tiny communities that
22 all camp by a fire engine and New York City decides it can't
23 buy fire engines. The New York City fire engine failure
24 purchases are a lot more significant than Cabin John. So we
25 will discuss this. It's really proprietary and we can't go

1 into detail. But I think you will find rather enlightening.

2 CHAIRMAN SCHMIDTLEIN: Okay. Well, I mean, but
3 that was sort of my point as well, and the sense of the
4 overarching argument is that this is just a small industry
5 and they can't supply the demand. And if that were true, my
6 point was, why wouldn't we see more answers "yes" to that
7 question and then it asks for a description, right? Of
8 that. Instead of just the blanket "no". Are there supply
9 constraints? "No", right?

10 And then there's a second question behind that,
11 of course, availability of specific product types. I
12 haven't gone back through and tabulated all of the answers
13 to that. "Are certain grades, types, sizes of ripe olives
14 only available from certain country sources?" So it does
15 break that down even further. Mr. Porter, I see you waving
16 your hand back there.

17 MR. PORTER: Because I have a direct response to
18 your question --

19 CHAIRMAN SCHMIDTLEIN: Okay.

20 MR. PORTER: -- Madame Chair. I asked you to
21 look at Pages V24 to V25. And you actually mentioned, you
22 said, 19 of 24. Okay, that sounds like, doesn't sound good,
23 sounds like most of the industry is saying "no". But I
24 asked you to look at the five that said "yes". And I asked
25 you to go back in the confidential data and add up their

1 volume who said "yes" and compare that to the 19 who said
2 "no", and I think you'll have a very different answer, or
3 very different implication from the answer.

4 CHAIRMAN SCHMIDTLEIN: Okay. So following on
5 this argument, that Spanish imports are being pulled into
6 the market because U.S. cannot supply. Why are the Spanish
7 imports underselling then, right? If there is that need and
8 that's the supply, why are they underselling the U.S. at the
9 degree that they are.

10 MR. CRAVEN: I think, again, you're gonna be
11 dealing a lot with confidential data, but I would point out
12 that the both of the domestic industries have highly
13 promoted brand names. And highly promoted brand news
14 necessarily include a brand premium. You wouldn't promote a
15 brand if it didn't have a value of promoting the brand. A
16 Rolex watch and a Timex watch are essentially
17 interchangeable.

18 CHAIRMAN SCHMIDTLEIN: So you -- okay. So your
19 argument is that the U.S. is priced higher because in the
20 retail brand segment of the market, they promote their
21 brands. Is that --

22 MR. CRAVEN: Well, I think we would all agree,
23 if we were dealing, for example, with a store brand, then
24 store brand is going to carry a lower price than a name
25 brand, in part because the name brand, particularly in the

1 case of the very well-known domestic name brands is heavily
2 promoted, and the store brand is just that. It's the store
3 brand.

4 CHAIRMAN SCHMIDTLEIN: That's only one portion
5 of that market though. Right? I mean if you look at what
6 the U.S. is shipping into, I mean this is not -- and you
7 have access to the APO, Page 2-3, "to distributors,
8 retailers" and it breaks it down?

9 MR. CRAVEN: We'll expand upon this. We're
10 really treading really close to BPI here.

11 CHAIRMAN SCHMIDTLEIN: Okay.

12 MR. KADDOURA: Ma'am, if I may? Shawn Kaddoura
13 here. The point here is, about 40% -- there are three
14 national brand in the ripe olives on the shelf. So Pearl's,
15 Lindsey, by the two petitioners are Mario. For the
16 California, both brands constitute is about 40% as of 2017.
17 Mario is slightly less than 5%.

18 So when we look at the ripes, sales in the U.S.
19 and to earlier question, you got to look at it, when
20 somebody said, how would you look at the pricing in the
21 U.S.? You've got to compare the food service price, meaning
22 the industrial, as segment by itself. And then the private
23 label, which is really sales at a lower price than the
24 brand, and that price delta could be anywhere between, as
25 low as 10-15% to as high as 30%.

1 So without me being privy on anybody's data, the
2 pricing for the ripers is mostly gonna be driven really in
3 the sector that's selling them.

4 CHAIRMAN SCHMIDTLEIN: Alright. I was just
5 looking back at the pricing products because we have two
6 pricing products that are retail and two pricing products
7 that are institutional -- I mean if I understand your
8 response, right? It's really about the retail branded
9 product?

10 MR. KADDOURA: Correct. In the retail, there is
11 two segments. There's the brand the private label.

12 CHAIRMAN SCHMIDTLEIN: And the private label.
13 Okay.

14 MR. KADDOURA: And then there's the industrial,
15 pretty much, whether it's branded or non-branded, is gonna
16 be close in price.

17 CHAIRMAN SCHMIDTLEIN: Okay, alright. Well
18 maybe somebody who has access to the APO can elaborate on
19 that since that's not what the pricing products show.

20 MR. PRUSA: One thing I would mention is Product
21 1 is a little unusual in that as was just described, there's
22 really three branded products. And that's public data.
23 It's not -- you know, there's just the each of the two
24 petitioners brand and then Mario. So the nature of that
25 market, Product 1 is different than -- that's unusual

1 characteristic, that overlay on that. Just wanted to add --
2 that makes Product 1 different than the other three
3 products.

4 MR. MCCULLOUGH: And one last point I think
5 that's worth making. Matt McCullough. There may be
6 underselling and it's seen. There is underselling by the
7 Spanish product, but don't forget that there are other
8 imports in the market underselling Spain. And there may not
9 be a sale made in one of those products, but there could be
10 a bid there for Morocco, for another country at a lower
11 price.

12 CHAIRMAN SCHMIDTLEIN: And so they're competing
13 on price?

14 MR. MCCULLOUGH: They're competing against other
15 import sources.

16 MR. PRUSA: I think they're competing on a
17 variety. The staff report makes it clear that they're
18 competing on a variety of characteristics, one of which is
19 price, but certainly not the only characteristic they
20 compete on, and I think most of the responses is that price
21 is not the reason they're choosing.

22 CHAIRMAN SCHMIDTLEIN: Okay. My time is
23 expired. We can come back to this. Vice-Chairman Johanson.

24 VICE CHAIRMAN JOHANSON: Thank you, Chairman
25 Schmidtlein. Mr. McCullough, you just brought up Morocco,

1 and I'm curious about the role of Morocco in this
2 investigation. On Pages 23 to 25 of the Agribusiness
3 Consulting report, we read that imports from Spain initially
4 displace imports from Morocco in the U.S. market.

5 But that prices of U.S. imports from Morocco
6 dropped late in the period. Also on Page 11 of the
7 petitioners' brief, there is a suggestion that low-price
8 exports from Morocco in the Spanish market caused Spanish
9 producers to export more olives to the United States, and
10 that Spain should bring a dumping case against Morocco.
11 Could any of the witnesses provide clarity on Morocco's role
12 here?

13 MR. MCCULLOUGH: I think what the Commission
14 needs to be looking at is Morocco's role in this market.
15 It's Morocco competing against Spain and other import
16 sources competing against Spain for demand in this market.
17 And what we've seen is competition between it and among
18 those import sources which have largely remained flat
19 through the entire POI and the point about Morocco product
20 in the Spanish market, I don't think is particularly
21 relevant.

