UNITED STATES
INTERNATIONAL TRADE COMMISSION

In the Matter of:	**) Investigation No.:**
FRESH TOMATOES FROM MEXICO	**) 731-TA-747 (FOURTH REVIEW)**

Pages: 1 - 275
Place: Washington, D.C.
Date: Thursday, March 21, 2019

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THE UNITED STATES INTERNATIONAL TRADE COMMISSION

In the Matter of:) Investigation No.:
FRESH TOMATOES FROM MEXICO) 731-TA-747
) (Fourth Review)

Thursday, March 21, 2019
Main Hearing Room (Room 101)
U.S. International
Trade Commission
500 E Street, S.W.
Washington, D.C.

The meeting commenced, pursuant to notice, at 9:30 a.m., before the Commissioners of the United States International Trade Commission, Commissioner Irving A. Williamson, presiding.

APPEARANCES:

On behalf of the International Trade Commission:

Commissioners:

Commissioner Irving A. Williamson (presiding)
Commissioner Meredith M. Broadbent
Commissioner Rhonda K. Schmidtlein

Staff:

SHARON BELLAMY, RECORDS MANAGEMENT SPECIALIST

TYRELL T. BURCH, PROGRAM SUPPORT SPECIALIST

Christopher W. Robinson, Investigator

Amelia Shister, Investigator

Angleica Marrero-Sanchez, International Trade Analyst

James Horne, International Economist

Brian Allen, Attorney/Advisor

APPEARANCES:

Opening Remarks:

In Support of the Continuation of Order (Mary Jane Alves, Cassidy Levy Kent (USA) LLP)

In Opposition to the Continuation of Order (Tom Wilner, Shearman & Sterling, LLP)

In Support of the Continuation of Antidumping Duty Order:

Cassidy Levy Kent (USA) LLP
Washington, DC
on behalf of
Florida Tomatoes Exchange ("FTE")

Jon Esformes, Chief Executive Officer, Sunripe Certified Brands

Anthony J. DiMare, Vice President, DiMare Homestead Inc. and Vice Chairman, FTE

Priya Singh, General Manager and Secretary, West Coast Tomato Growers, Inc.

Michael Schadler, Executive Vice President, FTE

Fred Leitz, Chief Executive Officer, Leitz Farms, LLC

Chad Ianneo, President, SunSelect Produce California

Aris Pappas, Chief Operating Officer - Pete Pappas and Son, Inc.

Robert C. Cassidy, Jr., James R. Cannon, Jr., Mary Jane Alves - Of Counsel

-- continued --

APPEARANCES (Continued):

In Opposition to the Continuation of Antidumping Duty Order

Shearman & Sterling LLP
Washington, DC
on behalf of

Confederacion de Asociaciones Agricolas del Estado de Sinaloa, A.C. ("CAADES")
Consejo Agricola de Baja California, A.C. ("CABC")
Asociacion Mexicana de Horticulture Protegida, A.C. ("AMHPAC")
Asociacionde Productures de Hortalizas del Yaqui y Mayo ("APHYM")
Sistema Producto Tomate ("AMHPAC")

Theojary Crisantes Enciso, President, Board of Directors, Wholesum Family Farms
Felice Arboisiere, Technical Services, Yum Brands, Inc.
Michael J. Agostini, Consultant and Owner, Miago Produce
Jaime Chamberlain, President, Chamberlain Distribution Inc.
Dr. Hal Singer, Managing Partner, Econ One
Lisa Raisner, Government Relations, Shearman & Sterling LLP
Martin Ley, President - Fresh Evolution

Thomas B. Wilner, Robert S. LaRussa, Jon Weingart - Of Counsel

-- continued --

APPEARANCES (Continued):

In Opposition to the Continuation of Antidumping Order (continued):

Arent Fox LLP

Washington, DC

on behalf of

NS Brands, Ltd.

Bryant Ambelang, Chief Executive Officer

Skip Hulett, Vice President and General Counsel

Michael M. Nolan, Andrew Jaxa-Debicki - Of Counsel

REBUTTAL/CLOSING REMARKS:

In Support of the Continuation of Order (James Cannon, Jr., Cassidy Levy Kent (USA) LLP)

In Opposition to the Continuation of Order (Tom Wilner, Shearman & Sterling, LLP; and Matthew M. Nolan, Arent Fox LLP)

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P R O C E E D I N G S

9:30 a.m.

MR. BURCH: Will the room please come to order? Will you please be seated?

COMMISSIONER WILLIAMSON: Good morning. On behalf of the U.S. International Trade Commission I welcome you to this hearing on Investigation No. 731-TA-747, Fourth Review involving Fresh Tomatoes from Mexico.

The purpose of this review is to determine whether termination of the suspended investigation on fresh tomatoes from Mexico will be likely to lead to continuation or recurrence of material injury within a reasonable foreseeable time.

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

All witnesses must be sworn in by the Secretary before presenting testimony. I understand that parties are aware of the time allocations. Any questions regarding the time allocations should be directed to the Secretary. Speakers are reminded to not refer in their remarks or answers to questions to business proprietary information.

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

Mr. Secretary, are there any preliminary matters?

MR. BURCH: Mr. Chairman, there are preliminary matters. With your permission, the Petitioner and Respondents would like to add a witness. For the Petitioner Aris Pappas, Chief Operating Officer with Pete Pappas and Sons Inc. For the Respondents, Martin Ley, President of Fresh Evolution.

COMMISSIONER WILLIAMSON: Okay, thank you. That may be added. Very well, let us begin with opening remarks.

MR. BURCH: Opening remarks in support of the Continuation of Order will be given by Mary Jane Alves of Cassidy Levy Kent. Ms. Alves, you have five minutes.

COMMISSIONER WILLIAMSON: Welcome, Ms. Alves. You may begin when you are ready.

OPENING STATEMENT OF MARY JANE ALVES

MS. ALVES: Good morning, Commissioner Williamson. For the record, my name is Mary Jane Alves. Together with my colleagues from Cassidy Levy Kent we represent the Florida Tomato Exchange, an association of domestic growers and packers of fresh tomatoes. Our Panel will explain why a negative determination in this review will lead to the continuation or recurrence of material injury to the Domestic Industry.

Fresh tomatoes imported from Mexico are interchangeable with fresh tomatoes grown in the United States. NatureSweet belatedly asked you to define the two domestic like product in the industry, but the record shows no clear line dividing the continuum of types and varieties of fresh tomatoes grown in open fields and in protected environments in the United States.

There is likely to be a significant volume of fresh tomatoes imported from Mexico. The Mexican Industry's capacity in production is substantial. Capacity in Mexico far exceeds demand in Mexico and they are using only roughly 63 percent of that capacity.

As the largest exporter of fresh tomatoes in the world, the Mexican Industry directs well over two-thirds of its total shipments to exports. Given the perishable nature of fresh tomatoes, it is not surprising that the vast majority is shipped to the attractive, neighboring U.S. Market.

Despite a series of suspension agreements, fresh tomato imports displaced the U.S. Industry. In 1995, the Domestic Industry had the largest share of the U.S. Market at 68.6 percent compared to 28.3 percent from Mexico. By

2017, the Domestic Industry's share of the U.S. Market had dwindled to 24.7 percent and Mexico's share had climbed to 67.8 percent. This represents a complete shift in market share positions.

Total imports from Mexico nearly tripled from 1.4 billion pounds in 2001 to 3.6 billion pounds in 2017. This 149 percent increase far outpaced the roughly 4 percent increase in apparent U.S. consumption during that same period. How did the Mexican Industry capture such a significant market share from the Domestic Industry?

Despite what you will hear this afternoon, your record demonstrates a high degree of substitutability between U.S. and Mexican fresh tomatoes. Purchasers reported that both industries supply comparable quality products. As our witnesses will explain these imports from Mexico compete directly with the Mexican Industry for all types of tomatoes; round, plum, Roma, cherry and grape.

Growing methods, both field and greenhouse and specialty products they compete in overlapping channels of distribution and geographic markets. Consequently, U.S. and Mexican fresh tomatoes continue to compete primarily based on price.

The Commission found significant underselling of the domestic like product by Mexican Imports during the original investigation and in the resumed final investigation in 2002 they continued to undersell the Domestic Industry. Although the suspension agreement established reference prices for Mexican tomato imports, even Respondents' Counsel acknowledged that there were imports below those reference prices.

Additionally, the suspension agreement's reference prices do not apply beyond the first sale to an unrelated buyer and the suspension agreement allows sellers to provide price adjustments for tomatoes with condition defects. Thus, Subject Imports continue to have adverse effects on the Domestic Industry despite the suspension agreement.

At a minimum, your pricing data confirmed mixed underselling and overselling during the current review. The enormous volume of Mexican tomatoes puts pressure on U.S. prices As a result of increasing imports from Mexico and falling market prices; production in acreage fell, employment declined and Domestic Producers scaled down or exited the market.

Respondents have tried to paint the Domestic Industry as only a limited number of growers in Florida, but there are growing and packing operations that cover all regions of the United States and that supply fresh tomatoes throughout the calendar year.

As you will also hear, the Domestic Industry continues to develop its products and production operations and has innovated in a number of other ways. Without any antidumping duty order or at least an effective suspension agreement, imports of fresh tomatoes will continue to surge into the United States.

We look forward to answering your questions and providing you with information to support an affirmative determination in this review. Thank you.

COMMISSIONER WILLIAMSON: Thank you, Ms. Alves.

MR. BURCH: Opening remarks on behalf of those in opposition to the continuation of order will be given by Tom Wilner of Shearman and Sterling. Mr. Wilner, you have five minutes.

COMMISSIONER WILLIAMSON: Welcome, Mr. Wilner and you may begin when you are ready.

OPENING STATEMENT OF TOM WILNER

MR. WILNER: Thank you. Commissioner Williamson, if you don't mind because I'm rather older, I'm going to sit down. Anyway, thank you very much. You're not going to hear from our side for a little while so what I wanted to do is raise some questions that you might consider that you are hearing from the Domestic Industry.

First, I would like to show something that just came out a week ago. The USDA issued a report just a week ago and this shows what is the actual state of the U.S.

Industry today. This shows their sales and their prices over the last 20 years. As you can see, their sales have declined somewhat over 20 years as the USDA reported, their prices -- which are the top line -- have remained stable and have even increased somewhat in recent years.

Now, there is no doubt that the overall tomato market has grown and as a result of that, consumption overall has grown so their share of the market has decreased, their relative share of the market.

As the USDA pointed out and as the Staff Report confirms, their dominant product the field grown gassed green tomato, mature green tomato continues to dominate the food service industry but has lost market share in the retail markets, in the grocery stores and indeed that loss has been pretty dramatic. Let me show you a chart on that. The USDA points this out in their report.

If their share of the retail market has dropped from 78 percent in 1999 to 39 percent in 2003 and to about 10 percent of the retail market today. I think the real question before the Commission is why has this happened. It is because, as the FDA says, of unfairly low-priced aggressive imports taking market share away or is there another factor that causes this?

The first place you look for that is to see what has replaced their mature green tomato in the retail market.

The answer to that everyone agrees with, the USDA report said their share has decreased significantly due to the growth of greenhouse tomatoes in the market. Mr. Damari explained that there has been a ship and buying practices primarily at the retail level to source more greenhouse product and this in turn has caused market share loss for growers who produce open field product.

Let me just tell you, that is so. We know it when we go to the grocery store. Thirty years ago a greenhouse tomato in the markets was a novelty item. We hardly saw it. Came in very expensive from Holland or something and was a novelty. Today, that greenhouse tomato has become the staple of the market. Consumers want it, they demand it.

The simple fact is that Mexico produces it and Florida does not. As our testimony will show, Mexican growers have made tremendous investments to convert their growing operations from open field to protected environments; greenhouses, hothouses, shade houses.

The following chart will show and Florida has not made those investments. The following chart is really pretty shocking, and this is 2004. It has even increased since then. This is Mexico's round tomatoes -- over 80 percent are grown in a protected environment; only 18 percent in the open field. In Florida, less than about 0.1

percent are in protected environment.

The rest are still open field tomatoes. These mature greens in open fields. Now as I said this was as of 2014. We don't have exact figures out for that but Mexico's protected agriculture has increased since then and I don't think Florida's has at all. You can ask them why they have not done that.

Now, have greenhouse tomatoes succeeded in the market because they are priced lower? That's the question, really because that's what's taking the share away, unfairly priced imports. Well that's certainly not what any of us experience in the grocery stores. We know that greenhouse tomatoes are more expensive. Tomatoes in the stores are more expensive than they were.

You often don't find the mature greens in the stores anymore but greenhouse tomatoes are more expensive and the data which we can't discuss in detail here, show the same thing. That the wholesale and retail levels are more expensive and we will have testimony from the major wholesale buyer that says you know, that Mexican tomatoes are not cheaper, they are more expensive.

So low prices are not the reason for the success of the Mexican tomato, the greenhouse tomato in the market. There is another factor Mr. Commissioner, which shows that. You know, all the problems that the Florida guys complain of occurred while there was a suspension agreement in effect which are required to eliminate dumping and eliminate unfairly low-priced imports and price suppression and price undercutting and the Commerce Department determined that the agreement did just that.

The Commerce Department expressly found the 2013 suspension agreement eliminates completely the injurious effect of Mexican Imports and eliminates injuriously priced sales of Mexican Tomatoes.

COMMISSIONER WILLIAMSON: Mr. Wilner, can you kind of wrap up because your time's up.

MR. WILNER: I'm sorry. Okay, the only one thing I'd like to say, the final question I have is if these guys really feel, if the U.S. Industry really feels it is threatened with material injury why did so few of them respond to the Commission's questionnaire? Ninety-eight percent of them refused even to respond. Thank you, Mr. Commissioner.

MR. BURCH: Thank you. Will the panel in support of the continuation of anti-dumping duty order please come forward and be seated? Mr. Chairman, I'd like to note this panel has 60 minutes for their direct testimony.

(Pause.)

COMMISSIONER WILLIAMSON: Oh excuse me. Mr.

Cassidy, if you're ready you may begin.

(Off mic comment.)

STATEMENT OF ROBERT C. CASSIDY, JR.

MR. CASSIDY: My name is Robert Cassidy. I am a partner in the law firm of Cassidy Levy Kent. I am accompanied today by Fred Leitz, CEO of Leitz Farms, Priya Singh, the general manager and secretary of the West Coast Tomato Growers, Inc., Chad Ianneo, the president of Sun Select Produce of California and John Esformes, the chief executive officer of Sunripe Certified Brands, Anthony DiMare, the vice president of DiMare Homestead, Inc. and Aris Pappas, the chief operating officer of Poppas and Sons and of the Smoky Mountain Family Farms.

I'm also accompanied by my colleagues Jim Cannon and Mary Jane Alves. The Florida Tomato Exchange, which is the Petitioner in this proceeding, strongly supports the decision by the Department of Commerce to terminate the current suspension agreement on May 17th.

At the same time, the FTE today urges the Commission to find in this five-year review that material injury to the domestic industry will become worse than it is today if this proceeding is terminated. In other words, FTE supports continuation of this proceeding, either with a resumption of the anti-dumping investigation and imposition of duties on imports of tomatoes from Mexico, or with a suspension agreement.

Over the past three years, the domestic industry has reduced capacity and production and suffered a $50 million decline in net sales revenue. Over the same period, the industry lost 6.8 percent of its workforce, followed by a ten percent decline in employment from January to December and September 2018. Domestic producers suffered losses in the aggregate in every year of the Period of Review.

As a percent of sales, operating losses increased from 1.8 percent to 9.1 percent between 2015 and 2017. Between January and September 2018, operating losses increased to 10.1 percent. The Mexican industry has seized more than 50 percent of the U.S. market. Mexican producers have sufficient production to supply more than three times the volume of tomatoes consumed in Mexico.

Mexican tomato growers have already -- have nearly two billion pounds in excess capacity. Mexican packers have over three billion pounds in excess capacity. This means the Mexican industry has sufficient production and packing capacity to supply 100 percent of the U.S. market.

It is obvious that the domestic industry is vulnerable and that termination of this proceeding will dramatically increase material injury to the domestic industry. Absent a suspension agreement or anti-dumping duties, Mexican tomatoes will continue to surge into the U.S. market and inevitably depress prices.

