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 Orders:

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P R O C E E D I N G S

(9:30 a.m.)

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2
3 CHAIRMAN KOPLAN: Good morning. On behalf
4 of the United States International Trade Commission I
5 welcome you to this hearing on Investigation No.
6 731-TA-287 (Review) involving Raw In-Shell Pistachios
7 From Iran.

8 The purpose of this five-year review
9 investigation is to determine whether the revocation
10 of the antidumping duty order covering raw in-shell
11 pistachios from Iran would be likely to lead to
12 continuation or recurrence of material injury to an
13 industry in the United States within a reasonably
14 foreseeable time.

15 Notice of investigation for this hearing,
16 list of witnesses and transcript order forms are
17 available at the Secretary's desk. Transcript order
18 forms also are located in the wall rack outside the
19 Secretary's office. I understand the parties are
20 aware of the time allocations. Any questions
21 regarding the time allocations should be directed to
22 the Secretary.

23 As all written material will be entered in
24 full into the record it need not be read to us at this
25 time. Parties are reminded to give any prepared

1 testimony to the Secretary. Do not place testimony
2 directly on the public distribution table. All
3 witnesses must be sworn in by the Secretary before
4 presenting testimony.

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

9 Madam Secretary, are there any preliminary
10 matters?

11 MS. ABBOTT: No, Mr. Chairman.

12 CHAIRMAN KOPLAN: Very well. Then let's
13 proceed with the opening remarks.

14 MS. ABBOTT: Opening remarks in support of
15 the continuation of orders will be by Will E. Leonard,
16 Adduci, Mastriani & Schaumberg.

17 CHAIRMAN KOPLAN: Good morning.

18 MR. LEONARD: Good morning, Mr. Chairman,
19 and members of the Commission. I am Will E. Leonard
20 with the law firm of Adduci, Mastriani & Schaumberg.
21 We represent the California Pistachio Commission and
22 the Western Pistachio Association.

23 The pistachio from Iran antidumping order
24 issued on July 17, 1986. Figuratively, as well as
25 literally, a lot of nuts have fallen from the trees

1 since then. Consider what has transpired since
2 July 17, 1986. Our country has had four Presidents.
3 It's been in at least two wars.

4 Just saying the names of events and people
5 from 1986 to date evoke all kinds of memories.
6 Chernobyl, Challenger, Berlin Wall, Columbine, Exxon-
7 Valdez, Unabomber, Boris Yeltsin, Seinfeld, Harry
8 Potter, O.J. Simpson, Elian Gonzalez, Lance Armstrong,
9 Y2K, 9-11, tsunami, Katrina and Rita.

10 So many "ins" and "outs." Here today, gone
11 tomorrow. Fifteen minutes of fame. Yet throughout
12 all that time from July 17, 1986, indeed before and to
13 the present, there has been, along with death and
14 taxes, one constant: the threat to the United States
15 pistachio industry of imports of raw pistachios from
16 Iran.

17 You found that threat in 1986 and put an
18 antidumping order into place. Without that order, the
19 threat would evolve into real material injury. Just
20 as that order was warranted in 1986 and kept the
21 Iranian pistachios at bay all of the time since then,
22 revoking the order now would do exactly what was
23 prevented all these years. It would allow the Iranian
24 pistachios to be dumped into the United States.

25 Commerce has said dumping would be likely

1 and that the margin of dumping would be 241.14
2 percent. As we shall try to explain, it would wreck
3 havoc on U.S. pistachio growers and processors.

4 Havoc would come about because Iran, already
5 by far the largest pistachio producer in the world, is
6 increasing its production even more. More land is
7 being turned into pistachio orchards, and alternative
8 markets for Iran's product are few and shrinking in
9 large part because of an aflatoxin contamination.

10 The antidumping order has done exactly what
11 it was intended to do. Removing it would do exactly
12 what should not be done.

13 To explain much better than I what happened
14 before the order, during the pendency of the order and
15 what will happen if there is no more order are Karen
16 Reinecke, president, The California Pistachio
17 Commission; Brian Blackwell, owner, Blackwell Farms;
18 Bob Keenan, president, Keenan Farms; John Reilly,
19 Nathan Associates; and John Steinberger, Adduci,
20 Mastriani & Schaumberg.

21 Additionally, Mia Cohen, chief operating
22 officer, Setton Pistachios of Terra Bella, Inc.; Chuck
23 Nichols, president, Nichols Farms, Inc.; and Marianne
24 Schweers, co-owner, Eagle Ranch Pistachio Groves, have
25 traveled here today to be of any assistance possible

1 in responding to your questions.

2 Now we would like to start out with our folk
3 coming to the table and Ms. Reinecke giving the first
4 testimony.

5 CHAIRMAN KOPLAN: Actually we will start out
6 with the Secretary impaneling them.

7 MS. ABBOTT: Would the first panel in
8 support of the continuation of orders please come
9 forward?

10 Mr. Chairman, the witnesses have been sworn.

11 (Witnesses sworn.)

12 CHAIRMAN KOPLAN: Thank you, Madam
13 Secretary.

14 You may proceed.

15 MS. REINECKE: Good morning. My name is
16 Karen Reinecke, and I am president of the California
17 Pistachio Commission. I believe pistachio samples are
18 being distributed to you today. These pistachio
19 products are hulled, in the hull, raw and roasted
20 salted product that you can review during our
21 proceedings today.

22 I've been employed by the Commission, and
23 when I refer to the Commission I'm referring to the
24 California Pistachio Commission, since 1984 and was
25 named president in 1990. California produces 98

1 percent of the U.S. pistachios.

2 The California Pistachio Commission is a
3 state authorized agency that was formed in 1981 by an
4 act of the California state legislature and approved
5 by growers through a referendum vote. The Commission
6 represents all California pistachio producers who are
7 required to pay an annual assessment based on each
8 pound of pistachios produced.

9 The Commission, under the authority of the
10 state, conducts generic consumer and trade promotions,
11 marketing and advertising, production research and
12 governmental affairs of both the state and federal
13 level on behalf of all producers. The Commission does
14 not represent the industry's processors. However, we
15 work closely with them in effectively carrying out the
16 duties of the Commission.

17 Prior to California's first commercial crop,
18 all pistachios sold in the domestic market were
19 imported from Iran. Annual imports totaled
20 approximately 25 million pounds, which met the U.S.
21 consumer demand at that time.

22 The fledgling California industry believed
23 there was room for both California and Iranian
24 pistachios in the market, but it soon became apparent
25 that our Iranian counterparts did not agree. In 1981,

1 the U.S. signed the Algiers Accords ending the first
2 U.S. embargo, the hostage embargo. Pistachio imports
3 from Iran steadily increased and by 1984 were being
4 dumped and sold at below market price, effectively
5 barring the California industry from gaining any
6 meaningful market share and return on investments.

7 The cost of U.S. production was exceeding
8 the rapidly deflating market price. In 1981, the
9 imported Iranian pistachio was selling for \$2.51 per
10 pound and in 1985 was selling for \$1.46 per pound.
11 The U.S. industry had no choice but to pursue economic
12 relief and protection from this relentless unfair
13 competition.

14 When the antidumping order against raw
15 Iranian pistachios was established in 1986 the
16 California pistachio industry was finally able to
17 concentrate all of its efforts on increasing consumer
18 awareness and demand for pistachios.

19 Through the efforts of the California
20 Pistachio Commission and its grower members, the
21 industry began a concerted effort to educate consumers
22 about the health benefits and availability of
23 pistachios.

24 We were successful in approaching the major
25 supermarket produce department retailers throughout

1 the country and convincing them to start selling and
2 featuring pistachios in their produce departments.
3 Prior to this time pistachios were primarily sold in
4 small jars and containers in the snack and baking
5 aisles of the supermarket, which provided limited
6 visibility to shoppers.

7 Our efforts paid off. Pistachios became a
8 year-round produce item and one of the Department's
9 top selling items for Super Bowl parties across
10 America. With the growing and consistent supply from
11 California it was no longer just a seasonal holiday
12 nut. The market for pistachios became well
13 established.

14 The Commission's research shows that
15 although pistachios have become more accessible to
16 consumers, for the most part they are still considered
17 a luxury impulse snack item, which means consistent
18 promotion, supply and pricing are critical to the
19 successful movement of this agricultural product.

20 California growers are fully aware of the
21 need to remain vigilant in the continued development
22 of the U.S. domestic market. Today the market has
23 grown to over 125 million pounds annually. There are
24 approximately 600 California pistachio growers and 18
25 processors. The combined employment of the industry

1 is in the thousands, and the capital value of the
2 California pistachio industry is estimated to be in
3 excess of \$2 billion.

4 A couple of years ago I met with the
5 corporate office of a major U.S. owned wholesale
6 warehouse club store. As one of the largest single
7 buyers of California pistachios in the U.S., they
8 explained to me their need to offer the lowest price
9 for all their items and their willingness to switch to
10 Iranian pistachios if they were available and cheaper.

11 They stressed the fact that they were known
12 by their club members as sourcing products from
13 throughout the world, and therefore they were
14 convinced their members would have no issue with a
15 country of origin switch. This organization currently
16 represents in excess of 15 percent of domestic sales
17 for the industry.

18 In closing, we are sincerely appreciative of
19 the opportunity to provide a clear picture of today's
20 California pistachio industry. I speak on behalf of
21 all California pistachio growers when I express our
22 appreciation to the United States International Trade
23 Commission for your thoughtful and thorough review of
24 this antidumping order.

25 Thank you.

1 MR. BLACKWELL: Good morning. My name is
2 Brian Blackwell. I'm the owner of Blackwell Farm &
3 Company, a family owned business which, among other
4 things, grows pistachios on 300 acres of land.

5 I have been in the pistachio business since
6 graduating with a Bachelor of Science degree in
7 agricultural sciences from Fresno State University.
8 While I am a grower, I also manage the largest
9 pistachio nursery in the United States. I would like
10 to give you briefly some information on the pistachio
11 tree nursery stock and how the growing of pistachio
12 trees affects the conditions of competition between
13 the U.S. and Iranian pistachios.

14 Because of the success the California
15 industry has been having, we have seen a lot of
16 growers deciding to plant more trees. The time
17 between taking orders for delivering the trees to the
18 field for planting is approximately three years. We
19 are now taking orders for trees to be delivered in
20 February of 2008.

21 As you can see, pistachio industry members
22 must try to predict the future. Given how long it
23 takes for trees to come into production, there is
24 definitely some risk associated with planting trees
25 that can take as long as seven years to begin

1 producing a commercial crop.

2 In the early 1980s, after the Iranian
3 pistachios re-entered the United States market our
4 tree orders stopped almost overnight. Such was the
5 threat of the Iranian industry. Even growers with
6 established pistachio orchards who thought they could
7 compete with Iranian imports learned within one year
8 that they could not be profitable against the huge
9 wave of dumped Iranian pistachios.

10 The nursery business nearly died. For
11 several years the only tree orders we received were
12 for tree replacements in established pistachio
13 orchards. Then after the 1986 dumping order was
14 imposed the nursery started to receive orders once
15 again.

16 Normally the grower will have the land and
17 will start leveling and installing irrigation systems
18 a year or two before the planting of the trees. A
19 U.S. grower planting a pistachio orchard will wait
20 seven years before harvesting its first commercial
21 crop and another two to three years before producing
22 crops providing positive cashflow. Most pistachio
23 orchards take around 18 years before recouping their
24 investment.

25 There is a saying within our industry that

1 one plants almonds for their children, but one plants
2 pistachios for their grandchildren. Let me be clear.
3 Do I think Iran will export their trees to the U.S.?
4 No. What I am concerned about is how fast Iran can
5 export their nuts to the U.S. and devastate the U.S.
6 pistachio nut growing and processing industry and
7 necessarily the pistachio tree nursery business.

8 Within a one-year period, Iran in the 1980s
9 increased its exports of pistachios to the U.S. from
10 five million to 21 million pounds. I do not want a
11 repeat of what happened to our industry then.

12 Thank you.

13 MR. KEENAN: Good morning. My name is
14 Robert Keenan. I am president of Keenan Farms, a
15 pistachio ranch and processing operation that my
16 family started in 1972 and in which I became involved
17 in 1975.

18 My company began processing pistachios in
19 1977, and we are the third largest marketer of
20 pistachios in the United States. I am responsible for
21 the administration and marketing of Keenan Farms
22 pistachios. Our operations are located in the Central
23 Valley of California.

24 As a grower, I prune in the winter,
25 cultivate and harvest the crops in a 160-day period

1 beginning with bloom in early April and culminating in
2 the harvest in September. Mechanical harvesters shake
3 the trees to remove the fruit, preventing the
4 pistachios from ever touching the ground. This
5 reduces incidences of aflatoxin.

6 The harvesting equipment costs approximately
7 \$250,000 per unit and harvests approximately 15 acres
8 of production per day. The primary processing begins
9 with harvest and lasts about 40 days per year. About
10 75 percent of the annual production volume is
11 harvested and processed in a 17-day period, which
12 necessitates a tremendous capital investment by the
13 industry.

14 Processing consists of removal of the outer
15 hull, washing, separation of the filled nuts from the
16 blank nuts, drying to a moisture of approximately five
17 percent and fumigating for control of insects. A
18 second part of the process is the sorting, grading and
19 sizing and packing of the raw product.

20 Being in the business since 1975, I can
21 speak firsthand about the conditions before the
22 antidumping order went into effect in July of 1986.
23 Iranian pistachios were coming into the United States
24 in very large quantities and at prices much lower than
25 that of California pistachios. Purchasers demanded

1 that the California industry get in line with Iranian
2 price.

3 The domestic industry has benefitted
4 enormously since the antidumping duty order was
5 imposed. Growers have invested in developing 80,000
6 acres of new orchards since 1985. Processors have
7 increased profits and capacity sevenfold and have
8 invested time and money to develop new U.S. markets
9 and expand existing U.S. markets.

10 With a stroke of a pen, all the progress the
11 domestic industry has made since the antidumping order
12 was imposed could be negated. We learned in the 1980s
13 how quickly the Iranian pistachios could enter the
14 U.S. Iranian producers and exporters will be willing
15 to sell the pistachios very cheaply because they have
16 been out of this market for almost 20 years. There
17 will be a rush to capture the U.S. market.

18 Any company with roasting equipment could
19 easily import, roast and package Iranian pistachios.
20 This would also include roasting equipment currently
21 being used to roast other nuts and seeds.

22 Pistachios are a fungible product.
23 Consumers by and large will not be able to discern if
24 a pistachio was from California or Iran. Their
25 decision to buy will come down to price. Lower prices

1 lead to reduced grower income and reduced orchard
2 value.

3 Additionally, the U.S. market is extremely
4 attractive to Iranian producers and exporters since
5 aflatoxin tolerance is significantly higher in the
6 U.S. than in Europe. A large percentage of Iran's
7 pistachio shipments to Europe have been rejected at
8 the destination ports because of higher than
9 acceptable levels of aflatoxin.

10 Nearly every country in the European Union
11 has rejected shipments of Iranian pistachios. Many of
12 those pistachios that are not allowed to enter the
13 European Union could very well enter the U.S. with its
14 less stringent aflatoxin standard. The revocation of
15 the order will jeopardize the future of the California
16 industry.

17 Thank you very much.

18 MR. REILLY: Good morning, Mr. Chairman and
19 members of the Commission. My name is John Reilly of
20 Nathan Associates, and I'm appearing on behalf of the
21 California Pistachio Commission and the Western
22 Pistachio Association.

23 In my testimony today I will first address
24 the development of the U.S. pistachio industry between
25 the initiation of the antidumping order and the

1 present, demonstrating that the absence of Iranian
2 product from the market has permitted the U.S.
3 industry to grow substantially.

4 Finally, I will assess the pistachio
5 growers' reported financial performance in view of the
6 economics of establishing and operating pistachio
7 orchards in California. I will refer to the tables
8 that you should have in hand as I work through the
9 analysis.

10 Table 1 summarizes selected indicators of
11 U.S. growers' average yearly performance for the two
12 crop years beginning in September 1984 and ending in
13 August 1986 and the two years beginning in September
14 2002 and ending in August 2004. The data for each
15 period are averages for a high production and a low
16 production year.

17 Between the two periods, apparent U.S.
18 consumption of pistachios on a shelled weight basis
19 rose by 118 percent while U.S. production grew by more
20 than 430 percent. This rather extraordinary U.S.
21 grower performance has resulted from a combination of
22 a market share gain from about 59 percent to nearly
23 100 percent along with strong export growth.

24 The domestic market share gain is the direct
25 result of the departure of Iranian pistachios from the

1 U.S. market. The growth of pistachio exports from 2.2
2 million pounds to nearly 40 million pounds primarily
3 reflects gains in the EU market that I'll address in
4 more detail in a few minutes.

5 U.S. pistachio bearing acreage about tripled
6 between the two periods, which accompanied by a 76
7 percent gain in yield per acre caused U.S. production
8 to increase by more than five times. Although
9 pistachio prices have remained relatively low,
10 increasing by only about 14 percent over a period of
11 nearly 20 years, the substantial yield improvement
12 over the period caused crop value per acre to more
13 than double.

14 Had Iranian pistachio exporters continued to
15 have unfettered access to the U.S. market from 1986 to
16 the present, the domestic industry could not have
17 approached its current scale and high level of
18 efficiency.

19 As regards exports, it is clear that
20 domestic investment in new producing acreage, yield
21 improvements and quality control have permitted the
22 U.S. industry to succeed as a competitor on the world
23 stage.

24 As shown in Table 2 of my handout, total
25 pistachio exports in recent years have increased

1 substantially, growing from 46.3 million pounds in
2 2002 to 78.5 million pounds in 2004 for a relative
3 gain of more than 69 percent.

4 Moreover, between January to July 2004 and
5 the same period in 2005, U.S. exports grew by an
6 additional 73 percent. Driving this rapid growth had
7 been U.S. exports to the EU partly at the expense of
8 Iranian exporters.

9 The EU has a strict aflatoxin limit of two
10 parts per billion. Iranian exporters have had
11 substantial difficulty in meeting this standard. As a
12 result, EU imports of pistachios from Iran plummeted
13 by more than 50 percent between January to July 2004
14 and the same period in this year to the direct benefit
15 of U.S. pistachio exports.

16 Ironically, the U.S. aflatoxin standard for
17 imports is 20 parts per billion. Accordingly, a
18 substantial amount of the Iranian product rejected
19 under the EU standard would meet the U.S. standard and
20 could therefore be exported to the United States.

21 Because pistachios are characterized by
22 alternating high and low production years, the
23 analysis of growers' financial performance should
24 bridge each on and off year, to use industry parlance.
25 The growers' financial statements in Table 3 of my

1 handout bridge fiscal years 2003 and 2004.

2 For 2003, the off year, the growers reported
3 an aggregate loss. Conversely, they reported a
4 substantial profit for the on year. Averaging the
5 results for fiscal 2003 and 2004 produces a net
6 reported pre-tax profit of some 35 percent of sales.
7 Although such a margin is impressive on its face, it
8 must be put in perspective.

9 As noted in the staff report, the data do
10 not include mandatory assessments paid by each grower
11 to the CPC. More important, many of the smaller
12 growers providing financial information appear to be
13 family operations -- that is proprietorships --
14 reporting on a cash basis. As such some portion of
15 the profits that they report likely represents returns
16 to family members' labor in operating the orchards.
17 That is, the family wages.

18 Pistachio trees do not produce nuts until
19 six or more years after planting in an orchard. Thus,
20 a new grower must endure an extended period of
21 substantial outlays with no revenue in order to enter
22 the industry. The same holds true for existing
23 growers contemplating an increase in planted acreage
24 or replacement of trees that are approaching the end
25 of their economic lives.

1 The land improvement and orchard development
2 costs for most currently producing acreage have likely
3 been fully written off and are not reflected in
4 current financial statements. Were this not the case,
5 depreciation and amortization would be far greater
6 than the \$9.7 million or 10 percent of total cost
7 shown in Table 3 of my handout. Moreover, the
8 opportunity cost of the land given over to pistachio
9 production is not reflected at all in the growers'
10 financial statements.

11 In 2004, the University of California
12 published a study of costs for establishing and
13 operating a well-managed, 100-acre pistachio orchard
14 in the San Joaquin Valley, assuming current land and
15 factor costs. I summarize the UC annual capital
16 recovery cost estimates in Table 4 of my handout.

17 Such costs include the investment in
18 establishing the orchard and bringing the trees into
19 production, the opportunity cost of holding the land
20 for pistachio production and the investment in
21 buildings and equipment required to run the operation.

22 Total estimated annual capital recovery cost
23 after the orchard becomes productive amounts to \$1,110
24 per acre. Orchard establishment investment recovery
25 amounts to \$572 -- that's the majority of total cost

1 -- and the recovery of investment in buildings and
2 equipment amounts to \$276. The opportunity cost of
3 land amounts to \$262.

4 Now, based on a yield of 2,535 pounds per
5 acre from Table 1 of my handout -- that's the average
6 yield for the 2002-2004 period -- the total figure of
7 \$1,110 per acre translates into 44 cents per pound for
8 capital recovery. The 2004 depreciation reported by
9 the growers amounts to only six cents per pound.

10 In short, the growers' financial information
11 reported to the Commission falls far short of
12 reflecting the full economic cost of establishing an
13 orchard and growing pistachio in the current market.