22 DR. PRUSA: I wanna add one thing -- I think
23 Morocco's a very interesting country to look at because
24 Morocco's clearly proves that price is not the only factor
25 in the market. You have the data. We have data. It's

1 clear that people who are making purchasing decisions are
2 making decisions from whom to purchase for a variety of
3 reasons, and it can't -- if it were as simple as "about a
4 penny a can" or something, I mean, this is clearly not what
5 we're seeing in the data that you have and I've seen on
6 Product 3 and Product 4.

7 So there's clearly more to the story about the
8 decisions that the buyers are -- and that's, I think,
9 Morocco's very, for not only identifying the role to the
10 extent that underselling plays a role, but also it
11 highlights what the purchasers have told you about their
12 purchasing decisions.

13 VICE CHAIRMAN JOHANSON: Okay. Mr. Prusa, could
14 you address that a bit further in the post-hearing brief?
15 I'd appreciate it.

16 Petitioners at Page 21 of their prehearing
17 brief, point to lost sales and lost revenue survey data.
18 The actual numbers are proprietary, but for post-hearing,
19 could you all please comment on the relevance of the number
20 of purchasers that considered subject imports to be lower
21 priced? Mr. Porter?

22 MR. PORTER: We did this extensively in our
23 prehearing brief. If you -- I'm trying to find it -- we had
24 an entire section on it. Let me look at the Table of
25 Contents, and we did just what you're asking now, is we

1 looked at -- essentially we looked at all of the answers,
2 but we went one step further and matched volume to the
3 answers, and then when you do that, you get sort of a very
4 different, if you will, conclusion from just looking at the
5 number of purchasers.

6 And in a way, it's very analogous to what I was
7 dealing with, with Chairman Schmidlein. You can say 19 of
8 24 said X, but if the five are five times the 19, you come
9 to a different conclusion. And that's what we've done with
10 the lost sale and lost revenue allegations.

11 VICE CHAIRMAN JOHANSON: Okay, Mr. Porter. I'll
12 look at that in your brief. I apologize. I read it, but --

13 MR. PORTER: Yeah, it's on Page 52 of our brief.

14 VICE CHAIRMAN JOHANSON: Okay. I've been
15 reading a lot, so I appreciate you pointing out where that
16 is. I will look at that again. Thank you. Likewise, on
17 Page 23 of the petitioners' brief, they point to instances
18 where purchasers cited lower price as a reason for
19 purchasing subject imports. Could you all please comment on
20 these allegations in your post-hearing brief as well?

21 MR. PORTER: I apologize. That's the question
22 that we actually addressed.

23 VICE CHAIRMAN JOHANSON: Okay.

24 MR. PORTER: Typically, we -- quite honestly,
25 the lost sale, lost revenue, the way in which it was

1 presented in the staff report, combine both what I call sort
2 of traditional lost sale and lost revenue and this other
3 question which you just said, which is, "Was price a factor
4 in your decision to buy Spanish versus the domestics?"

5 And it was that question that we went in
6 purchaser by purchaser and said, did they answer yes or no?
7 And what was the quantity of their purchases? And we have a
8 nice chart right in the brief that does that for you.

9 VICE CHAIRMAN JOHANSON: Okay. I will look at
10 that. Thank you, Mr. Porter. And I'm curious about the
11 whole issue of olive oil production. Maybe that's because
12 we did a major 332 report on olive oil four or five years
13 ago when I first came to the Commission, so I know a fair
14 amount about olive oil now.

15 Footnote 21 on Page 111 of the confidential
16 staff report contains a petitioners' claim that table olive
17 varieties are not well suited for olive oil production.
18 Also, Footnote 5 on Page 24 of the confidential staff report
19 cites the University of California's assessment that table
20 olives and oil olives require different irrigation and crop
21 management practices. Do you all agree with these
22 assessments?

23 MR. SOMERS: We included in the study that olive
24 oil olives that are being planted now started in 2005 are a
25 different variety and they're different tree makeup, and

1 actually, based on the information, talking to ERS, we think
2 their area is probably 10,000, 11,000 acres right now. And
3 it's something --

4 VICE CHAIRMAN JOHANSON: And their area being
5 what --

6 MR. SOMERS: Of olive oil for production.

7 VICE CHAIRMAN JOHANSON: Okay.

8 MR. SOMERS: Because what we did on that is,
9 economic research service, the USDA gives total olive area.
10 They do not break it out. We know what table olive area is.
11 And we also know from a report that was done in 2005 where
12 there was a substantial amount of acres planted for olives
13 for oil production. And we calculated the difference
14 between the two regarding how much we think is being
15 produced of olive oil production.

16 MR. MCCULLOUGH: Matt McCullough. This point
17 was raised because obviously -- we've made a point in our
18 brief and if you read, it's Pages 15 and 16, there was a
19 suggestion made in the preliminary phase that you absolutely
20 don't use table olives, the Manzanilla variety, for olive
21 oil.

22 I did not so much analyze that fact, but I just
23 simply went out onto the internet to discover the fact that
24 they are in fact used for olive oil production and
25 increasingly so. So I didn't necessarily quantify that

1 because the numbers weren't there.

2 But it's part of the story about where the
3 acreage is going. Certainly I would fathom that more
4 acreage is shifting to specialized olive oil varieties. But
5 I would also say that there is table olive tree production,
6 I think the evidence is clear, that is being used for olive
7 oil, not for table olives.

8 VICE CHAIRMAN JOHANSON: Okay, that's where I
9 was confused. Mr. Prusa?

10 MR. PRUSA: Well, I was just gonna add that the
11 caveat -- I wanna concur with what Mr. McCullough just said,
12 but the caveat the domestic industry made is that we don't
13 know of commercial volumes, they have a stronger stamina,
14 which you can't use these trees for olive oil and then they
15 have a caveat some place put in there about commercial runs.
16 Our point is, in fact, there is some substitution options.

17 Is it the factor that's driving the industries
18 over -- you know, this gray cloud -- No. But is it an issue
19 that is affecting at some level the decisions of some people
20 who are growing Manzanilla trees? There's evidence, quotes,
21 articles that people are doing that. Now the question is,
22 we don't have a volume number on it, but the idea that it's
23 not occurring is not true, because there's stories out there
24 from California of people doing it.

25 MR. SOMERS: And there was a study, as I

1 mentioned, in 2005 where there was a number of acres planted
2 to the olive oil production. So it is happening out there.

3 VICE CHAIRMAN JOHANSON: Alright. Thanks for
4 your responses there. Mr. Rockwood, I believe you addressed
5 earlier the whole issue of price premiums for branded
6 products. And to what extent would you claim that branded
7 ripe olive products do indeed carry a price premium? And to
8 what degree do you think ripe olive brands benefit from
9 customer loyalty?

10 And this can be answered by any of the
11 witnesses, but I just brought it up with you, since you
12 raised brand new products before.

13 MR. ROCKWOOD: Most of the branded products that
14 we deal with have to with private label. I think I've heard
15 a lot of talk today about, you know, branded products
16 versus, you know, store brand. So we deal with, as you may
17 or may not know, many of the food service distributors we
18 deal with over my -- over the last two decades, they've
19 really gone out of their way to develop their own private
20 labeled products.

21 So we have programs with these customers and
22 they see great value in those brands, but the bottom line is
23 that those are private labeled brands that are owned by
24 those food service distributors.