As minority participants in their own market, U.S. producers will be forced to cut prices or to stop planting tomatoes. They will suffer declining sales and rising losses. Many U.S. producers will follow their neighbors, who have already exited the market. Employment will decline and farming communities across the country will feel the effects.

For these reasons, the FTE respectfully requests the Commission to find that revocation of the 2013 suspension agreement will be likely to lead to continuation of material injury. We would like to start today with Fred Leitz, the CEO of Leitz Farms. Fred.

STATEMENT OF FRED LEITZ

MR. LEITZ: Good morning Commissioners. My name is Fred Leitz. I am the chief executive officer of Leitz Farms LLC, which I run with my three brothers. We are fourth generation farmers in southwest Michigan, and we have the fifth generation working for and with us. We started growing ground tomatoes on our farm in 1977, Roma tomatoes in 1997 and grape tomatoes in 1999.

Our tomatoes are all harvested vine ripe and field grown on 500 acres of land. We produce about 200 to 225 thousand packages a year of both grounds and Romas, and another 120 or so packages of grape tomatoes. This is a seasonal operation. We start planting in May and we quit planting the first of July. We usually start harvesting tomatoes the 24th or 25th of July and go until about the 10th or 15th of October or the first killing frost.

All the tomatoes we grow are hand harvested and it's a very labor intensive process, from the start of seed planting in the greenhouse to harvesting to packing and getting packages on a truck. We use packing lines to wash and sanitize and sort by size, but we manually sort them out by color and quality.

Because our tomatoes are vine ripe, the quality going in the box must be perfect. A little spot today will be a big spot in three days. Our motto around the packing shed is "if in doubt, throw it out." We pre-cool all tomatoes to 60 degrees before we take them to the packing shed. If they aren't pre-cooled before being packaged, being packed, they might get checker-boarded.

In other words, some tomatoes will color up faster than others, depending on where it was in the bush and stage of development, and our customers demand a uniform color in the shipped package. We have 232 workers including packers. In 2017, it took $5.26 in labor cost per box, not per hour, per box, to put that package of tomatoes on a truck compared to substantially lower labor costs to the

Mexican producers. That labor cost includes everything that every tomato producer has to do to get a finished product.

We sell 40 to 50 percent of our product essentially on the spot market. Either I sell it off the yard to guys in Chicago and get it shipped there, and we internally sell and ship three to five semis a night to Detroit. My sales agent/broker sells the rest of it throughout the Midwest, New York and other east cost destinations.

We sell to independent grocers, grocery store chains and wholesalers who sell to grocery stores, food service and institutional users. About 30 percent of our volume goes to food service. We used to sell in Texas and Florida, but we don't any longer because we can't compete with the price of Mexican product.

As I said earlier, we start harvesting in July. I do the local and Chicago sales. Three weeks before we start harvest, I start looking at markets to see where prices are trending. Then I'll start calling customers and letting them know when we will have product or they'll call me and ask when I will have product. Depending on the customer, a couple want the first product of the season shipped to them.

I will arrange transportation or if they have a truck in the area, they pick up. We'll talk price, and I can be bullish at the start of the season, because they're wanting to get some home-grown product on their shelves. Everyone's tired of what they've been getting all winter and want some local home-grown, Midwest tomatoes. They'll stock up so they can say they have local tomatoes on the shelves. People will look for home grown because of the flavor.

That's our biggest selling point, and that's how we market, tomatoes like you used to get out of grandpa or grandma's garden. Field grown tomatoes have a richer acidic flavor, depending on sunshine, soil type and organic matter in the soil. Once we get a couple of weeks into the harvest season, having 75 percent home-grown tomatoes on the shelf is not as important as price, and buyers get more price conscious. Remember, they are paid to pay us less. I can't blame them. That's their job.

They tell me well, you know, the market is $10 now, so I'm not going to pay you 12. Or I'll give you 12 later, I'll give you 12, but later on you've got to make this up to me. If the market -- sometimes if the market goes up and they're not getting full supplies from somewhere else, they'll call in that favor, or they'll tell me this is the price coming out of Mexico; can you meet it?

I will push them a little bit harder because our product is a better product. But they tell me that Mexico is sending 1,600 packages on a truck and only billing for 12 to 14 hundred. They are told to say by the shipper if two to four hundred packages of the product have problems or is being rejected, so they can get the price down. There is no way I can compete with things like that.

One of our customers used to come get two truckloads a week, and now he gets about half a truckload a week from us. That's because he's getting most from Mexico. We always plan for good volume during the latter part of our season, which runs from the 20th of September to about the 15th of October. Sometimes the last three weeks of our season was the most profitable, so we always plan to have a lot of volume at that time.

It used to be a window where the price would go up as other production areas finished and before the Quincy area got started in Florida. But the market window isn't there like it used to be. This is 100 percent due to supply from Mexico. Our acreage has pretty much stayed the same, and our production has been stable. But our revenues have been going down. Our costs are going up and our prices are going down.

I sold tomatoes cheaper last year than I've sold in probably ten years. I never thought I would sell No. 1 tomatoes below what I sold No. 2 tomatoes for ten years ago. We started making plans two and a half years ago to remove, replace and double the size of one of our packing sheds, purchase modern packing equipment and move to automatic volume fill. The packing line would have electronic color, size and defect sorting.

We would do the final defect sorting by hand. Product that wasn't volume-filled would be placed packed by hand into two layer cartons. I had the building plans, had a down payment on the building and we had a rooftop 95 kW solar generation away included to produce electricity for that plant, to match the existing 85 kW array we put up last year.

I had packing line drawings, we had all the financing set up and we stopped the project last fall. The markets have been trending downwards that last eight years, and were so poor the last two years we had to cancel our plans and hope to reevaluate later. This trend has caused dramatic tomato acreage decreases in the Midwest.

Our brand is called None Better. We are proud of what we produce and we stand by everything 100 percent. If you don't like it, bring it back and we'll either replace it or give you your money back. As I said, we currently have the fifth generation working on our family farm. I don't want to be known as the fourth and final generation working our tomato farm.

Commissioners, if this agreement isn't fixed and soon, we will all be -- we will sitting around our dinner tables at Thanksgiving eating all Mexican produce and watching a documentary called "The Shame of No Harvest." Thank you for giving me this opportunity to speak. I welcome your questions.

MR. CASSIDY: Our next witness with Priya Singh, the general manager --

MR. BURCH: Can you turn on your microphone?

MR. CASSIDY: Priya Singh, the general manager and Secretary of West Coast Tomato Growers.

STATEMENT OF PRIYA SINGH

MR. SINGH: Good morning Commissioners. My name is Priya Singh, and I'm the general manager of West Coast Tomato Growers, Inc. of Oceanside, California. My grandfather, Harry Singh, Sr. started the farm back in 1939, and ran our business until 1976, when my father Harry Singh, Jr. took over the reins at age 32. In 2015, still under the watchful eye of my father, the mantle was passed on to me to manage our operations.

I come to all of you not as someone who merely stumbled onto farming or the produce industry by accident, but as somebody who was born and raised on a farm and has at one point or another worked in almost every position our farm has to offer, just like my father before me. Whether it was field management, pest control, managing our packing house along with shipping, I felt my involvement in my family farm was my duty.

I have even tried my hand for a couple of years on our sales floor. I have come to realize I'm better suited in the field with my tomatoes that on the phone with a customer. Our company grows vine-ripened round and Roma tomatoes on nearly 650 acres. About 70 percent of our tomatoes are sold directly to the retail grocery sector in various packing styles. We package single layer, RPCs, two layer place packs and volume-filled boxes, depending on what the customer desires.

We are now building out a bagging line for our vine-ripened Roma program as well. The 30 percent balance of our tomatoes are sold to food service and restaurants. Our tomatoes are highly desired for their vine-ripened taste and quality. We sell our tomatoes under the label of Oceanside Pole, which has been known in the produce industry for 80 years.

We harvest our tomatoes from mid-June through November. My family has been farming in Oceanside for so long that our tomatoes are a summertime tradition in Southern California. Our reach, however, goes well beyond Southern California. We ship our tomatoes throughout the U.S. and Canada and even export a limited volume by air to the Japan, which is a testament to the high quality of our product.

Unfortunately, west coast tomato growers is unique, in that it is one of the last pole grown and vine-ripened tomato farms in the United States, and the only tomato grower of volume in Southern California. This is not something that my family and I hold as a badge of honor, but as a foreshadow of what is to come for other farmers in any state of our union that grows tomatoes. Whether it be greenhouse grown, mature greens or vine-ripened, the outcome will be the same if the Commission votes negative.

Over the years, my family has seen many other farmers in our area close their doors due to unsustainable and constantly flooded tomato markets. When preparing for our upcoming season, we always reach out to our key customers that have been with west coast tomato growers for many years to get more insight on their needs.

In between our conversations, there is always the elephant in the room that is eventually discussed, price. For over 15 years we've seen our profit margins drop as labor costs continue to grow at a frantic pace. Our wages are federally mandated and they go up every year, whereas in Mexico they just have remained for the most part relatively the same over the years.

For example, many of my customers can get a 25 pound Roma or round from Mexico at 830 FOB. If I were to compete with Mexican prices, I would have no option but to shut my farm down since our cost is above $11 a box. As you can see, there really is no competition. Tomatoes from Mexico are priced so low that I am unable to price my products at levels to cover my increasing labor cost.

Such a large price gap is stacked against not only us, but all farmers in the United States. There is no coincidence that the decline of tomato farms in the United States correlates with the growth of tomato farms in Mexico. Ten years ago, my father had grown the farm to 1,100 acres and we were producing 5.4 million cases of round tomatoes for the summer season.

Today, given current conditions, we grow 650 acres of round and Romas, selling about half the cases as we did ten years ago. Our tomatoes are sold in retail chains and for food service. Even though people enjoy the flavor profile of our vine-ripened tomatoes, it is hard to compete with low prices of imports from Mexico in markets further from home, where we once had larger volumes of sales.

If action is not taken promptly, you will see the smaller growers out of Georgia, Michigan, Virginia and the Carolinas disappear, followed by California and finally Florida. Commissioners, this is not an exaggeration and this not a small group of Florida farmers banding together that are gathering here as Mexico would assert.

As a California grower, I can assure you this is not the case. This is truly an issue that should be concerning not only the people in this room but to every American. The probability of the United States losing all of its tomato farms is very real. My family has been farming in Oceanside, California since 1939. My grandfather passed on his growing methods to my father, and my father has passed them to me.

I have two young sons that I hope will take to farming as I have, so I can pass our traditions on to them. I hope that my testimony can shed some light to our current situation. Thank you for giving me this opportunity to speak. I welcome your questions.

MR. CASSIDY: Our next witness will be Chad Ianneo, president of SunSelect Produce California.

STATEMENT OF CHAD IANNEO

MR. IANNEO: Good morning, Commissioners. My name is Chad Ianneo, and I'm the president of SunSelect Produce. We're located in Tehachapi, California, where we have 64 acres of greenhouse space, of which we use 40 acres to grow tomatoes and 24 acres to grow peppers.

In 2018, we produced 1.9 million cases of tomatoes, which we sold primarily in the U.S. market. As a point of reference, one acre of greenhouse production is equal to about ten acres of field production. We can produce about 900,000 pounds of tomatoes per acre.

You may have heard of tomatoes on the vine or TOVs from Mexico. This is exactly what we grow. We have the ability to grow the same varieties and similar products with the same or better quality as Mexican producers. Unfortunately, our farming costs have increased over the past three years. Costs associated with labor necessary to produce 40 acres of greenhouse production continue to rise. We employ 250 full-time positions, many of which require skills specific to our industry.

We sell primarily to west coast customers, although we will ship to the east coast when customers need us to. We focus on servicing retail customers, with some food service and wholesale business. Although we try to secure consistent business every week, most of our customers buy on the spot market. Over the last three to four years, our TOV plantings remained relatively constant. We have the ability to double or triple our production to meet domestic demand.

At this time, we've decided to suspend expansion due to low prices and the impact of increased Mexican imports. Although we intend to continue growing TOVs and peppers, we evaluate our business every year to determine the mix between the two, and whether we can stay competitive in the marketplace.

We want to make sure we can continue to grow the beset tomatoes we can, and to be able to compete fairly in the U.S. market. Thank you for giving me this opportunity to speak. I welcome your questions.

MR. CASSIDY: And our next witness is Jon Esformes, Chief Executive Officer, Sunripe Certified Brands.

STATEMENT OF JON ESFORMES

MR. ESFORMES: Good morning, Chairman and other members of the Commission. I'm Jon Esformes and I'm CEO and Operating Partner of Sunripe Certified Brands. I'm a fourth-generation tomato grower. My great-grandfather started the business as an immigrant on the streets of New York City in 1920.

My father appeared before the International Trade Commission in 1996, alongside Paul DiMare as a witness in the original investigation. I appear before you today, alongside Paul's son, Tony DiMare, fighting the same battle.

Sunripe Certified Brands is our parent company based in Palmetto, Florida. We have domestic farming operations in Florida, Georgia, Virginia, and up until this last Fall, in California. We have packing operations in all of those same states, except Georgia. We pack tomatoes from our Georgia farm in Florida. We also have distribution facilities that we operate in Nogales, Arizona and McAllen, Texas for our Mexican farming operations. We own our own farming operations in Mexico and we also represent one of the largest tomato growers based in Culiacan, Sinaloa.

Given our geographic diversity, we operate somewhere on a year-round basis. Our tagline for the company is "following the sun, leading in quality." We farm wherever Mother Nature dictates the best location during that season. So, for example, the Florida harvest runs roughly from November until the end of May. Georgia harvests during the month of June and the month of October, and we harvest in Virginia during July, August, September and into the beginning of October.

Until last Fall, our California operation began harvesting in June, and its season would run through the first ten days of November. Our California operation started in the late 1940s. As we grew through the '70s and into the '80s and '90s and even into the very early 2000s, we were shipping upwards of seven million cartons and farming anywhere between seven to eight thousand acres a year. At the time of the original anti-dumping investigation, we were the largest fresh market tomato shipper in California. We shipped tomatoes to every state in the union, along with Canada and Mexico.

California is an ideal location for growing summertime tomatoes and a perfect complement to our Florida and Mexican operations. The climate and soil are perfect for growing tomatoes. We produced vine-ripe and mature green round and Roma tomatoes, and in the early 2000s, began a grape tomato operation. We shipped nationwide when the Florida and Mexican industry was in its offseason.

Despite these advantages, we began to lose ground to increasing imports from Mexico. Our farming costs were rising, and Mexican tomatoes through McAllen or Nogales could be shipped to the Midwest and East Coast at lower prices. In 2006, we started lowering our acreage to meet demand, and by 2018, we were only farming about 1,600 acres of tomatoes. In 2006, we had 1,150 employees on the payroll. By 2018, we were down to 339 employees.

In the early years under the Suspension Agreement, our competition was coming from Baja. We both competed for business across North America. During the summer, West Coast prices would be as low as $2 or $3 a box while the Midwest, East and export prices could be much higher.

Over time, though, the Mexican tomato industry expanded. The growth in acreage and production has been continuous and relentless, and at this point, Mexico produces three times the amount of tomatoes they consume. In the past few years, Texas has become a major entry point for Mexican tomatoes on a year-round basis. Mexico has invested in infrastructure, highways and distribution centers, across the border from all of the Texas entry points. The increase in volume from Mexico during the summer months has depressed prices on a continental basis. As a result, we can no longer compete out of California.

Our production costs in California have steadily increased, particularly labor costs. Our rising costs made it next to impossible to meet the low prices charged by imports from Mexico. So last September, after 70 years of continuous operations, we made the difficult decision to close our California operation altogether.

Now let me address some of the conditions in our market. We sell tomatoes through three distribution channels: retail, food service and wholesale. With each of these channels, we have various types of transactions, from short-term spot market to long-term contracted prices. All of these transaction types are designed to meet the needs of our customers as they market to the consumers.