14 Thank you for your attention. I'll be happy
15 to answer any questions you may have.

16 MR. STEINBERGER: Good morning, everyone.
17 I'm John Steinberger.

18 The question to be answered in any sunset
19 review by the Commission is will revocation of the
20 order likely lead to material injury within a
21 reasonably foreseeable time.

22 The statute identifies three key factors to
23 be considered. The likely volume of the subject
24 imports. How much will come in? The likely price
25 effect of the imports. When it comes in, what will it

1 do to domestic prices? And the likely impact on the
2 domestic industry. What will happen to all of those
3 indicators of financial health that the Commission
4 uses such as production, shipments, capacity
5 utilizations, market share, profitability, employment
6 wages and so on?

7 That's the essence of a sunset review, just
8 those three things set forth in 752(a)(1). If you
9 have to boil it down to just those three things it
10 makes sense to look at those three. You look at
11 volume because you might discover, for instance, that
12 the foreign producer is no longer in business, or
13 maybe they have more business than they can handle, or
14 for some other reason they can't ship to the United
15 States in volumes that would be of any consequence.

16 Or, you could have a case like this one
17 where the foreign industry is a behemoth, and removal
18 of the order would pour huge quantities of subject
19 merchandise at dumped prices into the United States.

20 You look at the likely price effect because
21 there might be cases in which a significant volume of
22 dumped imports in the marketplace won't affect the
23 price of the domestic like product. Maybe conditions
24 have changed since the order has been issued, and the
25 imports and the domestic product now would cater to

1 separate niche markets and wouldn't really compete
2 with each other.

3 Or, you might have a case like this one; a
4 commodity like product where demand is driven by
5 consumers who make no distinctions between the
6 imported and the domestic product.

7 Finally, you look at the likely impact on
8 the domestic industry because there might be cases in
9 which the import volume is significant, the products
10 actually do compete fairly directly, but in the great
11 scheme of things it just doesn't matter much to the
12 domestic industry.

13 Or, you might be looking at a case like this
14 one where the nature of the product itself leaves the
15 domestic industry with no safe harbor.

16 This is not a checklist. The statute
17 doesn't say that all three factors must be supporting
18 an affirmative determination, although in this case
19 they do. The statute says that these are the things
20 that the Commission must consider in deciding that
21 single ultimate question of whether revocation of the
22 order would likely lead to material injury in a
23 reasonably foreseeable time.

24 Now, the rest of 752(a) gives a little bit
25 further guidance. (1)(a) says you look at the prior

1 injury determination. Why? Because it's your best
2 indication of what happened the last time the subject
3 merchandise was traded in the United States without
4 the discipline of the antidumping order.

5 The prior injury determination also tells
6 you how the market is structured and exactly what the
7 mechanism of the injury is. It identifies the chain
8 of causation between the import and the injury.
9 Unless there's been some kind of fundamental change in
10 the intervening years, it's a reasonable inference
11 that removal of the order will trigger the same
12 mechanism of causation again, and injury will recur.

13 (1)(b) tells you to think about whether any
14 improvement in the domestic industry is related to the
15 order. If the industry's fortunes have risen because
16 of the antidumping order then it's reasonable to
17 conclude that they will decline if you remove that
18 order. That's the reality check on the conclusions
19 reached by the Commission about causation the first
20 time around.

21 (1)(c) says you should look at whether the
22 industry is vulnerable to material injury if the order
23 is revoked. Vulnerable is not defined by the statute,
24 but the statement of administrative action in the
25 Uruguay Round Agreements Act explains that the term

1 vulnerable relates to susceptibility to material
2 injury by reason of the subject imports.

3 Vulnerability, susceptibility is not about
4 whether the industry is doing well. Of course, an
5 industry that's doing poorly, that's in a weakened
6 state, will almost always be vulnerable, but that does
7 not mean that a healthy industry is invulnerable.

8 Look at Achilles on the day of his death.
9 He was a tough guy, Achilles. He was strong. Homer
10 said he was God-like. Under ordinary conditions on
11 the battlefield he could do very well for himself. So
12 he's standing on his own two feet in the Temple of
13 Apollo, and a single arrow to his heel takes him down.
14 He wasn't made to withstand that particular type of
15 attack.

16 That's the classic example of what
17 vulnerability means. It's susceptibility to some kind
18 of injury. You're looking today at an industry that
19 is also strong, is also standing on its two feet, but
20 it isn't made to withstand an unrestrained waive of
21 imports at dumped prices from a country whose
22 production dwarfs its own.

23 Let's follow the framework of the statute a
24 little bit and look at those three basic factors one-
25 by-one -- the volume of imports, the price effects and

1 the impact on the domestic industry. First, the
2 likely volume of imports from Iran.

3 Can anyone seriously doubt that Iran is able
4 to produce huge quantities of pistachios and ship them
5 to the United States? Iran's industry is the largest
6 in the world averaging 672 million pounds of
7 production each year since 2002 as compared to 290
8 million pounds in that same period in the United
9 States.

10 The Iranian industry is highly export
11 oriented. Fifty to 80 percent of its pistachio crop
12 is exported each year making pistachios the country's
13 top agricultural export and the second or third
14 ranking export commodity of everything Iran produces,
15 right up there with oil. Think about that. Right up
16 there with oil from Iran.

17 Think about the critical importance of
18 pistachios to Iran's domestic economy and especially
19 to their ability to bring in hard currency. Iran has
20 very few export products that can do that.

21 During the 1970s and 1980s, Iran was too
22 involved in revolution and wars and too isolated from
23 the rest of the world to commit itself to building an
24 industrial base that would produce much of anything
25 that the rest of the world wanted.

1 Most of you have probably done a fair amount
2 of traveling in other countries, and I'll wager that
3 last time you were in London you did not watch the
4 World News on the BBC on a Rafsanjani television set.
5 When you're in Rio, you don't see Iranian cars buzzing
6 around on the streets. You don't fly around in
7 Iranian made jetliners. You don't buy Domghan
8 furniture or Khorasan coiffers makers or Farazad
9 swimwear.

10 Iran isn't that kind of country. It's a
11 simple, agrarian society. Its principal exports are
12 oil from the ground, rugs made by hand, pistachios
13 plucked off of trees also by hand. Iran needs to
14 export pistachios, and as we saw from the 1980s the
15 U.S. is an extremely attractive market to them. That
16 will not change any time soon.

17 That's the forest as far as the likely
18 volume of likely volume of imports goes. Now a few of
19 the trees. One of them is any likely increase in
20 production capacity or existing unused capacity in the
21 exporting country. In other words, can we expect Iran
22 to produce more pistachios in the future than it has
23 been producing?

24 The answer is yes for several reasons. The
25 staff report notes that Iranian production increased

1 steadily from 1986 into the 1990s and then up to the
2 present day. We also know that Iran's production
3 during 2003 and 2004 was suppressed by unusual weather
4 events. With ordinary weather Iran is capable of
5 producing much more, even without any new bearing
6 acreage.

7 Third, Iran's Ministry of Agriculture
8 reported that Iran had 266,000 acres of seedling trees
9 in 2001, which would be a 38 percent increase in the
10 bearing acreage of 693,000 in trees. That was four
11 years ago, so it's a fair shot that a good portion of
12 that extra seedling acreage is now already in
13 production, and that which isn't will be in production
14 very soon.

15 Production steadily increased. Many acres
16 that did not produce in 2003 and 2004 are going to
17 produce now, and new acreage has been added, all of
18 this in a country that produces more pistachios than
19 it consumes and a country that needs pistachio exports
20 to generate hard currency.

21 We know where much of that production will
22 go. We know from the experience of the 1980s that it
23 will come here. That would be true even if Iran did
24 not have an aflatoxin problem in the EU. If you add
25 the EU aflatoxin restrictions to the mix, you graduate

1 from likely to inevitable.

2 The EU now tests every single shipment of
3 Iranian pistachios and rejects any that test above two
4 parts per billion for B1 aflatoxin, which is most of
5 them, or above four parts per billion for aflatoxin
6 generally. In the U.S., the current standard is 20
7 parts per billion, and the testing for imports is hit
8 and miss.

9 The existence of barriers to the importation
10 of subject merchandise into third countries is another
11 one of those factors, one of the trees in the forest
12 of looking at the likely volume of subject imports.
13 Considered as a whole, the facts on the record point
14 to only one plausible conclusion about the likely
15 volume of imports. The likely volume would be
16 enormous.

17 The second factor out of the big three is
18 the likely price effect. It is not complicated in
19 this case. With regard to this factor, the statute
20 directs the Commission to consider whether there's
21 likely to be significant price underselling and
22 whether the imports will have a price depressing or
23 price suppressing effect.

24 There is nothing on the record of this
25 review -- nothing -- that would suggest that subject

1 imports would sell at or above the domestic price of
2 pistachios. Everything points to underselling. This
3 is a commodity product. The last time it entered the
4 United States in large quantities it consistently
5 undersold the domestic product.

6 In third countries where the two products
7 compete, the Iranian product consistently undersells
8 the U.S. product, and the Department of Commerce has
9 found that if the antidumping order were to be revoked
10 the merchandise would be dumped at enormous margins.

11 The consumers who buy this product don't
12 care whether it comes from Iran or the United States
13 for the most part. Demand from those consumers who
14 buy the roasted product is what drives the demand for
15 raw pistachios. Anyone with roasting equipment, which
16 might now be used for peanuts, cashews, any number of
17 other product, can buy the Iranian product at a lower
18 price, use that equipment to roast it and send it
19 along its merry way to consumers who will not care
20 where it came from.

21 For a commodity product, the inevitable
22 result is downward pressure on domestic pricing.
23 Domestic producers will have no choice. That's where
24 they will have to go. The second factor of the big
25 three plainly supports an affirmative determination.

1 You come to the third of the big three
2 factors, the likely impact on the domestic industry.
3 For the answer to that you need only look at what the
4 Commission found in the original investigation because
5 the mechanism of causation has not changed.

6 A drop in domestic market share from 92
7 percent to 56 percent, a drop of about 40 percent in
8 capacity utilization, declines in employment and
9 wages, consistent declines in grower profitability and
10 net income, even net losses for growers, the same
11 pattern of decline for processors. Keep in mind all
12 that happened quite rapidly.

13 Iran's market share in the United States
14 went from about 16 percent to 45 percent in one year
15 between 1983-1984 and 1984-1985. In that same year,
16 domestic market share goes from 82 percent to 54
17 percent. Growers' net income before taxes goes from
18 \$3.9 million to \$1.7 million. That's in a single year
19 because it's a commodity product. By anyone's
20 standard, that's a reasonably foreseeable time.

21 The Commission's staff estimated that
22 apparent U.S. consumption of raw in-shell pistachios
23 was 115.6 million pounds since 2002. I'm sorry.
24 115.6 million pounds in 2003-2004. That's U.S.
25 domestic consumption. Contrast this with Iran's

1 average annual production of 672 million pounds since
2 2002, and all of that from a country that exports 50
3 to 80 percent of its production and is now seeing
4 problems in one of its largest export markets, the EU.

5 Imagine what a disaster it would be if Iran
6 shipped just five percent of its production to the
7 United States. That would be 33.6 million pounds into
8 a market that the staff has put at 115.6 million. Can
9 anyone doubt that Iran could ship five percent of its
10 production or that it would be a problem for the U.S.
11 industry if they did so?

12 Finally, remember that in the pistachio
13 business it isn't enough just to invest years and
14 years of getting that tree in the ground, waiting for
15 it to grow before you can harvest it. The other thing
16 you must do in this industry is invest years of time
17 creating the demand for what people regard as an
18 option, a luxury product.

19 Like the trees themselves, the marketing
20 campaigns don't yield fruit overnight. That means
21 that the domestic industry can't just compensate for
22 lost U.S. sales by shifting this product somewhere
23 else. They have to build the demand in those other
24 markets first.

25 Is Iran likely to export significant volumes

1 of raw pistachios to the U.S. if this order is
2 revoked? Yes. If that happens will the product from
3 Iran undersell domestic pistachios and depress U.S.
4 prices? Absolutely. Will that then eat into the
5 domestic industry's market share, revenue, capacity
6 utilization, profits, employment, wages? Of course it
7 will.

8 With those answers to the big three
9 questions, there is only one outcome under Section
10 752, and that's an affirmative determination.

11 Thank you.

12 MR. CONNELLY: Mr. Chairman, members of the
13 Commission, good morning. My name is Warren Connelly.
14 I am here on behalf of Cal-Pure Pistachios, Inc.,
15 Paramount Farms, Inc. and its related entities.

16 With me today is Bill Phillimore from
17 Paramount Farming Company. Bill is going to present
18 Paramount's remarks, and then I may have a few
19 concluding and summarizing remarks.

20 MR. PHILLIMORE: Thank you. Good morning.
21 My name is Bill Phillimore, and I'm the executive vice
22 president of Paramount Farming Company. I've been
23 with Paramount for over 17 years, all since 1987.
24 There my responsibilities include all the
25 administrative parts of running the company.

1 Paramount is the largest pistachio grower in
2 California. We have about 25,000 bearing acres of
3 pistachios, which is about 25 percent of the bearing
4 total in the state. We have another 3,000 acres not
5 yet in the bearing stage.

6 We deliver our entire harvest each fall to
7 our three related processing plants for processing
8 into raw in-shell pistachios. Although 70 to 80
9 percent of the domestic raw in-shell product is
10 roasted, salted, packaged and sold into the snack food
11 market, the remainder is shelled and sold as an
12 ingredient to the food industry.

13 Our three plants also handle a lot of volume
14 of pistachios that we acquire from unrelated growers.
15 We process about 50 percent total volume of the
16 pistachios grown in California. In order to maximize
17 returns to both our own farms and to unrelated
18 growers, it is essential that our processing plants be
19 able to rapidly receive and process the entire
20 pistachio harvest during a period of four to six weeks
21 beginning in late August or early September. This is
22 because once harvested, pistachios in their in-hull
23 state deteriorate rapidly.

24 If we can't get the crop to the plant within
25 a few hours of harvesting then the degrading hulls

1 will stain the shells. Stained shells adversely
2 affect the specification of the product, which reduces
3 grower profits.

4 You may recall not so long ago that
5 pistachio shells were frequently stained red. This
6 was simply a way that the industry had to hide the
7 defects on the shells. It wasn't because we thought
8 that consumers preferred to get red dye all over their
9 hands. However, Paramount has invested many millions
10 of dollars in its plants in recent years to expand
11 capacity and to ensure that we can process deliveries
12 from the field within six hours or less and by doing
13 so minimize the staining problem.

14 Our plants operate 24 hours a day, seven
15 days a week, for the harvest season. Much of the
16 equipment which is dedicated to pistachio processing
17 sits idle for the rest of the year. There are very
18 few industries where the commitment of equipment to
19 harvest has such a short useful life.

20 Growing and processing any agricultural crop
21 is a risky business, even in the best of times.
22 Certain unpredictable weather-related events such as
23 frost, drought, heavy rain or even excessive heat and
24 humidity can dramatically affect the size and quality
25 of the harvest and the resulting return to growers.

1 At Paramount we made our own substantial bet
2 on the future of the pistachio business beginning in
3 1997 when we started to plant an additional 12,500
4 acres. In 1996, when we made the decision, no one
5 could have accurately predicted where our business was
6 going, but we did have the invaluable protection of
7 the antidumping order on Iranian raw in-shell
8 pistachios which was in effect at the time.

9 This order, along with the embargo on
10 Iranian imports between 1987 and 2000, has given our
11 company sufficient assurance to proceed with a
12 carefully considered plan to gradually increase
13 production and the capacity to process that
14 production.

15 However, in order to justify the required
16 investments we have had to build demand with an
17 extensive program of promotion and advertising,
18 branding with the widely known and respected Sunkist
19 label for our retail sales and innovative in-store
20 displays and packaging such as our one-pound
21 resealable zip bag.

22 Our in-store promotions run from time-to-
23 time throughout the year and are tied to events like
24 the Super Bowl and March Madness, which I believe has
25 something to do with basketball. I'm sure you've seen

1 our regular displays in the produce sections of local
2 supermarket chains here like Giant, Safeway and Harris
3 Teider. We are now focused and trying to penetrate to
4 a greater extent the mass merchandiser and buying club
5 segment, as well as convenience stores.

6 Regularly scheduled promotions at the retail
7 level are one way that we're trying to create year-
8 round demand. Pistachios have historically been
9 regarded as a seasonal item, with consumption mainly
10 occurring during the fall and winter right after
11 harvest. This is a problem that year round
12 advertising and promotion can overcome, as long as we
13 have a sufficient inventory to support our program.

14 We've explained in our brief how we use
15 carry out to stabilize supply and pricing, but one of
16 our greatest fears is that the Iranians have no
17 incentive whatsoever to market their crop in an
18 orderly manner and therefore be detrimental to
19 pricing.

20 Establishing pistachios in the market as an
21 alternative to peanuts, cashews and other snacks has
22 not been an easy task. We do have the advantage these
23 days of a growing number of well-educated consumers
24 who seek out information about the health and
25 nutritional benefits of the food they eat. However,

1 that's really not enough of an advantage in a crowded
2 field of alternatives, and we still have a long, long
3 way to go.

4 Pistachio consumption a per capita basis in
5 the United States is still far below consumption of
6 almonds, peanuts, cashews and walnuts. In fact,
7 annual per capita consumption of pistachios is still
8 only about a quarter of a pound, although we have made
9 considerable progress from prior years.

10 That is just one reason why our industry is
11 not yet at the point where we can withstand an
12 external shock regardless whether it comes in the form
13 of a weather catastrophe, a change in consumer mindset
14 or a surge of low-priced imports from Iran. Right now
15 our company is profitable, as is the industry overall,
16 but that does not mean we are not vulnerable to
17 Iranian imports if the order is revoked.

18 We have described in detail in our brief the
19 threat that Iran poses. By every measure, the Iran
20 raw in-shell pistachio industry is much more
21 formidable now than it was during the original
22 investigative period. Iranian production levels,
23 acreage under cultivation and export levels have all
24 increased significantly.

25 Moreover, although the California industry

1 has grown, the Iranian industry's rate of growth has
2 outpaced our own. For example, Iran's productive
3 acreage grew by 66 percent between 1992 and 2003,
4 while U.S. acreage grew by 51 percent in the same
5 period, but that was from a much, much lower base.
6 Iran right now has about a million acres under
7 cultivation, while the U.S. has about 124,000.

8 California producers are more efficient than
9 producers in Iran so we produce more pounds per acre.
10 However, the huge acreage difference means that Iran
11 will always grow a fair greater volume than we do. In
12 fact, the threat of resumed imports has caused
13 Paramount to decide not to plant any more pistachio
14 trees for the moment.

15 We also grow almonds and pomegranates. For
16 these two products we do plan to increase our acreage
17 by a very substantial amount in the next year or two
18 as our confidential questionnaire response shows.
19 However, our secession of pistachio plantings
20 demonstrates just how serious we perceive the threat
21 from Iran to be.

22 This threat is not just volume and price
23 related, although to be sure the price, volume and
24 market share effects of Iranian imports would be
25 disastrous. We're also very worried about the quality

1 and perception of quality of Iranian pistachios.

2 Specifically we're worried about a food
3 safety scare that could easily arise if Iranian
4 imports are detected to have excessive levels of
5 aflatoxin as has been the case in Europe. Consumers
6 these days react rapidly to the detection of unhealthy
7 levels of banned substances by switching their buying
8 habits.

9 The canned tuna industry, to take just one
10 recent example, suffered a 10 percent sales decline
11 and lost revenue of \$150 million after the FDA issued
12 a mercury warning in March of 2004. The irrelevance
13 of this warning to most adult consumers was
14 disregarded. What matters was the consumers' general
15 perception that canned tuna held a threat for them.

16 That is precisely what could happen if
17 Iranian imports are allowed back into the U.S. In
18 this regard, please keep in mind that pistachios are
19 still widely perceived in the marketplace as a
20 commodity despite our best efforts to brand
21 Paramount's products and create an identity and
22 consumer loyalty for them.

23 Consumers do not yet sufficiently
24 differentiate our products from others. Thus,
25 detection of excessive aflatoxin levels in Iranian

1 imports and the associated widespread publicity will
2 inevitably affect demand and pricing for our products.
3 This is likely as shown by what happened in the EU.
4 There, during 2003 and 2004, Iranian imports have been
5 found upon inspection to have excessive aflatoxin
6 levels up to 21 percent of the time.

7 The adverse product reaction to Iran's
8 problem has caused demand for its product to drop in
9 that market, and that has had the side effect of
10 helping our exports. However, these exports are still
11 just a fraction of Iran's own output. More important,
12 the EU's much more stringent aflatoxin standard means
13 that Iran will have a strong additional incentive to
14 divert a greater percentage of its exports to the
15 United States if the order is revoked.

16 During the original period of investigation
17 in the mid 1980s, Iran sent 19 percent of its
18 production to the United States. It is reasonable to
19 expect at least this level or more likely much more
20 given the problem that Iranian exports are continuing
21 to have in the EU to be targeted at the U.S.

22 The EU is the market that they claim at the
23 moment to be their largest and most profitable.
24 Certainly the other markets around the world are not
25 sufficient to provide Iran with a meaningful incentive

1 to avoid the U.S. market if given the opportunity to
2 re-enter it. That is especially true since the U.S.
3 market, partly due to our marketing efforts, is
4 currently relatively high priced.