25 So that's the market place within which we deal

1 with. And it really speaks to what the whole food service
2 industry is about and how they procure.

3 I really can't speak to nationally branded
4 products that go into the supermarket shelves because I
5 don't deal in that arena. Primarily mine is the food
6 service market that I addressed.

7 MR. SEIDEL: So Mike Seidel. Food service
8 customers recognize a "national brand" like say Lindsay, or
9 the Pearl, or Heinz Ketchup for that matter. And then
10 there's obviously the private label brand for the
11 distributor.

12 So the advantage to a private label brand for
13 the distributor is maybe it's their own formula, it's their
14 specifications, but it becomes our own equity, the equity of
15 our company.

16 So when our sales people are out selling a
17 product, everybody's got Heinz Ketchup, but not everybody
18 has our brand of ketchup or everybody has -- might have
19 Pearl olives. Not everybody has our brand of olives, right?

20 So they could be better product. Maybe not as
21 good, different price point, different type of promotion and
22 marketing expansion that goes into that. And, you know,
23 some customers, again, they -- they'll have a preference.
24 And you know, probably about 45 percent of our sales or in
25 our private label and 55 percent of our sales are in

1 national brands.

2 VICE CHAIRMAN JOHANSON: All right, thank you
3 for your comments. My time is expired.

4 CHAIRMAN SCHMIDTLEIN: Commissioner Williamson?

5 COMMISSIONER WILLIAMSON: Thank you.

6 Mr. -- is it Rockwood, you had said something
7 about -- something happened. I think it was 10 years ago
8 that really emphasized to your customers the need to have
9 alternative sources. Did I hear that correctly? I mean,
10 because you made a lot of stress on the importance of having
11 alternative sources of supply. And it sounded like you
12 almost said there was something happened 10 years ago that
13 kind of triggered that or made that more important?

14 MR. ROCKWOOD: Well, what really what happened
15 is our customers approached us and they had an openness to
16 find alternatives to the domestic industry. We only deal in
17 the imported olives, whether they be from Spain or other
18 countries. So they're the ones that really needed the
19 alternative supply source. So they came to us. We were
20 already dealing in the arena because we were just importing
21 olives. So that really enabled our business to grow because
22 they approached us saying we can no longer do that.

23 So it's the customers coming to us, the food
24 service distributors, some of the change -- chains that the
25 food service distributors represent coming to us and saying,

1 hey, can you help us out? We're open to procuring imported
2 olives.

3 COMMISSIONER WILLIAMSON: And --

4 MR. ROCKWOOD: So then that being our strong
5 suit, we went ahead and it expanded our business in that
6 arena.

7 MR. PRUSA: Commissioner Williamson, this is Tom
8 Prusa. I think it was one of Mr. Somer's slides that showed
9 that in the depths of the drought, right, the --

10 COMMISSIONER WILLIAMSON: Which drought?

11 MR. PRUSA: -- the California drought between
12 2011 and 2014 --

13 COMMISSIONER WILLIAMSON: Okay.

14 MR. PRUSA: -- I'm sorry, yeah, it didn't get
15 better until January -- really get better until January 2017
16 when the rain really came, but in the worst year, they only
17 had 30,000, right? And that I think is not only -- that low
18 crop is public data produced by California Department of
19 Agriculture. It's open knowledge to all olive -- this
20 created, you know, in talking to various purchasers, they
21 were aware that supply. How can we guarantee our supply?
22 So I think --

23 COMMISSIONER WILLIAMSON: Mr. Rockwood is
24 talking about something that happened 10, you know.

25 MR. PRUSA: I don't -- I didn't hear 10 years

1 ago. I'm thinking --

2 COMMISSIONER WILLIAMSON: That's what I thought
3 I heard. Didn't you say something about 10 years ago? I
4 mean, I was very struck by it.

5 MR. CRAVEN: Well, Mr. Kaddoura referred to 10
6 years ago, I believe.

7 COMMISSIONER WILLIAMSON: Okay. My apologies
8 then. Was -- maybe say what was the event that spurred
9 that? Okay.

10 MR. ROCKWOOD: I have the wording here in front
11 of me.

12 COMMISSIONER WILLIAMSON: Yeah.

13 MR. ROCKWOOD: Again, this is why the
14 institutional food service channel fell away a long time
15 ago.

16 COMMISSIONER WILLIAMSON: Okay. And that was
17 because a long time ago, they wanted?

18 MR. ROCKWOOD: They approached us looking --

19 COMMISSIONER WILLIAMSON: Okay.

20 MR. ROCKWOOD: -- looking for alternative
21 supplies --

22 COMMISSIONER WILLIAMSON: Okay.

23 MR. ROCKWOOD: -- because they said they could
24 not rely just upon the domestic industry.

25 COMMISSIONER WILLIAMSON: Okay, I just wanted to

1 get that clarified. So that's been a longstanding thing.

2 MR. PRUSA: Probably -- Commissioner Williamson

3 --

4 COMMISSIONER WILLIAMSON: Yeah.

5 MR. PRUSA: -- can I make this really quick?

6 Can you go back to one of Joe's slides? Let's -- I mean,

7 Joe Somers from Informa has a slide that highlights, you

8 know, you're asking how -- where's the slide with the chart

9 of the five-year -- well, keep going back or the five-year

10 averages, Joe? Okay, go forward. Right there. The slide

11 on the -- look at the chart on the right, Commissioner

12 Williamson. It's showing from -- five-year averages, which

13 gets -- which, you know, smooths out whatever year to year

14 variation, but it's showing long-term falling olive

15 production in California.

16 So you're asking about when did it happen? This

17 is the major buyers in the market have been seeing these

18 trends. This did not emerge in January 2015 or January

19 2014. These are the patterns that the bid buyers in the

20 market have been observing and this is disconcerting to you

21 if you want to have a steady supply of ripe olives for your

22 pizzas, right?

23 So this is a long term in what was, I think,

24 described was at some point, it became clear to the big

25 buyers that they needed alternative -- they had to have

1 supply diversity to get ripe olives. They guarantee to
2 their customers.

3 MR. MCCULLOUGH: And to bring that into focus --

4 COMMISSIONER WILLIAMSON: Okay.

5 MR. MCCULLOUGH: -- Matt McCullough, so those
6 numbers are averages, but if you look at the specific time
7 frame and you see what happened and you see what purchasers
8 were looking at, you can understand why they would want to
9 diversify supply.

10 Just like we heard this morning, Mr. Paretzky
11 saying who -- what industrial user wouldn't want to
12 diversify supply when we're talking about importing raw
13 olives?

14 So in 2013, this industry had 25,000 acres.
15 They produced 78,000 tons of canning quality olives. In
16 2014, they only produced 30,500 tons of canning quality
17 olives, less than half of what they had produced the year
18 before and acreage declined.

19 COMMISSIONER WILLIAMSON: Okay, can I cut you
20 off there? I guess the question, because the petitioners
21 will probably say one reason why acreage is declining is
22 because the imports were taking more and more of the market
23 and prices were weak and -- so which came first?

24 MR. PRUSA: Well, and that's --

25 COMMISSIONER WILLIAMSON: And that gets to the

1 question I was about to ask about when we were looking at
2 the -- this question of five-year period of investigation.
3 If we -- okay, if we don't do that, there was a sharp
4 increase in imports in Spain I guess between 2013 and 2014.
5 And we could take that in consideration in looking at the
6 conditions for competition. And I raised this question this
7 morning.