We compete with Mexico for every single order on a year-round basis in all of these channels. Our customers are faced with the responsibility of generating a profit, and the lowest price generally wins the day. By way of example, when I am talking to customers, they will say, "Look, I've got a cheaper price from Mexico. If you want a piece of the business, you've gotta match the price." I might offer $8.95 per box on grape tomatoes, for example, and the customer will come back and say, "We're getting a price at $6.95, do you want any of the business?" Sometimes, we say, "No thanks, we'll pass." Now, most of the time, we will take a portion of the business at the lower price. If we pass too often, we stand the chance of losing the opportunity of doing business with that customer.

Not only are we competing on price, but we are also always trying new varieties and are always trying to innovate. The snacking category is a perfect example. It's nice that other growers around the country and around North America are talking about all of their specialty tomatoes, but at the end of the day, the bulk of that category is grape tomatoes that were developed in Florida in the early 2000s.

We are constantly innovating. We are developing varieties that are consistently better at meeting consumer demand and the growing conditions that a particular region is faced with. We're constantly developing new cultural practices.

In addition to varietal innovation, the Florida tomato industry is the unequivocal leader in social responsibility in North American agriculture. Farm workers have historically been the most vulnerable workers in any community. We made the decision years ago that we were going to see the people that honor us with their work, recognize the communities that they come from, and make sure that we had a vibrant HR department partnered with a worker advocacy group as a way to ensure that these folks are guaranteed all of the legal rights and protections that every other work in the United States enjoys.

That means that a person is free from harassment, both physical and sexual; that they get paid and collect the wages they're due; and that they're working in a safe physical environment. That is not the history of agriculture anywhere. In fact, it was the Florida tomato industry's actions to ensure a fair and safe working environment which led Rich Morosi of the LA Times to write in 2014 his six-part expos on labor practices in Mexico. That expos told the story of rampant and unchecked wage theft, forced labor, child labor, and even slavery in Mexico. The changes in labor practices in agriculture across North America are a direct result of the actions of the Florida tomato industry.

Let me close with a few words about our East Coast operations. Just as we were the largest tomato grower in California, we were one of the largest growers on the Eastern Shore of Maryland and Virginia. Now, we only have a small grape tomato operation only in Virginia. In Georgia, we continue to farm, but we don't operate a packing house anymore because we no longer grow enough to justify the facility. Our acreage in Florida has also dropped dramatically. By way of illustration, in 2005, we farmed 8,000 acres on the East Coast, with an average employee count of 3,500. By 2018, we were farming 2,650 acres with an average head count of 1,250.

My family has been in the business since 1920 when my great-grandfather immigrated from Greece. I've been in the business all my life. I've worked on farms and packing houses from the time I could drive. For me, this is a life-long endeavor. But over the past few years, I've had to watch our business steadily contract. We have reduced acreage and production and employment. We have just closed what was once the largest tomato operation in California. Although I believe that the Suspension Agreements have not been entirely successful, without relief from Mexican imports, our industry will continue to decline.

Without protections to level the playing field, or a new, stronger, enforceable Suspension Agreement, there will be nothing to stop the Mexican tomatoes from putting American farms out of business. Without relief we will not survive. Thank you for giving me this opportunity to speak. I welcome your questions.

MR. CASSIDY: Our next witness is Anthony DiMare, Vice President of the DiMare Homestead, Inc. Tony.

STATEMENT OF ANTHONY DIMARE

MR. DIMARE: Good morning members of the

Commission. My name is Anthony J. DiMare. I am Vice President of DiMare Homestead and DiMare Ruskin, Inc. Companies. I am also the current Vice Chairman of the Florida Tomato Exchange.

The DiMare Company is a family-owned and operated company that my grandfather and his two brothers started in Boston, Massachusetts 90 years ago this year. I am a third generation DiMare and have been working in the family business for 36 years. I started in the business with our Florida packing operations and then got involved with Sales after five years in the business.

I am still involved in our Florida sales today on a day-to-day basis, along with overseeing all of our packing operations in Florida. I've also been involved in our farming operations in the past, scheduling planning dates, determining variety selections, and everything else related to the farming operations.

On the distribution side, I interact with some of our repack and distribution operations on a weekly and sometimes daily basis, depending on the facility location. We have growing operations in Florida and California. We do import some tomatoes primarily from Mexico for our tomato repacking and distribution operations, which some of our customers require.

Our distribution and repacking operations are located in California, Florida, Pennsylvania, and Texas. Tomatoes are usually packed near the growing areas and repackers are typically located around the country near their customers. The repackers' role is to regrade, sort, and repack various types of tomatoes into various food service and retail ready packs.

In addition to this process, repackers sort the product by color and size, depending on their customers needs. We also place pack product into two-layer containers, similar to what the Mexican industry packs and into single layer 10-lb and 15-lb containers or flaps, as they're referred to in the industry; again, depending on our customers' needs.

The DiMare Company's grow field grown tomatoes or what's referred to in Mexico as open-field production. The field-grown tomatoes we produce consist of round type, both mature green and vine ripe, cherry, grape, Roma, and yellow-meated tomatoes. The round tomatoes we grow are primarily mature green and 90 percent of the production and 10 percent are harvested vine ripened.

We grow tomatoes 12 months a year between our Florida and California operations. Our season in Florida starts in October and goes to June. Our California operations start production in early May and extend to November and our repack and distribution operations operate year round.

Mexican tomato imports continued to be sold at low prices year after year and have devastated and continue to devastate the domestic industry. In some regards and in some instances, this practice can be viewed as predatory pricing. Individual growers and packing operations are leaving the industry in Florida at an alarming rate. This is a result of Mexican tomatoes being dumped in the U.S. market at less than fair value.

Growers/shippers in California are also leaving the industry as recently witnessed by Pacific Tomato Growers, who is a witness here today and San Joaquin Tomato Growers, both very large and long-standing grower/shippers in industry.

I'll give you one good example of what has happened over the last 20 plus years to our company and really to the winter producer in the tomato industry in Florida. We, as a company, used to farm 5,000 acres of tomatoes in our Homestead, Florida operation in the 1990s, which is our winter season operation from January to April. This is also the period where Mexico's volume and imports are at their highest levels.

This current year we have less than 600 acres planted in our Homestead, Florida operation. The effect of the exorbitant and at times out of control crossings of

Mexican imports at low prices has caused the acceleration and Exodus of domestic producers in recent years. We planted 25 percent less acreage this season in Homestead than we planted last year and the year before last 20 percent less than the year before that.

This reduction is because of the expansion in planted acreage in Mexico and the continued dumping of Mexican tomatoes at low price levels which has put the domestic industry at a competitive disadvantage. The USDA's reports reflect these numbers with respect to increased crossing over the years. If you look at the charts and look at the spike in increased planted acreage in Mexico and the increase of volume of crossings; particularly, during the winter months when Mexico is shipping their heaviest volumes you will see this.

The uncontrolled heavy volumes at crossings at low prices has absolutely devastated the domestic industry and in particular, the winter producers from January to April when Mexico is at their peak. Thank you for giving me this opportunity to speak this morning. I welcome your questions.

MR. CASSIDY: And our next witness is Aris Pappas, the Chief Operating Officer of Pete Pappas & Sons and of the Smoky Mountain Family Farms.

STATEMENT OF ARIS PAPPAS

MR. PAPPAS: Good morning members of the Commission. My name is Aris Pappas and I am an owner and the Chief Operating Officer of Pete Pappas & Sons, a wholesale produce company in Jessup, Maryland, where I also oversee the sales and procurement of our fresh tomato category. PPS is a year round distributor that specializes in repacking tomatoes.

I am also the manager partner of Smoky Mountain Family Farms in Newport, Tennessee where we grow rounds, Romas, cherries, and grapes, as well as organic grapes and Romas. We typically harvest our crop in Tennessee from the end of June till the middle of October.

At PPS, throughout the year we source tomatoes from all over the country, including Florida, Georgia, South Carolina, North Carolina, Virginia, Delaware, Maryland, New Jersey, New York, Tennessee, Arkansas, Alabama, Michigan, and California. We also source from Mexico and occasionally the Dominion Republic, Canada, and Guatemala.

Many of the growers with me on this panel are my suppliers. In addition, we also have many Mexican growers that are also our suppliers. I am here because I believe that within an enforceable suspension agreement in place all of my suppliers, whether in the United States or Mexico will have fair access to the U.S. market on a level playing field.

I hope my testimony will help the Commission understand the market from a purchaser's point of view. From PPS, we sell our fresh tomatoes to retailers, wholesalers, and food service distributors, focusing on the Eastern seaboard.

From Smoky Mountain, we typically sell the eastern half of the United States. The round, Roma, grape, and cherry tomatoes displayed here were from our current inventory in Jessup, Maryland, which are sold primarily to retailers. Whether sourced from the United States or Mexico, we repack them in a similar manner. To our repack team in Jessup and most of our extensive customer base a tomato is a tomato, whether it is a mature green, a vine ripe, or grown in a greenhouse.

We currently have primarily Florida grown rounds, grapes, and cherries due to quality. We are also stocking about the same amount of Florida and Mexican Romas because the quality on those is very comparable.

I would like to now direct your attention to the samples displayed in front of you. So, at Pete Papus & Sons we source the majority of our tomatoes in bulk, raw packs which are seen in this front line here. We would then take the bulk packs and repack them into the specialty packs that you will see laid out here as well.

What I'd like to speak to is the interchangeable aspect to the tomatoes. These four samples right here are our volume filled jumbo grass green tomato, a mature green out of Florida, a 5/6 mature green out of Florida, a 5/6 mature green out of Mexico, and a jumbo vine ripe out of Florida.

So, I'd like to speak to the interchangeable aspect of these tomatoes. Mr. Commissioner, if I could even show you a tomato. So, this tomato was picked at a one color and now is between a five and a six color. This tomato is a vine ripe gas green right here, a mature green. This is a vine ripen tomato that was probably picked between stage 2 and stage 3. There is very little difference to our operation in Maryland and to our customers. This is an interchangeable aspect to us.

This is a Mexican gas green tomato, a mature tomato; again, picked at stage 1, so the interchangeable aspect of these tomatoes to our operation is insurmountable.

COMMISSIONER WILLIAMSON: Can anyone sort of tell the difference in taste and say what the difference is?

MR. PAPPAS: People have their different opinions. There's studies that are out there that a mature green tastes better. There are studies out there that a vine ripe tastes better. But what I'd like to mention is that there would be -- and Tony maybe could speak to this a little bit as well.

There might only be one day difference on the vine between a one and a two color, so the amount of nutrition given to the tomato from the plant might only be 12 hours difference between being picked green and being picked vine ripen, so there's not much -- there's a very fine, minuet disparity between the two.

Another thing, Commissioners, on that color chart you'll see the number 2 stage there. That is considered a vine ripe in the industry, no different than number 6 that's a red ripe.

Again, stage number 2 and stage number 6 in the industry are considered both vine ripened. The difference is in the maturity level and the days that the product was harvested. That's the only difference.

We, then, would put these tomatoes in these specialty packs -- a two layer premium, a 15-lb premium or a 10-lb premium that you would see -- again, we're in Jessup, Maryland, so where you shop our tomatoes are in your stores. So, there is an interchangeable aspect to us and our customers on those three types of tomatoes we discussed right there.

So moving down the line looking at some of these other samples here, we have an extra large Florida Roma and an extra large Mexican Roma. Our specialty pack we're doing is a one-pound bag Roma tomato. And again, there's interchangeable aspect here. We could put the Mexican Romas in this bag that are vine ripened or we could put the mature green Roma tomatoes from Florida in this bag. So, the fact that there's an interchangeable aspect is noted to our customers and to our operation.

The next item to look at is a California, American-grown tomato on the vine. This is from Sun Select out of California. The next raw product to take a look at here are the bulk grape tomatoes and bulk cherry tomatoes and they would then be put into these specialty packs that are seen here.

I believe it was either Mr. DiMare or Mr. Esformes mentioned the evolution of the grape tomato. These Sanna sweet grape tomatoes were the first grape tomatoes to come to market and they cultivated the grape tomatoes for it in the early 2000s, so that is these right here. They also do a golden grape tomato out of Florida, so a specialty pack there.

This snacking category for our company we've seen a trend of growth toward the snacking tomatoes and I want to mention too there also is an interchangeable aspect of the snacking tomatoes. We do buy some snacking tomatoes that are greenhouse grown in Mexico or vine ripened from Florida and we can pack either one into our quarts or pints organically or conventionally.

MR. DIMARE: And again, this TOV is the hothouse TOV from California, tomato on the vine.

Another thing I'd just like to point out is the variety and the differentiation of the different varieties that we grow are similar to what Mexican producers grow, no different. We grow specialty tomatoes, snacking tomatoes in Florida, California, around the United States. It's not different than Mexico. The difference is in the price that the product is sold for. So, we can compete. We have expanded with innovation in growing various varieties in different types of tomatoes to keep up with the changing trends in the marketplace that we all face. Whether we're a U.S. grower or a Mexican grower, we have to continually look at the changing trends and demands in the marketplace and we have done that through innovation and with breeding and introduction of different packaging and varietal introductions to meet our customers' needs. Thank you.

STATEMENT OF ARIS PAPPAS (CONTINUED)

MR. PAPPAS: Tony, thank you for your support. One other thing to mention on the breeding, these are BHN variety tomatoes that are grown in Florida and Tony mentioned the cultivation and breeding. I also buy BHN variety tomatoes. They are grown in Mexico. So there's interchangeable aspects to the variety, the seed of the tomato being grown both in Mexico and in Florida.

In closing, I'd like to emphasize that Pete Pappas and Sons, we sell the majority of our tomatoes whether they are domestic or imported to retailers. Also I would like to reiterate the interchangeable aspect of the mature green, vine ripened and greenhouse tomatoes we buy and sell to our company and our customers. A tomato is a tomato. I thank you guys for your time and welcome your questions.

STATEMENT OF JAMES R. CANNON

MR. CANNON: Jim Cannon, Cassidy Levy Kent on behalf of the Domestic Industry. How much time do I have? Fifteen -- okay. So I'd like to go through the slides. I'm going to go pretty quickly.

The first slide we're looking at is a color chart which shows the different stages of ripeness of the tomatoes. I think it's a good reference point. The next slide shows mature green tomatoes in retail packaging. These are Florida tomatoes. The next slide shows Florida Roma tomatoes, pretty common sight at the grocery store. The next slide shows Florida tomatoes grown on the vine, you can see the owner on the sticker so you can look for this one in your grocery store.

Next, we see some Florida vine ripe tomatoes. You've heard testimony that about 10 percent of, I think Mr. DiMare's production is Florida vine ripe for the Florida as a whole I think it's a higher number, fourteen percent of their production is vine ripe. On the next slide you see green beefsteak and yellow tomatoes showing the variety of different colors of tomatoes that are available. The green is obviously for your fried green tomatoes.

The next slide shows organics. Florida also grows the organic vine ripe tomatoes. These are in retail packaging. Followed by that we see an array of domestic Mexican grape tomatoes for retail sale put up in packages; on the far left you see the NatureSweet package and on the far right you see the domestic Lipman snacking category tomatoes and in the middle are different Mexican snacking tomatoes.

Following slide up to no. 10 now is Michigan vine ripened tomatoes. I want to say these are your tomatoes, aren't they Fred?

MR. LEITZ: Yes.

MR. CANNON: The following slide we see Fred's vine ripe Roma tomatoes. Then the next slide we see the greenhouse operation in California which we heard testimony from Chad about. I think this is Chad's greenhouse. You can see the tomatoes hanging on the right hand side, right on the vine and then you get some close-ups on slide 13. Again, this is Chad's greenhouse in California.

Alright, slide 14 shows product of California greenhouse tomatoes on the vine, his label "outrageously fresh". Again, pretty common sight in a grocery store where you see all of these varieties typically. Next, slide 15. So the Mexican greenhouses or shade houses or adapted environments come in a variety or a range.

So this greenhouse is a pretty high-end greenhouse. It has plastic cover, it's enclosed on the sides but there is still growing in dirt. This isn't hydroponics or cement floor but this is actually a pretty high-end Mexican greenhouse. The next slide, slide 16 shows the other end of the spectrum. This is a shade house.

You can sort of barely see this but there is a mesh screen on the top that shades the tomatoes. That helps keep out pests and also gives it shade to keep the heat off but when we talk about a greenhouse in Mexico there is a substantial range in terms of the actual physical buildings that we are talking about. It could be this type of thing or it could be a full on greenhouse as we might think of it with plastic or glass.