5 In summary, we fear that all our investments
6 are in severe jeopardy if the order is revoked. We
7 have built an industry from scratch in just over three
8 decades, but our survival is threatened by a
9 competitor that has no incentive to act responsibly in
10 this market and who's not done so in the past.

11 In our brief we have shown what the Iranians
12 have done in other markets in head-to-head competition
13 with American pistachios, and the Commission has the
14 vivid illustration of what happened during the
15 original investigation when Iran seized a 42 percent
16 U.S. market share in just a few short years through
17 aggressive pricing and dumping.

18 We urge you not to expose us again to this
19 highly likely development at this critical stage of
20 our development. We are not yet a mature industry,
21 and we are still working hard to establish our
22 products in the marketplace. Continued relief through
23 the antidumping order is essential to our continued
24 survival.

25 That completes my remarks.

1 MR. CONNELLY: Just a few remarks to
2 summarize Paramount's position in closing.

3 We have basically five reasons why we
4 believe the Commission ought to keep the antidumping
5 order in effect. First, as you've heard already
6 today, the Iranian pistachio industry is even more of
7 a menace today than it was during the original period
8 of investigation.

9 Second, Iranian producers and exporters
10 still do business in the same way as they have done
11 business traditionally. They treat pistachios as a
12 commodity, and they sell that commodity on the basis
13 of price around the world.

14 We've even given you a case study by the
15 USDA as to what happened in China in 1998 through 2000
16 where Iranian producers and exporters took substantial
17 sales away from U.S. producers and exporters through
18 low-ball pricing.

19 Third, the largest Iranian producer and
20 exporters, the Rafsanjan Pistachio Producers
21 Cooperative, is a sophisticated and formidable
22 competitor that has set its sights on re-entering the
23 U.S. market.

24 The RPPC had 200 members in 1968. Today it
25 has 70,000 members, and it uses modern methods of

1 handling and processing. There is no question that
2 the RPPC and other Iranian exporters have the ability
3 and the resources to rapidly redirect their products
4 to the U.S. market.

5 Fourth is, as you've heard, the U.S. market
6 is a highly attractive market to Iran because it is a
7 relatively high-priced market, and demand for
8 pistachios is growing thanks to the investments, the
9 very substantial investments, in promotion and
10 advertising that U.S. producers have made.

11 Iranian interests have admitted that they
12 piggyback on U.S. marketing and promotion efforts in
13 Europe and elsewhere, and there's no question that
14 they will do so even more here.

15 Fifth and most important, the Commission has
16 frequently found that the best available information
17 concerning what is likely to happen if an order is
18 revoked is found in the record of the original
19 investigation. Here the original pistachios record
20 remains uncontradicted and unchanged in every material
21 respect.

22 Today, thanks to the antidumping order, the
23 members of the domestic industry have been able to
24 continue with their investment plans and their
25 promotional efforts which have succeeded in

1 establishing a toehold in a very crowded marketplace.
2 That toehold is not a firm one, and it could slip very
3 easily.

4 Now, the Commission has also found relevant
5 in other sunset reviews the lack of participation by
6 Respondent interested parties. There is an obvious
7 reason why the RPPC, which did enter an appearance in
8 the Commerce sunset review, has declined to do so
9 here. The RPPC simply does not want to disclose the
10 details of its operations and future strategies, and
11 it doesn't want to provide the data that the
12 Commission's questionnaires require.

13 We submit that this failure to participate
14 strongly supports acceptance of the data that we have
15 submitted and the conclusions that we have drawn from
16 that data because they are the product of the only
17 facts available at this time.

18 In conclusion, in the world of agriculture
19 almost nothing is certain, but in the pistachio
20 industry there is one certainty. Iranian producers
21 and exporters are absolutely certain to target the
22 U.S. market once again if given that opportunity.

23 That completes our remarks. Thank you.

24 CHAIRMAN KOPLAN: Thank you, Mr. Connelly,
25 and thank you to all of the witnesses for your direct

1 presentation.

2 We'll begin the questioning with Vice
3 Chairman Okun.

4 VICE CHAIRMAN OKUN: Thank you, Mr.
5 Chairman, and thank you to all of you for appearing
6 today, particularly the many members of the industry
7 who are with us today. It is particularly helpful in
8 helping us understand the issues and the record before
9 us.

10 For me I see these pistachios almost all the
11 time. I've got a seven-year-old daughter who on her
12 own discovered pistachios and thinks they are
13 wonderful. I don't know if it was marketing or what
14 it was, but her favorite days of the week are when I
15 put that pistachio bag in her lunch box because she
16 thinks it's better than cookies. She loves them. You
17 have someone hooked on that, so I see them a lot.

18 I have a number of questions for the
19 industry, but I do want to start with counsel for my
20 first question. Mr. Steinberger, you of course
21 outlined and Mr. Connelly just touched on as well,
22 which is the Commission as part of its statutes both
23 looks backwards to see what we did in the original
24 investigation and then looks forward in a
25 counterfactual way to determine what would happen if

1 the order were lifted.

2 As I always do, I go back to the original
3 and read the views of the Commission. One of the
4 things I guess that struck me when I read the views of
5 the Commission, and of course they looked much
6 different than they do now. This was a long time ago,
7 and none of the Commissioners are Commissioners that I
8 served with during my time.

9 It was a threat case, and you went through,
10 and I think Mr. Connelly did as well, the facts that
11 were on the record in terms of the market share that
12 were lost, what happened to capacity utilization, and
13 yet the Commission found threat.

14 I find it interesting, and it's hard to tell
15 because at that point in time the Commission did not
16 write what it thought was going on with present
17 material injury, so I wanted to have you help me out
18 in terms of what, if any, relevance that has because
19 the two things, and to comment on when doing that, are
20 okay, let's say your five percent comes in and there
21 is a market share loss. Let's say I assume volume
22 from Iran, and there will be some market share loss.

23 What's the impact on this industry, an
24 industry that has been described as not yet mature, an
25 industry with very high profit margins? We can talk

1 about those with Mr. Reilly.

2 I want to start with that kind of legal
3 question of does it mean anything that even though
4 there was what in many cases would be something I
5 would have found, maybe a present injury, what was
6 going on during that time period to make the
7 Commission look out from the original record?

8 MR. STEINBERGER: Thank you. You said that
9 you found it rather curious that the Commission was
10 doing it that way at that time, and it means the same
11 thing to me I think that it means to you.

12 That decision was before my time, so I have
13 the written record. It wasn't before Mr. Leonard's
14 time, however.

15 VICE CHAIRMAN OKUN: I wanted Mr. Leonard to
16 comment on it.

17 MR. STEINBERGER: We have the same written
18 decision that you do, and it did strike me as odd
19 because we have become accustomed certainly in the
20 past 10 years or so to seeing it done in terms of
21 first you look at material injury and you decide
22 whether the industry is currently experiencing injury
23 and then only if you have to you go to threat, whereas
24 in the original determination in this case the
25 Commission went straight to threat and said nothing

1 about the existence or non-existence of material
2 injury.

3 If you are to look at the data in that staff
4 report you will see such things as net losses among
5 growers and a very clear spiraling downward pattern
6 from which you could well conclude that there was at
7 that time material injury, but unfortunately that's
8 something you just have to conclude now there is no
9 particular legal relevance one way or the other as to
10 whether they were experiencing injury at that time.

11 It's not much of an answer, but that's the
12 way the decision left it.

13 VICE CHAIRMAN OKUN: Mr. Connelly, do you
14 want to add anything?

15 MR. CONNELLY: Thank you. I agree with
16 everything that John just said and certainly strongly
17 agree with the point that the record in the original
18 investigation would easily have supported a negative
19 current material determination.

20 I think the only other thing I might observe
21 is at least several --

22 VICE CHAIRMAN OKUN: Did you mean to say
23 that, what you just said?

24 MR. CONNELLY: The record would have
25 supported a finding of current material injury.

1 VICE CHAIRMAN OKUN: You said a negative
2 finding.

3 MR. CONNELLY: I'm sorry. I apologize for
4 that.

5 VICE CHAIRMAN OKUN: I just wanted to make
6 sure I knew where you were coming from. Okay.

7 MR. CONNELLY: Definitely not.

8 At least two Commissioners employed a method
9 of analysis that I think it's fair to say was unique
10 to them. We can't really speculate because they
11 didn't say whether that method of analysis affected
12 whether they went to threat first as opposed to
13 material injury, but it strikes me that at least
14 that's a possibility.

15 VICE CHAIRMAN OKUN: Mr. Leonard, do you
16 want to add anything, or is that sufficient?

17 MR. LEONARD: Well, I don't know what those
18 youngsters that were on the Commission then felt as to
19 the reason why they weren't ready to go full bore, if
20 you will, to find material injury because just as Mr.
21 Connelly and Mr. Steinberger and perhaps you have said
22 or intimated, the record would seem to have supported
23 a present material injury then, but you take what you
24 can get.

25 The threat was there. It had the same

1 effects, the same results. The order went into
2 effect. The margin was what was determined by the
3 Department of Commerce. That was then, and this is
4 now.

5 In many respects the standard for a sunset
6 or five-year review is really a threat standard, so at
7 the very least one could find a threat here and one
8 maybe has to find a threat here rather than present
9 material injury, but that's what the sunset standard
10 is is, as you said, a counterfactual calculation.

11 It would seem regardless of what was said in
12 1986, the order went into effect. The order stopped
13 what was an onerous happening going on, and the order,
14 if it were eliminated now, would resume that
15 unfortunate practice of low-priced and large amounts
16 of Iranian pistachios to the detriment of an industry
17 which would then be vulnerable, as I think John said,
18 even though it is doing all right now.

19 Therefore, I'm not sure how much the lack of
20 a present material injury finding in 1986 affects what
21 one would do today under the five-year review
22 standard.

23 VICE CHAIRMAN OKUN: Okay. Let me turn then
24 to a question about what changes there have been since
25 the original investigation and how that might impact

1 the analysis.

2 I think it was you, Mr. Phillimore, who had
3 mentioned something that I read in both briefs, and
4 that had to do with the change in how inventories are
5 handled in that there's a carryover now in effect to
6 kind of stabilize when you have your out years.

7 I wanted to hear from other industry
8 representatives to talk about what impact that has in
9 terms of when we're looking at the financial condition
10 of the industry looking forward, how that change has
11 helped the industry.

12 I'll start with you, Mr. Phillimore, but I'd
13 like to hear from the others as well.

14 MR. PHILLIMORE: Okay. I think it's been
15 extremely important for the industry to be able to
16 market product year round.

17 One of the key issues in any consumer
18 product these days is shelf space. Once you've got it
19 you must keep it, and the risk of running out of
20 product and losing shelf space, to then have to gain
21 it back is something that no one in consumer marketing
22 would ever tell you was a good idea.

23 Therefore, I think that one of the things
24 that has changed over the last period is that we've
25 done a much better job by holding inventories from one

1 crop year to the next, and sometimes these inventories
2 have been pretty massive, but it has enabled us to
3 always have pistachios available, always have them on
4 the shelf and market them in a year-round manner.

5 VICE CHAIRMAN OKUN: Okay. I see my light
6 is going to come on, so I'll come back and take up
7 some other questions for the industry.

8 Mr. Phillimore, just one more question
9 because it always strikes me as well, I mean, I see
10 the growing demand, and you've talked about the
11 marketing. Why can't pistachios be taken completely
12 out of the little shell and marketed like a cashew?

13 MR. PHILLIMORE: It's part of the appeal of
14 the pistachio that you have to work a little for it.

15 VICE CHAIRMAN OKUN: Okay.

16 MR. PHILLIMORE: No. This whole experience
17 is opening the nut. You will find that if you buy the
18 meats and snack on them that it's not the same
19 experience at all.

20 VICE CHAIRMAN OKUN: Okay. I'm debating
21 with my staff. I can run a little test in our office
22 of our giant cashew from Costco versus our giant
23 pistachio.

24 Anyway, I'll have questions for the rest of
25 the industry. Thank you.

1 CHAIRMAN KOPLAN: Thank you.

2 Commissioner Lane?

3 COMMISSIONER LANE: Good morning. I will
4 confess that I like pistachio nuts much better than
5 peanuts, cashews or anything else. The only thing
6 that might compare are hazelnuts, but I like pistachio
7 nuts, and I just want to know do we get to keep these
8 exhibits, or is that committing a sin if we eat the
9 exhibits?

10 The first question I have is perhaps for Mr.
11 Steinberger or Mr. Phillimore. Is that right? I've
12 probably done that wrong. Anyway, I want to talk
13 about the trade embargo with Iran.

14 As I understand it, the trade embargo went
15 into effect I think you said in 1987 to 2000, so
16 during that trade embargo did that mean that no
17 pistachio nuts from Iran could come into this country?
18 How did that affect the order that was in effect?

19 MR. STEINBERGER: There have actually been
20 two embargoes. This gets very confusing because each
21 of those embargoes had different stages, so to get the
22 dates exactly right always makes my head spin a little
23 bit, but we've got it in one of our footnotes.

24 The first embargo had to do -- it was
25 actually prior to the order. That was related to the

1 hostage crisis, and then the second embargo had to do
2 with some other activities that Iran was engaged in in
3 the Persian Gulf. The dates you stated sound about
4 right, and during that period --

5 COMMISSIONER LANE: Well, those are the
6 dates Mr. Phillimore gave.

7 MR. STEINBERGER: Yes. During that period
8 that was a total embargo when nothing could come in.

9 The main impact that that has had on this
10 case is that it affected the timing of the sunset
11 review, and that's why you're doing the first one now
12 as opposed to five years after 1986. It essentially
13 suspended the period that you would count for -- well,
14 five years after as a transition order I mean. It
15 suspended the period of time that you would be doing
16 the sunset.

17 Certainly during the period the embargo was
18 in effect you could not import this product from Iran,
19 and when you are looking at the data to try to figure
20 out what the effect of the order was and how it
21 benefitted the domestic industry one thing we did to
22 try to deal with that problem with the purity of the
23 sample, so to speak, was to look at what happened just
24 during the time from the order during a non-embargo
25 period and see how the imports were affected. We have

1 not tried to mix those two things.

2 You look confused. I don't think that was a
3 good answer.

4 COMMISSIONER LANE: Well, I did some
5 reading, and it looked like that there was an embargo
6 up until 2000, and then the embargo partially was
7 lifted so that we could have oil, rugs and pistachio
8 nuts could be imported.

9 I was just curious as to when you talk about
10 the effect of the order was it really the order that
11 had the good effect upon the industry, or was it the
12 embargo of trade with Iran, and have you been able to
13 differentiate those two items?

14 MR. STEINBERGER: Certainly you've had a
15 time when you had both the order and the embargo, and
16 if you have a complete embargo then obviously you
17 won't have the imports coming in, but the embargo has
18 been lifted for some time and you still don't see a
19 whole lot of this product coming in. The conclusion
20 we would reach is that's because of the order.

21 COMMISSIONER LANE: Okay. That's a good
22 answer.

23 Another question I have is this idea that
24 your crop is at its maximum every other year, and my
25 question is is it possible then that you stagger the

1 growing so that you have part of your crop being at
2 100 percent this year and part of your crop next year
3 at 100 percent?

4 Mr. Blackwell?

5 MR. BLACKWELL: The answer to that is trees
6 in a particular orchard that were planted in a
7 particular year may be at their 100 percent
8 production, but even trees within an orchard may be on
9 an off cycle so the state --

10 Regardless of when the trees were planted,
11 generally due to some weather conditions or climatic
12 conditions all the trees generally produce high in a
13 high crop year and low in a low crop year, but that
14 doesn't mean individual trees within an orchard are
15 producing at their maximum that particular year.

16 Did I understand your question correctly?

17 COMMISSIONER LANE: Yes, but I guess does it
18 make sense that every other year the trees are at
19 maximum and that if you staggered the trees then part
20 of your crop would be at a maximum every year?

21 MR. BLACKWELL: I may be misunderstanding
22 the question, but I think you're saying if you
23 staggered the plantings?

24 COMMISSIONER LANE: Yes, that's what I mean.

25 MR. BLACKWELL: It makes no difference. At

1 some particular time, because of a weather condition,
2 a lack of chill or a bad bloom period, all the trees
3 -- I say all. Most of the trees in the state will all
4 be at their maximum production for that particular
5 year all together.

6 MR. PHILLIMORE: Maybe I could just add that
7 I'm afraid that we've tried. We've tried everything
8 we could and know about, but at the moment the trees
9 have very much got the better of us.

10 We do not understand sometimes why they
11 yield when they will or why they do what. We just
12 have to take what we've given because we have spent a
13 lot of time and money trying to change that and failed
14 miserably.

15 MS. REINECKE: I would like to also add we
16 have had actually two back-to-back record crop years
17 that took the industry by complete surprise.

18 Basically we know that this tree is an
19 alternate bearing tree, just as the Iranian industry's
20 trees are an alternate bearing tree, and for the most
21 part we've been on the same bearing cycle as they
22 have, heavy crops the same year, light crops the same
23 year.

24 The industry has spent through the
25 California Pistachio Commission hundreds of thousands

1 of dollars on research through the University of
2 California to try to determine what causes the tree to
3 do this, and they've never been able to really come up
4 with one good cause that they can work to prevent
5 this.

6 As the trees grow, when we say working to
7 their maximum as these trees grow they're still
8 producing more on their on years and more on their off
9 years, but it's a very difficult challenge for the
10 industry to be able to come up with a consistent
11 supply and to be able to really be able to forecast
12 what that crop is.

13 The industry for a number of years would
14 actually fund a crop estimate, an acreage estimate on
15 an annual basis, but we discontinued it because we
16 never really -- there were years that it was so
17 significantly off. The one year it was supposed to be
18 180 million pounds on an off year and came in at 118
19 million pounds.

20 You can see for the market to be able to
21 attempt to sell their crop and to be able to know
22 exactly what that supply is going to be makes it very
23 difficult, and that's why it is absolutely critical
24 too that we have a carryover supply so that we're able
25 to manage the crop and the supply, whether our trees

1 give us what we want or not.

2 MR. NICHOLS: Can I?

3 COMMISSIONER LANE: Go ahead.

4 MR. NICHOLS: I'd like to add something if I
5 could, Commissioner Lane.

6 COMMISSIONER LANE: Yes?

7 MR. NICHOLS: Although in pistachios it's
8 manifested probably more so the tendency to have high
9 and low years, it's not uncommon for many other nut
10 trees, tree nuts -- one in particular would be pecans
11 -- to have this same phenomenon. It's millions of
12 years of evolution, and we've been trying to figure it
13 out for the last 30.

14 COMMISSIONER LANE: Okay. So what I take
15 from that is I just have to accept that and we can't
16 figure out why? Okay. I like that.

17 I have a question about the California
18 Pistachio Commission. As I understand it, you deal
19 with marketing and advocacy, et cetera. Do you do
20 anything about pricing?

21 MS. REINECKE: No. The Commission has
22 nothing to do with pricing. That is not in our state
23 authority.

24 COMMISSIONER LANE: Okay. And the other
25 question I have, and probably not you, but this

1 aflatoxin. Why are the Europeans more concerned about
2 it than we are?

3 MR. STEINBERGER: I guess the short answer
4 is you'd have to ask them, but they have a different
5 political structure and through that structure have
6 simply established a much lower tolerance for
7 aflatoxin than we have.

8 COMMISSIONER LANE: Does it taste bad?

9 MR. STEINBERGER: To my knowledge it does
10 not affect the taste, but it is a carcinogen. The
11 Europeans are simply generally less tolerant of any
12 kind of substance that affects food safety than the
13 United States.

14 COMMISSIONER LANE: Okay. Thank you.

15 MR. PHILLIMORE: I would just add too that
16 the three big aflatoxin affected crops are corn,
17 peanuts and to a much lesser extent pistachios.

18 Aflatoxin is not an issue in the common
19 market on either corn or peanuts because they don't
20 grow peanuts. Therefore, they don't mind setting
21 phytosanitary standards that almost become trade
22 barriers.

23 CHAIRMAN KOPLAN: Thank you, Commissioner.

24 Commissioner Pearson?

25 COMMISSIONER PEARSON: Thank you, Mr.

1 Chairman. I would like to extend my welcome to the
2 panel, particularly to those of you who have had some
3 lengthy plane flights to get here. I appreciate the
4 effort. I do note that things worked out. At least
5 we didn't have the hearing scheduled during harvest.
6 That would have been even less convenient.

7 I'm curious about the countervailing duty
8 measure which we are not looking at in this
9 investigation. The antidumping duty is somewhere
10 around 240 percent. The countervailing duty order is
11 set nearly at 100 percent.

12 Even if we were to lift the dumping order,
13 wouldn't the 100 percent countervailing duty still be
14 sufficient to restrict imports from Iran?

15 Mr. Steinberger?

16 MR. STEINBERGER: Just initially I would
17 want to make clear the way those two work together.
18 You mentioned a level above 200. There is an offset
19 so the way that it has actually worked is that when
20 you put them together you don't get 240. You get 184.
21 That has to do with an offset that's done for the
22 export subsidies.

23 More fundamentally getting to your question,
24 it's basically why keep the antidumping order in place
25 if you have this great 99 percent countervailing duty

1 that gets imposed on the product? The Iranians aren't
2 going to be able to handle paying 99 percent. That
3 will keep their merchandise out, if I understand the
4 question correctly.