8 MR. PRUSA: So --

9 COMMISSIONER WILLIAMSON: And so what do we make
10 of that increase in terms of how it affected the
11 competitiveness of the domestic industry?

12 MR. PRUSA: May I make two comments on your
13 question, Commissioner Williamson?

14 COMMISSIONER WILLIAMSON: Uh-huh.

15 MR. PRUSA: And one is I'm going to back to this
16 question of the domestic industry there -- that -- the idea
17 that it's ripe olives from Spain go back to Joe's slide. Go
18 back, I think, to Dolores' slide or two. Joe has the prop
19 -- right there. Look at the difference in profitability.
20 This -- the similar studies, Joe's just quoted one year
21 here, right? This difference, it's not \$84 versus \$96.

22 COMMISSIONER WILLIAMSON: Yeah, but we've had a
23 lot of testimony about -- you just don't up and go from
24 olives to almonds. There's a big risk. There's a big
25 investment.

1 MR. PRUSA: We have had 500,000 acres of almonds
2 put on in the last decade. There's a lot of farmers making
3 a decision to move to almonds.

4 COMMISSIONER WILLIAMSON: But you've also had
5 the Spanish olives have been in the institutional market for
6 quite a while. I mean, no -- arguments can be made that it
7 wasn't because --

8 MR. PRUSA: In California, in Spanish olives
9 explain the fact that there's manual harvesting in
10 California, that there's labor shortages in -- remember, we
11 have whole variety of things that you cannot put the entire
12 economic decision to move on the impact of Spanish olives
13 between 2015 and '17. The question before you is 2015 to
14 '17.

15 COMMISSIONER WILLIAMSON: The question I'm
16 asking is we heard a lot of arguments about why, you know,
17 why you might not do these shifts, the fact that you just
18 don't shift from olives to almonds, the time frames that
19 it's going to take --

20 MR. PRUSA: Okay --

21 COMMISSIONER WILLIAMSON: And that was their
22 reason for why --

23 MR. PRUSA: And I presented data in our brief
24 that the return, if I haven't wrote it down, the return
25 calculated using the data from University of

1 California-Davis, the return to convert from olive to
2 almonds over the first 20 years is 15.9 percent extra
3 return by moving from olives to almonds. This is using the
4 University of California data.

5 COMMISSIONER WILLIAMSON: Yeah.

6 MR. PRUSA: Right, the return is a very high
7 return. Yes, that analysis handled the upfront cost, the
8 several years of no revenue, because the almonds have to
9 come to where they start producing. Their return right now
10 for almonds is overwhelming.

11 And on the issue about going to almonds, right,
12 yes, the almond tree requires slightly more water than the
13 olive tree. However, olive processing requires a magnitude
14 -- I mean, hundreds of thousands of gallons of water that
15 increase the cost. The water issue is far more challenging
16 than simply the irrigation issue is -- it's both a processor
17 issue and the grower issue. That is less severe for
18 almonds.

19 COMMISSIONER WILLIAMSON: Well, here's -- have
20 we seen in the record to show that -- how that -- it's
21 hurting them that the water issue?

22 MR. PRUSA: Uh --

23 COMMISSIONER WILLIAMSON: But I still want to
24 get back to the question I asked originally.

25 MR. PRUSA: Yeah.

1 COMMISSIONER WILLIAMSON: Because this is my
2 question.

3 MR. PRUSA: Sorry, okay.

4 COMMISSIONER WILLIAMSON: What do you make of
5 the increase in the -- in thinking about conditions of
6 competition, what do we make of the increase in the Spanish
7 olives in 2013, 2014 before the period of investigation?

8 MR. MCCULLOUGH: First, getting -- and this is
9 part of the question, you -- the implication is that the
10 Spanish imports reduced acreage. That's a long run trend
11 that's been happening for 15 years. It's just the
12 continuation of a trend that happened, whether you look at a
13 three-year period, or a five-year period, or a 10-year
14 period, or a 15-year period, it's been going and on and on
15 and on.

16 COMMISSIONER WILLIAMSON: Okay. I take that
17 point, although that wasn't what I was getting at now.

18 MR. MCCULLOUGH: But it's important to
19 understand.

20 COMMISSIONER WILLIAMSON: Okay.

21 MR. MCCULLOUGH: Now what pulled the Spanish
22 imports into this market? And this was my point about the
23 data. You saw in 2014 a canning crop cut by less than half
24 from the prior year and continuing declining acreage.

25 If I'm a buyer and I see the drought, and I see

1 a canning crop that goes by less than half, another
2 reduction in acreage, what am I going to do? I'm going to
3 supplement my supplier. I'm going to diversify my supply to
4 get away from the supply risk.

5 It's also what the domestic industry did. In
6 that '14/'15 crop year, that was the big year that they
7 brought in provisionally prepared olives, 2015. Why did
8 they do that? They had lots of inventory, but that goes to
9 the point that they can't supply demand out of that
10 inventory.

11 The inventory numbers don't change and if you
12 look at the public data, you can take that back to 2010.
13 The inventory numbers don't supply demand in this market.
14 If it could, they would not have imported that many olives.

15 MR. PRUSA: But the other thing that is on -- in
16 the Informa report is that total subject -- subject plus
17 non-subject import supply was flat. So did Spain go up?
18 Spain went up taking volume from other non-subject
19 suppliers.

20 MR. SOMERS: This is Joe Somers. I just wanted
21 to add the point, the main reason we think area's been going
22 down is the labor costs. Now in the report, we did have
23 historical years showing what the share is of the labor
24 costs for table olives. And it's been increasing over time.
25 And we think that's really one of the major reasons that the

1 acreage is going down, because you can't get that net profit
2 that you're trying to get.

3 MR. KADDOURA: If I may, this is Shawn Kaddoura.
4 From a customer standpoint, as we deal with them, and a
5 couple of the major retailers that we met, they're
6 monitoring the same thing that we look at here.

7 So when the big events start happening, meaning
8 the market was actually being shorted, and the customers
9 being shorted, they did make it, because they're reacting to
10 one year or two years.

11 They assess California situation and olive
12 conditions over the past 10 years and the outlook for the
13 next 10 years.

14 As we presented the demand for the customers,
15 what is the outlook for the crop, olive crop, in California
16 for the next 10 years and what is the outlook for the olive
17 crop in Spain for the next 10 years?

18 COMMISSIONER WILLIAMSON: Okay, thank you for
19 all those answers because I've gone way over again. Thank
20 you.

21 CHAIRMAN SCHMIDTLEIN: Commissioner Broadbent?

22 COMMISSIONER BROADBENT: No more questions,
23 thank you.

24 CHAIRMAN SCHMIDTLEIN: Okay. All right, going
25 back to this question about the retail branded product and

1 that's selling at a premium, so if I understand it
2 correctly, so here's my question. We do have a pricing
3 product in product 1 that is the retail branded product.
4 There was revised data submitted with regard to that
5 product. You mentioned it in your presentation, Mr. Prusa,
6 where it shows that there was predominantly overselling now
7 by the Spanish imports.