Slide 17 then shows some Mexican versus U.S. round tomatoes. This one's particularly interesting because of the price. See, the Mexican tomatoes here at a price of 80 cents. Slide 18 and 19 are Sunripe Certified Brands. You've heard John's testimony. This is their social responsibility code and their commitment to their workers.

When I get to slide 20, I want to just -- I have a ways to go. I'm going to go fast. This standard here, will termination of the suspended investigation be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time?

So we're looking, we're doing the counterfactual. We're looking in the forward, almost predictive analysis that you employ in a sunset case. First thing I want to show you is the standard for your investigation is to analyze the condition of the U.S. Industry as a whole. This is not about only the Florida Industry, although as you can see, Florida is now the largest segment of the U.S. Industry.

We heard from John, he closed what was once the largest operation in California. We have another witness here, Priya who is perhaps now the largest operator in California and he is threatened by the imports of tomatoes from Mexico. However, you can see that. Florida is 40 percent.

So in our opening statement when the Sinaloa Industry, because after all that's what Cadas represents. Not all of Mexico but Sinaloa. When they presented this case to you they focused almost entirely on Florida but that is not the standard for the Commission or the statutory standard and indeed your Staff Report doesn't segregate the performance of the Florida Industry from the whole Domestic Industry. You rather look at the industry as a whole following statutory standard.

Slide 22, talking about this whole industry, industry as a whole. The Domestic Industry and its workers are vulnerable if the agreement is terminated. How are they vulnerable? Well, consumption -- you can see the top line -- consumption is increasing and yet U.S. shipments are declining from 15 to 17. It's worse in the interim period.

If you look at U.S. Shipments in a dollar-per-town basis over the period you see, again, over the full year period, '15 to '17, dollars-per-pound basis, U.S. shipments are declining over the interim period first part of 2018 in the first 9 months. The decline is even sharper.

Next page, slide 23. The Domestic Industry's capacity is under-utilized, sales are declining and the losses are growing so if you look at the top line the Domestic Industry capacity is declined, production has declined by 8.2 percent, capacity utilization is 67 percent in the interim period, 64 percent in 2017.

Net sales are down and operating income at the very bottom line -- as a percent of sales we essentially go from a 2 percent loss to a 9 percent loss and then ending in the interim period of 2018 a ten percent loss. So all of the traditional factors over the most recent three full years in the interim period are down.

If you look in our brief, if you look in our Staff Report you see over the much longer period, from the beginning of this case, back in the 90's; '96 through the last time the Commission looked at the Industry 2002; these numbers were far higher. So end-to-end the decline is dramatic and you've heard the testimony concerning that, but just in the short period, the most recent period, there's been a significant decline.

Slide 24, U.S. Employment. U.S. Employment has declined and this is really dramatic. Even in only a period of 3 years. In the last period, so interim 2017 to 2018, total production related workers for both growers and packers in this industry have fallen basically 10 percent or more than 1000 workers. So they've gone from 9006 to 8000 workers, a substantial drop-off in employment.

Now I want to talk about what's likely to happen if we terminate the suspension agreement. To look at that we will need to look at Mexico's acreage and their capacity and their production. So turning to slide 25, what we see in Mexico, long term, end-to-end 1996 to 2017 huge growth in Mexican acreage and production. But even in the short term over the last three years we see a 12 percent growth in acreage in Mexico.

We see capacity has grown 13.2 percent, production is up 10 percent and they are not filling their capacity so both in 2015 to 2017 we see their capacity utilization is declining and then in the interim period it's getting worse, it's down to 63 percent utilization. So they are adding acreage, increasing their production but they're adding acreage and capacity faster than production is increasing meaning that they have a lot of unused capacity.

They have a substantial volume that we could be shipping to the United States. So if we remove the suspension agreement and if we take away the minimum reference price, ask yourself what will happen. They will load this capacity, they will continue to ship to the United States in larger and larger volumes.

Turning to the next page 26. Mexico's capacity targets the U.S. Market. You heard the opening statement, my colleague Mary Jane. She mentioned that they had basically three times as much production as they need to supply the home market and you can see this here. Total shipments are rising from 3.5 billion to 3.9 billion tomatoes but of that total 2.4 now up to 2.7 is going to the United States.

They're shipping more than 2/3rds of their output to the U.S. Market because they have far more acreage and capacity in Mexico than their domestic market absorbs.

Again, if we terminate the suspension agreement, ask yourself what happens to this volume of imports.

Now the next slide 27. This shows the long-term trend. This is a long-term trend in market share. USDA data, U.S. shipments versus Mexican imports. Here you can see that. Since 1996 when the suspension agreement was put in place the Domestic Industry held its own in the early years under the suspension agreement but by about 2009 the recession. A time when for many shoppers tomatoes became pretty expensive and the retail stores would switch what was on the floors to a lower priced product.

At that time, Mexico ramped up sharply and basically Mexico and the U.S. Industry for the next, well until 2015, were about 50/50 in the U.S. Market. However, since the new suspension agreement in 2013 in the last two now three years 2016/2017 shown by USDA here, Mexican Imports have gone past U.S. Industry.

So whereas we were at basically equal shares of the U.S. Market, Mexican Imports are now the dominant share of the U.S. Market. From that position as the dominant share, it clearly had an impact on price levels in the market. In fact, it's a commodity product, tomato. The suppliers therefore become price-takers.

With the Mexican Imports holding the largest share of the market they set the price in the market.

Again, ask yourself. If you take away the suspension agreement, if you take away the reference prices which set a minimum price, what will happen. What will happen is Mexican Imports will continue to increase and they will use low prices to do that.

This is summarized on the next slide 28. In the Staff Report, Staff concluded that domestic and imported tomatoes are highly substitutable. This is based on the purchaser questionnaire data. Tomatoes are a perishable product. You have about two weeks to sell them so as a seller, as a grower you become a price taker. As the tomatoes get older, you are forced to sell, whatever the market will let you sell at.

If you take away the minimum reference price, exporters in Mexico will shift their sales to the U.S. Market rather than sell in Mexico. This is an interesting phenomenon of the suspension agreement.

Now, with the reference price in place, most Mexican growers are going to ship to the U.S. Market at the reference price or above. They are going to abode by, live up to the requirements of the suspension agreement. So what happens when they have an excess supply? They sell in Mexico. They sell it at home. They only sell as much as the market will take at the reference price. If you remove that reference price, that minimum price they will have a strong incentive to sell much more volume into the U.S. Market because our market has higher prices than the Mexican market.

Alright, slide 29. These are the census data. They show that the Mexican Industry and the Domestic Producers are offering all the same varieties. This is the mix for the Mexican Producers. Next, I will skip to 31. Slide 31 shows the underselling. This is straight from the Staff Report. What you see is mixed underselling. You see that even with a minimum reference price, suspension agreement in place, you've got a 124 instances of underselling out of 260-odd total comparisons.

The next slide is USDA data showing that in fact Mexican Imports of round tomatoes and 5x6 is essentially product three. According to USDA data, Mexican Imports of product three consistently undersold U.S. Producer prices.

Now I ran out of time so I think, taken as a whole what the record shows in this case is that without the suspension agreement the condition of the U.S. Industry will worsen, injury will continue or recur. Therefore you should make an affirmative determination. Thank you and we welcome your questions.

COMMISSIONER WILLIAMSON: Okay, thank you very much. I wanna thank all the witnesses for coming today. I also wanna thank you for having the witness statements. It makes it very helpful recalling your testimonies. I appreciate it and I know it takes time to prepare those. This morning we'll begin our questioning with Commissioner Schmidtlein.

COMMISSIONER SCHMIDTLEIN: Alright, thank you very much. I'd like to thank all the witnesses for being here as well. It'd incredibly helpful for us to understand the case and what's going on here.

Let me start with, I guess, the procedural issue or procedural context for the case. And Mr. Cannon, maybe you're the best person to answer this. So you had a slide that showed the breakdown of production in the United States between Florida, California and other states. And that the ITC should focus on the industry as a whole.

And I wonder if you could respond to the respondents' argument that, in fact, the industry as a whole doesn't support continuation of this investigation because very few members have submitted questionnaire responses, and even, I don't think the--let's see, the number was for FTE itself--a majority of the members did not submit a questionnaire response. So does that indicate that indeed the industry as a whole doesn't support continuation of the investigation?

MR. CANNON: Thank you. No, it's not unusual--in fact, the Commission has commonly encountered this, particularly in agricultural cases--it is not unusual for, especially where you have a large number of small farmers, it is not unusual to see a low response rate when you sort of count noses, right? So if you look at it and say, "How many companies responded?", it's a relatively low number.

People who responded are major producers and what you have here in terms of representation is roughly 40%. Your questionnaire responses cover 40% of U.S. production taken as a whole. And you also have questionnaire responses covering two of the largest, if not the largest, producers in California during this time period, as well as producers in Florida who aren't only Florida producers. They're producing in Virginia, they're producing in Georgia, South Carolina, other states.

We have with us on the panel today, a producer from Michigan, we have producers from California and other -- Greenhouse, for example -- so the industry as a whole, if you look at whether they support or oppose the case, as we note in our prehearing brief, the industry as a whole solidly supports this case, as represented by all of these producers before the Commission who, together, account for 40% of the U.S. industry.

COMMISSIONER SCHMIDTLEIN: So just in terms of the data, is there a basis for us to say that the experience -- it's not even half of the industry, right? So just looking at it -- there's no bright line number here that you have to achieve in order to say that the industry supports it.

But just from a data standpoint, is there a basis for us to say that the experience of the producers that did submit information can be extrapolated to the rest of the industry? And therefore, the rest of the industry is probably experiencing the same trends or impact that the ones that have submitted questionnaire responses?

MR. CANNON: Right. So yes. So first, from the, you might say the "Silent Majority", there was no opposition, right? There were no other U.S. producers coming in saying, "No-no, we don't support the Suspension Agreement." It is obviously a difficult thing for small growers. Secondly, your database is not only representative of--in fact, more than 40%--of U.S. sales, but 40% of U.S. production, we'll take that number.

Thirdly, the USDA data, which we laid out in our brief, show the same trends. They show virtually the same trend in terms of declining market share, increasing market share from Mexico. They show the same overall fall in acreage across the United States that you see from the 40%.

And so whether the Staff were to rely upon just the questionnaire responses for the domestic industry, or it were to use the USDA data, I think you come to the same conclusions, and in fact, that's why in our submissions we put in both. We put in both the long-term view, the short-term view from the Staff Report, as well as the view from looking at the USDA data, which give you essentially all of the metrics that you would ordinarily use, certainly for volume effects and for price effects.

COMMISSIONER SCHMIDTLEIN: Okay. Just based on your arguments, it seems that you don't think the Suspension Agreement has been very effective. So I'm assuming that you're hoping that the Commerce Department renegotiates that; is that right?

MR. CASSIDY: Well, we asked the Commerce Department to terminate the agreement, which would result in the investigate being resumed.

COMMISSIONER SCHMIDTLEIN: Okay. So that's --

MR. CASSIDY: And the Commerce has decided to do that in fact. In the meantime, we're here because we support continuation of the Agreement until it is terminated.

COMMISSIONER SCHMIDTLEIN: Okay.

MR. CASSIDY: We basically want this proceeding to continue, either as an investigation followed by anti-dumping duties, which would be a preferred result. But failing that, as a Suspension Agreement.

COMMISSIONER SCHMIDTLEIN: So if Commerce terminates the Suspension Agreement before we vote in this case, and we still vote in this case and then go to final? Or no?

MR. CASSIDY: You would have no reason to vote, because --

COMMISSIONER SCHMIDTLEIN: Right. So this -- we wouldn't be voting in this case.

MR. CASSIDY: You would not, no.

COMMISSIONER SCHMIDTLEIN: But then we would be resuming --

MR. CASSIDY: The day of the Commerce termination, you would initiate an investigation.

COMMISSIONER SCHMIDTLEIN: Right. And recollect all the data.

MR. CASSIDY: Yeah.

COMMISSIONER SCHMIDTLEIN: Yeah.

MR. CASSIDY: For a slightly different period, but yes.

COMMISSIONER SCHMIDTLEIN: Slightly different period, that's right.

MR. CASSIDY: Yeah.

COMMISSIONER SCHMIDTLEIN: Okay. Okay, good. Well, thank you for that clarification. So I'd like to get a better handle on where the U.S. and Mexican tomatoes are competing, and where that is in the record, okay? So the respondents maintain that Mexican imported tomatoes do not compete in the food service sector. Do you agree with that? And the reason I'm asking is when you look at the channels of distribution, of course, you see a fair number or percentage going into packers and distributors, which then doesn't tell us where that's going. So are Mexican tomatoes competing in the food service segment?

MR. CANNON: Yeah, so I will let the witnesses answer that. And the first part of the question being, do Mexican tomatoes compete in the food service?

COMMISSIONER SCHMIDTLEIN: Right.

MR. CANNON: And then I think the second part of your question is, do domestic tomatoes compete in the retail grocery store segment?

COMMISSIONER SCHMIDTLEIN: Right.

MR. CANNON: And although you can see it. But I think probably everyone wants to answer this. But we do have a re-packer/distributor --

COMMISSIONER SCHMIDTLEIN: Right.

MR. CANNON: -- so why don't I let Aris start?

COMMISSIONER SCHMIDTLEIN: Okay.

MR. PAPPAS: Aris Pappas, Tennessee and Maryland. I would like to share that as a re-packer and distributor of fresh tomatoes, we use both Mexican and domestic tomatoes for both retail and food service accounts, again stating we are primarily retail-driven, where we interchange those tomatoes to most of our customers. So, again, we're using Mexican and domestic tomatoes for food service after repacking them.

COMMISSIONER SCHMIDTLEIN: Okay.

MR. DIMARE: We also are in the repack distribution end of the business as well, as being growers and I echo Aris' answer. We sell both, food service and retail of domestic and Mexican product. So they're truly interchangeable, irregardless of the country of origin.

MR. ESFORMES: Jon Esformes, Sunripe Certified Brands, Florida, Georgia, Virginia, late of California, and Mexico. I ship tomatoes, both out of Mexico and Florida at the same time. The same customers will be loading trucks from me in Florida on the same day that they're loading similar items out of Mexico. Going through the same channels. So a 25-pound box of Roma tomatoes is exactly that. A 25-pound box of Roma tomatoes.

COMMISSIONER SCHMIDTLEIN: Okay.

MR. LEITZ: As a small grower in the Midwest, we ship packed tomatoes like you see there in the single layers. The two layers, the pints, the clamshells, and we also ship 25-pound boxes to food service. So we are in the grocery stores and also in the food service. So our distribution hits all channels.

COMMISSIONER SCHMIDTLEIN: And have you all as growers or producers had experience -- it sounds like some of you are in both businesses, right? Have you experienced the distributors or other packers, if you're not selling to packers, I guess, other distributors "using the Mexican prices to leverage down the prices" that you're getting? Has that been a personal experience you've had?

MR. ESFORMES: Yes, on a daily basis, weekly basis. Whether it's for long-term contracting, seasonal pricing or weekly spot market, including advanced pricing for a spot ad, where I might give a price this week for something three weeks out to a retailer, I'm competing against quotes from Mexico and Florida and sometimes competing with myself.

COMMISSIONER SCHMIDTLEIN: I was gonna say, so you're also importing from Mexico, it sounds like?

MR. ESFORMES: That's correct.

COMMISSIONER SCHMIDTLEIN: And so why do you import from Mexico, if you're growing here in the United States?

MR. ESFORMES: So my family has been farming in Mexico since 1959. Frankly, when the Castro government came in to power in Cuba, we had to exit Cuba. Cuba was a major production area back once upon a time for U.S. tomatoes. My father went to Mexico in 1959 and we began farming cucumbers and we had an office there for decades. Many of the folks in the room are friends of my families. So for us, we're in the farming business. We're in the business of supplying fresh produce as reasonably as we possibly can and making a profit for ourselves and supplying our customers.

COMMISSIONER SCHMIDTLEIN: But are your imports -- do you think the imports you're bringing in from Mexico are hurting your U.S. business?