5 COMMISSIONER PEARSON: It's not an
6 inconsequential number --

7 MR. STEINBERGER: Of course.

8 COMMISSIONER PEARSON: -- given the duties
9 that we see in cases that come before us. Of course,
10 Commerce is doing this. I'm not trying to look behind
11 the duties. I'm just trying to understand as a
12 condition of competition what we have here.

13 MR. STEINBERGER: Absolutely. It's a nice,
14 healthy number, 99 percent, but it's not a duty. It's
15 only a deposit.

16 We have had several administrative reviews
17 under the countervailing duty order. The deposit is
18 collected, and when the entries are reviewed of course
19 a final amount is determined as the assessment amount.
20 If there is a duty to be paid it would be that amount
21 after the administrative review.

22 We know that out of the 99 percent which was
23 determined in the original order, Commerce has already
24 determined that one program which is an exchange rate,
25 a favorable exchange rate program that constituted a

1 subsidy before, accounted for some 46 percent out of
2 the 99.

3 There was one other program which accounted
4 for 7.11 I think it was, which was found to be knocked
5 down to two percent. There were a number of 7.11
6 programs that have been found in other administrative
7 reviews to be not used.

8 We don't have anything really to tell us
9 exactly which programs are still in place, and to get
10 that information you would have to go to Commerce and
11 allow Commerce to determine what the actual final
12 subsidy would be.

13 The way that you should look at this 99
14 percent deposit rate is economically the cost that
15 it's imposing is essentially the cost of borrowing
16 money to put up that money as a deposit until the real
17 rate can be determined rather than treating that as a
18 99 percent tariff because it's not. It's only a
19 deposit.

20 COMMISSIONER PEARSON: Right, but if you are
21 an importer of pistachios and are thinking about
22 bringing some in from Iran certainly the 99 percent
23 deposit is going to influence importer behavior
24 because the importer would have probably no direct
25 knowledge that he wouldn't end up forfeiting the

1 entire deposit, all 99 percent.

2 MR. STEINBERGER: We've found actually the
3 importers are very much aware of how the system works,
4 and there have been several reviews. The one that I
5 mentioned involved a company called Negah Nima Trading
6 Company.

7 They are quite knowledgeable about how the
8 system works. They apparently had no problem putting
9 up the deposit, although it was for a small shipment,
10 and they were successful in getting their rate knocked
11 down. The final rate in their new shipper review I
12 believe was 23 percent or in the low 20s rather than
13 the 99.

14 Customs also for some reason has not
15 collected a whole lot of these duties.

16 COMMISSIONER PEARSON: Probably because not
17 much product is coming in.

18 MR. STEINBERGER: Well, no. I'm not quite
19 sure of the reason for this, but you can find out how
20 much money Customs has actually collected by going to
21 the annual reports under the Continued Dumping and
22 Subsidy Offset Act.

23 Oddly enough, when Customs actually
24 collected the money out of the amount due under the
25 countervailing duty order ever since the CDSOA went

1 into effect the amount they actually collected was not
2 99 percent. It was six percent.

3 We've seen this problem also in other cases
4 where Customs has not collected very much money. In
5 the Crawfish antidumping case, for instance, Customs
6 has collected less than five percent of what's
7 actually owed, and importers are very much aware that
8 that's happening out there. That's the real world
9 fact. They know that they cannot pay the duties in
10 many cases.

11 The actual amount collected, that six
12 percent, is six percent of what's liquidated and was
13 actually supposed to be collected. If importers know
14 that then the 99 is certainly not going to scare them
15 very much.

16 The truth is that if you want to get out of
17 paying your duties to Customs all you have to do is
18 don't pay. Customs hasn't sued a single person for
19 not paying their duties in the past, even since the
20 CDSOA was put into effect.

21 MR. CONNELLY: Commissioner Pearson, may I
22 just add a little bit to that?

23 COMMISSIONER PEARSON: Please. Mr.
24 Connelly?

25 MR. CONNELLY: I'm Mr. Connelly. I have a

1 slightly different perspective on this, although I
2 certainly agree with what John just said.

3 I think it's fair to take into account that
4 when the subsidy orders were issued this was 20 years
5 ago. Typically subsidy programs that I've had
6 experience with do not remain in effect for 20 years.
7 In other words, the programs that Commerce analyzed 20
8 years by and large have, according to the Iranian
9 Government itself, expired.

10 The Iranian Government is an active
11 participant at the Commerce Department in several of
12 these reviews that John just mentioned, and I think in
13 our post-hearing brief we can give you more of a sense
14 of the details of what the Iranian Government is
15 saying.

16 From our perspective, we don't rely and we
17 don't count on the effectiveness of those
18 countervailing duty orders as giving us any
19 protection, any meaningful protection, because of the
20 fact that they are essentially historical subsidy
21 determinations. We have no way to know at this point,
22 and those were facts available at the determinations
23 as well.

24 We have no way to know at this point the
25 extent, if any, to which Iranian producers and

1 exporters are receiving continued subsidies under any
2 of those programs, but all the evidence in the record
3 at the Commerce Department suggests that the rate of
4 subsidy is actually far less today.

5 There's one other point, and that is the way
6 you get back into the market when you have that high
7 cash deposit rate is actually quite simple. Under the
8 U.S. Customs laws an exporter can easily become its
9 own importer without establishing any presence
10 whatsoever in the U.S. market. All it has to do is
11 hire a Customs broker, give it a power of attorney,
12 post the standard Customs bond, and it is in business
13 as an importer. Therefore, the exporter can fund its
14 own cash deposit.

15 Typically the way it works is you make a
16 small test shipment. You put down that cash deposit
17 which doesn't create a cash burden because it's a
18 small shipment. Commercial volume, but still a small
19 shipment. You go through an administrative review.
20 It doesn't take a year, or maybe it takes a year, and
21 then you're in business if you can show that you
22 haven't gotten subsidies.

23 That's yet another reason why we don't
24 regard the countervailing duty order as any meaningful
25 protection for us.

1 COMMISSIONER PEARSON: Having some
2 experience with agricultural subsidy programs, if
3 indeed what you're saying is correct the Iranians may
4 have done a better job at reforming theirs than some
5 other countries have.

6 My time is just expiring. Mr. Leonard, did
7 you have something very brief?

8 MR. LEONARD: I could never be very brief so
9 I'll pass.

10 COMMISSIONER PEARSON: Okay. Thank you, Mr.
11 Chairman.

12 CHAIRMAN KOPLAN: Thank you.

13 Commissioner Aranoff?

14 COMMISSIONER ARANOFF: Thank you, Mr.
15 Chairman. I just want to add to my colleagues my
16 thanks to the panel and especially those of you who
17 have come out from California to join us. It's always
18 extremely helpful to us to have the experts here to
19 tell us about your industry.

20 I want to go back to a question similar to
21 what the Vice Chairman was asking in her questions
22 regarding the age of the orders and how we weigh some
23 of the things that happened 20 years.

24 One of the things that I'm trying to figure
25 out how to think about in this case is you have here

1 not just an antidumping order that has protected this
2 industry against unfairly traded imports from one
3 country, but in a somewhat unusual situation an order
4 that's giving this industry a virtual monopoly over
5 the U.S. market because third country imports are so
6 small.

7 I guess the question that I'd like to put to
8 some of the industry representatives is how can I
9 separate the effect to which this order has insulated
10 you from unfair competition versus what has happened
11 to the industry because it's been insulated entirely
12 from competition.

13 I guess the first question I want to put to
14 you is if there were imports that were fairly traded
15 from Iran or from Turkey or from somewhere else, could
16 you compete with those imports? What would that
17 market look like?

18 MR. NICHOLS: My name is Chuck Nichols. I'm
19 a grower and processor of pistachios.

20 In fact, it is an open marketplace in the
21 United States with the exception of Iran. Turkey,
22 most other countries that have a very, very low duty
23 coming into the United States. I believe Turkish
24 pistachios it's under a cent per kilo, so they have
25 open access to our market.

1 Additionally, as it was pointed out, we
2 compete in export markets and compete fairly
3 effectively in some markets with all of these
4 countries. What we don't have is we don't have the
5 susceptibility to a country coming in and dumping them
6 at very low prices.

7 That's the protection we have, but from the
8 standpoint of competition we compete quite well in the
9 United States, in our home market, and in other export
10 markets.

11 COMMISSIONER ARANOFF: I guess I still need
12 a little bit more help understanding that, and I
13 appreciate your answer, Mr. Nichols, in that if the
14 U.S. is, as a number of you have testified, a
15 relatively high-priced market for this product is it
16 transportation costs that are keeping, for example,
17 the Turkish product closer to home in Europe? Is it
18 that they simply don't produce enough?

19 Don't they have an incentive to produce more
20 and ship here to this high-priced market? I guess I'm
21 trying to understand why Iran is the only real
22 competitor out there for the U.S. market.

23 MS. REINECKE: I'd like to respond to that
24 question.

25 As far as the Turkish product, it is truly a

1 different variety and looks very different. It's a
2 very hard nut to open, and for the most part this
3 product is basically for confectionery and bakery
4 purposes. A lot of the product from Turkey is
5 actually consumed in Turkey.

6 We currently don't have a very strongly
7 developed ingredient market in the U.S. so there's
8 really not the same home for that product here, and it
9 is not accepted as much as the Iranian and California
10 nut as the real snack nut because of not having the
11 easily opened shell.

12 When we talk about can we compete with a
13 fair price, yes, and that's why we think the
14 antidumping order gives us that and would maintain
15 that so that if they're willing to come in and pay
16 that duty then at that point it is at a fair market
17 value for us.

18 COMMISSIONER ARANOFF: I appreciate that.
19 Mr. Phillimore, you wanted to add something?

20 MR. PHILLIMORE: I would just add one more
21 thing. I think there has been product certainly where
22 there's been an immense planting of the orchards. I
23 forget what the project is called, but they have
24 really chosen to grow hazelnuts rather than
25 pistachios, and presumably it's because the economics

1 of hazelnuts are better for them.

2 They're doing that with the full knowledge
3 that they could come into our market with very little
4 duty or anything else like that, so they've made a
5 decision based on what they see the market to be.

6 COMMISSIONER ARANOFF: I appreciate that.
7 I'll turn to the attorneys and just ask you to comment
8 briefly.

9 The legal issue that I'm trying to parse out
10 is an antidumping duty order of course has a remedial
11 purpose. It's supposed to remedy the effects of the
12 unfairly traded imports. It can, but it's not
13 directly intended to give monopoly power to a domestic
14 industry, although there's nothing in the statute to
15 prevent that either.

16 I guess my question is how much of the
17 domestic industry that we see here today in the sense
18 that it's much larger than it was when the order was
19 originally imposed, how much of that can we attribute
20 to the fact that there's been no competition at all as
21 opposed to simply remedying unfair trade, and does
22 that matter for purposes of the determination that the
23 Commission needs to make here?

24 MR. LEONARD: I'm glad you put in that last
25 qualifier because in all due deference I don't think

1 it does matter.

2 As you have indicated, there are many one
3 company industries that have come before the
4 Commission and have received the relief under the
5 antidumping or countervailing duty laws because they
6 meet the criteria of the law.

7 Here, as Ms. Reinecke pointed out, this
8 industry is ready to meet competition, but it wants it
9 to be fairly traded competition, and that means as
10 determined under our laws. It has a very large
11 percentage of the market now.

12 What is it due to? Well, the numbers would
13 suggest that it is due in large part to the
14 antidumping order because the shares of the market
15 have been turned around during the pendency of the
16 antidumping order, but that's not a requirement that
17 the antidumping order provide relief only in cases
18 where there is not a monopolistic or an oligopolistic
19 industry. It's available for everyone that qualifies.

20 MR. STEINBERGER: Can I add to that just a
21 little?

22 COMMISSIONER ARANOFF: Sure.

23 MR. STEINBERGER: The reason you may be
24 concerned, and I agree with everything Mr. Leonard
25 just said; that is that this statute does not really

1 address that concern, but more generally the reason
2 you would be concerned about a monopolist is that you
3 would have no competition affecting the pricing, and
4 they would be extracting a price from consumers that
5 was inappropriate. You wouldn't have the normal
6 supply and demand functions working the way they are
7 supposed to.

8 You don't have a monopoly with this
9 industry. You have a number, a very large number, of
10 growers, a significant enough number of processors
11 that those processors in the United States are all
12 competing with each other, and the natural result of
13 that competition and the supply and demand curves is
14 setting the price it's supposed to, so that is not a
15 problem.

16 I would be more concerned if you had a
17 single pistachio processor and a single grower or
18 something like that, but there is no reason to think
19 that we are looking at a monopoly situation here. It
20 just happens that the domestic industry produces a
21 product that is not produced in very large volumes by
22 very many other countries, which is not unheard of in
23 these cases.

24 COMMISSIONER ARANOFF: Thank you, Mr.
25 Leonard and Mr. Steinberger. I appreciate those

1 answers. They're helpful.

2 Let me turn to a question that Ms. Reinecke
3 just raised in answering my other question. Mr.
4 Phillimore in his testimony earlier indicated that
5 about 70 or 80 percent of his pistachios are destined
6 for roasting and salting, which suggests that 20 or 30
7 percent are going to other uses, I assume the
8 confectionery uses that were described.

9 Ms. Reinecke, can you comment on whether
10 that 20 to 30 percent estimate is California wide and
11 whether there's any differences between the nuts that
12 are destined for not roasting and salting, but other
13 uses, and the ones that are roasted and salted?

14 MS. REINECKE: I'm sorry. Can you repeat
15 that last part again? I'm not quite sure what you're
16 --

17 COMMISSIONER ARANOFF: Sure. I guess the
18 first question was is that number, 20 to 30 percent of
19 the crop, California wide in terms of going to not
20 being roasted and salted, going to other uses? That's
21 the first question.

22 The second is is there any difference
23 between the nuts that are roasted and salted --

24 MS. REINECKE: Between the raw and the
25 roasted salted?

1 COMMISSIONER ARANOFF: No. Between the
2 roasted and salted that are sold for eating as whole
3 nuts and the ones that go into other applications.

4 MS. REINECKE: Okay. Well, basically, and I
5 wouldn't say and I can't speak for Mr. Phillimore, but
6 as far as 20 to 30 percent that would be staying in a
7 raw state or going into a confectionery ingredient
8 market, I don't know there's that much that would be,
9 probably more of his own company that would be doing
10 that.

11 Most of the product, at this point it's a
12 very small percentage industry wide that is really
13 going into a manufactured product. The raw does not
14 sell to the consumer for the most part. It can be
15 sold, but it isn't preferred by the consumer and so
16 for the industry traditionally the roasting and
17 salting was necessary to sell the product because
18 that's what was preferred.

19 We're competing with all salty snacks.
20 We're competing with Doritos and Cheetos and
21 everything else. We don't just compete with other
22 nuts in the nut market.

23 COMMISSIONER ARANOFF: Okay. I appreciate
24 that answer, and because my time has run out I'll come
25 back to it in the next round. Thanks.

1 CHAIRMAN KOPLAN: Thank you.

2 Let me start with my first couple of
3 questions with Mr. Phillimore if I could. I'm going
4 to refer to the brief, but you've gotten into this in
5 your direct presentation as well this morning.

6 On pages 1 and 2 of your prehearing brief
7 you state, and I quote, "Beginning in 1997, Iran has
8 periodically encountered severe difficulties in
9 exporting pistachios to its largest traditional
10 market, the European Union, because a significant
11 portion of its shipments have been tested by EU
12 authorities and found to contain excess levels of
13 aflatoxin, a cancer causing substance.

14 "The reject rate in recent shipments has
15 reportedly been as high as 21 percent. As a result,
16 the EU now tests every shipment of Iranian pistachios.
17 The inability if the Iranian industry to solve its
18 aflatoxin problem provides a strong incentive to shift
19 exports to markets with higher aflatoxin limits."

20 Then you discuss on pages 19 and 20 the
21 lower aflatoxin standard in the United States and
22 state that pistachios rejected in the EU are re-
23 exported to other markets such as, according to the
24 Grain Cart of 2005 exhibit, Russia and Asia. We cite
25 to your Exhibit 12.

1 Isn't it entirely possible that the Iranian
2 shipments rejected in the European Union would not
3 have met aflatoxin standards in the U.S. market either
4 today? Your data in Exhibits 11 to 13 of the
5 prehearing brief do not fully answer this question.
6 How do you respond to that?

7 MR. PHILLIMORE: I think it's one of slight
8 ignorance. We know that the product was rejected by
9 the EU, but we don't know what levels of aflatoxin
10 there were in it, or at least I don't know what levels
11 of aflatoxin were in it so it's an assumption.

12 Well, we know that it gets re-exported, but
13 we don't know that the level would be somewhere under
14 20 to allow it to come into the United States.

15 CHAIRMAN KOPLAN: So it is possible it
16 couldn't make it through our standard as well?

17 MR. PHILLIMORE: It is certainly possible,
18 and there may be someone here who has better numbers
19 than I do.

20 CHAIRMAN KOPLAN: Thank you. I see a hand
21 up. Mr. Nichols?

22 MR. NICHOLS: Yes. As Bill said, we don't
23 have hard numbers because they don't exist, but what I
24 would add to that is the enforcement in the United
25 States of the 20 parts per billion standard is very,

1 very spotty, as it is in most of these other countries
2 that currently are being redirected such as Mexico,
3 China.

4 China has a standard of 20 parts per billion
5 as well, and I've never heard of any rejections there.

6 CHAIRMAN KOPLAN: I appreciate that, and I
7 understand what you're getting to is that they might
8 not get caught. My question goes more to whether they
9 could be caught if the inspection picked up on that
10 kind of thing.

11 MS. COHEN: Yes. Hello. My name is Mia
12 Cohen.

13 CHAIRMAN KOPLAN: Ms. Cohen?

14 MS. COHEN: I'm with Setton Pistachio Terra
15 Bella, Inc.

16 I also just want to add to Chuck's comments
17 that currently all loads leaving Iran to the EU are
18 tested before leaving and then also upon receipt in
19 the EU, so what we're finding is that while they may
20 have left Iran, they're still getting rejected in EU
21 possibly slightly higher than the four parts per
22 billion or the two in the case of B1, in which case
23 those loads could be diverted to other markets, such
24 as the United States, if the antidumping were revoked
25 as we're at 20 currently.

1 CHAIRMAN KOPLAN: But we don't have hard
2 data on that though. Is that right?

3 MS. COHEN: Right. This is just from our
4 experience.

5 CHAIRMAN KOPLAN: Okay. Thank you. I
6 appreciate that.

7 MR. KEENAN: If I can add one thing, Mr.
8 Phillimore has stated that 21 percent rejection at
9 European destinations.

10 That may be the official record of 21
11 percent, but we know that there has been upwards of 70
12 percent rejection at ports such as Hamburg by people
13 who would pre-test the Iranian product and then not
14 take it out and try to clear out. They knew it
15 wouldn't pass, and they would now re-export that
16 product.

17 We've had reports in the last couple years
18 that it's been as high as 70 percent rejection rate of
19 Iranian products at European destinations ports.

20 CHAIRMAN KOPLAN: Thank you for that, Mr.
21 Keenan.

22 I should mention as we go through the
23 questions if you reidentify yourselves each time it
24 makes it easier for the reporter.

25 Let me come back to you again, Mr.

1 Phillimore. On page 9 of your prehearing brief you
2 state, and I quote, "Due to the removal of the
3 embargo, Paramount has stopped all new plantings of
4 pistachio trees out of fear that its new investment
5 could be rendered worthless if Iranian imports resume.
6 Paramount plans no new plantings for the next 10
7 years."

8 Are there any other factors affecting your
9 investment outlook, or did you make this decision
10 solely because of the possibility that Iranian imports
11 might enter the U.S. market?

12 I'm curious as to how you picked a 10 year
13 period and are you claiming that you made this
14 decision solely on the basis of the pendency of this
15 investigation?

16 MR. PHILLIMORE: I think there's some
17 information into that decision is confidential. I'd
18 rather answer in the posthearing brief if that's all
19 right.

20 CHAIRMAN KOPLAN: I have no problem with
21 that. I look forward to your answer for that purpose
22 in the posthearing. Thank you.

23 Ms. Reinecke, if I could turn to you? I
24 note from a Federal Register notice which appeared on
25 September 13, 2005, Commerce released final results on

1 its review of the countervailing duty investigation on
2 pistachios from Iran.

3 The CVD rate for Iranian exports from Nima
4 is now zero for pistachios produced by Razi and only
5 23.18 percent from Nima when produced by Maghsoudi
6 Farms. The CVD investigation has some bearing on my
7 analysis in part to the extent that certain companies
8 face a zero CVD margin absent the antidumping order.

9 Can you provide the Commission with
10 information on the relative sizes of Razi and
11 Maghsoudi in the Iranian market? Would Razi,
12 regardless of its current size, have an incentive to
13 acquire additional acreage if the antidumping order is
14 revoked?

15 MS. REINECKE: Well, of course we certainly
16 can't speak for those companies. It has been our
17 understanding in what they have submitted in their own
18 brief that they have limited capacity at this point,
19 limited production, and that's why those decisions
20 were made with the chain rate.

21 CHAIRMAN KOPLAN: They haven't submitted
22 briefs to us.

23 MS. REINECKE: No. No. In the
24 countervailing --

25 CHAIRMAN KOPLAN: Okay.

1 MS. REINECKE: We're talking about what came
2 from them in their own briefs. It was limited
3 acreage.

4 Would they be able to produce more?
5 Probably yes, but I wouldn't really be able to speak
6 to that.

7 CHAIRMAN KOPLAN: Do you have information
8 with regard to the relative size as I was asking?

9 MS. REINECKE: Yes. That was in their
10 briefs submitted in those hearings, in the
11 countervailing hearings, of how big they were.