8 And so, I think when you see the corrected staff
9 report, you'll see there are eight quarters of overselling
10 by Spain, four quarters of underselling and the volume is
11 also greater in the overselling.

12 So if the U.S. retail branded is supposedly
13 selling at the premium, and I -- this was all going back to
14 trying to explain why is there underselling, right? So in
15 the particular pricing product that we have on that, we have
16 predominant overselling by Spanish imports, but can you
17 explain that --

18 MR. PRUSA: Yeah, May I -- so I think part of
19 the confusion, I think --

20 CHAIRMAN SCHMIDTLEIN: Yes.

21 MR. PRUSA: Yes, I understand. Number one,
22 which this sounds one, we should do it post-hearing sometime
23 because as I said, product 1 is the one beyond all the other
24 APO issues in this case, but that one is even more severe
25 given the limited number of firms supplying product 1.

1 CHAIRMAN SCHMIDTLEIN: Uh-huh.

2 MR. PRUSA: But I think part of your confusion
3 what you're hearing is from some of the importers or
4 purchasers here is they're thinking of product 2, this --

5 CHAIRMAN SCHMIDTLEIN: That's private label.

6 MR. PRUSA: -- private label. I understand, but
7 when they're talking about there's a premium, I think in
8 their mind, they're thinking the premium comparing a branded
9 can, same size branded can versus a private label. I think
10 in their mind when they're talking about, that's the premium
11 that they're thinking of when you're hearing that
12 discussion.

13 UNIDENTIFIED SPEAKER: That is correct.

14 CHAIRMAN SCHMIDTLEIN: Okay. All right, well, I
15 would invite you to address that in the post-hearing. I
16 think that would be useful along with the question of why do
17 we see underselling in the other pricing products again if
18 this product is being pulled into the market because there's
19 such a capacity constraint on the U.S. industry?

20 All right. I think that is the extent of the
21 questions I have for right now, which would take us back to
22 Vice Chairman Johanson, you have more questions.

23 VICE CHAIRMAN JOHANSON: On page 213 of the
24 confidential staff report, there's a sentence that
25 summarizes the view of one purchaser indicating that there

1 has been a decline in food service business. And I'm just
2 curious as to why this decline is taking place? I have some
3 great experts out there who might know a bit about that
4 since you all are in the business.

5 MR. SEIDEL: So are we speaking over all food
6 service?

7 VICE CHAIRMAN JOHANSON: Right.

8 MR. SEIDEL: Yeah. So --

9 VICE CHAIRMAN JOHANSON: I mean, it's a product
10 that people like to eat as Commissioner broad bent mentioned
11 with her son.

12 MR. SEIDEL: Yeah. It's -- there's a lot of
13 public information out there that over all, you know,
14 restaurant sales are sluggish. There's some of the larger
15 chains have been challenged. Some of the larger chains have
16 shut locations. And you know, there's the restaurant and
17 the number of restaurants are up nationally as well. So
18 there's more choices.

19 VICE CHAIRMAN JOHANSON: People are eating out
20 more, I believe.

21 MR. SEIDEL: Well, the -- you know, I don't know
22 the exact, you know statistic on that, Mr. Johanson.

23 VICE CHAIRMAN JOHANSON: Anybody else?

24 MR. CRAVEN: Well I think we'd have to look at
25 this in more detail, but we have Chairman Williamson for

1 example, I'm sorry, not chairman, Commissioner Williamson
2 eating more specialized olives. And so, it's possible we'd
3 have to look at this, but the restaurants changed. We used
4 to have lots of bagel restaurants. Now we don't have any.
5 And so, what changes can be your nature of the restaurants
6 themselves, they're always evolving, and we may have reached
7 a point where there's currently a change away from certain
8 of the olive restaurant.

9 MR. MCCULLOUGH: And Matt McCullough, once
10 again, Tom had made the point earlier, and it was referenced
11 in the petitioner's presentation, there is a particular --
12 there are particular actors in the food service market who
13 are very big. And if they individually are having declines
14 in their sales, it will move the needle of apparent
15 consumption in this market. That's how big they are. And I
16 think that's part of the issue.

17 VICE CHAIRMAN JOHANSON: Right. Okay. Thanks
18 for your responses there.

19 Ms. Avella, you mentioned in your testimony that
20 olive production has been negatively impacted by brush fires
21 in California. I believe that one of this morning's
22 witnesses stated that this is not the case. Could you
23 either now or in post-hearing provide a citation for your
24 comment or some type of background for it?

25 MS. AVELLA: We'll make a comment in the

1 post-hearing for it.

2 VICE CHAIRMAN JOHANSON: Okay, that's great. I
3 look forward to seeing that. That concludes my questions.
4 Thank you all for appearing here today.

5 CHAIRMAN SCHMIDTLEIN: Okay, I actually have one
6 more question. So you had put up the slide on production
7 cyclical and steadily declining to make the point that there
8 is such variability in the production.

9 So my question is, this is sort of the reverse
10 of what I asked the petitioners this morning is in deciding
11 whether or not we should use longer POI in looking at
12 whether or not there is a natural cycle to the production,
13 would your argument with regard to the dependence of the
14 domestic industry on California-grown olives support that?

15 MR. SOMERS: To be honest with you, when we
16 picked five years for a period, we just picked it by chance.
17 I mean, we could actually use two years when you have on and
18 off. We just happened to pick five. There was no rational
19 --

20 CHAIRMAN SCHMIDTLEIN: A cycle's two years,
21 right?

22 MR. SOMERS: Right.

23 CHAIRMAN SCHMIDTLEIN: Right.

24 MR. MCCULLOUGH: The cycle's two years. We
25 could have done it in two years, but we just -- there was

1 no, it just happened. That's the way we did it.

2 CHAIRMAN SCHMIDTLEIN: Right, so I guess that
3 begs the question, and this is probably a -- you know, for
4 Mr. McCullough, should be using four years? It's a two year
5 natural cycle. That's what we used in the prelim.

6 And if we do use that, so the second part of my
7 question is and if we do use that and that captured the loss
8 of market share that we relied in the prelim, what does that
9 do to the case? In other words, are -- is there some sort
10 of argument that injury is not recent enough or that was a
11 reasonable indication of injury, but it's not actually
12 material. You know, what would your argument be?

13 MR. MCCULLOUGH: That's -- there's a lot in
14 there and I think obviously we'd like to address that in
15 post-hearing.

16 CHAIRMAN SCHMIDTLEIN: Okay.

17 MR. MCCULLOUGH: Again, I think you have to ask
18 yourself, okay, there's a cyclical to raw olive
19 production, but is that -- should you be considering that a
20 cyclical of the industry under investigation in this
21 case? I think that's a technical legal issue that should be
22 considered about whether you should go to a different POI.

23 And again, the issue's not really about what the
24 POI should be and what you can't look at. I'm not saying
25 you can't look at some of the earlier data to get some

1 context about what's going on in the 2015, 2017 period, but
2 in terms of addressing when the injury may or may not have
3 occurred, or what's going on, I'd like to take some time to
4 think about that and put it on paper..

5 CHAIRMAN SCHMIDTLEIN: Okay, all right, I would
6 -- I'd invite you to do that. That's fine.

7 MR. PORTER: I'm sorry, just to clarify your
8 question. You're asking that we should instead of looking
9 at five years, instead of looking at three years, we should
10 look at four years and then do the traditional injury
11 analysis? Is that what you're asking us to do?