MR. ESFORMES: I have lowered my Florida acreage to match my increase in Mexican production. By way of example, my grape tomato production during the months of December, January, February, March, all the way into May, I have lowered my acreage plantings in Florida because I've ramped up production out of Mexico.

COMMISSIONER SCHMIDTLEIN: And why is that?

MR. ESFORMES: Because I can sell for a lower price and still come out.

COMMISSIONER SCHMIDTLEIN: Because of the labor costs?

MR. ESFORMES: Lower costs.

COMMISSIONER SCHMIDTLEIN: Just lower costs?

MR. ESFORMES: Lower costs. Primarily labor.

COMMISSIONER SCHMIDTLEIN: Across the board?

MR. ESFORMES: Primarily labor.

COMMISSIONER SCHMIDTLEIN: Primarily labor.

Okay. All right. My time is expired, so I'll switch it back to Commissioner Williamson.

COMMISSIONER WILLIAMSON: Why don't I continue -- thank you. Again, thank you for all the witnesses. Why don't I continue along that line. And you talked about lower costs. So I was wondering, have changes in exchange rate between the U.S. dollar and the Mexico peso had any impact on the other market for fresh tomatoes? That's another cost factor?

MR. ESFORMES: Periodically, if there are dramatic shifts in the value of the peso to the dollar, there will be an advantage gained or lost in Mexico, depending on which direction the peso moves, but my experience is that is primarily related to labor costs. Most of the purchases for farmers, at least for me in Mexico, is done in dollars, be it for chemicals, packaging, that sort of thing. My farming costs, as far as inputs other than labor, are fairly stable. U.S. compared to Mexico, but the labor is the big advantage in Mexico.

COMMISSIONER WILLIAMSON: Okay.

MR. DIMARE: Just to add on that, Jon touched on the production and farming as it relates to peso devaluation. I look at it a little differently on the buy side. We used to sell tomatoes in the wintertime out of Florida and operations--I know Jon's operations and others in California sell some tomatoes in Mexico--previous to the Suspension Agreement, we sold a small percentage of tomatoes in Mexico.

You had a peso rate, at three pesos to the dollar, you take a $10 value box of tomatoes, if I was exporting into Mexico, it would cost that Mexican importer 30 pesos. Today that same $10 box now costs 190 pesos for that importer. As a result, we don't sell and haven't sold one box of tomatoes in Mexico.

You have a open market of unregulated volume coming into this country and wreaking havoc in the marketplace. I didn't believe as a producer that that's the way that trade agreements and trade policies are supposed to work, that one side is gonna take advantage of the entire marketplace and we can't sell our product into Mexico, competing against them as a producer?

So the peso has affected and rendered us uncompetitive in selling any product into Mexico. You saw the numbers of volumes crossing into this country today. As we speak today, the difference in volume right now in round tomatoes coming from Mexico was twice the daily shipments of what Florida is shipping. On Roma tomatoes, it's over seven times of what they're crossing into the United States on Roma tomatoes versus what we're shipping currently right now.

COMMISSIONER WILLIAMSON: Let me just finish up on this exchange rate. What's the impact in terms of the Mexican tomato price in the U.S. exchange rate?

MR. DIMARE: I think it's created an incentive, quite frankly, with the exchange rate the way it is. Just like any kind -- whether it's China or anybody else that have devalued their currency, it creates an incentive to ship as much product into the United States to get dollars back. It's all about economics to me, at the end of the day. And it has been a significant factor.

COMMISSIONER WILLIAMSON: Okay, thank you.

MR. IANNEO: Chad Ianneo with SunSelect Produce. I'd like to address one question that came up earlier regarding pricing. Our price that we sell on a daily basis is directly affected by supply from Mexico. So as volume increases out of Mexico, exports from Mexico to the United States increase, our price decreases. As volume drops, the supply goes down and we can ask for a higher price. But as volume from Mexico increases, that directly affects our price on a daily basis to retailers.

COMMISSIONER WILLIAMSON: Okay. Now, of course, you've got these seasonality changes and all the different regions. Can you relate that to your comment about the volume? And the volume price changes? Because it seems like, you know, our seasons haven't changed that much yet.

So, I'm trying to just distinguish what sort of happens every year as maybe as opposed to the trend on Mexican pricing.

MR. IANNEO: So as a greenhouse grower, our seasonalities are not necessarily a factor. We produce TOV 52 weeks a year.

COMMISSIONER WILLIAMSON: Okay.

MR. IANNEO: Certainly we can ramp our volume at different times based on when we think the market price might be higher or lower, or higher in this particular case. Summertime as volumes across the country and Mexico increase, pricing normally drops. In the spring and winter and sometimes in the fall, pricing can be a little bit higher, but that trend has decreased, there's so much supply normally coming out of Mexico that the supply isn't usually impacted by weather conditions.

So in our case, cloudy days, rainy weather, not necessarily temperature, but light affect our supply, same with the greenhouse production in Mexico. Open fields certainly is impacted by that, so if a seasonality in our business isn't necessarily an issue, it has more to do with weather and light levels in particular. And then whether or not certain times of the year we can get a higher price based on supply coming out of Mexico. But the key component to that is, supply out of Mexico is more consistent on a year-round basis, so prices are consistently lower because of that supply.

COMMISSIONER WILLIAMSON: Thank you.

MR. LEITZ: My season is the end of July, August, September and October. And years ago, as soon as ten years ago, I used to feel sorry for the Florida tomato growers because of the Suspension Agreement. The Mexican produce in our season wasn't that much of a factor, but that has drastically changed in the last eight to ten years, where it's become a major factor. And being a small grower, I don't have the volume of product to go to different buyers and say, you know, "I can help you out now and you can pay me a little more, and later on, we'll give it back as the supplies dwindle," and stuff. So the Mexican product has -- they use the Mexican product against me all the time to get the price lower. And as we can see by the charts, the volume has steadily increased during our season.

MR. ESFORMES: Just to follow up on that, by way of illustration, during the months of June, July, August, September and October, I once operated a packing house in Georgia, two packing houses in Virginia and the largest packing house in the State of California. I now operate one small facility in the State of Virginia and have a small farming operation in Georgia. So by way of illustration, my production is down nearly ten million cartons since 2004-5, during the summer months as a direct result of the increased shipments coming out of Mexico and the lower prices.

COMMISSIONER WILLIAMSON: And these are shipments coming out all year long?

MR. ESFORMES: 52 weeks of the year.

COMMISSIONER WILLIAMSON: Okay. Has price premium for specialty tomatoes decreased over time? I mean from these things they first came in from the Netherlands?

MR. ESFORMES: There's no such thing as a specialty that stays a specialty. It eventually becomes a commodity. Once upon a time, Roma tomatoes came along and they were considered a novelty item. They're now a staple. The same thing happened with the snacking category with grape tomatoes. When they first came along, we had year-round contracts in the neighborhood of $17 to $18 for a twelve-package flat of grape tomatoes. It becomes a commodity and is freely traded at $6 to $7 to $8. So there's no specialty that stays a specialty very long.

COMMISSIONER WILLIAMSON: And that's the same, I guess, with tomatoes on the vine, too? Which I took a liking to a while ago.

MR. IANNEO: We recently took out four acres of grape and cherry tomatoes in our greenhouse because the price on the market was lower than our cost to production. So classifying that as a specialty tomato and answering your question directly, the pricing of specialty tomatoes has declined to the point where we can't produce in California any longer. From the TOV side, yes, we've steadily seen our average pricing year over year decline as imports from Mexico have increased.

COMMISSIONER WILLIAMSON: Okay. I have lots more questions, but why don't I -- my time is about to expire.

COMMISSIONER SCHMIDTLEIN: Okay. It's a little unusual with only two of us here.

COMMISSIONER WILLIAMSON: Yes.

COMMISSIONER SCHMIDTLEIN: Okay. So let me go back to these questions about the segments. The respondents also assert that foodservice accounts for about half of U.S. consumption. Do you all agree with that? I mean if you've looked at USDA data or any other data that can tell you roughly what percentage of consumption is attributable to foodservice versus retail.

MR. DIMARE: I'd say that's accurate. I haven't personally looked at the USDA data, but, you know, knowing the makeup of the business, foodservice/retail, I'd say that's pretty accurate.

MR. PAPPAS: I'd say that number's hard to predict accurately because a lot of tomatoes are going to re-packers and distributors and there's not data on where they go with the tomatoes. So there's no data on where I sell all my tomatoes publicly. So I think that number is just on what the public data has. So I think that's -- it's a guesstimation in my mind.

COMMISSIONER SCHMIDTLEIN: But just based on your experience in the industry, roughly do you -- you know, and especially because we have a association representative here, don't we?

MR. ESFORMES: I think some of that is influenced by how well or poorly the economy is doing. We saw a big shift during the recession back to retail away from foodservice as people were less apt to go out and spend money in restaurants. We've seen foodservice ramping up over the last four or five years as the economy has recovered, and there's more money being spent in restaurants. People eat out more often.

So that has a big influence. There's also some seasonality. But to parrot Aris, quite frankly, I sell a lot of tomatoes into New York City and they all go to the wholesale market there. From that wholesale market, they could be selling anyone from a fine dining restaurant to a mom-and-pop corner store on the streets of New York. So it's very difficult to track the product all the way through. The data might give you something from the associations at, you know, a 150,000 feet, but it's really big-picture data.

COMMISSIONER SCHMIDTLEIN: Okay, thank you for that. I wasn't here for the opening statements, so I did not see this, but I'm told that Mr. Wilner showed a slide with some USDA data that reflected a retail segment market share for U.S. producers. That is based on data that was just recently released by the USDA. Are you all familiar with that data? And it also showed that U.S. producers were losing greater share in the retail segment than in other segments.

MR. CANNON: So that's their argument. The respondents are arguing that there's different market channels and that the domestic industry has lost more share in the retail segment than we've lost in the foodservice segment. And in fact, our folks would testify that, to some extent, a vine-ripe tomato is less desirable and so when we're selling a lot of mature greens, it's better, it's more desirable in the foodservice segment. It slices better. It's not as juicy, so it doesn't get your hamburger too wet.

This is all true. However, I think what our testimony reflects is that because so much of our sales goes to wholesale and distribution, when we report an answer in the questionnaire responses and provide the data, we can't separate what distribution is doing, how much is going to retail, how much is going to foodservice. And so we just don't know.

We service both segments fully. We compete fully across all these types of tomatoes, greenhouse, vine-ripe, mature green, cherries, grapes, in both segments. So we fundamentally dispute their argument, and their argument appears to be that we are more concentrated in foodservice and therefore somehow don't have to compete with Mexican imports in that segment of the market, it's just not true.

COMMISSIONER SCHMIDTLEIN: Right. I understand.

MR. ESFORMES: I don't know how to break down --

COMMISSIONER SCHMIDTLEIN: I'm just trying to get to what the evidence is, like what data can we look at in the record? And apparently they've introduced some USDA data that was recently released, so I can invite you to address that in the post-hearing. I mean we've already asked staff to pull that up and look for it and send it to me up here if we can get it together.

But that's exactly what we're trying to get a grip on, right? Exactly what are the different segments in the market? Where do Mexican imports compete with the U.S.? And what's the magnitude? What are we talking about here?

MR. ESFORMES: I would go ahead and say that we have definitely lost traction in the retail segment. And what I'd also go ahead and say is that on a daily, weekly, monthly and quarterly basis, it's a result of the pricing constraints and the pricing pressure that we're under.

COMMISSIONER SCHMIDTLEIN: And is that more so than in the foodservice sector? You've lost traction more than in the --

MR. ESFORMES: In retail than we have in foodservice.

COMMISSIONER SCHMIDTLEIN: And so why is that? Is it because of this preference for the flavor of a vine-ripened tomato that's not been --

MR. ESFORMES: I don't agree with that at all. I don't believe that. I believe that it has more to do with the ability to provide lower costing, lower pricing --

COMMISSIONER SCHMIDTLEIN: Well, then why aren't they able to --

MR. ESFORMES: -- on a more advanced basis.

COMMISSIONER SCHMIDTLEIN: Okay. Well, then why aren't they able to do that in the foodservice sector as well?

MR. ESFORMES: So what's happened, especially in the retail side, as we've gotten to much larger retail stores, the Walmarts, the Krogers, the big expansion, what has happened is that there's been fewer produce people -- if you go to your local grocery store, you're not gonna find many people working the produce department anymore. So it becomes much more programmed.

So what we've got -- when I put in my submissions to retailers, I'm putting them out six months, nine months in advance, giving them pricing. Now, I can't, out of Florida and the U.S., I can't go ahead and keep my job--my partners wouldn't keep me--if I gave out cost pricing nine months in advance. It would cause a loss at the farm. That would be crazy for me to go ahead and do, to guarantee myself a loss.

So the lower costing is to the retailer and the ease of the transactions based on that. So the ability to give out advanced pricing at a lower price than what the domestic industry is able to project that, has pushed us out of the retail, much more so than foodservice. And I expect foodservice to be following.

COMMISSIONER SCHMIDTLEIN: Okay. So why hasn't that happened in foodservice so far? I mean the Suspension Agreement's been, in this case, has been going on for over twenty years, right? So why is that phenomenon happening with retail purchasers, but not in the foodservice sector?

MR. ESFORMES: So, from my perspective, the difference is, is that in foodservice, you're talking about an ingredient. They are purchasing an ingredient. They're buying something that they are then going to use in their menu to produce the final product.

In retail, they're an extension of the commodity business. They're in the business of selling bulk products to people who then take them home. So, the retail is much more sensitive on an immediate basis to what their costing is and making sure -- retail is much more flexible in terms of being able to move items, expand their displays. Whereas, if you're running a restaurant, you've got your menu -- if you've got a tomato that's working for you, you're going to keep buying that tomato. You're not going to be so quick to, gee, I'm going to shake up my tomato mozzarella salad.

MR. SINGH: As a grower, I am 70 plus percent based in retail. I do have some food service customers as well, but the majority of my business is on the retail side. And it is difficult. I deal with it every single year. Every time I go out to market for my season, which is June through November, I'm being priced out of the market. Being priced out where I cannot compete and it's just below my cost of production.

MR. IANNEO: So, 97 percent of our product goes into a retail pack, TOV. Three percent is packed in a 25-lb box, which we call a cull and normally those are sold to food service customers just because retailers don't normally take that type of pack. So, I can only say from a greenhouse perspective, as the amount of acres in Mexico continues to increase and they focus more on retail they have less volume available for food service customers, so they're not focusing on food service. They're focusing on retail, which at the end of the day has a higher price point than food service. But from our standpoint, that price point coming out of Mexico is less than the cost of production in California.

So, yes, focusing on retail is the big key because you have a higher price point, but by the same token, that's negatively affecting our business because that price point from Mexico is less than the cost of production.

COMMISSIONER SCHMIDTLEIN: I mean I appreciate your explanation about the difference in selling into these different -- I know you're selling to packers and distributors, but they're selling to different channels.

From you all's perspective does -- you know in the price sensitivity and so forth that you just spoke of with regard to retail purchasers is there a cross-effect in terms of a price affect between the two. In other words, what's happen in the retail segment and the sensitivity there to price does that have an impact on the food service purchasers?

MR. DIMARE: We're definitely seeing a trend to change in buying practices because of low-cost product coming out of Mexico. We're seeing it very recently in the Roma category where some major change have shifted away from purchasing round tomatoes to a cheaper Roma tomato and it's all about price. The buying decision is based on price. It's not quality. It's not necessarily supply. It is all about price and that's where some of this changing, to your point and to your question, to the food service side. We're absolutely seeing some of those trends now start shifting away on the food service side to, for an example, the Roma tomato, as I mentioned, because of cost.

COMMISSIONER SCHMIDTLEIN: Okay, thank you. My time has expired.

COMMISSIONER WILLIAMSON: Okay, thank you.

Again, I want to continue along this line and I was about to ask the question about other segments of the food service. I assume people who -- McDonald's and Wendy's are one segment. I assume folks -- I don't know Cisco and maybe mid-price point in restaurants and maybe also high price and I assume there's differences there. Is there changes in different segments of the food service industry?