12 CHAIRMAN KOPLAN: And is that something that
13 you can provide to us for the record?

14 MR. STEINBERGER: We can certainly provide
15 that information to the extent that it's on the public
16 record of the Commerce Department proceeding.

17 CHAIRMAN KOPLAN: Right.

18 MR. STEINBERGER: I can answer your question
19 in a little bit more detail. Keep in mind that the
20 countervailing duty law of course now allows
21 individual shippers to get their own rates.

22 Nima, whether it's being supplied by
23 Maghsoudi or by Razi, had undertaken an effort to
24 become the conduit for pistachios from Iran. In fact,
25 they had essentially said that at the Commerce

1 Department proceeding.

2 They said we want to go through this
3 proceeding with a new shipper review or administrative
4 review, get a rate based on not receiving any
5 subsidies, get our rate down to zero and start
6 shipping large quantities of pistachios to the U.S.
7 market. That was their whole purpose in going through
8 the Commerce Department proceeding.

9 They were frustrated in that purpose
10 somewhat by the use of a combination rate or a chain
11 rate that limited them to those particular procedures.
12 Nima was the exporter, and Maghsoudi and Razi were the
13 producers. They can always switch to more farms and
14 go through the same process, but we can provide
15 details on the numbers in our submission.

16 CHAIRMAN KOPLAN: I appreciate that.

17 MR. LEONARD: Mr. Chairman?

18 CHAIRMAN KOPLAN: Yes?

19 MR. LEONARD: To follow up on what Mr.
20 Steinberger has said, there is no question in our
21 minds that having achieved a zero rate at least with
22 regard to one producer that other exporters and other
23 producers in Iran in the countervailing duty matter
24 will seek to get that very same zero; that there are
25 no subsidies.

1 In effect they will say the Government of
2 Iran gives us very little information, but the
3 Commerce Department has accepted what has been given
4 to it or even as Mr. Connelly said in what we thought
5 was a strong adverse inferences from facts available
6 presentation.

7 Nevertheless, the Commerce Department
8 accepted that there were no subsidies being provided
9 or that there was no receiving of such subsidies by
10 the party involved, and there is absolutely nothing
11 now to prevent other producers and other exporters in
12 Iran from achieving the same zero rate if they can.

13 MR. CONNELLY: Mr. Chairman, may I just add
14 one thing to that?

15 CHAIRMAN KOPLAN: Yes. My time has expired,
16 so if it can be brief?

17 MR. CONNELLY: Yes. RPPC, the largest
18 producer by far, sent a representative of theirs to
19 our hearing in the case at the Commerce Department
20 involving Nima and Razi indicating precisely how
21 interested they are in the outcome of that case.

22 CHAIRMAN KOPLAN: Thank you all very much
23 for your answers to my questions.

24 I'll turn to Vice Chairman Okun.

25 VICE CHAIRMAN OKUN: Thank you, Mr.

1 Chairman. I have a few questions with regard to how
2 we evaluate the current state of the financial state
3 of the industry and its susceptibility to recurrence
4 of injury.

5 I know, Mr. Reilly, you had some things in
6 your slide, but the first question I have relates to
7 just the structure of how prices are set. The staff
8 report at page 3-18 in Footnote 8 had indicated that
9 the current structure of guaranteeing minimum prices
10 to growers, as well as a possibility that positive
11 price adjustment for higher actual wholesale prices
12 serves to stabilize the market from large price
13 swings.

14 I wanted to have if I could the industry
15 talk a little bit about the relationship between
16 growers and processors, how it's changed since the
17 original and how widespread it is and how we should
18 evaluate that in determining and looking at the
19 financials, whether there's anything in particular we
20 should be keeping in mind.

21 I don't know who's the best person to do
22 that. Mr. Phillimore?

23 MR. CONNELLY: I'm volunteering you.

24 VICE CHAIRMAN OKUN: Okay. Well, that's a
25 good place to start.

1 MR. PHILLIMORE: I'll have a shot. It's
2 tough to remember what it was like 20 years ago,
3 although I was around the industry then.

4 I think that there are two things that have
5 happened since then. One is that there is intense
6 competition amongst the processors to get outside
7 growers' product. I mean to get outside growers'
8 product. There's an intense competition.

9 I think that one of the things that has
10 happened in the last few years is that there is a
11 grower minimum price which is set before harvest which
12 does tend to -- which has tended to -- perhaps favor
13 the growers over the processors and has meant that
14 most of the returns -- I think you can see this in the
15 staff brief that most of the additional returns have
16 gone to the grower rather than the processor.

17 VICE CHAIRMAN OKUN: Right. I mean, I see
18 that exactly. I know you're only speaking for your
19 company here.

20 Is that widespread? In other words, is that
21 what's happening in the rest of the industry? You say
22 there's competition. Is it because everyone is
23 offering that?

24 MR. PHILLIMORE: Absolutely.

25 VICE CHAIRMAN OKUN: Okay.

1 MR. PHILLIMORE: Once someone comes out with
2 a grower minimum price, everyone else has to come
3 fairly close to it. Otherwise they're not going to
4 get the product.

5 VICE CHAIRMAN OKUN: Okay. In terms of then
6 how we evaluate the industry in this case, one of the
7 things that you just said, Mr. Phillimore, is that it
8 effectively looks like it sets lower the processor's
9 return because the additional revenue, as it were,
10 goes to the grower so it helps the growers out.

11 I guess maybe, Mr. Reilly, this would go to
12 you, which is in looking at the results for the
13 industry should we take that into account and say the
14 processors' numbers really are an artificially number
15 because of the way the industry is set up?

16 Excuse me. I should say the way it's set
17 up, but the way it's structured, how it impacts the
18 bottom line that we see in this report.

19 MR. REILLY: Yes. I'd focus on the growers
20 in evaluating the financial condition of the industry.

21 Also just to mention, there is a significant
22 amount of vertical integration in this industry too so
23 there's an element of which pocket you put the profit
24 in that comes into play as well.

25 VICE CHAIRMAN OKUN: Okay. Actually that

1 was going to be my next question. It was a helpful
2 answer with regard to the growers, but with respect to
3 the vertical integration and where you would see the
4 competition from the Iranian nuts that would come in.

5 As I understood it, and I don't know if it
6 was you, Mr. Phillimore, in your testimony or others
7 who talked about what you would see is not trees
8 coming in, not necessarily roasted nuts coming in, but
9 you'd see raw nuts coming in, going into roasters and
10 then being sold in competition with that roasted nut.

11 I don't want to put too much in what you
12 said because I want to make sure I understand where
13 the competition from the Iranians would occur in this
14 instance.

15 MR. PHILLIMORE: I think that's correct. I
16 think what you've just stated is correct.

17 VICE CHAIRMAN OKUN: Okay. Ms. Reinecke, I
18 don't know if there's any position from the Commission
19 any different than what you'd see from Paramount?

20 MS. REINECKE: It would definitely be in the
21 final roasted state when that product came in, and
22 it's very easy for it to be roasted in the U.S., as
23 was already shared.

24 There's a number of companies that prior to
25 California's industry getting started were buying

1 product from Iran and were roasting it, most of them
2 on the east coast. These companies are all still in
3 existence today.

4 They have shifted to other nuts, but they
5 have the equipment available, and it would be a very
6 simple thing for them to do, so that would be where
7 the actual competition would be for it.

8 VICE CHAIRMAN OKUN: Okay. Let me turn to
9 counsel and the economist as well. Just help me out.
10 I mean, I understand the original investigation, what
11 the scope was, and the scope of this is the same as
12 the original investigation.

13 I'm trying to determine whether in
14 evaluating what we're talking about in the competition
15 how we should look at the high vertical integration
16 and the fact that it is the roasted that you're saying
17 where the competition would occur.

18 MR. STEINBERGER: At the time of the
19 original investigation there were two separate cases,
20 one on roasted, one on raw, and I think what you're
21 getting at is who would handle this product when it
22 came in.

23 The staff report summarizes questionnaires
24 from people who are currently pistachio roasters as
25 one point of competition, but what happened in the

1 original investigation was that much of the product
2 was handled by people, a lot of them on the east
3 coast, who may not necessarily have been pistachio
4 roasters before, but they had roasting equipment that
5 was useful for other things and could quickly become
6 pistachio roasters.

7 There is a fair amount of vertical
8 integration in the California industry, and those
9 processors would theoretically have some capability of
10 bringing in the raw Iranian product and roasting it
11 and then putting it into the market, but that is not
12 really what happened to a large degree before. What
13 happened was that it was moving in, getting roasted
14 and then getting sold, and that was affecting the
15 demand for the product that you are looking at.

16 I don't know if that's helpful or not,
17 but --

18 VICE CHAIRMAN OKUN: Yes, it is helpful. I
19 may have a follow-up for posthearing, but let me then
20 turn to some quality questions, one that had struck me
21 when hearing about the red staining.

22 There were some comments from purchasers,
23 and again it's hard to figure out how much emphasis to
24 put on that when there have not been very many nuts
25 brought in during this period, but there was some

1 discussion about inferior quality, and I'm just trying
2 to determine what kind of nuts would be coming from
3 Iran besides these lots in issue, which has been
4 covered in some detail.

5 Do the Iranians still stain their nuts to
6 deal with any problems? Is anyone competing with them
7 overseas?

8 Yes, Ms. Reinecke?

9 MS. REINECKE: Actually the Iranians do not
10 stain the nuts red. This started back in the 1930s
11 when basically it was all Iranian product coming in,
12 and they had a lot of dark staining on their shells.
13 They do all sun drying and so because of that the
14 shell itself was very dark and stained.

15 It was actually an importer in New Jersey
16 who started dying them red with a vegetable food
17 coloring, and it was used to make the nuts stand out,
18 to cover the staining on the shells, and back then
19 they used to be sold in little vending machines like
20 gumball machines, five cents for a handful.

21 When California had its first commercial
22 crop in 1976, at that point we already had the
23 mechanization in place for the harvesting and
24 processing which reduced that staining which can come
25 off of the tree when you have that outer hull, which

1 you see in your samples.

2 As that hull starts to dry and shrink onto
3 the shell it can cause staining on the shell, which is
4 not attractive. It doesn't hurt the nut, but what it
5 does is it falls within a lower graded product, so we
6 say it's lesser quality because we're not getting the
7 top grade for that.

8 What the processors then realized is that
9 most consumers at that point were used to those silly
10 little red nuts because that is what they had
11 originally seen when they were coming in from Iran, so
12 California started having to dye up to 50 percent of
13 their first crops red to cover -- you know, to make it
14 look as if they were a similar product to the Iranian
15 product.

16 Today it's a very, very small percentage
17 that the California industry dyes, but in Iran you
18 would not see anyone dying the nuts red.

19 VICE CHAIRMAN OKUN: But do their nuts still
20 have the darker staining?

21 MS. REINECKE: Yes, they do. Yes, they do,
22 but they have been able to through some mechanical
23 processing be able to control that. It is a little
24 bit of a darker nut, but once it gets salted and
25 roasted it looks very, very similar.

1 To the average consumer, they're not going
2 to be able to tell the difference between the two
3 nuts.

4 VICE CHAIRMAN OKUN: Okay. In terms of
5 sizes, I know there's a lot of public information, and
6 you've provided a lot in your brief.

7 My red light has come on. I'll come back to
8 this question, Mr. Chairman, if it's not covered.

9 COMMISSIONER LANE: I thought maybe you had
10 forgotten my name there for a moment.

11 CHAIRMAN KOPLAN: I just wanted to emphasize
12 it.

13 COMMISSIONER LANE: I have a question. We
14 have what I'll call Exhibit No. 1 which is called
15 unhauled pistachios. Is this what the product looks
16 like when it comes off the tree?

17 MS. REINECKE: Correct.

18 COMMISSIONER LANE: That was Ms.?

19 MS. REINECKE: Ms. Reinecke. Yes.

20 COMMISSIONER LANE: Reinecke. So this is
21 what it looks like when it comes off the tree and
22 then?

23 MS. REINECKE: That outer hull must be
24 removed within 24 hours otherwise we end up with the
25 staining which then is the other issue. So the outer

1 hull is removed mechanically in the processing and
2 then you have the next one.

3 Then it's dried down to that raw state
4 before it's roasted/salted, and at that point it's
5 dried down to a safe moisture level of between six and
6 seven percent and at that point it can be stored up to
7 two years in silos. It is a safe moisture level for
8 shipping as well.

9 That's the product that then it would be
10 shipped in from Iran. That's the product that our
11 industry ships overseas and then is roasted and salted
12 in what we call further processing in other markets.
13 Then that's the third sample that we provided to you.

14 COMMISSIONER LANE: Okay. The raw
15 pistachios --

16 MS. REINECKE: You can see there's not a lot
17 of difference in just looking at the two together.
18 There's not a lot of difference visually between the
19 roasted/salted and the raw products.

20 COMMISSIONER LANE: I know. After the
21 hearing I'm going to test these two out. Exhibit No.
22 2 is the raw pistachio nuts and this is the state that
23 would be stored.

24 MS. REINECKE: Correct.

25 COMMISSIONER LANE: Would you ever store the

1 roasted pistachio nuts for up to two years?

2 MS. REINECKE: No. Once the product is
3 ready to be shipped, within a relatively quick period
4 of time that's when it would be roasted and salted.
5 So in looking at imports coming in here they can't
6 bring in roasted product and have it sitting here
7 waiting to be sold, nor is it a product that even a
8 roaster would want to roast big quantities and having
9 sit around.

10 COMMISSIONER LANE: My next question is
11 probably Mr. Phillimore maybe or Mr. Leonard. I want
12 to go back in time to when the Iranians were selling
13 nuts over here.

14 As I understand it today pistachio nuts from
15 the United States are basically sold in clubs like
16 Sam's Club, Costco, Trader Joe's, you can buy them at
17 supermarkets, and also in specialty gift shops, and
18 boutiques and there's a wide range of packaging and
19 pricing.

20 Now, if the Iranians came back in with their
21 pistachio nuts how would they be packaged and which of
22 these segments would they be most likely to compete
23 against?

24 MS. REINECKE: Can I answer that question?

25 COMMISSIONER LANE: Yes. Sure.

1 MS. REINECKE: Ms. Reinecke. As I said in
2 my comments in talking to one of the major wholesale
3 warehouse club stores what they do is they actually
4 have the processors within our industry do their own
5 packaging for them. They have their own private label
6 that they would use.

7 For instance Sam's Club has their own label,
8 Wal-Mart has their own label. What our processors do
9 then is once they get the order they would then
10 package that product under that label.

11 So they could create their own label, but
12 they could easily go into -- a roaster, an importer
13 bringing this product in, preparing the product could
14 go to a Costco, could go to a Sam's Club and say we
15 have product, this is our price, it's significantly
16 cheaper and we'll do that packaging for you.

17 So overnight you could see a very
18 significant loss of supply.

19 COMMISSIONER LANE: If the order were listed
20 which of these segments of the outlets for the
21 products, where do you see the Iranian product
22 competing the strongest?

23 MS. REINECKE: In the outlets as far as in
24 the club stores, or you mean club stores or --

25 COMMISSIONER LANE: Any of the retail

1 outlets for pistachio nuts.

2 MR. NICHOLS: Karen, can I give you a little
3 help on that one?

4 MS. REINECKE: Okay.

5 MR. NICHOLS: I think I understand your
6 question to be as what segment at retail would the
7 Iranians be most competitive?

8 COMMISSIONER LANE: That's exactly what I
9 said.

10 MR. NICHOLS: Okay. I think the answer is
11 almost all those segments because the people that
12 could easily engage in this business already do
13 business through retail grocery stores. They do
14 business with the convenience stores and the mass
15 merchandisers. It would be really hard to pick one
16 over the other because I think they would all be
17 accessible.

18 MS. COHEN: Can I just add one thing to
19 that?

20 COMMISSIONER LANE: Yes.

21 MS. COHEN: Mia Cohen. We also have
22 operations in the northeast and I can speak for that
23 segment real well that we would easily see these
24 roasters that we've talked about before importing
25 Iranian pistachios, roasting them and then selling

1 them to rebaggers that could then sell them in any
2 retail forum.

3 A huge portion we believe would be this
4 rebagger business, wholesale business if you will,
5 that we would see all over the place, so I completely
6 agree with Mr. Nichols in that regard.

7 COMMISSIONER LANE: Ms. Reinecke, if the
8 Iranian product would come back in to the United
9 States how much underselling would the Iranian product
10 be let's say on a three pound bag of pistachio nuts?

11 MS. REINECKE: Well, traditionally in the
12 other markets we have seen anywhere from a 30 to 40
13 percent undercutting of the price and it's been pretty
14 consistent. It has been higher than that in some
15 instances and so it would be difficult to know exactly
16 what they would do here.

17 We know at this point they really want this
18 market back and so I think there would be a huge
19 incentive to get into these markets that were
20 traditionally and solidly behind the California
21 industry.

22 COMMISSIONER LANE: If I were the average
23 consumer of pistachio nuts and went into a Sam's Club
24 if the order were lifted would I be able to tell any
25 difference between a California pistachio nut and an

1 Iranian pistachio nut?

2 MS. REINECKE: Okay. I'm very glad you
3 asked that question because this is pivotal. No, you
4 wouldn't. For most consumers a pistachio is a
5 pistachio, but on top of that you're probably not
6 going to get a cheaper price for this product. What
7 ends up happening, this becomes a huge profit center
8 for the retailer not for the consumer.

9 This has been the case in so many other
10 agricultural products as well where the retailer and
11 the importer look at that, and when we ship around the
12 world we go into markets where the retail price is
13 significantly very high whether it's Iranian product
14 or California product.

15 The importer sees that, though, as their
16 opportunity to make more money. So it really, what we
17 have seen in the pricing when Iran was in here
18 pistachios at that time were sold as I mentioned in my
19 comments in the little jars, in the little cans in the
20 snack section of the store where it was very difficult
21 to find quite frankly.

22 It was not a produce item, it was not mass
23 merchandised. Costco and Wal-Mart did not exist at
24 that time. You didn't see these big displays of four
25 pound bags of pistachios, you saw little jars that

1 retailed for \$10 a pound. Today that price is
2 significantly less and that's because of what the
3 California industry has been able to do in really
4 building up the infrastructure for the industry.

5 COMMISSIONER LANE: I have one more quick
6 question. When the Iranian product is shipped to the
7 EU, and it is rejected and then it is re-exported to
8 someplace else how expensive would it be and would it
9 be prohibitively expensive if the order came off to
10 re-export that product to the U.S.?

11 MS. REINECKE: No. Absolutely not. We're
12 seeing this product -- when the EU ban came on against
13 Iranian products for three months in 1997 that product
14 was trying to get in, could not get into the market.
15 It was not meeting the aflatoxin intolerance.

16 At the port of Hamburg it was then being
17 moved into Canada, it was being moved into Mexico and
18 now what we've seen they've literally taken the market
19 of China that was a 30 million pound market for us and
20 have expanded it to close to a 50 million pound market
21 all with Iranian product sold as California product.

22 Because we were the ones who had developed
23 that market they have the product then coming in, and
24 sold, and labeled and package as American product and
25 the consumer doesn't know the difference, nor is there

1 a cheaper price.

2 COMMISSIONER LANE: Thank you.

3 CHAIRMAN KOPLAN: Thank you, Commissioner.
4 Commissioner Pearson?

5 COMMISSIONER PEARSON: Mr. Steinberger, in
6 response to my original question you suggested that
7 the CVD order may not be an effective import restraint
8 because importers would expect to get the deposit back
9 upon review. Doesn't that same argument apply to the
10 anti-dumping order?

11 MR. STEINBERGER: I was counting on you to
12 ask that question. I think it's addressed to the
13 collection issue, that is people aren't paying what is
14 owed. Is that the question?

15 COMMISSIONER PEARSON: Well, or getting back
16 upon review what --

17 MR. STEINBERGER: Okay. Those are two very
18 different scenarios.

19 On the question of why should we care about
20 either one of these orders, if the truth is that
21 Customs doesn't pursue you, if you just run out on the
22 bill the difference is that as a legal matter you're
23 required to pretend that people actually pay these
24 duties in the anti-dumping case, but if you're
25 considering it as a condition of competition I would

1 hope that you address the reality that the
2 countervailing duties to a large degree have not been
3 collected.

4 I think that's a rather minor point. The
5 more important point is that we are seeing when the
6 programs get reviewed that the countervailing duty
7 evaporates. Part of this is what Mr. Connelly pointed
8 out, that the programs are quite old. Another part is
9 that when the original countervailing duty order went
10 into place remember what conditions were like at that
11 time between the United States and Iran.

12 Iran basically didn't show up, so the entire
13 99 percent, every one of those programs was calculated
14 by commerce on the basis of adverse inferences. In
15 fact the 23 percent that was calculated for Nima in
16 its new shipper review was also based entirely on
17 adverse inferences.

18 In the reviews the problem has been that the
19 Respondents have not provided sufficient information.
20 When they do so to the extent that you can tell
21 anything about these programs -- I know you said or
22 indicated that you were skeptical because the Iranians
23 must have gotten rid of all their subsidy programs.