12 CHAIRMAN SCHMIDTLEIN: I'm asking whether or not
13 the -- the argument that the respondents is making with
14 regard to the natural cycle of production on which the
15 domestic industry's processing depends, according to you
16 all, right, that it's not sustainable to import raw olives,
17 that doesn't that support the argument we should be looking
18 at a POI that is -- takes into account that natural cycle?
19 So that's the first question.

20 And the second question, and that's what we did
21 in the prelim. We used a four year POI because the
22 Commission said this is a two year alternating cycle. We
23 have large harvests in one year and a smaller so forth.

24 So we looked at four years. If we do that, it
25 and captures a -- you know, there's a bigger movement in

1 market share when you look at -- we add in those prior
2 years, and that's what we base the prelim decision on.
3 That's a different standard, it's a different legal
4 standard, right? So the question is what does that do to
5 your case? And I --

6 MR. PORTER: You're -- Madam Chair, we'll
7 definitely do that, ma'am, but you're sort of suggesting
8 that we just look at four years, so which is '14, '15, '16,
9 and '17. And I'm pretty sure that when we look at that and
10 do what I call the traditional injury causation analysis,
11 we're going to come out the exact same.

12 CHAIRMAN SCHMIDTLEIN: Well, I wouldn't be
13 surprised if you don't come up the exact same.

14 MR. PORTER: I know, I know, but I -- not only
15 but more importantly, are --

16 CHAIRMAN SCHMIDTLEIN: I would be shocked -- .

17 MR. PORTER: -- or I get to have vigorous
18 factual support for that.

19 CHAIRMAN SCHMIDTLEIN: Okay.

20 MR. PORTER: Okay, I really don't think that
21 changing the POI from three to four is going to dramatically
22 improve their case.

23 MR. MCCULLOUGH: No, in a lot of ways, I think
24 it's not going to be helpful to their case at all.

25 CHAIRMAN SCHMIDTLEIN: Okay.

1 MR. PRUSA: And I was going to add,
2 Commissioner, this is Tom Prusa, which is you traditionally
3 look at a variety of metrics. It's really not just one.
4 It's one of the things you guys make clear is you look at a
5 variety of things. And the idea that by going from three to
6 four, you might find one that makes -- oh, there's like a
7 little more evidence here. I think there's -- there's a
8 problem going longer and that you're going to find many
9 more things that are showing that it's -- there's all of
10 these main structural problems.

11 And actually, that's what I get from this is not
12 the cycle. I understand you have a specific -- the cycle
13 issue. I take from what you Informa Group did, it shows
14 that you this is such a long systematic thing, you're -- so
15 much discussion was on the cycle. You're missing the forest
16 for the trees, which is the big, big thing here is this
17 long-term way beyond the control. It's important as the
18 Spanish olive producers are. There's this fundamental
19 change happening in California with agriculture.

20 CHAIRMAN SCHMIDTLEIN: Uh-huh.

21 MR. PRUSA: That -- we're focusing on small
22 variations over a long-term decline. And I -- that's I
23 thought was a distraction that the petitioners were able to
24 get you to start thinking about, rather than focusing on
25 there's this long-term decline.

1 And I think that -- whether you look at three
2 years, four years, or five years, the overarching problem is
3 a declining acreage issue.

4 CHAIRMAN SCHMIDTLEIN: Yeah, and I get your
5 point. And that goes to more of the impact and causation,
6 you know, this was more of a question about the first part
7 of the question was really a question that comes from the
8 legal place of making a decision about what the appropriate
9 POI is. And then the second part of the question is what
10 happens if we did?

11 And I think it would be useful for have each
12 side address that if the Commission did use a four year POI
13 in this case.

14 Okay. All right, I have no further questions at
15 this point, so I guess we -- all right, so that concludes
16 the Commissioner questions. Do the staff have any questions
17 for this panel?

18 MS. HAINES: Elizabeth Haines, staff has no
19 questions.

20 CHAIRMAN SCHMIDTLEIN: Okay. Thank you. Do
21 petitioners have any questions for this panel? We always
22 give you the opportunity if you want.

23 MR. PARETZKY: We have no questions,
24 Commissioner.

25 CHAIRMAN SCHMIDTLEIN: Okay. All right, well

1 again, I'd like to thank this panel very much and I will
2 dismiss you at this time. And once you have taken your
3 seats in the audience, we will move to closing statements.
4 The petitioners will have 12 minutes from direct plus five
5 for closing, for a total of 17. The respondents will have
6 eight minutes from direct plus five for closing for a total
7 of 13.

8 MR. PARETZKY: Madam Chair, can we have a five
9 minute break?

10 CHAIRMAN SCHMIDTLEIN: Sure. We'll take a five
11 minute break --

12 MR. PARETZKY: Thank you.

13 CHAIRMAN SCHMIDTLEIN: -- and reconvene.

14 (Whereupon a five minute recess was taken, to
15 reconvene this same day.)

16 MR. BURCH: Will the room please come to order.

17 CHAIRMAN SCHMIDTLEIN: Alright Mr. Paretzky you
18 may begin when you're ready. You have a total of 17
19 minutes.

20 CLOSING STATEMENT OF RAYMOND PARETZKY

21 MR. PARETZKY: Thank you Madame Chair, members of
22 the Commission. I'm going to start off with some rebuttal
23 just to hit a few points seriatim. First of all on the
24 5-year POI or data period I was really heartened to see that
25 we and Respondents basically agree on this issue now that

1 I've heard their presentation.

2 They say use the staff report, use the 2013-14
3 data for context. That's really all we've asked for. The
4 staff report does have 5-years of data for key indicia. The
5 staff did collect that data at your direction. All we're
6 asking is the Commission look at that data collected by the
7 staff for the key indicia for which the -- for which you
8 collected it.

9 That's what Respondents have done. The first two
10 witnesses in their industry analysis used in the extended
11 POI three of their first four witnesses spoke to large
12 swings in domestic supply and cost due to cyclical growing
13 conditions.

14 They've repeatedly told you to look at 2014 and
15 prior years just to study issues such as supply and
16 inventories. Inform Charts "includes additional years
17 because they are informative in explaining trends." And
18 then there's my favorite slide -- the one that they've now
19 showed you three times which shows, which uses, "5-year
20 averages to remove the volatility in production and smooth
21 out the production highs and lows."

22 Frankly their entire presentation was devoted to
23 cyclical production trends and looking at those over a
24 5-year period it's not surprising that they agree that you
25 should examine that data.

1 Some other points on imports of raw olives --
2 they make it seem like we said that this was something that
3 could never be done -- it was cost prohibitive, it was
4 impossible. On the contrary, we've always conceded we'd do
5 it. It's clear in our preliminary questionnaire response,
6 our final questionnaire response, our testimony at the staff
7 conference and in the petition.

8 It costs more in some instances, you know Mr.
9 Carter testified about that and we'll give you more detail
10 but that's not the same thing as saying that it's
11 cost-prohibitive. On inventories, 2014 you've heard was a
12 very short crop year going into 2015 period.

13 The U.S. processors thought that we would reduce
14 our inventories in response to that crop year and supply our
15 customers. What happened was the first major retail
16 customer flipped to Spain in 2015 -- that's what the record
17 shows, preventing us from reducing our inventories.