MR. DIMARE: There is. And the difference and the change that is going on that's affecting all of us is in the variation of types of product as you can see with some of the specialty tomatoes here. You have a red grape tomato displayed there. You also have a golden or yellow grape tomato, so that's where a lot of the changes are happening in the category. It's almost to a certain extent, especially, at retail forcing us into a niche industry by the continuation and the request or demand for variation in not only tomato types, but also different packaging again, as witnessed on some of the displays and samples up there.

So, there is that shift and we as producers, domestic or Mexican, have to keep up with those changing demands. We don't dictate that. The marketplace dictates that and we are adjusting to adapt to the demand of the marketplace.

MR. IANNEO: So, on the small amount that we do sell to food service, the market price is the market price. Our product could go to a high-end restaurant or it could go to a small burger chain. We don't see a difference in that simply because the market price is the market price. So, as much as I'd like to have a premium for a high-end restaurant, I don't see that existing in the current marketplace.

COMMISSIONER WILLIAMSON: And is that because of the price of the product from Mexico?

MR. IANNEO: One hundred percent of our pricing on a daily basis is due to the volume coming out of Mexico. Our price is dictated by how much volume Mexico is shipping on a daily basis.

COMMISSIONER WILLIAMSON: Okay, thank you.

Mr. DiMare, you talked about this phenomenon with the Roma tomatoes becoming -- are the Mexicans producing more of them at a lower price or what's causing this change.

MR. DIMARE: There's no question. A lot of the business that's booked in our industry is contracted and I think as some of the other witnesses attested to earlier, the contracts are at level of prices that we just can't compete because of our costs and they continue to be driven down. And those decisions, as I said on the buy side are predicated on price. The cheapest price will get the business. And again, a lot of the business food service and some retail are contracts. And as Mr. Esformes stated earlier, some of these contract requests are six, nine, sometimes twelve months in advance. We just can't compete with our costs to what some of the Mexican shippers are committing to on a contract price basis.

COMMISSIONER WILLIAMSON: Okay. How do input costs of growing fresh tomatoes, say, in Florida, compare with input costs in other growing regions of the United States?

MR. ESFORMES: My input costs are very similar in Florida to what they are in Mexico, except for labor, which is the largest part of the cost of getting a tomato to market. Between the cultural practices in the farm, the harvesting costs, and the packing, labor is the work that's being done. So, chemicals, boxes -- you know hard goods that -- hard inputs they are within range, but it's the labor advantage -- the labor costs that makes the significant difference.

MR. CANNON: Just to clarify; were you asking the question to compare costs across different states -- the United States? In other words, I heard your question to be compare your California operation to your Florida operation or Michigan, et cetera, not U.S. versus Mexico.

COMMISSIONER WILLIAMSON: The next question is going to go to Mexico, but let's answer this one. I have more questions on the Mexican costs, but let's get the difference between different regions of the U.S.

MR. IANNEO: Following along with what Mr. Esformes said, certainly, chemical prices, fertilizers, seed costs are very similar across the United States. The big cost would be different. It would be land cost, water cost. California, of course, is extremely in both of those categories. Labor costs are different based on how the states establish minimum wage. Our minimum wage is on the way to $15, whereas, other states are maybe lower, could potentially be higher.

So, in general, the base cost for production are relatively similar. I'm sure the rest of the group can fill in on that, but from our standpoint in California land and water continue to rise as well as labor, so those are the top three for our cost to production.

MR. DIMARE: Cost of production in Florida is very similar to costs in the East Coast. It costs us about $10 a box to break even. In comparison, California production cost a lot less because a majority of the industry, excluding Mr. Singh's operation, are growing on the grow, so we have a lot less input cost in California versus Florida.

Florida happens to be an environment that as more weather challenges, so you have a little bit more input costs on some of the resources, tools that we use for fungicides fighting pest and disease, in other words, so input costs are higher in Florida versus California. However, they're very similar as you move up the East Coast. I think Mr. Esformes and Mr. Leitz can confirm that in their operations. Labor costs are somewhat similar, depending on whether or not you're using guest workers. A Guest Worker Program is very expensive. The adverse affect wage rate, which differs from state to state.

In Mr. Leitz's state of Michigan, it's a lot higher than it is, for example, in Florida if you're using the Guest Worker Program. But again, to your question cost comparisons, state-to-state, there is a difference in California and Florida production, but East Coast, again, is very similar.

COMMISSIONER WILLIAMSON: Mr. Leitz?

MR. LEITZ: Mr. DiMare is correct. We have such a short growing season, so our costs are a little higher. It's about an $11 break even on a 25-lb box of tomatoes or a two-layer box of tomatoes because a two-layer is more expensive, even though it has a few less tomatoes in it. And in sitting with these gentlemen in the last couple days and talking, it's been very informative to see the costs that we all are really pretty close to each other on what it cost to grow a box of tomatoes in the U.S.

COMMISSIONER WILLIAMSON: Okay, thank you.

MR. SINGH: I concur with everything that my fellow farmers here are saying. California where we grow on stakes there our labor rates -- our lease rates are high. It is costing me above $11 to produce a box of tomatoes in San Diego, California. So, with that said, there's definitely a difference.

COMMISSIONER WILLIAMSON: Okay.

Let's go to the question of labor in Mexico. And I guess you all made representation of being lower costs. And I think there have been articles and discussions about labor conditions in Mexico. And my question is why don't we have like -- you know we have some brands of coffee about grown under fair conditions and things like that, if that is a difference between Mexican and the U.S. producers.

MR. ESFORMES: There are programs that have evolved very quickly over the last several years as a direct result of what we did in Florida with the Coalition of Immokalee Workers and the Fair Food Program which involves a third-party auditing firm and reporting system.

What we're seeing across Central America, all of Latin America and also starting to happening in the U.S. are these labels popping up that represent fair trade practices, so to speak. And quite frankly, I have not found one that matches the depth and the vibrancy of the Coalition of Immokalee Workers Program in any of the investigations that we've done.

In Mexico, I participation in the Eleven Rivers Program based in Sinaloa and I'm a strong supporter of it because, frankly, it's the only program that I feel has a vibrancy to it available in Mexico. There's a lot of stickers out there and what I've heard from my customers in retail is that they actually have sticker shock going on because there's too many different kinds of brands you've got Rain Forest certified with the little frog on it for companies that are farming in places where there's no Rain Forest. I mean it doesn't make any sense, but it's a pay-for-play certification.

COMMISSIONER WILLIAMSON: Okay, thank you.

Okay, thank you for those.

MR. LEITZ: I do a yearly labor cost. It's pretty easy on our farm. All our labor divided by all the packages and everything that is involved in labor. And in my opening testimony, I said it takes $5.26 in labor for every package I put out and we look at what the daily labor rates are in Mexico. And every tomato grower has to do the same things as far as planting, staking, cultural practices and stuff, so labor, hour-per-hour, is within 10 percent of what I do and they do.

So, if you look at like $10 a day in Mexico, that's around 40 cents a package to my 5.26.

There's a big discrepancy there. I know we're not supposed to talk about those costs, but the price of my labor is 5.26 a package and the price of their labor is 40 cents.

COMMISSIONER WILLIAMSON: Okay.

MR. IANNEO: One quick comment on that.

COMMISSIONER WILLIAMSON: Sure.

MR. IANNEO: So, we're members of Fair Trade and Equitable Food Initiative, which is also a program in Mexico and a lot of competitors are certified either Fair Trade or EFI. Those established working conditions specific to workers in our case greenhouses, but it doesn't establish a minimum wage, so my minimum wage rates are significantly more expensive than the Mexican minimum wage rate, so it does establish the working conditions -- good working conditions, but overall it doesn't match the minimum wage. It doesn't require a minimum wage to be paid to employees. It's a livable wage, which in California is a lot different than, say, Mexico or even other states in the U.S.

COMMISSIONER WILLIAMSON: Okay, thank you.

COMMISSIONER SCHMIDTLEIN: I'm not quite done with this segment part yet. In the retail segment, the Respondents assert that vine ripe tomatoes are now more in demand. Do you all agree with that basic assertion?

MR. PAPPAS: I disagree. With our operation in Jessup, Maryland where we're servicing primarily retail we are using a large portion of gas green tomatoes for retail that go in the packs that you see in front of you right now. We also could use vine ripe tomatoes, but very few of our extensive customer base are requesting specifically vine ripe tomatoes.

MR. ESFORMES: My experience is that purchasers -- customers' demands, consumer demand is driven by what retail presents. And what retail is interested in presenting is what they can make the most amount of money on. So, tomato consumption, how many pounds per week they're going to sell retailers discovered a long time ago that they're going to sell "X" number of pounds per week at a certain retail price. It's a question of how much of a profit are they able to generate off of that real estate investment that they're making for that week for that item.

COMMISSIONER SCHMIDTLEIN: So, in your experience, are consumers willing to pay more for vine ripe tomatoes?

MR. ESFORMES: My experience is that consumers will moderate their purchases based on their budgets and that's what they're operating off of. So, what we've seen is we've seen unique packaging affects consumer demand, but as far as what people are actually buying, respectfully of my friends who grow tomatoes on the vine, people say, gee, they smell great, but no one's eating the vine. That's where the smell is that everybody loves so much. So, it's not like you're buying something based on the flavor that you have in the store. You're buying from a retailer because you have confident that that retailer is doing the best job to present you a value proposition for you and your family.

MR. SINGH: I am a vine ripe grower in Southern California and on a daily basis through my harvest and through my sales I am directly competing with mature green growers in Northern California and in other states. Head-to-head I'll find my products next to theirs, so they do end up in retail.

COMMISSIONER SCHMIDTLEIN: Well, the Florida Tomato Exchange or any other trade associations have you done any sort of study on marketing in terms of whether or not consumers are now more interested in vine ripe tomatoes?

MR. PAPPAS: I'd just like to point out again if we went to that color chart the minuet difference between a mature green tomato and many vine ripes. Again, looking at stage 1 picked as a mature green and stage 2 picked as a vine ripe that that is often just one day on the vine, so the difference in flavor or profile slicing will not be very much comparing a mature green to a vine ripe.

To follow up on Mr. Eformes point about price, most of our retailers would pick any of the first four bulk round tomato boxes we presented. A gas green, a mature green from Florida, a mature green from Mexico, or a vine ripe grown from Florida at the lowest price point, so they're interchangeable. They want the best tomato at the best price regardless of whether it's a vine ripened tomato, mature green, or greenhouse grown tomato.

COMMISSIONER SCHMIDTLEIN: Okay. Before you go, would FTE, the representative FTE, I'm just curious. Isn't this what trade associations do? Like you're out there monitoring what's going on in the market? What's being demanded and so forth and so on? So, are there any surveys or studies or any other research like that which looks at trends in demand for different types of tomatoes, different varieties of tomatoes?

MR. SCHADLER: I understand the question. So, in recent years, the short answer to that question is, no, we have not done such research. There has been some historical research done. In fact, I believe it may have been presented even in 1996 where there was essentially a taste test done between a mature green tomato which had fully ripened and a vine ripe tomato from Mexico.

The results that were found -- I mean I can't corroborate this right here because I don't have the study in front of me and it's quite old at this time, was that actually in this case the mature green tomato won out in the taste test.

One point I would like to make too. I mean the witnesses right here on this panel I mean they represent vine ripe growers, mature green growers, greenhouse growers of vine ripe tomatoes. It's less a point about mature green versus vine ripe. At the end of the day, so much of it, whether it's a mature green or a vine ripe depends on how the tomato is handled.

So, I mean the tomato once it gets into the trade is not handled properly, whether it's a mature green or a vine ripe, it's probably not going to taste very good for the consumer. And any grower or any marketer of tomatoes, regardless of the product that they're going, is going to look for a distinguishing quality in how they sell and market that tomato. So, of course, the vine ripe growers that are here today from the United States from Michigan, from California, from Florida are going to say, yes, my vine ripe tomato tastes better or the greenhouse guys are going to say, yes, my tomato tastes better because it's grown in a controlled environment and the field grown guys are going to say, no, the field tastes better because it grows under the sun.

The point is there's so much variability and at the end of the day these products are interchangeable. The consumer doesn't know whether it's a vine ripe or a mature green. They're buying based on looks. They're buying based on price. One of the main reasons why TOV greenhouse green tomatoes have been so successful is because they look perfect. Consumers shop with their eyes and consumers oftentimes don't even know what they're buying. So, I guess that's what I would say on that point.

COMMISSIONER SCHMIDTLEIN: Alright, I just lost my train of thought. All I could think of was but in the grocer store I see tomatoes with vines on them, so anyway. Go ahead.

MR. DIMARE: I just want to make the point all these displays have all these different types of tomatoes here. You have to keep in mind one thing. They all started out, including that yellow grape tomato in the green stage, every single one of them.

MR. PAPPAS: I would like to follow up on Tony's point about them all starting in the green stage and I'd also -- I bet we could challenge my own panel or anyone in this room to do taste tests of the first four round tomatoes there and once we cut the tomatoes and didn't display where they were from it would be hard to tell the difference.

COMMISSIONER SCHMIDTLEIN: Well, that's what Irv and I are going to do at lunch. We're going to have a blind taste test.

MR. SINGH: I go on various marketing trips to various retail outlets and I have yet to encounter the retailer who is asking me about flavor.

COMMISSIONER SCHMIDTLEIN: Okay.

MR. SINGH: The biggest issue on every single one of their minds is price point.

COMMISSIONER SCHMIDTLEIN: So, this brings me to the next question, which is why isn't the practice of ripening tomatoes with ethylene gas in a warehouse done in Mexico? My understanding is in Mexico they allow the tomatoes to naturally ripen, even in the field. Is that true or not true? And if it is true, why is that? Why does the United States practice this?

MR. ESFORMES: The practice of ripening a tomato in a room, quite frankly, ever banana is ripened in a room. Every avocado you eat is ripened in a room. Every kiwi you eat is ripened in a room. We pick tomatoes at a stage that enables us to go ahead and manage that tomato because what we're looking for is shelf life. And there's two ways you manage shelf life with a tomato without getting involved in genetic material is either through refrigeration or through picking tomatoes at a highly matured stage, ripening -- and then continuing the ripening process while they are in transit to the customer.

MR. DIMARE: I think I correct what you said -- what I think I heard you say is that Mexico is claiming they don't have a mature green industry. That's absolutely not correct. There are three major players that also grow mature greens in Mexico no different from us in Florida.

COMMISSIONER SCHMIDTLEIN: Okay, yes, because in NutraSweet's brief, they state that the process of de-greening or coloring mature green or green ripe tomatoes, depending on the preferred oxymoron involves treating the tomatoes with ethylene gas to turn them red. This process, which is standard practice in the U.S., was abandoned long ago in Mexico where fill green production is virtually all naturally ripened vine tomatoes.

MR. IANNEO: Just to follow up on Mr. DiMare's comment, even tomatoes on the vine, so what you see in the grocery store where four or five tomatoes are in a cluster still attached to the vine and everything's nice in red that doesn't necessarily mean that it was picked that way. So, we can pick TOVs at a stage 3 or even a stage 2 and over time they will ripen up. So, for example, I can ship something at a stage 4 East Coast with a two or three day ride and by the time it gets to the East Coast it looks like that with no gas, no ethylene.

So, in general, Mexican producers can pick a green tomato and they may or may not be using gas. In general, from our standpoint, it's not necessary to do so, so you can ripen a tomato without that. It'll just happen faster with ethylene. So, to say that their product's better because it's picked to ripe isn't necessarily true because they pick it at the same stage that really we all do. It's a breaker stage and it'll eventually color up and ripen and turn full green or turn full red over a short period of time.

COMMISSIONER SCHMIDTLEIN: So, when you do it with ethylene are you actually adding more -- because doesn't the tomato produce ethylene itself. So, are you adding more gas to ripen it?

MR. DIMARE: Yes, you're correct. A tomato like avocados and bananas contain ethylene. What we're doing is introducing ethylene into the ripening rooms, enhancing the process. That's all you're doing. It's a natural process. We're just enhancing, speeding up the process by introducing a natural ingredient of ethylene into the ripening rooms.

MR. PAPPAS: I want to make it known that I have three different labels or varieties of gas green Mexican tomatoes currently in my facility in Maryland and there's some right in front of you at Box 3, gas green Mexican grown tomatoes. So, they are still prevalent in the industry and I'm buying them.

COMMISSIONER SCHMIDTLEIN: Okay, go ahead.