24 It's a little bit different from that.
25 Rather than get rid of the subsidy programs, instead

1 of having a pistachio support program what you have is
2 a farm support program which is so widely available
3 that it doesn't meet the legal requirement for
4 countervailing it, that is there are many industries
5 that get the benefit of most of the programs and
6 you're stuck with that now.

7 It gets treated as a generally available
8 program.

9 So the programs that commerce has looked at
10 they find that in the case of the exchange rate
11 program it has gone away because the exchange rate
12 structure changed, in the case of one other program
13 which was known as the price support or guaranteed
14 purchase of all production program, that was a 7.11
15 percent program, that one was determined to be
16 noncountervailable by commerce recently.

17 COMMISSIONER PEARSON: Right, but setting
18 aside the details of countervails for the moment an
19 individual firm that's exporting pistachios to the
20 United States has a lot more control over its own
21 behavior than it has over the behavior of its
22 government, okay?

23 So the government may be providing some
24 subsidies to the industry that may or may not be a
25 legitimate reason for countervailability. Set that

1 aside. The firm that is controlling its own behavior
2 has some ability to decide whether or not to sell at a
3 dumped price.

4 So the argument that you used in response to
5 my initial question was that on deposit much of that
6 money will be gotten back by the importer. Doesn't
7 that apply even moreso to the anti-dumping duties
8 because of the ability of individual firms to control
9 their own behavior?

10 MR. STEINBERGER: I'm afraid I don't follow.
11 On the anti-dumping duty --

12 COMMISSIONER PEARSON: Well, they go through
13 a review and they can get their anti-dumping duties
14 bound, right?

15 MR. STEINBERGER: This is true. This is
16 true. That's true with anyone.

17 COMMISSIONER PEARSON: Right.

18 MR. STEINBERGER: The question is is that
19 going to happen or are they going to prefer to dump?
20 Basically it's a "punch-or-pay" system. You can dump
21 and pay the duty or raise your price and you don't
22 have to pay the duty.

23 COMMISSIONER PEARSON: Right.

24 MR. STEINBERGER: Of course if you remove
25 the order you don't have to make that choice, you can

1 just dump and pay nothing.

2 COMMISSIONER PEARSON: You perceive that the
3 Iranians have an economic desire to dump instead of
4 selling for as much as they could?

5 MR. STEINBERGER: Absolutely, because they
6 will need to come in here and take their market share
7 back. The best way to do that is the way everyone
8 always gains market share, it's by undercutting
9 prices. Now, that's a little bit different from
10 dumping, but the outcome is the same.

11 You want to sell at a low price so that you
12 can capture the market share.

13 COMMISSIONER PEARSON: So help me
14 understand. Is there a fundamental difference between
15 the argument you were making on countervail regarding
16 the ability to claim back much of the deposit versus
17 the argument that you're making it now an anti-
18 dumping?

19 MR. STEINBERGER: I'll have to think about
20 that a little bit because I'm not sure how you
21 perceive the two arguments.

22 COMMISSIONER PEARSON: I'm not sure either.
23 That's why I'm asking. If you want in the posthearing
24 go ahead and explain to me what I should know about
25 this that I'm not understanding correctly right now.

1 MR. STEINBERGER: Okay.

2 MR. LEONARD: May I, Mr. Commissioner?

3 COMMISSIONER PEARSON: Please, Mr. Leonard.

4 MR. LEONARD: There are a couple of points
5 on the consideration of the countervailing duty order
6 that is in place. As has been said, the most recent
7 countervailing duty order review indicated that it's a
8 zero countervailing duty that is due on the imports.

9 Granted it's a small amount and hopefully
10 we're going to be able to provide to the Commission
11 the quantity that we estimate or that has been
12 estimated by the growers in Iran or the shipper in
13 Iran, but it is a hole in the dike. It's a split in
14 the levee as I would say.

15 There is no reason to believe that other
16 shippers, and indeed as Mr. Connelly pointed out the
17 largest shipper, and grower and member of the industry
18 in Iran, the RPPC, there is no reason to believe that
19 those entities will not see what has happened here and
20 find and request their own administrative reviews to
21 see if they, too, can obtain a zero amount of subsidy,
22 or there may be new enterprises in Iran that can
23 request what's called a new shipper review.

24 If they are not affiliated or have not been
25 affiliated from the beginning with the people involved

1 in the original investigation they will ship a small
2 amount here probably at a high price and request a new
3 shipper review, and during the pendency of the new
4 shipper review they need place only a bond on any
5 shipments coming in here, no countervailing duty or if
6 it were dumping no anti-dumping duty either.

7 Finally far be it from me to say coming from
8 a civil law state that the USITC follows precedent or
9 should follow precedent; however, the precedent seems
10 to be in the sunset reviews in cases that have
11 involved both anti-dumping and countervailing duty or
12 that the order that was being reviewed was in addition
13 to another order in place it seems to be that the
14 Commission has not given consideration to the fact
15 that there is another order out there that could stem
16 the imports.

17 There was a dissenting opinion that seemed
18 to suggest that such considerations should be given,
19 but has not been the holding of the Commission in
20 these sunset reviews. I would respectfully say it
21 should not be in this case either.

22 MR. STEINBERGER: Just to add quickly to
23 that, the one reason why that's the way the Commission
24 has tended to go is that you create a logical problem
25 in that if you have two different orders on the same

1 product basically the one that gets reviewed last is
2 the one that stays in place.

3 That's a problem with how you approach this,
4 and it's especially ironic in this case because Iran
5 not being a subsidies agreement country it was never
6 entitled to any kind of consideration by this body at
7 all. It's a bit of a quandary and we'd certainly be
8 happy to deal with it in our posthearing brief in more
9 detail.

10 COMMISSIONER PEARSON: Please do because
11 it's somewhat of a conundrum.

12 If we were to find that the CVD order would
13 have a restraining affect on imports then my reading
14 of the dumping side for our current investigation
15 would suggest that we are under some pressure to
16 revoke the order because if the CVD order is
17 restricting imports then the AD order is perhaps
18 irrelevant and irrelevant orders are supposed to go by
19 the way.

20 Pardon me.

21 CHAIRMAN KOPLAN: Thank you, Commissioner.
22 Commissioner Aranoff?

23 COMMISSIONER ARANOFF: Thank you, Mr.
24 Chairman.

25 I wanted to follow-up on something that Mr.

1 Phillimore raised in his testimony earlier today. You
2 had indicated that there was a risk that consumers
3 would just stop eating pistachios if they find out
4 that there are carcinogens in the Iranian product. I
5 guess my question to you is this.

6 We have this story of the U.S. losing out to
7 the Iranian product in China because the Chinese are
8 basically stealing your name and putting it on their
9 product. That seems a lot less likely to happen in
10 this country where we have laws against that sort of
11 thing that we actually enforce.

12 Wouldn't it be as much a strength to the
13 U.S. industry in competing with the Chinese product
14 both here and in your export market for you to be
15 marketing your product and saying California product,
16 we're safe?

17 MR. PHILLIMORE: Well, I think at least my
18 response to the first thing is just that we don't want
19 to raise the issue in the minds of the consumer at
20 all. We certainly as the industry are not going to
21 bring it up and we don't want to bring it up.

22 I think that the example of what has
23 happened in the EU has shown that over time there is
24 some limited benefit in taking the position that
25 you're safe, and that you're better than theirs and

1 all the rest of it, but there also has been in the EU
2 an incredible drop in overall consumption.

3 So I think you're right to a certain extent,
4 but it's not something that we would institute as an
5 issue that we're safe and they're not because that
6 brings doubt on the whole issue. I think that overall
7 the affect is still massively negative.

8 COMMISSIONER ARANOFF: Thank you for that
9 answer. That's very helpful.

10 I wanted to ask, and I'll throw this out
11 generally to the industry representatives, some more
12 questions about the way that you inventory this
13 product. I guess based on my colleagues questions
14 you've indicated that it's the raw product that's
15 inventoried, that it can be inventoried for up to two
16 years.

17 Could somebody discuss how expensive that is
18 and what kinds of issues you face in terms of spoilage
19 or loss of taste of the product when it's stored for
20 that long? If I as a consumer eat a nut that's been
21 stored for a year and a half or so before it was
22 roasted versus one that was roasted right away could I
23 taste the difference?

24 There's a lot of questions in a row.
25 Because you inventory these products in order to even

1 out the supply does that mean you end up having to
2 throw a lot of it away because it doesn't ever get
3 used?

4 MR. NICHOLS: I'd be happy to try and answer
5 a couple of the questions. It's Mr. Nichols. As to
6 the issue of taste the roasting process really I guess
7 refreshes a product and what a consumer would perceive
8 as something that is stale or old would be old roasted
9 product.

10 If you took the raw product that was
11 harvested and stored for one month versus one year or
12 perhaps a year and a half you would see very, very
13 little difference if any. As to the cost of
14 inventorying and storing product the costs are quite
15 substantial.

16 The product has to be safeguarded against
17 pests first and foremost, the actual capital cost of
18 building the facilities to hold it is quite expensive
19 and then you have the cost of actually holding the
20 merchandise, the interest costs or the borrowing
21 costs, so the costs are quite substantial.

22 COMMISSIONER ARANOFF: Is it cold storage?
23 Does it require temperature controls or cold storage?

24 MR. NICHOLS: No. In the raw state it does
25 not. It requires a dry environment. There are risks

1 that you have to manage. The moisture has been talked
2 about quite a bit. It has to be stored at a safe
3 moisture otherwise you risk mold, but beyond that if
4 it's kept dry, if it's kept free of pests it can be
5 held quite well.

6 MR. PHILLIMORE: This is Bill Phillimore.
7 Could I just add to that?

8 COMMISSIONER ARANOFF: Sure.

9 MR. PHILLIMORE: You have already paid for
10 the product when you're inventorying it, so there are
11 some fairly interest costs to carry it. There's also
12 a considerable risk. We have already touched on how
13 inept we are as an industry in predicting the size of
14 the crop and therefore you can get caught as a
15 processor in carrying inventory at times when you
16 don't need to because the next crop is that big.

17 So there is a considerable risk on the part
18 of anyone who holds it because they may have paid the
19 growers more from the year they're holding it than
20 they would be able to sell it to later on. So you
21 certainly have an inventory price risk as well as all
22 the costs involved.

23 COMMISSIONER ARANOFF: Appreciate that.

24 In the markets that are largely served by
25 Iranian nuts, and the Iranians themselves don't store

1 the raw nuts, is there someone else in the chain who
2 is storing the nuts so as to keep a year round supply
3 or are those markets still just consuming pistachios
4 on a seasonal basis as for example in China?

5 MR. PHILLIMORE: My feeling is that the
6 latter is true. They're still just consuming it on a
7 basis as when the Iranians can process it, when they
8 can get it there. There's no real attempt at year
9 round marketing or year to year marketing.

10 COMMISSIONER ARANOFF: So this is a market
11 where it's the Iranian producers or Iranian companies
12 themselves that are marketing this product, it's not
13 third-country roasters buying the product, and then
14 storing it themselves and doing what you all do here?

15 MR. PHILLIMORE: No. I would very much
16 question anyone who is buying product to store
17 anywhere in the world on any sort of long-term
18 process.

19 COMMISSIONER ARANOFF: Thank you.

20 Switching subjects a little bit our staff
21 report for lack of a whole lot of Iranian sales in the
22 United States contains some third-country prices for
23 pistachios from Iran. I wondered if any of you have
24 any comments for us on the usefulness of those third-
25 country prices as we approach this review?

1 Go ahead.

2 MR. CONNELLY: Commissioner Aranoff, I have
3 an answer to that. The data is what it is. We went
4 out and found some independent sources of data that
5 are in our brief, we made some comparisons. The
6 interesting thing I think is it comports with the
7 results of the comparisons from the data in the staff
8 report.

9 So I don't think any of us would say we know
10 this to be 100 percent accurate, but I think what we
11 would say is the trends seem to be consistent from
12 market to market, from year to year, country to
13 country.

14 COMMISSIONER ARANOFF: Thank you.

15 One thing that hasn't been mentioned very
16 much if at all this morning that I wanted to ask you
17 about is China and the fact that China now appears to
18 be starting to develop an industry of its own.

19 Given that the pistachio trees don't bear
20 nuts for quite a number of years in commercial
21 quantities to what extent are recent plantings in
22 China something that we should be taking into account
23 in our analysis, and what variables are there in terms
24 of perhaps different pests in that part of the world
25 or other things that might put the commercial success

1 of China's plantings in any doubt?

2 MR. STEINBERGER: I think Karen Reinecke can
3 address that in more detail, but just very briefly to
4 set that up the plantings are a somewhat longer term
5 issue with China. In the shorter term the issue is
6 that the Iranians have already taken over the market
7 in China, so that's not a new place for them to go.

8 Karen?

9 MS. REINECKE: The Commission was concerned
10 because we had been receiving information through the
11 foreign agricultural service that was provided to them
12 through FLU that was showing supposedly there were
13 some very significant plantings in China, so we sent
14 over our director of research who is a plant
15 pathologist to travel to all of the known growing
16 areas throughout the country of China.

17 He spent three weeks over there and although
18 he did find some limited plantings did not find any
19 type of commercial plantings at this point or any
20 infrastructure that would enable the China government
21 or people to produce this product on a worldwide
22 scale.

23 So at this point we're monitoring the
24 situation, but we do not see that as any kind of
25 threat, but for Iran to have been able to come into

1 China and take that market away from us in less than
2 three years that's a threat.

3 COMMISSIONER ARANOFF: Thank you for that
4 distinction. I certainly hope that means we won't be
5 seeing you back here in another few years with a
6 Chinese pistachio case. I see that my time is up.

7 CHAIRMAN KOPLAN: Thank you, Commissioner.

8 Let me just follow-up with you if I could
9 along that line. I noticed that on page 24 of your
10 brief you mention that China is expected to be able to
11 satisfy most of their 2010 pistachio consumption
12 largely eliminating demand for imports from Iran.

13 If I don't consider 2010 to be within the
14 reasonably foreseeable future what weight should I be
15 giving that or do you consider 2010 to be within the
16 reasonably foreseeable future?

17 MR. STEINBERGER: Well, I think that
18 argument has been overtaken by events. Unfortunately
19 at the time that we did our brief we were not aware of
20 all of the details of the California Pistachio
21 Commission's earlier trip visit where they did not
22 find those plantings, and we were not aware of the
23 full degree to which the Iranians had simply taken
24 over the Chinese market.

25 The issue with China is more one of whether

1 Iran would be able to push its product and push more
2 of its product into China quickly and for that you
3 don't need to look out to 2010, you can look out to
4 2006. The problem with Iran doing that, with pushing
5 more of its product in than is already there is that
6 as we had stated earlier you need to grow demand for
7 this product.

8 You have to lay the groundwork with
9 marketing to make enough people in that market want
10 that product. I think Ms. Reinecke might be able to
11 address that a little bit more because my
12 understanding is that in China what happened was the
13 United States producers went in, laid that groundwork,
14 created the demand.

15 Iran then came in and sold at low prices to
16 all of those people who now constitute the demand, but
17 since then the Iranians have not invested anything
18 further in growing the demand.

19 CHAIRMAN KOPLAN: Ms. Reinecke, did you want
20 to add?

21 MS. REINECKE: We started a promotional
22 support program funded through the marketing
23 assistance program through foreign agricultural
24 service in 2003 going into China working basically in
25 the Guangzhou market, which is south close to Hong

1 Kong, then moving up into Shanghai, Beijing, basically
2 staying along the coastal areas.

3 We spent over \$2 million of the growers
4 money and of the MAP funds to develop that market
5 through trade education, consumer education, a retail
6 support program and we were extremely successful.
7 That market went from less than five million pounds to
8 30 million pounds in five, six years. It was an
9 overnight success.

10 Iran then went in 1997 when all of a sudden
11 they couldn't get into Europe. They desperately
12 needed other markets for their product. They were
13 quoted in a number of different trade journals stating
14 that the California industry has done a wonderful job
15 in developing these markets for us and now we can go
16 in and we have a home for them.

17 That to us was a direct threat of everything
18 we're doing. Do we stop marketing our product
19 worldwide in order to prevent them from taking them?
20 No. We can't. It is a serious threat for our
21 industry because they don't market their product, they
22 sell it on price. This is consistent through every
23 country in the world.

24 CHAIRMAN KOPLAN: Thank you for that
25 response. Let me stay with you if I could. Export

1 data on the public version of our prehearing staff
2 report, I'm referring to Table 4-2 at page 4-8, show
3 that 162 million pounds of pistachios were exported
4 from Iran to the United Arab Emirates in 2003.

5 That's a country with two and a half million
6 people which would equal if my math is right and I
7 don't pretend that it is, but it would seem to equal a
8 consumption level of 64.8 pounds per person per year
9 if consumed domestically.

10 Is the UAE performing downstream processing,
11 packaging and re-exporting for the Iranian industry?
12 How do I read these numbers? Ms. Reinecke?

13 MS. REINECKE: Sorry.

14 CHAIRMAN KOPLAN: No. I was staying with
15 you.

16 MS. REINECKE: I thought someone else was
17 answering. Absolutely. They've done some tremendous
18 marketing in the United Arab Emirates. Now, you're
19 absolutely right. That is a major transfer point for
20 the Iranian industry. We also have a situation --

21 CHAIRMAN KOPLAN: Do you know where it's
22 going?

23 MS. REINECKE: Most of it will then go into
24 Europe, then into China. It really goes all over the
25 world from that point. To India. That's really a

1 major transportation point for them. We have that
2 situation in Europe as well where a lot of the product
3 will be brought into for instance Luxembourg which is
4 a very, very small country.

5 If you look at the numbers you'd think my
6 gosh, that's all they eat is pistachios, where it
7 actually then is being shifted throughout Europe from
8 there, so yes.

9 CHAIRMAN KOPLAN: Thank you. I'm going to
10 stay with you with another one if I could. Exhibit
11 No. 3 of your brief uses a University of California
12 cost of production study which is specific to the San
13 Joaquin Valley and furrows using a drip system of
14 irrigation.

15 In addition to including imputed costs,
16 which the Commission does not generally evaluate, the
17 study appears to simulate the costs of a relatively
18 new growing operation whose trees are in the early
19 phase of full production.

20 Given the fact that actual growing
21 operations reported to the Commission usually reflect
22 a mix of new and old growing assets Exhibit No. 3
23 appears to overstate costs actually incurred by the
24 industry as a whole. Could you comment on that?

25 MS. REINECKE: I would like to probably give

1 that question to John Reilly.

2 CHAIRMAN KOPLAN: He was just reaching for
3 his microphone.

4 MR. REILLY: Yes. I will comment on that.
5 Our view is that the out-of-pocket cost figures in the
6 UC study, the consensus of the folks that I've talked
7 to who are in the industry is that the out-of-pocket
8 operating costs are probably overstated relative to
9 what the industry as a whole is currently incurring,
10 but that the capital recovery requirements are pretty
11 much on the money.

12 Now, I noted in my testimony that you're not
13 going to see that in the financial statements that the
14 Commission has in its record because many of those
15 costs have been written off, expensed prior to the
16 present time and there's a difference between capital
17 recovery, and expensing depreciation and expensing
18 investments.

19 One is expensed normally as rapidly as
20 possible for tax purposes, especially if you have
21 offsets in profitable parts of an orchard or in other
22 operations, say growing almonds, but we do feel that
23 the numbers for capital recovery are pretty accurate
24 for a relatively new operation that's incurring costs
25 at today's factor prices.

1 So basically it's forward looking more than
2 backward looking.

3 CHAIRMAN KOPLAN: Thank you for that, Mr.
4 Reilly.

5 Ms. Reinecke, for the U.S. industry as a
6 whole what percentage of growers own processing
7 facilities and what volume do they represent?

8 MS. REINECKE: What was the second part of
9 that?

10 CHAIRMAN KOPLAN: What volume do they
11 represent?

12 MS. REINECKE: Well, you've got -- as far as
13 volume. Let's see. Do we have a better number here?
14 Well, there's 18 processors within the industry and
15 they probably represent in excess of 60 percent of the
16 industry I would say maybe. Yes. Sixty percent of
17 their own production.

18 MR. LEONARD: Mr. Chairman, if we can refine
19 that in any way we'll be happy to supply that
20 posthearing.

21 MS. REINECKE: Yes. Those are off the top
22 of my head numbers.

23 CHAIRMAN KOPLAN: Yes. Why don't we do
24 that. You can see the way that was phrased in the
25 transcript and respond. The second part of that is of

1 the processors that own pistachio acreage how much of
2 the total processed volume for a given processor is
3 harvested from acreage owned by the processor?

4 So if you could provide that information
5 posthearing it would be helpful, but you do understand
6 the question, where I was going with it?

7 MS. REINECKE: Yes.

8 CHAIRMAN KOPLAN: Thank you. There's a
9 statement on page 2-8 of the prehearing staff report
10 that safety concerns have increased demand especially
11 for California pistachios. Is this because of lower
12 aflatoxin levels in domestically produced pistachios
13 or is there another reason?

14 MS. REINECKE: Absolutely. Aflatoxin has
15 become a major issue for the pistachio industry, for
16 the global nut industry.

17 CHAIRMAN KOPLAN: Thank you. I see that my
18 red light has come on.

19 I'll turn to Vice Chairman Okun.

20 VICE CHAIRMAN OKUN: Thank you.

21 I think I'll just follow-up and an earlier
22 question raised by Commissioner Aranoff with regard to
23 looking forward, how that bodes for the U.S. industry
24 in terms of its marketing.