18 More customers have changed since then, also
19 prices -- pricing pressure has resulted from Spanish
20 imports. Our inventories now are unhealthy levels in large
21 part attributable to Spanish imports -- that's what the
22 record will show and we'll address it further post-hearing.

23 Prices -- I was struck by one of their tables
24 that show subject imports above major competitors. The
25 price that chart omitted the United States, it's not -- all

1 they're saying is that they're priced over their other
2 imports, other low-priced imports, but it omits the U.S.
3 All you have to do is look at the underselling data.

4 You asked them why they're underselling in
5 private label and institutional and they answered by talking
6 about our branded retail product. That's no answer at all.
7 I'd also like to mention a nomenclature issue that we think
8 is distorting one of the tables that you asked us about
9 Madame Chair -- and that's Commission Table 2-1.

10 Both of Respondent's distributor witnesses talked
11 about their private label sales into the institutional
12 segment. It seems to us that Table 2-1 does not -- and the
13 questions relying it does not capture that data accurately
14 and we would intend to address this issue post-hearing.

15 Another one I wanted to point out was their Slide
16 24 which I think is characteristic of their approach. I'm
17 holding it up now, this is Curtis Mallet's Slide 24 which
18 the distortion of this slide I think speaks for itself.

19 I urge you to look at this slide and consider how
20 the data is presented and what it says. We concede that
21 there has been a small decline in import volume from 2015 to
22 2017 but I think that slide is really distortive.

23 I'd like to talk about the supposed volume
24 limitations, you know, they say the domestic industry can't
25 meet volume requirements in food service, then why are they

1 underselling us? You've asked that and it's an excellent
2 question that there is no answer to.

3 We have plenty of capacity and plenty of
4 inventories to sell to food service in addition to private
5 label and brands if we didn't have to compete for dumped and
6 subsidized imports.

7 I was also struck that two of their witnesses are
8 specialist importers who don't buy domestic product under
9 any circumstances. It seems to me their testimony is hardly
10 relevant. One of them said it makes no sense to buy an
11 imported olive from California. Well who can argue with
12 that -- but how is that relevant?

13 Another point was about provisionally prepared
14 olives that they were very upset that we didn't include in
15 our petition. Well we're processors. We import raw
16 materials to supplement domestic raw materials. To say that
17 we gained the case by not including our raw materials in the
18 scope seems to be a very outrageous kind of statement.

19 Another point I'd like to make is the Bell-Carter
20 letters that they put up there which we don't walk away from
21 in anyway. Like all producers, U.S. ripe olive processors
22 face increasing costs and need to raise prices. The letters
23 outline these cost pressures. I mean there are things like
24 draught, water issues, not the fictional issues like
25 earthquakes and fires that they quote but we concede that

1 there are issues just like the Spanish producers face the
2 same challenges, the same cross pressures, but they have
3 subsidies to help them overcome these challenges.

4 We've been clear from day 1 that we have not been
5 able to raise our prices enough to cover our costs and to
6 make profits. If not for the dumped and subsidized imports
7 we could have.

8 I think that is what I'll end my part of the
9 rebuttal. I think ultimately and a tremendously large part
10 of their presentation and their briefs and in their
11 presentation today talked about this supply issue which we
12 really don't consider very relevant to the case.

13 I think the record makes clear that we can import
14 raw olives when we need to. It's not our preferred approach
15 to making up at least a large amount of our share but one of
16 their witnesses conceded our point about the world being
17 awash in table olives. She said a huge global supply.

18 You know there just isn't any doubt about that
19 and I think the rest of this is largely a red herring. The
20 record does not support the contention that we are unable to
21 supply our customers. There are customers that they've
22 taken through underselling -- that's what the record shows.
23 Thank you very much.

24 CLOSING STATEMENT OF DAVID LEVINE

25 MR. LEVINE: Thank you Raymond. Madame Chair and

1 Commissioners thank you for your attention today. We
2 greatly appreciate the care with which you've listened to
3 everybody's presentations and the thoroughness of your
4 questions.

5 Today you heard sharply contrasting versions
6 about the condition of the U.S. industry and the reasons for
7 that condition. The leaders of the U.S. ripe olive industry
8 have told you how their multi-generational family business
9 had been pushed to the breaking point -- how low prices in
10 the U.S. market prevent them from covering operational and
11 investment costs and how the low prices they're able to pay
12 California table olive growers have led those growers to
13 pull trees and reduce olive acreage.

14 They've shared with you their despair over these
15 conditions while maintaining a steely and realistic
16 accounting of how dumped and subsidized rip olive imports
17 from Spain have systematically caused these circumstances.

18 They recounted for you how over several years
19 they lost the bulk of the U.S. institutions market to cheap
20 Spanish imports and how this market share grab coincided
21 neatly with declines in U.S. olive acreage.

22 They made it plain that their Spanish competitors
23 more recently have been successfully targeting the U.S.
24 retail market with the same low priced strategy and how as a
25 consequence of that some of their biggest retail customers

1 have switched to cheaper Spanish product.

2 Respondents conversely, would like for you to
3 believe that Musco and Bell-Carter are not materially
4 injured. Knowing that the facts show otherwise, they argue
5 that the problems facing the U.S. processors are of their
6 own making and have nothing to do with subject imports.

7 They disavow any responsibility for the condition
8 of the U.S. industry and instead accuse the "California
9 agriculture economy" of causing declines in table olive
10 acreage that somehow limit the ability of Musco and
11 Bell-Carter to serve U.S. customers.

12 The facts in the record support only one of these
13 versions and that version is Petitioners. The record shows
14 the following:

15 The U.S. producers are generating operating
16 margins that barely cover their expenses and then have left
17 no room whatever for needed investments. Musco and
18 Bell-Carter wish the accounting fiction told by Respondents
19 was correct, but the facts do not lie.

20 The record makes abundantly clear that these two
21 proud companies have reached a point where they satisfy all
22 the standard indicia of material injury. Respondents claim
23 that there are no adverse price effects from their imports.

24 Mr. Carter and Mr. Musco have emphatically
25 demonstrated otherwise -- in their testimony and in their

1 questionnaire responses. The record shows that imports of
2 ripe olives have undersold U.S. producers consistently
3 throughout the period of investigation in both the
4 institution and they retain private label segments of the
5 U.S. market.

6 Dumped and subsidized Spanish imports gained
7 substantial U.S. market share directly at the expense of
8 U.S. producers and they've continued to take customers from
9 the domestic producers and drive prices down further.

10 As Spanish underselling and market share expanded
11 over the past several years, Musco and Bell-Carter have been
12 unable to pay California table olive growers at prices
13 sufficient to cover their costs and many growers have had to
14 pull olive trees and reduce olive producing acreage.

15 California growers weathered natural conditions
16 and successfully competed with other crops for decades but
17 the impact of dumped and subsidized Spanish imports has made
18 it nearly impossible for many to survive.

19 In any event, despite the Respondent's effort to
20 shift the attention in this case it's not one about the
21 growers. This case is about the producers of ripe olives.
22 The record shows that despite the pinch that cheap Spanish
23 imports have put on the U.S. industry, Musco and Bell-Carter
24 have the inventory and production capacity and the ability
25 to satisfy U.S. market demand.