MR. ESFORMES: The introduction of ethylene what it also does is it makes all of the tomatoes ripen together. So, that what we're doing is we're taking tomatoes that some may be at a stage 2, some maybe at a stage 1 and they're all in the same 25-lb carton. By introducing the ethylene, the whole box will look the same in a week when it arrives at its destination. That couple of days of the introduction of ethylene enables that whole box to be the same so it's all available for immediate use.

The other thing that I want to go ahead and say is that, quite frankly, it enables us to guarantee that we're not transporting -- that we're not holding and transporting tomatoes below 55 degrees. So, if you pick tomatoes at a 4, 5, or 6 stage and then put them on a truck, by the time they get to the consumer they're going to experience -- they could experience a period of time where they are spending their life below 50 degrees.

The most amount of damage that ever going to see on any kind of tomato is a result of improper handling in the distribution channel and that's by refrigeration.

MR. SCHADLER: One comment about the ethylene process, so I can't remember if anyone else noted this, but every single banana that is sold in the United States has been subjected with ethylene to ripen it. Bananas are picked green. The vast majority of avocadoes are picked green and subjected with ethylene. Other fruits that are commonly exposed to ethylene in the ripening process are pears, peaches, plums, mangoes, cantaloupe, honey dew melon and even some citrus.

COMMISSIONER SCHMIDTLEIN: Okay, alright.

MR. ESFORMES: One additional piece is that our costs of labor in the U.S. are such that once upon a time all of our packages were two layer -- single and two layer and three layer tomatoes. Because of our costs of labor we've had to mechanize our packing facilities here in the U.S. and go to this 25-lb bulk carton. So, we have less labor available to us.

The advantage in labor in Mexico, the cost advantage in Mexico allows for continued practices that involve place packing a vine ripened tomato so that you've got a layer of tomatoes as opposed to a 25-lb bulk.

COMMISSIONER SCHMIDTLEIN: Okay, thank you very much.

COMMISSIONER WILLIAMSON: Thank you. Continuing on this question about tomatoes and handling, are tomatoes always picked by hand? I mean, you know, tomatoes that are for -- that are not processing?

MR. DIMARE: All fresh market tomatoes in the U.S. and Mexico are hand-harvested.

COMMISSIONER WILLIAMSON: Okay. But if you're doing it for pot canning or anything, that's a different story?

MR. DIMARE: The processing industry is 100 percent mechanization. But all fresh market tomatoes again, Mexico-U.S. are all hand harvested.

COMMISSIONER WILLIAMSON: Okay, and that includes washing, sorting, packaging. Is any of that automated?

MR. DIMARE: There is automation on some of the color sorting and on some of the -- it hasn't been perfected in the round tomato industry. There is some mechanization blemish grading, sorting, such as grape tomatoes, a little bit in Roma tomatoes. So there is some mechanization. They just haven't perfected the blemish sorting part of it in the round tomato industry quite frankly.

COMMISSIONER WILLIAMSON: Okay. Is there a difference in automated processing for picking tomatoes that need to be coming from open field as opposed to greenhouse harvesting?

MR. IANNEO: Chad with SunSelect California. Everything that we produce is hand-picked and hand sorted. That box right there is what we pick directly into from the greenhouse, and then it goes through a quality check, again by hand, and anything that's not, outside of grade is taken out and replaced with something that's within grade, and then box goes on a pallet and directly to our retail customers. So it's all, it's all hand harvested.

COMMISSIONER WILLIAMSON: Is that sort of generally characteristic of greenhouse tomatoes, that there's going to -- there has to be more? It's all -- there's less possibility for automation than in a field grade or field harvested?

MR. IANNEO: I think in general, we're all struggling with how to automate a truly hand-picked tomato. We are. There's nothing viable out there on the market right now on the greenhouse side, and I can't speak to the field grown side. But I think it's equally as difficult to find a machine that can do that, versus a person, a person.

MR. CANNON: So Jim Cannon. So I'd like to ask, we don't only have growers of mature green. Half the panel grows vine ripe, and I think it relates to this ethylene issue as well, the extent to which one is more mechanized versus hand labor. But certainly I'd like to invite our vine ripe growers to weigh in on this question too, about how much hand labor is there versus mechanization, and then mature green can address that too.

MR. SINGH: Priya Singh, California. As a vine ripe grower, everything is hand harvested, hand packed in our facilities as well. We do some volume filling as well, you know. So we do various forms of packing, although on the harvest side everything is done by hand. As Chad had mentioned, there's really no equipment even for open field that would help us to harvest those tomatoes.

COMMISSIONER WILLIAMSON: Okay.

MR. LEITZ: Fred Leitz, Michigan. Being in the season, we are in our location, we are all hand harvested, all vine ripe, and that's because of proximity to market. I want to pick one day, pre-cool, pack the next, get it out on a truck and to market. So in three days, you've got the product from field to the consumer. So that's why we do vine ripes.

COMMISSIONER WILLIAMSON: Okay. Is that an important part of your marketing too, for your customers?

MR. LEITZ: Yes, it is.

COMMISSIONER WILLIAMSON: I used to live in New York City, and there's a store call Fairway, and they used to always advertise that they had their tomato farms in New Jersey.

MR. LEITZ: Yeah. That's a big part of it. The other thing about tomatoes, and we had talked earlier versus the mature greens and vine ripes, and you go to the sore and you buy and you smell them. But isn't that the fun of buying a tomato sometimes, some days. Sometimes they really taste good and sometimes they're a little blander, and sometimes it's like man, I wish I could get that one every day. But that's got to do with soils and sunshine and our God-given weather.

COMMISSIONER WILLIAMSON: Okay, thank you. What percentage of -- this is in general, of employees are seasonal workers and what months do you bring in extra workers?

MR. DIMARE: So the majority, I think I can speak for most all my cohorts here, the majority of the workers we all employ are seasonal workers, and that is for harvesting. Much more than what we're reliant on in the packing operations, where a little bit more of a stable workforce.

But labor across the country, not only in agriculture but a lot of the hotel, restaurant, motel industry is struggling for labor as well, and some of those industries are seeking out guest worker programs H2B, to satisfy the need for labor around the country. But the majority of what we employ on the harvesting side are seasonal workers.

There is a percentage of domestic workers, or I shouldn't say local workers, in those given production areas that we rely on. But a lot of them are seasonal workers that move up and down the state and the country for that matter, depending on the seasonality.

MR. IANNEO: Okay. Chad, SunSelect Produce California. It's 98 percent of our employees are full-time employees. There are very few that we cycle through. Because we're a 52 week producer, we can employ roughly all 250 of our team members year-round.

COMMISSIONER WILLIAMSON: Is that more -- more characteristics of a greenhouse operation?

MR. IANNEO: Certainly, I'll let Mr. Singh reply to that on the field side. But yeah, because we're in a greenhouse we can produce 52 weeks a year. We have the ability to keep employees on full-time. But certainly from a field standpoint, it's a little different.

MR. SINGH: Priya Singh, California. We are definitely seasonal. Our employees are with us roughly between six to seven months out of the year. Due to labor shortages, we do participate in guest worker programs, which actually we'll field it on 90 percent of our labor force that we do bring in. We'll most likely bring them in anywhere from March through November, and we'll stage them out.

COMMISSIONER WILLIAMSON: Okay, good.

MR. ESFORMES: Jon, Sunripe. Our workers, while classified as seasonal, quite frankly they move from Florida to Georgia to Virginia. So on the east coast, we have a large number of workers who are with us 11 to 12 months of the year. There might be a short period of time added up throughout the year that they're not actually working for us.

In our packing facilities in Florida, it's local folks that live in the community there. Many of them are immigrants from Haiti who live in that region there, and work in our packing facilities.

COMMISSIONER WILLIAMSON: Okay, thank you.

MR. LEITZ: Yeah, Fred Leitz, Michigan. Being very seasonal, we have workers coming in the first, middle of April until the middle of October when they leave, mostly H2A workers. We still have about 20 local seasonal workers, and full-time workers is about ten.

COMMISSIONER WILLIAMSON: Thank you. Let's switch subjects. In your presentation, I think in 2015 it seemed like the U.S. versus the Mexican share of the market were about the same. But then that's when there was a sharp divergence, and the Mexican share of the market really went up. What caused that?

MR. CANNON: Lower prices for the Mexican imports, coupled with rising costs for the domestic industry.

COMMISSIONER WILLIAMSON: Why then? I mean we've been talking about a 17-18 year period. Why was that such a kind of pivot point?

MR. CANNON: So if you just look at the market share shift, you see that leading into 2009, the industry was sort of 60-40, you know. If you go all the way back, it's 70-30 domestic to Mexican. With the suspension agreement in place and the reference prices in place to limit the supply in Mexico, you got to a point in 2009 where suddenly there's a surge in imports, lower priced imports from Mexico in particular.

The suspension agreement then was renegotiated in 2012. In fact, it's been renegotiated four times, but it was renegotiated to raise the reference prices, in account of the fact that it was not effectively combating price suppression. So the Commerce Department renegotiated the suspension agreement, increased the reference price and put in many other changes to basically try to improve enforcement of the agreement.

But as we outline in our brief, that still stops short of what's needed. So then in the subsequent years, you see that the two, domestic and Mexicans, essentially shared the market, until the Mexicans passed substantially passed the U.S. market in 2016. That continues today, and they're still on an upward path. Having gained the majority, they continue to increase.

If you were to overlay that with the, which we can do in the post-conference, with the acreage and production in Mexico, you will see that the acreage and production in Mexico just followed a steady uphill line. So at a certain point, with U.S. producers cutting back, a steady increase in Mexico. They swapped positions in market share, and it doesn't appear now that having swapped, we're going back.

COMMISSIONER WILLIAMSON: Okay.

MR. LEITZ: Fred Leitz, Michigan. Real quick on that, with the minimum reference price less during my season, we've had a lot of growers decrease acreage. So the Mexican imports took up that slack, and they decreased acreage because of price. Could not compete, and the Mexican -- as the road got opened up through Brownsville and McAllen and Harlingen, where they could bring more imports up and go to the east coast, the price difference just took us out of the ball game.

COMMISSIONER WILLIAMSON: Okay. So reference price is higher in the winter season than in the summer?

MR. CANNON: Jim Cannon, correct. It's an exhibit to our pre-hearing brief. It's found in Exhibit 1. I'm sorry.

COMMISSIONER WILLIAMSON: Okay. I can check it later.

MR. CANNON: I was just going to give you an example. But for -- so I'm looking at open field and adapted environment. Adapted environment might be that shade type photo from Mexico. So in the July to October period, the reference price is essentially 25 cents a pound. In October to June, it goes up to 31 cents a pound. So that's what Fred is talking about.

COMMISSIONER WILLIAMSON: Okay.

MR ESFORMES: This is Jon from Sunripe. Part of the swing that you see there in terms of imports was that during the recession from 2008, '09 and '10, there was a tremendous push by foreign banks to promote sales of their production systems, French greenhouses, Canadian greenhouses. You had very cheap interest rates, and there was a big push by various countries to promote the sales of their technology in the face of the recession at very attractive rates.

That created a lot of infrastructure and a lot of investment opportunity in Mexico, which speaks to in particular the period of time that Fred and my California operation used to operate in during the summer. So we had a lower reference price than we did during the winter; however, there was all of this high tech investment that was being made in Mexico with these cheap loans, that created all this infrastructure that flooded the U.S. market during that summertime period.

In addition, the Mexican government, in their interest in supporting their industries, made subsidies available in various forms and mechanisms to support their agricultural industry.

COMMISSIONER WILLIAMSON: Okay.

MR. DIMARE: Tony DiMare. I'd just to highlight, you know, for the period that you're looking at, the 2015, that some of the growers that have gone out of business, and this doesn't count the reduction that some of us have attested to today during this period 2015 and out. Whitworth Farms Florida, DelMonte Florida-Virginia, grower shipper. Harley Packing Florida, which is the oldest tomato company in the state of Florida dating back to the late 1800's, went out of business about a year ago.

Gulfstream Tomato, Florida; Charlie Jones, South Carolina, San Joaquin Tomato Growers, California, Artesian

Farms, Florida. That's just an example that kind of reconfirms what's happened in the period of your question.

COMMISSIONER WILLIAMSON: Okay, good. My time has gone way over.

COMMISSIONER SCHMIDTLEIN: Okay, okay. I wanted to switch to few questions about price as well. You mentioned the rebilling practice that the Commission apparently commented on in the original investigation. Is that a practice that continues today?

MR. CANNON: Jim Cannon. I'm going to let my colleague take the floor, wherever Mary Jane is, and discuss price.

MS. ALVES: Yes Commissioner Schmidtlein. Unfortunately, the practice of rebilling does continue, and there have been some additional practices that have begun as a result of the current version of the suspension agreement. As you may know, the current suspension agreement is looking at the reference prices as the imports cross the border, and that is largely what your pricing data are looking at.

What are the importers selling at their first transaction to an unrelated purchaser? What we are seeing in the market, however, is that the prices of imports from Mexico are in fact underselling the domestic like product, which is not necessarily what is reflected in your pricing data.

Your pricing data suggest that there's mixed underselling and overselling in the U.S. market. Part of that has to do with what the suspension agreement has created. In the appendix to the suspension agreement, it allows for transactions to be discounted if there are condition defects in the merchandise. The suspension agreement also allows, and some of those discounts can occur several months after the fact, and so they may not necessarily be reflected in the pricing data.

In addition, there are additional transactions that are occurring. The chains of distribution have gotten longer as a result of the current version of the suspension agreement. So you have transactions that may occur going across the border, where the imports are coming in at the reference price, but in fact when they are actually sold to that final end user, the retailer for example or the food service company, there are several transactions that occurred in the meantime, and those are below reference price transactions.

So that is in fact what our clients are competing against in the U.S. market. They're competing against these other transactions that are suddenly occurring, where the transactions are occurring below reference price.

COMMISSIONER SCHMIDTLEIN: Okay, so let me understand. The suspension agreement reference price applies to the price that the foreign producer is selling to the importer, that's correct?

MS. ALVES: Right.

COMMISSIONER SCHMIDTLEIN: The pricing products that we have are capturing the price --

MR. CANNON: I'm sorry, Jim Cannon. No, that's not correct.

COMMISSIONER SCHMIDTLEIN: Okay.

MR. CANNON: The suspension agreement applies to the first sale by the importer to what in the suspension agreement is called the selling agent. It's the first unaffiliated sale. So if I'm an importer answering your questionnaire, you would expect all my prices would be above the reference price, and in fact you see in your pricing data uniform prices that are pretty much above, always above the reference price, because you're capturing that first sale.

COMMISSIONER SCHMIDTLEIN: Okay so --

MR. CANNON: But that first sale could be to a broker or a middle man, or someone like me in my living room if I wanted to get in the tomato business and flip tomatoes. So when I resell, I am no longer bound by reference price. I can sell at any price.

COMMISSIONER SCHMIDTLEIN: But let me go back to the pricing products. The pricing products is capturing the price that the importer is selling to a distributor or a repackager or a supermarket or whatever the other channels, right? That is -- that's what's captured there. So from a level of trade -- no?

MR. CANNON: No. In this industry normally --

COMMISSIONER SCHMIDTLEIN: With the price -- no, I'm talking about the pricing products, Mr. Cannon.

MR. CANNON: I understand.

COMMISSIONER SCHMIDTLEIN: Not about the other chains of distribution, what exactly the pricing product is --

MR. CANNON: In this business, unlike say -- so most of your cases now, I argue about this all the time, we see direct shipment. Foreign producers direct to U.S. customers, direct to market.

COMMISSIONER SCHMIDTLEIN: Yeah, but we usually break that out. Here, we're talking about, right.

MR. CANNON: The trend generally is to collapse these levels. That's not what's happened in this industry. Because of the suspension agreement, and in fact because of the need to repack product, there is a level in this industry of which Aris, as an example. When he buys from an importer, he pays the reference price.

When he turns around and sells at retail, because of Appendix D, he can get adjustments, discounts back, or he can just resell at a lower price rather than destroy the product. So actually he is an excellent example of this, and I think can explain it very well. So we'll let Arris explain that.