25 Again, I guess one of the things that I

1 think Mr. Phillimore you had talked about your concern
2 you don't want to raise it in the U.S. industry, and I
3 can understand if you don't have anyone here I
4 wouldn't raise it now, but if the order were lifted
5 and Iranian imports were to come back into the
6 industry you had used as an analogy the tuna, that's
7 where you saw demand go off because of consumer fears.

8 I guess I would raise another product for
9 you to think about which is Alaska's salmon, and I
10 have some familiarity working for an Alaskan senator
11 for a number of years which is they had a very good
12 experience which was when concerns were raised about
13 the health of farmed salmon the Alaskans marketed
14 their salmon as wild and healthy and they saw demand
15 increase.

16 It struck me that the U.S. industry is
17 sufficient to do the same thing. If you've got a good
18 product and there are concerns worldwide about
19 aflatoxin why aren't you positioned of the increasing
20 demand that's been forecast in the United States why
21 wouldn't you be able to capture that by marketing as
22 you have successfully done thus far?

23 Ms. Reinecke, you can comment on that as
24 well. I think it is relevant to you, but I'll raise
25 it with Mr. Phillimore because they had used the tuna

1 example.

2 MR. PHILLIMORE: It may be that we could,
3 but I think it's one of those unknowns one doesn't
4 want to face. I think that's the best answer that --
5 if the Iranian product came in and there was an
6 aflatoxin scare that's what we would be forced to do,
7 but that does not mean that there would be adverse
8 economic consequences associated with it.

9 VICE CHAIRMAN OKUN: Actually, before I turn
10 to Ms. Reinecke you had mentioned that demand had gone
11 down in the EU based on that. I haven't had a chance
12 to look back at your brief to see is the EU demand
13 declined on our record anywhere in the data?

14 MS. REINECKE: I don't know if it is or not,
15 but I think it's a very telling story and something
16 that we have all learned from. Prior to the ban on
17 Iranian pistachios in September of 1997 in 1996 the
18 imports into the EU, which was at that point primarily
19 only Iranian pistachios, reached 200 million pounds.
20 That was an all-time record for them.

21 Right after the ban was put in place their
22 numbers went down to 87 million pounds. That was
23 within one year's time. What ended up happening is
24 that the press went out and were very vocal in saying
25 throw your poisoned pistachios away, pistachios are

1 carcinogenic.

2 They usually did say somewhere in the
3 article that it was Iranian pistachios, but it didn't
4 matter because for the consumer people look at that
5 and they say pistachios, I can't tell the difference.
6 What if I'm feeding these to my seven year old
7 daughter? I'm not going to take the chance. There
8 are a lot of other products.

9 I think that's one of the things that the
10 California industry is very aware of. This is not a
11 product that someone has to have, this isn't a banana,
12 this isn't potatoes, this isn't something that people
13 eat every single day, it's a luxury, it's special and
14 if there's a problem with it you're not going to buy
15 it.

16 It's an expensive item and you're going to
17 go someplace else. We saw in the strawberry industry
18 about 10 years ago a very similar thing happened.
19 Mexican strawberries came in, and they had e. coli
20 problems and a lot of people got sick with them. Even
21 the retailers -- in California, Vaughn Supermarket
22 came out with big ads: We only buy California
23 strawberries. Ours are clean. Ours are safe.

24 The strawberry industry saw a \$30 million
25 drop in profit that year because it was right at the

1 peak of their season because those strawberries had
2 been sold supposedly as California strawberries, but
3 they weren't California strawberries, they were
4 Mexican strawberries.

5 So we can put whatever we want on our bag
6 and we can say we're aflatoxin free, well, quite
7 frankly the word aflatoxin is kind of scary. It's a
8 toxin. Nobody even wants that near their package.
9 That's our problem.

10 We want to go out and we want to educate
11 consumers like we've done in Europe, but it has taken
12 us from 1997 when we lost all of that market share to
13 today to finally get it to the place where the
14 importers are saying you know, California is safe, and
15 I feel a lot of confidence in you guys, and the
16 retailers are starting to feel the confidence, and
17 we're getting back into the market and we're growing
18 that market.

19 So there's a huge fear for the industry that
20 this industry -- you're not here to protect us from
21 our food safety issues, but we really show is that
22 there is such a big benefit to Iran to be able to get
23 into this market. There's a 20 parts per billion
24 standard in the U.S., two in Europe. A lot of their
25 product can meet 20 parts per billion.

1 So we're going to have that product here,
2 and we're going to have issues with it and that's our
3 concern.

4 VICE CHAIRMAN OKUN: Again, it may already
5 be there. To the extent I was thinking about it I had
6 focused on the fact your exports to EU had benefitted
7 to the extent that there may be demand decline. It
8 may be in the record. If it's not, if you could put
9 it on the record I would appreciate that for
10 posthearing.

11 MS. REINECKE: (Nonverbal response.)

12 VICE CHAIRMAN OKUN: You're shaking your
13 head and I'll see it I guess if you have it. Then
14 just the other demand question. I know the staff
15 report had reported that we had four processors and
16 four purchasers anticipating increase in demand in the
17 future.

18 I wondered if this panel could just share
19 with me just in terms of what you see in terms of
20 demand. You've had very good demand growth on the
21 record during the period that we're looking at, but
22 just in terms of firsthand and what you see going
23 forward. Again, this might have been in your brief,
24 but I can't remember.

25 If you could, what's your future projection

1 for demand growth?

2 MR. KEENAN: Well, demand domestically has
3 been fairly static in the last couple of years, but we
4 looked at maybe three, four percent a year under the
5 right conditions. If Iran comes back into this market
6 with their historical undercutting of our prices that
7 will evaporate including a significant percentage of
8 our crop, too.

9 In the export markets we work diligently to
10 increase those shipments, but you have to continue to
11 educate the consumers. You can't turn it on because
12 you have an extra 10 million pounds or 20 million
13 pounds, you have to work on this very slowly year
14 after year to increase your demand worldwide.

15 VICE CHAIRMAN OKUN: Any other comments on
16 demand or is that reflective of the industry?

17 On the back row there?

18 MR. NICHOLS: Yes. This is Mr. Nichols. I
19 think the industry has had a history of over a two
20 year cycle covering the high and low year basically
21 balancing finding markets for its products both
22 domestically and abroad. The growth rate of the
23 industry will probably be something over what Bob
24 Keenan was talking about.

25 I would concur with his numbers domestically

1 and that will leave our industry to look to exports to
2 increase for the balance of the growth that we see
3 coming in the industry.

4 VICE CHAIRMAN OKUN: Then let me just turn
5 back to a couple of pricing questions just looking at
6 the original record and then the data that we had.
7 One thing that I had wanted to get the industry to
8 comment on is just the relative prices between the
9 medium, the large, the extra large and whether you can
10 tell me whether the Iranians compete in the same
11 sizes?

12 Looking at it it seemed there was some
13 anecdotal information that the Iranians were focused
14 more on the medium size which as I understand it would
15 be a lower priced nut anyway. Can you comment at all
16 on that, on the sizes and whether the U.S. markets
17 differently in terms of having larger nuts or anything
18 else that might be relevant in thinking about pricing
19 issues?

20 MR. NICHOLS: Well, the only thing I would
21 offer, for the 2004 year which was part of the study
22 probably 30 to 40 percent of the California crop was
23 in the medium size range which is a higher percentage
24 than usual. The balance went into the large size.
25 That varies every year depending on mother nature.

1 Typically we see the Iranian medium size
2 compete. Where we're selling in markets where we
3 compete against the Iranians we see their medium size
4 compete against our large size because those are the
5 most common sizes that they produce and the most
6 common sizes we produce.

7 As far as price levels, again, those vary
8 depending upon the year. This year there's very
9 little difference between say large and extra large,
10 only a couple of cents. If there's a year where
11 there's a very short supply such as 2004 there can be
12 a substantial 30 cent difference.

13 In 2004 there was a very, very small
14 percentage, perhaps one or two of the extra large
15 size, and there was a very wide differential. This
16 year there's a substantial amount and it's only a
17 matter of a couple of cents.

18 VICE CHAIRMAN OKUN: Thank you for all those
19 answers.

20 CHAIRMAN KOPLAN: Thank you, Commissioner.
21 Commissioner Lane?

22 COMMISSIONER LANE: Table 3-11 of the staff
23 report presents company specific financial results for
24 processors. Could you please describe some of the
25 important differences in operational structure between

1 the processors?

2 Mr. Reilly, maybe you could start with that?

3 MR. REILLY: When you're talking about
4 company specific information we're not talking about
5 BPI are we? Yes. I think we are. I believe we are.
6 That's something we would have to address in a
7 posthearing brief.

8 COMMISSIONER LANE: Okay. That would be
9 fine then. Thank you.

10 I don't have any other questions.

11 CHAIRMAN KOPLAN: Thank you, Commissioner.
12 Commissioner Pearson?

13 COMMISSIONER PEARSON: I'd like to address
14 some questions to the growers. What type of land is
15 best-suited to raising pistachios?

16 MR. BLACKWELL: The land in the San Joaquin
17 Valley has deep, well-drained soils. Weather
18 conditions need to be such that we have enough
19 chilling in the wintertime which is hours below 45
20 degrees. Typically we say 1,000 hours. We've noticed
21 in the last few years that maybe we can get away with
22 a little bit less, but typically we say 1,000 hours.

23 Also, summer heat. These plants are desert
24 plants, so they require summer heat. In the San
25 Joaquin Valley this year we had 30 days of over 100

1 degrees and so that generally plays very well for
2 pistachio growth. The land, we have rolling hills, we
3 have flat ground. Again, well-drained soils high in
4 Boron, good water infiltration rates.

5 COMMISSIONER PEARSON: Ms. Schweers, did you
6 have something to add?

7 MS. SCHWEERS: Yes. I'm Marianne Schweers
8 and we're from New Mexico. Our farm is a self-
9 contained farm and as you've heard a number of times
10 that the California industry is 98 percent of the
11 industry the other two percent is the southwest. What
12 Brian just described is, again, the same type of land
13 that we have where pistachios grows. Very specific
14 desert.

15 The tree has the most narrow parameter of
16 environment of any commercial nut produced, so as one
17 of the other Commissioners asked what we'll be hearing
18 about other countries and why don't Turkey, and Syria
19 and Greece come into our market here with large
20 volumes, the land available in the world to raise
21 pistachios is not that great.

22 It's very limited. That was one of the
23 reasons we chose pistachios is because we thought the
24 price would hold.

25 COMMISSIONER PEARSON: Thank you.

1 So what was the land that's now in pistachio
2 orchards being used for prior to its conversion?

3 I note, Mr. Blackwell, you indicated that
4 either flat land or the hills can be used for
5 pistachios, so perhaps it's in that sense a little
6 more flexible than some other crops?

7 MR. BLACKWELL: Yes. It's very flexible. I
8 might add something that is happening currently and
9 that has happened in the last few years to cite an
10 example is the raisin industry just as of recently
11 went through some bad economic times where they
12 couldn't sell their raisins.

13 Growers, we're not the smartest people in
14 the world I guess, so we chase one crop after another.
15 Growers went out and pulled out all their vines and
16 started planting pistachios and almonds because they
17 were a good business. So that's the type of things.

18 We're also seeing cotton farmers who were on
19 a yearly basis breaking even or maybe making just a
20 little bit of money turning their land over to
21 pistachios and waiting the seven, 10, 12, 15, 18 years
22 to start recouping their investment. In the long run
23 they're going to be making more money than by staying
24 with those traditional crops.

25 COMMISSIONER PEARSON: The irrigation

1 systems that are used, is it exclusively drip
2 irrigation or on the level answer this, is there some
3 furrow irrigation around --

4 MR. BLACKWELL: There is some furrow
5 irrigation. I would say just speculation on my part
6 that probably over 90 percent is in a drip irrigation
7 type, either fan jet or drip. There's very little
8 that is done by furrow or flat irrigation, but there
9 is some.

10 COMMISSIONER PEARSON: Is some of the hill
11 land, was it converted from pasture use into
12 pistachios?

13 MR. BLACKWELL: Most of the hilly ground
14 that I know of, yes, was all pasture ground and it was
15 turned into pistachio ground and very good ground.
16 It's all used with irrigation systems that have
17 compensating pressure devices that allow us to use
18 some of those underlaying hills for growing the
19 pistachios.

20 COMMISSIONER PEARSON: So there really would
21 be a substantial difference in opportunity costs
22 between converting an acre of cotton ground for
23 instance versus converting an acre of pasture ground?
24 There must be an incentive to try to get as much land
25 that's in a relatively lower value of use into

1 pistachios?

2 MR. NICHOLS: Brian, can I take a stab at
3 that?

4 MR. BLACKWELL: Yes.

5 MR. NICHOLS: This is Mr. Nichols. There's
6 typically a trade-off. As Brian said there's both
7 types of ground. Most of what is planted in
8 pistachios was in cultivated crops heretofore or prior
9 to being planted to pistachios.

10 Typically in the situations where the
11 pasture land is converted there are other mitigating
12 costs that are substantially higher and generally the
13 one that's the highest is water, but there are also
14 other costs associated in dealing with terrain that
15 add to the annual costs as opposed to opportunity
16 costs.

17 COMMISSIONER PEARSON: Okay. No. That's a
18 good point. Thank you for raising it. Realizing that
19 there are substantial opportunity costs regardless of
20 what kind of land is being converted I'm curious, do
21 you think that the financial analysis that we have in
22 the staff report accurately reflects those opportunity
23 costs?

24 Mr. Reilly?

25 MR. REILLY: No, I don't. It doesn't

1 address them at all. The opportunity cost of holding
2 land is not addressed at all in the financial
3 statements because there's no element for that cost
4 included.

5 Basically the costs that are in the
6 financial statements are the traditional costs that
7 the Commission views which would be the out-of-pocket
8 cost of operation plus depreciation of buildings and
9 equipment. Land is not depreciated, so it would not
10 be reflected in the depreciation accounts.

11 COMMISSIONER PEARSON: For posthearing if
12 you'd like to provide any further clarification of
13 that issue I would be interested in it just because we
14 do have an issue here of growers are consciously
15 giving up an annual income stream from raising
16 tomatoes or whatever and investing now in the hope and
17 obviously the expectation that there will be money to
18 be made in pistachios some years hence.

19 So we have a different situation here than
20 we have in many markets and I just wanted to make sure
21 that I understood how those opportunity costs would
22 factor into the decision-making of the growers.

23 MR. REILLY: We'll be happy to do that.

24 COMMISSIONER PEARSON: Thank you.

25 What are pistachio hulls used for? Are they

1 an income item or an expense item?

2 MR. KEENAN: An expense item. There's a
3 little work being done on cattle feed application, but
4 it's very limited. It's a very wet, cumbersome
5 product that's probably 98 percent moisture so it's a
6 cost.

7 COMMISSIONER PEARSON: Is it suitable for
8 mulching, or composting, that type of activity, or are
9 you having to pay someone to get rid of it for you?

10 MR. KEENAN: I think you typically spread it
11 on vacant ground and there really isn't a lot of mulch
12 value to it.

13 COMMISSIONER PEARSON: The fruit of the
14 pistachio such as there is that's going out with the
15 hulls? You don't have a thick fruit with the
16 pistachio. Is it just the hull and a little bit of
17 ooze in there?

18 MR. KEENAN: Yes. It's the outer hull that
19 we remove. All the rest of it is retained for
20 marketability.

21 COMMISSIONER PEARSON: I shouldn't think of
22 like a peach here where you have a lot of fruit around
23 the center pit?

24 MR. KEENAN: We have an outer husk that we
25 remove during the harvesting processing period, we

1 have the shell which you're used to seeing in the
2 stores and the edible kernel inside.

3 COMMISSIONER PEARSON: What's the expected
4 life of a pistachio orchard? We probably haven't had
5 the business in the United States long enough to know,
6 but you guys have invested with some expectations.

7 MR. NICHOLS: That varies quite a bit. As
8 you said the industry is relatively young and to date
9 most of the pistachios that were planted since
10 commercial cultivation started are still in
11 production. Probably what will really determine will
12 either be market factors or obsolescence if there's
13 new varieties that are established.

14 The actual longevity of the trees, we
15 believe it's a fairly long-lived tree similar to a
16 citrus tree or a grapevine, but we really don't know
17 at this point.

18 COMMISSIONER PEARSON: So potentially we can
19 think in terms of 100 years?

20 MR. NICHOLS: Perhaps the trees would live
21 that long, but even though grapevines and citrus trees
22 can live for 100 years most of them are pulled well
23 before that, but potentially yes.

24 COMMISSIONER PEARSON: Are they trimmed
25 every year?

1 MR. NICHOLS: Yes.

2 COMMISSIONER PEARSON: Or pruned I guess is
3 the --

4 MR. NICHOLS: Pruned.

5 COMMISSIONER PEARSON: -- correct term. A
6 lot of the labor of running an orchard would be in the
7 pruning?

8 MR. NICHOLS: I can answer for our
9 operation. Our single largest cost is hand pruning,
10 but that varies by growers. Some of them do it almost
11 exclusively mechanically with hedging machines, but it
12 really, really varies from grower to grower.

13 COMMISSIONER PEARSON: My light is changing,
14 but a final question. What size are these pistachios
15 that we have in the samples?

16 MR. KEENAN: Probably a large 21, 25 this
17 year.

18 COMMISSIONER PEARSON: The fanciest,
19 showiest one --

20 MR. KEENAN: Well, they're kind of nice.
21 It's a beautiful crop year.

22 COMMISSIONER PEARSON: They look great.
23 Thank you very much.

24 CHAIRMAN KOPLAN: Thank you, Commissioner.
25 Commissioner Aranoff?

1 COMMISSIONER ARANOFF: I just want to
2 follow-up very briefly on a question that the Chairman
3 asked earlier mainly to Mr. Phillimore about your
4 company and you had promised to answer in your
5 posthearing brief, so I'm going to add to your
6 homework.

7 This regards the statement in your brief
8 that your company didn't plan any planting for 10
9 years.

10 I know the Chairman asked you some questions
11 about it that I wanted to add to, which is basically
12 up until the point where you stopped planting how much
13 had you recently planted, and given the conversation
14 that we just had about the productive life of a tree
15 to the extent that you know how long do you think that
16 you could go without planting before you start to
17 affect your continuity of supply?

18 My last question, you talked about the fact
19 that it was uncertainty in the market given the
20 potential for example that this order might be revoked
21 that had led you to this decision and I guess my
22 question to you is because it can take so many years
23 for a tree to come to productive maturity and because
24 any sunset review only gives you an assurance for five
25 years if an order is retained how can you ever have

1 enough certainty to continue planting if that is in
2 fact exactly what's motivating you?

3 I would certainly invite the other growers
4 to answer that question as well in their briefs if
5 they think that they have something to add on that
6 point.

7 That concludes my questions, Mr. Chairman.

8 CHAIRMAN KOPLAN: Thank you, Commissioner.
9 I look forward to those answers as well for purposes
10 of the posthearing. I've got one last question.

11 Ms. Reinecke and Mr. Phillimore, what affect
12 have EU phytosanitary restrictions on Iranian
13 pistachios had on prices of pistachios in the EU?

14 MS. REINECKE: I can only talk in
15 generalities because we don't deal with pricing per
16 se --

17 CHAIRMAN KOPLAN: But you are selling in the
18 EU?

19 MS. REINECKE: Well, the Commission doesn't
20 sell, our processors sell. Correct. So as far as
21 actual pricing what we have seen is a significant
22 firming up of price. This is a situation of supply
23 and demand as you get into these markets that have
24 higher quality concerns like Europe, like the U.S.

25 So we're at this point looking at

1 significant acreage still coming into bearing, we're
2 going to have more product and so it's a situation
3 that we're looking at will those prices be able to be
4 firm in the coming years? There is a definite demand
5 for the cleaner product.

6 CHAIRMAN KOPLAN: Thank you.

7 Mr. Phillimore, you want to add?

8 MR. PHILLIMORE: Yes. If I understand the
9 question correctly I'm finding it very difficult to
10 answer it because there are so many other factors
11 apart from the phytosanitary thing that affect price
12 levels, really the value of the dollar, how much
13 product we have in the United States that we want to
14 export or the value thing, so I'm sure that I can
15 really answer the question.

16 CHAIRMAN KOPLAN: Okay. Well, let me ask
17 you both this. Would you estimate that this has
18 contributed, though, to price increases for pistachios
19 in the United States? Hasn't it had some affect on
20 what happens here?

21 MR. PHILLIMORE: I would have said not
22 necessarily in the United States, but I think it has
23 certainly had an affect on -- the Europeans are
24 prepared to pay more for our product because it is
25 clean than they would if it was not if that answers

1 the question.

2 CHAIRMAN KOPLAN: Mr. Keenan?

3 MR. KEENAN: But a negative affect on like a
4 China market where prices have fallen because of the
5 phytosanitary issue, in Europe the price has firmed,
6 but Iran moved to the Chinese market. It lowers their
7 prices to make sure they can sell their product, so it
8 affects us there. We gain in one and lose in another.

9 CHAIRMAN KOPLAN: Mr. Reilly, you were
10 reaching for your microphone?

11 MR. REILLY: Well, the price affects are
12 quite logical. Basically if you think about it the
13 market supply of pistachios in Europe has been reduced
14 by the phytosanitary enforcement, that is the
15 reduction of available supply from Iran. Their U.S.
16 product has partially replaced that, but the total
17 supply has been reduce priced therefore it will go up.