1 Respondents argued this is an acreage story.
2 It's not an acreage story -- this is a story about what the
3 processors can do. Importantly, the record also confirms
4 that the Spanish industry with the full backing and support
5 of the Spanish government has focused on the U.S. market as
6 a primary target for their unfairly subsidized and dumped
7 imports.

8 In the pre-hearing brief and in the recent
9 testimony of the Commerce Department CVD hearing, the
10 government of Spain reaffirmed the following and I quote,
11 "Spain is the world's leader in table olives production and
12 it is also the main exporter. The U.S. has been one of the
13 main destinations." And with that quote, we'll end our
14 presentation, thank you very much.

15 CHAIRMAN SCHMIDTLEIN: Thank you very much.

16 MR. BURCH: Closing and rebuttal remarks on
17 behalf of Respondents will be given by Christopher A. Dunn
18 of Curtis, Mallet-Prevost, Colt & Mosle. Mr. Dunn you have
19 13 minutes.

20 CLOSING STATEMENT OF CHRISTOPHER A. DUNN

21 MR. DUNN: You've all heard the expression "Lies,
22 damn lies and statistics." I am not accusing the
23 Petitioners of engaging in any of those practices today. I
24 certainly could not accuse them of engaging in statistics
25 since we have heard very little of their numerical data

1 analysis.

2 What we have heard is misstatements, cleverly
3 worded statements, misleading statements and statements that
4 are just flat contradicted over and over by statements that
5 they have made in public, in their briefs and in their
6 petition.

7 This case is about volume and the availability or
8 lack of availability of domestic products. Let's look at
9 what the Petitioners have said. They claim U.S. processors
10 are capable of fully replacing subject imports and serving
11 U.S. demand for ripe olives in whatever sizes the market
12 requires.

13 But the record shows that the production of
14 processed olives by the domestic industry is only a portion
15 of the market -- a small portion of the market. U.S.
16 producers claim they can satisfy the market with their
17 inventory and it's interesting that in their brief they talk
18 about inventory rather than imports.

19 The record shows, however, that their inventories
20 which by the way are much larger than 3 months that they
21 claimed in public today -- you can look at the data to see
22 what they are. But those inventories have been stable for
23 years and clearly reflect a normal business practice.

24 Moreover, the inventory is -- and it's important
25 that you understand this -- that inventory is of packed

1 product. They said this morning that they pack primarily
2 for the retail market. I would say very likely,
3 overwhelmingly for the retail market.

4 That means that they are in packages and sizes
5 that are geared to the retail market. They are not going to
6 serve the food service institutional segment of the market
7 with that inventory. It is not available to sell to them.

8 This morning they shifted their argument a little
9 bit and said, "Well, no, we can always import." But as we
10 have shown their imports have never come close to serving
11 the amount of the market that is left open that they do not
12 -- that they cannot serve. They would have to substantially
13 increase their imports well beyond anything they've ever
14 done to get into the food service segment of the market.

15 U.S. producers admit that they would need almost
16 to triple California acreage to fulfill demand by the U.S.
17 market but they claim that the 50% reduction in California
18 olive acreage over the past 15 years is due to pricing
19 pressure from Spanish ripe olives. This makes no sense.

20 You can test their hypothesis by picking up on a
21 suggestion made by the Petitioners -- one of the Petitioners
22 this morning that if prices were raised, if the unfair
23 pricing -- so-called unfair pricing were stopped, you would
24 see a huge increase in acreage devoted to table olive
25 production. Really?

1 The record -- those, the record shows that that
2 lost acreage has gone to almonds which are more than 20
3 times as profitable as table olives. So what they're
4 suggesting is that they would rip up all those olive trees
5 and go back -- all those almond trees I should say and go
6 back to olives -- that's simply not believable.

7 The data show that the overwhelming reason for
8 reduction in olives is the switch to more profitable crops.
9 U.S. producers have it exactly backwards. The reduction in
10 domestic acreage is not the result of imports. Imports are
11 the result of the reduction in acreage.

12 Apparently aware that their arguments at volume
13 are exceedingly weak, U.S. producers seek to switch the
14 focus of the investigation to pricing noting that Spanish
15 olives undersold California ripe olives.

16 But, they claim -- again without any real
17 support, that this underselling has caused adverse impacts
18 such as loss of market share. The actual data shows
19 something very different. The data show that Spanish olives
20 did not either depress or suppress domestic prices.

21 Domestic prices rose in every product the
22 Commission examined over the period of investigation. And
23 domestic prices rose more than enough to cover the company's
24 increased costs so that the industry was able to remain
25 profitable throughout the period.

1 The U.S. producers in their brief sought to try
2 to focus on the pricing data for a single product, private
3 label olives sold at retail but they ignore the obvious fact
4 that Spanish sales of this product never reached 10% of the
5 amount of product in this particular product that the
6 domestic industry sells.

7 It verges on ridiculous to suggest that the
8 limited quantity of Spanish olives in this product could
9 have had an adverse impact on domestic production or
10 profitability.

11 U.S. producers claim that Spanish olives have
12 placed significant pressure on prices. The data show
13 however, that Spanish olives are concentrated in the foods
14 service sector where domestic production is minimal.
15 Numerous witnesses in this hearing testified that they do
16 not buy domestic olives for the food service sector because
17 domestic prices -- producers, do not have sufficient
18 product.

19 U.S. Mills could not explain how Spanish olives
20 could be placing significant pressure on prices when the
21 record show that its domestic producers who are the price
22 leaders in this market. U.S. producers also did not explain
23 how the Spanish producers can be exerting the pricing
24 pressure when other import sources are priced substantially
25 below Spanish product.

1 The record reflects that Spanish products compete
2 primarily with other import sources and not with the
3 domestic industry. U.S. producers have failed to answer the
4 single most important fact shown in this investigation --
5 that if Spanish production is knocked out of this market
6 they will not sell a single additional case of olives to the
7 U.S. market. They cannot meet the demands of the market now
8 and they will not be able to do in the future.

9 The U.S. producers have sought through
10 misdirection and misstatement to distract the Commission's
11 attention away from the salient facts of the case. One --
12 subject imports did not increase over the POI. The quantity
13 of subject imports was smaller at the end of the period than
14 at the beginning.

15 Two -- U.S. producers increased their market
16 share over the period. Three -- U.S. producers have enjoyed
17 stable profits over the period of investigation being
18 profitable in every year. These facts are very different
19 from those cases where the Commission has issued an
20 affirmative determination.

21 The facts in this case just do not demonstrate
22 material injury or threat of injury to the domestic
23 industry. Thank you.

24 CHAIRMAN SCHMIDTLEIN: Thank you very much Mr.
25 Dunn. Alright that brings us to the close of the hearing.

1 Post-hearing briefs, statements responsive to questions and
2 requests of the Commission and corrections to the transcript
3 must be filed by June 1st, 2018. Closing of the record and
4 final release of data to parties will be July 2, 2018 and
5 final comments are due July 6th, 2018.

6 With that again I'd like to thank you all for
7 your participation and testimony today and this hearing is
8 adjourned.

9 (Whereupon the meeting was adjourned at 4:58 p.m.)

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CERTIFICATE OF REPORTER

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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: 5-24-18

SIGNED: Mark A. Jagan

Signature of the Contractor or the
Authorized Contractor's Representative

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: Duane Rice
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: Gaynell Catherine
Court Reporter

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