18 In China the situation is quite the reverse.
19 The United States was supplying that market in volume,
20 the Iranians wanted to break into the market, they put
21 additional supply on the market at low prices and
22 being a commodity product the prices generally fell.
23 It's a simple matter of supply and demand.

24 CHAIRMAN KOPLAN: Thank you. I have no
25 further questions.

1 Vice Chairman Okun?

2 VICE CHAIRMAN OKUN: Just a couple of things
3 to follow-up with. One, Commissioner Aranoff had
4 actually raised the question for posthearing that I
5 had wanted answered as well, so I will look forward to
6 hearing your response to the Chairman and Commissioner
7 Aranoff's question regarding the planting, and the
8 decision not to plant and how you evaluate that in
9 looking at these things.

10 Then second in clarification I know the
11 Chairman had discussed with you this UAE issue and
12 it's understood that what we had all thought, they're
13 going there and then going elsewhere, they're not all
14 being consumed in the UAE. I just wasn't sure if I
15 heard is there roasting going on in the UAE or is it
16 just they're going there and then they're being
17 shipped elsewhere?

18 MR. NICHOLS: They are sent to Europe as you
19 would Hong Kong in the past as a gateway to China.
20 It's really a shipping center, not as much a
21 processing and distribution center at least as it
22 relates to pistachios.

23 VICE CHAIRMAN OKUN: Okay. Then I just want
24 to go back to an issue I was exploring earlier with
25 regard to the condition of competition in terms of the

1 vertical integration where the industry would see the
2 competition from Iran or feel it most acutely.

3 I did want to kind of go back to somewhere
4 on the different orders that are out there because as
5 I understand it and correct me if I'm wrong on this,
6 but from the original investigations you had the in-
7 shell not roasted that's subject to the AD also
8 subject to a CVD, the roasted outside this scope
9 subject to a CVD and then also subject to the embargo.

10 So the embargo is lifted in 2000 and what
11 have we seen with roasted? It's understandable we
12 haven't seen much roasted Iranian nut coming in and
13 they don't have an AD order, they do have a CVD order.
14 Is that what's keeping them out or is it that they
15 don't want to roast anywhere else and send them in?

16 Help me understand because I'm not quite
17 sure what's going on or why you wouldn't see them in
18 here in the roasted.

19 MR. STEINBERGER: There have been some
20 imports of roasted pistachios from Iran after the
21 lifting of the embargo. My understanding of the
22 Iranian industry, though, is that they generally are
23 much less oriented toward roasting their own product
24 than the U.S. industry is and that perhaps one reason
25 for this is that domestically the Iranian product

1 tends to be roasted on the spot before it's consumed.

2 It will be sold into a small market and you
3 buy it off the street off of somebody who has roasted
4 it. So for moving large volumes around you want to
5 use the raw product because of its storage properties.

6 VICE CHAIRMAN OKUN: Mr. Phillimore, did you
7 want to --

8 MR. PHILLIMORE: Well, I think that's right.
9 I think the big issue is simply shelf life. Once
10 you've roasted the product it starts to go downhill.
11 I only speak for ourselves, once we roast the product
12 then it goes into cold storage to preserve it, things
13 that we don't have to do with the raw product, so that
14 really it is a matter of processing, it's a matter of
15 shelf life.

16 Once, though, you roast and salt the product
17 it does start to go downhill immediately and therefore
18 there's some reason not to do that until you know
19 you've got a sale and you know the sale is going to
20 take place fairly quickly.

21 VICE CHAIRMAN OKUN: Okay. That makes
22 sense. I thought that was probably what was going on.

23 Just help me again, and Mr. Steinberger, you
24 had explained some of this, but in terms of, again, as
25 a condition of competition when you have a high level

1 of vertical integration and growers going to in some
2 cases related processes if the order is lifted, you've
3 got Iranian product coming in it's because I think
4 someone had mentioned that you just saw roasters
5 spring up to process the Iranian product as opposed to
6 it being --

7 MR. STEINBERGER: No. They did not spring
8 up, they were already in place. These were mainly
9 people who were dealing in other nuts that had
10 roasting equipment for those nuts and had access to
11 distribution channels for those nuts. I think Ms.
12 Cohen can speak even more to that fact because she was
13 on the east coast a lot and dealing with their product
14 among those folks.

15 They handle a large number of products of
16 which pistachios can be one and in the 1980s they
17 simply added pistachios. Maybe she can say --

18 VICE CHAIRMAN OKUN: I recall her talking a
19 little bit about that.

20 Ms. Cohen?

21 MS. COHEN: Yes. I'd be happy to answer
22 that. We're in other nut commodities besides just
23 pistachios on the east coast. We roast almonds, and
24 cashews, peanuts, filberts, hazelnuts, et cetera.

25 Many of our customers, competitors also are

1 in that business; however, the pistachio processing
2 business is such that nearly all of the pistachios
3 roasted/salted marketed in the U.S. are done by those
4 processors in California, so what we're really sure of
5 is that if this ban were lifted all those roasters
6 that are already in the business, already supplying
7 customers, all these other nut commodities could
8 easily add Iranian pistachios to that mix and there
9 would be a very easy entry if you will.

10 It would be very easy for them to enter that
11 market and capitalize on it.

12 VICE CHAIRMAN OKUN: Then just one question
13 I have. So those roasters, those people and other
14 clients who are roasting would be competing with you,
15 Mr. Phillimore, in what your growers might get, their
16 return? In other words in looking at this formula
17 that's used them coming in to other roasters impacts
18 you because the price would be passed on immediately
19 to the growers, or a price decrease?

20 I don't know if my question is very clear,
21 but I'm just trying to understand again. Since what
22 we're looking at in the scope is not actually the
23 roasted nut I'm trying to understand the price impact
24 of the in scope raw and where you feel it.

25 I can see that, Mr. Nichols, you're shaking

1 your head as well, so you can comment after Mr.
2 Phillimore and Mr. Keenan.

3 MR. KEENAN: Maybe, if I understand that.
4 These roasters on the east coast who haven't handled
5 California pistachios because much of the business is
6 done directly from California processors directly to
7 the chain stores, then if the order was lifted the
8 Iranian imports would come in and if history repeats
9 itself as we expect it would they would come in at 25,
10 40, 50 cents a pound less than California.

11 They would use that to market and undercut
12 our pricing to our customers. That would then reflect
13 a lower value to our growers having to meet that
14 competition.

15 VICE CHAIRMAN OKUN: Because the processors
16 -- again, does it matter with this formula where
17 you've guaranteed the minimum and then the additional
18 as it were goes to the growers? Would that be an
19 immediate pass-through?

20 MR. KEENAN: It depends on the timing. It
21 will eventually happen, but if you lift the order
22 what's the transit time that the product from Iran
23 could come to the U.S., get the infrastructure going
24 and start distributing? So would it be an immediate
25 affect to the California grower? Maybe. Maybe it's

1 the next crop year, but that's to be determined.

2 MS. COHEN: Can I also add to that again?
3 I'm sorry. Mia Cohen. I wanted to just add I agree
4 with Mr. Keenan, and also that it would be an
5 immediate detriment to the processor because the
6 processor has contracted preharvest with all their
7 growers.

8 Any price cutting at that point in time,
9 dumping, et cetera, would severely hurt the processor
10 almost to the point of not being able to repair
11 itself. Then of course that would filter back to the
12 grower the next harvest.

13 VICE CHAIRMAN OKUN: Other comments on that?

14 MR. REILLY: John Reilly. Yes. Just one
15 comment on the relative margins.

16 If you'll note looking in the staff report
17 that the processors margins are quite low relative to
18 the growers the processor has very little margin to
19 deal with when faced with a significant selling price
20 decrease, so it's incumbent upon the processor to pass
21 back virtually immediately to the grower the reduced
22 price that the processor is getting simply as a matter
23 of survival.

24 So the affect of the imports of Iranian raw
25 product which are then roasted by east coast roasters

1 or midwest roasters on the growers in California would
2 be quite rapid, within one harvest.

3 VICE CHAIRMAN OKUN: I thank you for all
4 those responses and your responses to our many
5 questions today. I very much appreciate everything
6 you've had to say and will look forward to posthearing
7 as well.

8 Thank you, Mr. Chairman. I have no further
9 questions.

10 CHAIRMAN KOPLAN: Thank you, Commissioner.
11 Commissioner Lane?

12 COMMISSIONER LANE: (No response.)

13 CHAIRMAN KOPLAN: Commissioner Pearson?

14 COMMISSIONER PEARSON: Earlier there was a
15 comment that there's not all that much land in the
16 world that has soil and climate that's really suited
17 for pistachios. I note I have some familiarity with
18 farming in Minnesota and there we can meet the 1,000
19 hour of cold requirement without too much difficulty,
20 although we might not have adequate summer heat, I'm
21 not sure exactly.

22 The question is if we have the circumstance
23 in which demand for pistachios around the world
24 continues to grow such that we might have to increase
25 the size of the U.S. pistachio industry at the rate

1 that we've seen since the order went into affect is it
2 physically feasible to expand the industry three or
3 four times in the next 25 years?

4 Are you going to be able to find land
5 presuming that would be near the areas where
6 pistachios are currently grown and not in Minnesota?
7 Are you going to be able to find land that's suitable
8 and actually participate in the expansion that might
9 occur?

10 MR. PHILLIMORE: I would respond to that
11 just to say that it's going to depend on what the
12 opportunity costs for other people to get out of what
13 they're doing. There is certainly enough land that
14 qualifies, but at the moment it's all growing other
15 things.

16 If the market for grapes crashed, the market
17 for cotton crashed, the market for everything else you
18 might see that. It's just our position in the
19 industry relative to everyone else's.

20 COMMISSIONER PEARSON: So if we look in
21 California in particular there is adequate land and
22 it's just a matter of economics duking it out in terms
23 of what that land will be used for?

24 MR. PHILLIMORE: Absolutely. Yes.

25 MR. NICHOLS: Far less than 10 percent of

1 the suitable land is planted to pistachios. Maybe on
2 the order of three, or four, or five percent.

3 COMMISSIONER PEARSON: Okay. Thank you for
4 that clarification.

5 MS. COHEN: I'd like to also add just one
6 other thing. This is Mia Cohen. That while there may
7 be land or may not be land it's water that's typically
8 difficult to find, so oftentimes you're looking at
9 land and seeing whether or not there are water rights
10 and in fact what is the water that may or may not be
11 available, then trying to find it on the open market
12 if you don't have enough of it.

13 COMMISSIONER PEARSON: Thanks. That's
14 another argument for Minnesota, actually. There must
15 be a winter hardiness issue with pistachio trees or
16 can they withstand quite a bit of frost?

17 MR. BLACKWELL: Yes. They can withstand
18 quite a bit of frost during their rest period or
19 dormant state. Early in the spring when the leaves
20 are out of course they're more susceptible to hard
21 frost, but we have had temperatures down to I believe
22 in 1990 10 degrees or less and didn't lose any trees
23 to it.

24 COMMISSIONER PEARSON: Well, after I leave
25 the Commission it's something to think about.

1 MR. BLACKWELL: Yes. There's a three year
2 wait like I said on the trees, so give me a call.

3 CHAIRMAN KOPLAN: He's got about an eight
4 year wait.

5 COMMISSIONER PEARSON: Let's see. Two more
6 quick ones. When I go to purchase pistachios am I
7 well-advised to buy them in a sealed plastic bag
8 rather than in a mesh net or doesn't it make any
9 difference?

10 MR. PHILLIMORE: We market both, but I think
11 they're better in a sealed plastic bag because they
12 will pick up humidity. They will go stale if you
13 leave them out in a bowl. I would suspect in
14 Washington, D.C., in the summer when you leave them
15 out in a bowl they'll go stale because they'll pick up
16 humidity.

17 COMMISSIONER PEARSON: Yes. I've noticed
18 that.

19 Ms. Cohen?

20 MS. COHEN: Yes. I just wanted to add to
21 that that you'll see the demand for mesh bags is
22 significantly less than the demand for pistachios in a
23 sealed bag. Typically those are from isolated
24 retailers if you will that are real intent on
25 marketing it as a produce item literally next to the

1 tomatoes, and it's really a special look and feel
2 they're going for and typically not what we see.

3 COMMISSIONER PEARSON: Okay. So someone
4 mentioned earlier keeping them in cold storage after
5 they're roasted. Should I be doing that? Putting
6 them into the freezer or into the refrigerator?

7 MS. REINECKE: Absolutely. Yes. You should
8 keep them sealed. We usually keep them in Tupperware
9 or something in the refrigerator or freezer, and
10 they'll keep for months and they'll be great. If they
11 all get a little bit stale you can just put them in
12 the oven and toast them. So there you go.

13 When we went into the produce industry they
14 wanted to only put them in bulk and that was because
15 they said a packaged product just didn't lend itself
16 to the produce department.

17 So at that point we initially started out
18 with bulk scoop displays, but as you can imagine all
19 that moisture in the produce department, the nuts if
20 they didn't move quickly were a little bit soggy and
21 we would get consumer complaints. So we take that
22 back to the retailer and the retailers now really see
23 the real value of that resealable bag or the closed
24 plastic bag.

25 So it's good for the consumer and good for

1 the pistachio, too.

2 COMMISSIONER PEARSON: Well, I appreciate
3 that advice. I actually thought that you might say
4 no, no, no, don't put them in the freezer just eat
5 them quickly and then buy some more.

6 Thanks very much to all of you for coming
7 today.

8 Mr. Chairman, I have no further questions.

9 CHAIRMAN KOPLAN: Thank you.
10 Commissioner Aranoff?

11 COMMISSIONER ARANOFF: (No response.)

12 CHAIRMAN KOPLAN: Are there any other
13 questions from the dais?

14 (No response.)

15 CHAIRMAN KOPLAN: If not, Ms. Mazur, I
16 understand the staff does have some questions.

17 Mr. Thompson?

18 MR. THOMPSON: Greg Thompson, Office of
19 Economics. I'm sure we're all getting a little hungry
20 here, so I'll try and keep it as brief --

21 CHAIRMAN KOPLAN: I'm having a little
22 trouble with your microphone.

23 MR. THOMPSON: I was just saying that we're
24 all probably getting hungry here, so I will try to
25 keep it brief. Since your 2005 harvest is just ending

1 I was wondering if you could give the Commission a
2 sense of how large the harvest is going to be or what
3 prices you're expecting for this year if available? I
4 don't know if those decisions have been made yet.

5 Either submit it for the posthearing brief,
6 more specific information, but if you could just give
7 a very brief sense now as to how large it's going to
8 be that would be very helpful.

9 MS. REINECKE: So far the Commission has
10 collected its numbers from the processors that all
11 report on a monthly basis and new crop to date through
12 September was 227 million pounds. We will have
13 additional product coming in through October. Most
14 processors were actually planning to finish up
15 processing sometime around the middle of this month,
16 so we will be bringing in additional product.

17 This is our off year. Last year was 347
18 million pounds, the year before was 118, the year
19 before that was 304. So you can see that we are
20 continuing to increase overall and our short years are
21 becoming big years, too.

22 MR. THOMPSON: Thank you. This is a related
23 question actually to that. The yield over the last
24 two years has been steadily increasing or at least off
25 year to off year and on year to on year. Do you

1 expect this trend to continue?

2 MR. PHILLIMORE: But if you look at the last
3 off year it was down from the previous off year.

4 MR. THOMPSON: With that exception. Yes.

5 MR. PHILLIMORE: Yes. The answer is that
6 it's very difficult to predict. I would not
7 necessarily make that assumption.

8 MR. NICHOLS: If I could add to that, too,
9 one of the things that we lack in the industry is a
10 very precise inventory of the producing acreage and
11 the nonbearing acreage. The producing acreage is
12 what's important to measure the yield trend. I assume
13 that you're talking per acre as well as gross trends.

14 The industry is undertaking an effort to do
15 that, but most of the acreage numbers are estimates.
16 We think they're good estimates. In the past they
17 were collected by a state agency and it hasn't been
18 done for several years. We think it perhaps
19 understates a little bit the actual bearing acreage
20 that's out there.

21 MR. THOMPSON: Thank you. The staff has no
22 further questions.

23 MS. MAZUR: Mr. Chairman, staff has no
24 further questions.

25 CHAIRMAN KOPLAN: Thank you, Ms. Mazur.

1 Thank you, Mr. Thompson.

2 With that we will go to closing remarks.

3 First, though, I want to thank each of the members of
4 this panel for their contribution to today's hearing.
5 Appreciate the distance that you all have traveled to
6 come and testify before us today. With that, I would
7 release the panel and go to closing remarks.

8 MR. LEONARD: Nuts, said U.S. General
9 Anthony McAuliffe in a reply to the demand of the
10 Germans to surrender at Bastogne in World War II. At
11 that time, considered akin to a swear word, the
12 general's one-word retort was eloquent in its brief
13 and passionate response to an unacceptable demand.
14 The only way to improve on that McAuliffe angry rebuff
15 in the instant proceeding is to say Pistachio Nuts.

16 I don't want to say that this is just like
17 the World War II battle and the Iranians are the
18 latter-day Germans and the U.S. is the U.S., but Iran
19 would invite the surrender of the U.S. pistachio
20 market with the revocation of the anti-dumping order.

21 The salient points emphasized at today's
22 hearing are (1) 1986 United States saw Iranian
23 pistachios besieging the U.S market and bludgeoning
24 the U.S. pistachio industry; (2) the 1986 anti-dumping
25 order brought relief to the U.S. pistachio industry

1 from the unfair pricing of Iranian pistachio imports;
2 (3) revocation of the anti-dumping order now would
3 result in (A) large volumes of Iranian pistachio
4 imports, (B) underselling and price depression by
5 Iranian pistachios with respect to the U.S. product,
6 and (C) substantial impact on the domestic industry,
7 evidenced by reduced profits, probable financial
8 losses, reduced production, shipments and share of the
9 market, reduced utilization of capacity, increased
10 inventories, fallen prices, reduced employment; (4) an
11 industry doing satisfactorily is nevertheless
12 vulnerable to substantial injury from large import
13 volumes at dumping prices; (5) Iran is primed to
14 assault the U.S. market, (A) Iran has large and
15 expanding production, (B) Iran is export-oriented, and
16 (C) Iran is being shut out of the EU due to a large
17 extent to the aflatoxin problem.

18 As has been noted, pistachios are the good
19 member of the plant family whose bad member is poison
20 ivy. The Coasters sang, to eliminate poison ivy, one
21 needed oceans of calamine lotion. Well, no such
22 remedy will be needed to quell any harm aimed at the
23 domestic pistachio industry by Iranian-dumped imports
24 if this review determines that the anti-dumping order
25 should remain in place.

1 What a nutty proceeding this would seem to
2 be. There are precious few imports for one to see.
3 No one to represent the dark side of this sunset
4 review. No one to claim that the end of the order is
5 overdue. Yet there are issues worthy of discourse.
6 Hopefully, they have been discussed per force.

7 Iran grows pistachios in an extraordinarily
8 abundant amount. Were there no dumping order, then
9 there would be more nuts from Iran than one could
10 count. With the EU giving Iran a cold shoulder, in
11 the U.S., Iran might well become bolder. Iran would
12 send its product, aflatoxin or not, to this country to
13 underprice and sell or to rot. The dumping order has
14 given our industry a lease on life. Take away that
15 order and the industry again will face strife.

16 Remember, with this crop, there is no quick
17 turnaround. Growers and processors stick with what is
18 in the ground. The dumping order has provided
19 consummate stability. That revocation would harm is a
20 real possibility. The domestic pistachio industry --

21 CHAIRMAN KOPLAN: Excuse me, Mr. Leonard,
22 but your time is expired. I'm looking for a rhyme to
23 that, but I think I've --

24 MR. LEONARD: I've got only two lines, and
25 then I'm --

1 CHAIRMAN KOPLAN: Two lines. Do it.

2 MR. LEONARD: The domestic pistachio
3 industry might lose its women and men, orchards and
4 land, for it could not compete with the dumping price
5 of raw in-shell pistachios from Iran. Thank you.

6 CHAIRMAN KOPLAN: Thank you, Mr. Leonard.

7 Yes, Commissioner, we can clap.

8 (Applause.)

9 CHAIRMAN KOPLAN: Post-hearing briefs,
10 statements responsive to questions, and requests of
11 the Commission and corrections to the transcript must
12 be filed by October 20, 2005; closing of the record
13 and final release of data to parties, November 18,
14 2005; final comments, November 22, 2005.

15 Thank you to all who participated, and with
16 that, this hearing is adjourned.

17 (Whereupon, at 1:15 p.m., the hearing in the
18 above-entitled matter was concluded.)

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CERTIFICATION OF TRANSCRIPTION

TITLE: Raw In-Shell Pistachios from Iran
INVESTIGATION NO.: 731-TA-287 (Review)
HEARING DATE: October 11, 2005
LOCATION: Washington, D.C.
NATURE OF HEARING: Hearing

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

DATE: October 11, 2005

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I hereby certify that I am not the Court Reporter and that I have proofread the above-referenced transcript of the proceeding(s) of the U.S. International Trade Commission, against the aforementioned Court Reporter's notes and recordings, for accuracy in transcription in the spelling, hyphenation, punctuation and speaker-identification, and did not make any changes of a substantive nature. The foregoing/attached transcript is a true, correct and complete transcription of the proceeding(s).

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