COMMISSIONER SCHMIDTLEIN: But before we go on, I mean you're not answering my question, right? Are you saying there's a level of trade problem with our pricing products?

MR. CANNON: Yes. Now that we've seen the pricing data, coupled with our understanding of the suspension agreement, there is indeed. To solve for it perfectly is difficult --

COMMISSIONER SCHMIDTLEIN: So that's just what I want to understand. Why is there a level of trade problem with this. If you've got importers selling to distributors, right, and we're capturing that price in the pricing product, and you've got a U.S. producer selling to a distributor and we're capturing that price in the pricing product, why is that a level of trade?

MR. CANNON: Because when the repacker repacks and resells. So when Aris buys from an importer or --

COMMISSIONER SCHMIDTLEIN: As a distributor or a packer --

(Simultaneous speaking.)

MR. CANNON: When he buys from an importer and he then resells it, he no longer has to pay the reference price. But if his tomatoes are not competing against Jon's tomatoes, Jon has to bid against that lower price. Are you following me? Not all --

COMMISSIONER SCHMIDTLEIN: But in the pricing products that we have here, isn't it an apples to apples? I mean at that level of trade. You're telling me there's a longer chain that went with that.

MR. CANNON: Yes, yes.

COMMISSIONER SCHMIDTLEIN: But when we're trying to capture this one level, we are capturing that level, right?

MR. CANNON: But the domestic producers and the importers don't necessarily sell exclusively at the same level simultaneously. Jon could be plugging in his sale at a lower level than where the Mexican imports came in. Normally, what you're seeing is head to head, at the same level, when an importer sells to a customer and the domestic industry sells to a customer and they're at the same level.

In this industry, in part because of the suspension agreement, there's a large segment of this market where there are layers of distribution in between. There are brokers who do nothing. They don't touch the product. They buy it and they resell it. So when that happens, we then have to compete with those products on a much lower price, and it's in part a flaw in the suspension agreement.

Now I'm not saying that it's across the entire market. There are also direct customers. There are large chains, there's large food service customers who will buy on a contract basis direct from Mexico on an annual contract. Those prices, that would be head to head.

But in the, particularly in the spot market where we are competing half of our sales perhaps are in the spot market, the staff report has the data, maybe it's 40 percent, the product will travel through several levels of trade. In fact, because they live this with the suspension agreement, I shouldn't be the one telling you about this. Jon, maybe you want to explain this some more.

COMMISSIONER SCHMIDTLEIN: But I guess I'm still confused, because when -- I'm trying to get where is the defect in the pricing. I understand what you're saying, that like ultimately in reality down the chain, that I guess people are lowering the price. Even though they've paid more they're now lowering it and they're selling at a lower level.

COMMISSIONER WILLIAMSON: But aren't they losing money on that?

(Simultaneous speaking.)

MR. CANNON: That's exactly right. They're losing money.

COMMISSIONER SCHMIDTLEIN: They're lowering the price. That's exactly right. That was fascinating to me, so that's why I wanted Aris to address this, because it strikes me why would I do this? Why would I buy a reference price and turn around? The answer actually is kind of simple. If I buy at the reference price, I've got these tomatoes.

They're going to go bad in a week. So if I can't find a buyer at the reference point, we'll at least take 80 percent, you know. I'll take something rather than nothing. So that's what happens. So there's a lot of product in the market, particularly when the market is flush with product, like the winter months when these crossings are coming across.

Now you don't really want this testimony from me. You want it from the witnesses.

COMMISSIONER SCHMIDTLEIN: Okay. No, I know. But I still, the witnesses don't have access to all the pricing information in these products, and they also don't understand how we use the pricing products in terms of our analysis of price, right?

MR. CANNON: Exactly.

COMMISSIONER SCHMIDTLEIN: So at the end of the day, like this is something the Commission has to consider, assuming we go to a vote here.

MR. CANNON: And one of the issues, I actually sort of -- I totally usurped Mary Jane's role. Sorry, Mary Jane. But in the original investigation, the Commission also struggled a lot with the pricing data, and in fact had trouble figuring out how meaningful is it. I mean it's fair to say when you read their opinion, you can see this.

They say in the preliminary decision we need to revisit the pricing data, because we're afraid that it's not really capturing the prices in normal fashion.

COMMISSIONER SCHMIDTLEIN: Okay. But I understand your argument about what's happening further down the chain. And so the question I'm trying to get to is when you look at, we had 13 U.S. producers, 25 importers provided pricing data for sales of these products divided out between open field and greenhouse, right, for the three different varieties of tomatoes.

So you've got the importers reporting the price that they're selling at, right? You've got the producer reporting the price that they're selling at. So I understand that you're saying now they are turning around, those distributors, and lowering the price and selling at a loss and so forth because of the perishable nature. That's affecting the price in the market.

But in terms of the pricing data that we see right here, why do we see this weird pattern of underselling when it comes to greenhouse, and overselling in the open field categories? Putting aside your -- maybe your arguments about the chain affects that as well, but --

MR. CANNON: So this is Jim Cannon again. So one reason is if we continue on the slides to where I ran out of time. So if we go to Slide 31, this is your question. So what you're seeing is that on Product No. 1, which is open field, we see more overselling, less underselling. On Product No. 3, which is open field, you see more over, less under, and on Product No. 5.

So in the open field, we tend to see the U.S. prices are lower and the imports are higher. What they're asking is, which to me was the big problem or concern or curiosity about this case, the margins of underselling for those products are pretty large. It makes no sense, right? Why is the margin so large, right?

So the next slide, these are the USDA data, right. So the USDA data consistently shows round tomatoes, Product No. 3, underselling. So why is it that your data don't show that? Well, one reason is perhaps the issue I talked about, distribution chains. A second reason is how is greenhouse being defined by importers, a greenhouse tomato versus an open field tomato, right.

So this morning when you weren't here, they put up a slide and they basically say 80 percent of our tomatoes are greenhouse tomatoes. According to Census, 50 percent are greenhouse tomatoes, not 80. However, according to your pricing data, the numbers are dramatically different. Greenhouse is far less than open field.

So if I roll to the next slide, we started to look into the data. Pricing Product No. 3, round field tomatoes. The coverage of the importer questionnaires is 32 percent, right. So the total imports that the importers imported was 32 percent. If you look at Product 3 reported to the ITC, they reported 223 million pounds of tomatoes. If you look at all imports from Mexico, round tomatoes, there's only 198.

So they were putting more tomatoes in this category than Census says was imported. In other words, one-third of the importers are reporting a higher volume. Now what does that mean? It means probably that they're selling greenhouse tomatoes and reporting that in your pricing data when asked for field tomatoes. They're not giving you field tomato prices.

Now if we roll to the next slide. Under the Florida marketing order, importers have to be inspected -- the imports, I'm sorry, must be inspected when they arrive in the U.S. if they're field tomatoes. But if they're greenhouse tomatoes, they don't have to be inspected. So they have an incentive when they enter the data with Census, with Customs, to call everything greenhouse.

Under the suspension agreement, the price of an open field adapted environment tomato is ten cents a pound less than the price of a greenhouse tomato. So when they report for the suspension agreement, they have the opposite incentive. So what's happened here is what does greenhouse mean anymore? The data are not, in this perspective, very reliable, because we have dueling incentives to report one way to Census, to report a different way for the suspension agreement.

And then in your questionnaire, they decide for themselves what's a greenhouse, what's an open field. So it's strange, absolutely. Why are their greenhouse prices so much lower? In a commodity product, you expect to see mixed underselling. From a large perspective, you do. But on the data here that we have, we have these margins, which they're irrational for an agricultural product sold on this basis.

Now all that said, the suspension agreement at least is keeping their prices higher. If you take that agreement away, it's easy to predict what's going to happen. Now at this point we're still on the red light, I never did let Mary Jane.

COMMISSIONER SCHMIDTLEIN: It's just me and

Commissioner Williamson. Go ahead.

MS. ALVES: I had one additional point as well, and that is for the pricing data, you had asked the parties to differentiate between field and adapted tomatoes on the one hand, and greenhouse tomatoes on the other hand. There's another category of tomatoes, controlled environment tomatoes.

And so to the extent that there is some disparity in reporting between the two categories of pricing products, perhaps some of it may be due to confusion about where to report those controlled environment. That could be another reason why there's some difference in reporting between the two.

But again, the pricing data from a five year review perspective, which is where we are, indicate at a minimum that there is underselling and overselling, which is consistent with what the Commission found in the preliminary determination. There was also continued underselling during the resumed final investigation in 2002, and even if you accept the pricing data at face value, you would expect that the suspension agreement would have some effect on the pricing data leading to mixed underselling and overselling.

The closer you look at that data, however, you realize that there are some inconsistencies in the pricing data, as there were in the original investigations. What is the best way to capture the true value of what's going on in this market? I would say look at a couple of big picture factors.

One, look at that market share shift. This is a commodity product, you would not expect to have that aggressive of a market share shift over this period of time if pricing were not involved. Look at your importer questionnaires, your purchaser questionnaires. Purchasers are coming back consistently saying that these products are highly substitutable, that they're comparable in all the different factors that they care about.

And yet they're also telling you that the products from Mexico are at least comparably priced if not lower priced. They're also telling you they prefer to buy the lower priced products.

So the combination of all these other, other record evidence that shows you that there's something else going on in this market that is price-related should cause you to at a minimum discount or at least look at the pricing data at face value and say okay, well at a minimum they're showing that there's mixed underselling and overselling under the suspension agreement.

If we lift the suspension agreement, what are we going to get? Those volumes are already significant. They're going to keep coming, and there's no longer going to be a reference price to keep the prices intact.

COMMISSIONER SCHMIDTLEIN: Okay, all right. Thank you.

COMMISSIONER WILLIAMSON: Thank you. One thread of that previous discussion that was I think -- for the industry people to comment on this, the reference price, when the -- after that first sale and the price being dropped and how that works, what is the documentation for that?

MR. ESFORMES: So let me just start by saying that the Suspension Agreement works as it's written when you've got reputable people on both sides of the border, adhering to the spirit of the agreement, not the letter of the agreement. The letter of this agreement has a bunch of holes in it, that, for lack of a better way of saying it, circumvention finds a way. That circumvention in an industry like ours, it doesn't take a lot of circumvention. It's not a huge, big percentage of what is coming in from Mexico.

I'm not, by any means, testifying that there's a huge percentage of the tomatoes that are circumvented tomatoes. However, a small enough percentage of those tomatoes coming across end up circumventing the agreement through various methodologies and that can suppress various markets around the country which has a domino effect because of information systems.

Someone in New York knows what's going on in Chicago. Retailers around the country are all integrated in their information platforms. Foodservice companies, you know, Sysco, FreshPoint, knows what's happening in Nashville, Tennessee, and Vancouver, Canada. So everybody knows everything.

This price suppression that happens as a result of the circumvention and how that takes place--what that might look like--is tomatoes being sold in the first transaction which the Agreement covers at the minimum reference price. What then happens after that is the person who took paper title--not physical title--paper title to that load of tomatoes, then resells the load for below the reference price. That secondary transaction -- that business is losing money on paper.

And it's made up through various other forms. Those various other forms can look like bell pepper being sold at $10 instead of $12. That can look like a back sheet where money is then owed at a later date where, "I'll make it up to you," so to speak. Not this past winter, but the winter of '17-'18, I know of transactions of people who, in March, were getting adjustments on $20 loads of tomatoes they had bought in December of '17. They bought $20 tomatoes. Three months later, they were asked to buy $8.30

tomatoes and the answer was, "Yes, if you change those $20 December tomatoes to $16." So there's a lot of ways, when someone is not willing to adhere to the spirit of the agreement, to go ahead and circumvent. When you don't have the Suspension Agreement reach beyond the first transaction.

The other method is through the adjustments. One of the big things that I have seen myself at the border, are when we get to the minimum price in Mexico, where people will come along, buyers will come along and say, "I want that load of tomatoes, but I'm not gonna send you a truck for a week." Because they want the load of tomatoes to degrade to the point where they're able to take a USDA inspection and garner all of the adjustments to the price that they're able to get. It's an imperfect Suspension Agreement and if it goes away, we'll just have real cheap tomatoes everywhere.

MR. DIMARE: I'd just like to add on to Jon's comments. One other method with circumvention of the minimum reference price was, tomatoes were sold into Canada. As you know, Canada has no Suspension Agreement in force against Mexico. So tomatoes were being sold for $4 and $5 into Canada and transshipped back into the U.S., into Buffalo, Rochester, and finding their way back into the U.S. marketplace at less than the reference price through these transshipments. That was another method of circumvention that we've witnessed.

COMMISSIONER WILLIAMSON: Are they coming in as "Hothouse Canadian" tomatoes or --

MR. DIMARE: I can't speak to that directly.

COMMISSIONER WILLIAMSON: Okay. Thank you. Mr. Pappas, do you want to comment on this? No? Okay. So you're saying not everybody's doing this, but there's enough that -- what's the impact is it having on --

MR. ESFORMES: So what happens in our marketplace, everybody knows everybody. Just the same as everybody in the Bronx Terminal Market, Hunts Point Terminal Market knows all of their competitors. It doesn't take much in cheap product available on the marketplace to go ahead and depress everybody's market.

I can tell you that we adhere to not just the letter of the Suspension Agreement, but the spirit. In my imports from Mexico, the grower that I represent and my own farming operation out of Mexico. In the '17-'18 season, I abandoned 45% of my round tomato production in Mexico and 52% of my slated Roma production in Mexico, where I told the grower, "Don't send them to me, because I cannot sell them for the reference price in the United States. There's not enough business." I was losing business to tomatoes that were being circumvented through McAllen.

COMMISSIONER WILLIAMSON: Okay. Thank you. One question going back to you, where you were talking about, I guess, the improvements in production systems and things that were being sold during the recession. And you talked about it being sold in Mexico. What about in the U.S.? Were we getting technological improvements in how people were handling tomatoes? And why not?

MR. ESFORMES: The big push was -- it wasn't just a big push from the European and Canadian banks and producers of greenhouse, but it was also a push-pull, right? So Mexico made it very attractive from a government standpoint by making things available that would assist in supporting their agricultural industry. In the United States, it's no secret that, you know, if you wanna talk about pork bellies and soybeans and things like that, there's a big powerful lobby. Quite frankly, the row crop vegetable industry is, you know, we're kind of the red-headed stepchild of American agriculture.

COMMISSIONER WILLIAMSON: Okay.

MR. IANNEO: Five years ago, we built our greenhouses in Tehachapi and at the time they were state-of-the-art greenhouses. And so we took the initiative to invest in the U.S. with high-tech greenhouse growing. So it did happen. We did it because we're greenhouse growers. We're not very good field growers. We leave that to the experts. But we know how to grow in greenhouses. So I would say that there was investment in the U.S. in high-tech greenhouses similar to -- I don't wanna say similar to Mexico, but there is that investment in the U.S.

COMMISSIONER WILLIAMSON: Okay.

MR. PAPPAS: At our Tennessee farm, we have spent hundreds of thousands of dollars improving our packing house and our packing lines. Likewise, at our Maryland facility, we have spent six figures as well installing equipment such as a Wheel laser eye that takes a picture of all the snacking tomatoes that get run on our line to improve our operation. So we have made investments as well.

COMMISSIONER WILLIAMSON: Okay, thank you. The respondents have made a lot of distinction between greenhouse-grown and field-harvested. And yet, when you did the production here, it didn't seem like it made that much difference by the time it got to the store, to the end user. And so I wondered if anyone wanted to comment on why they are making such a distinction.

MR. CANNON: Just so I understand the question, the respondents are arguing that, essentially 80% of their products is greenhouse tomatoes and that we are still living in 1996 growing mature greens in Florida. And as you've seen, Florida is only 40% of the market. We've got vine-ripes and greenhouse and everything in between, not only mature greens.

But for the panel and for the people who are selling the product, I think the question is, do they compete across each other? In other words, do products grown vine-ripe compete with products from greenhouses? Are you competing in retail grocery stores for floor space, etcetera? I perceive that's what you want me to address?

COMMISSIONER WILLIAMSON: Exactly, yes.

MR. CANNON: I invite the witnesses to comment further on -- well, we can start with Chad. So does your product compete against Priya's product, for example? Or Jon's?

MR. IANNEO: So, in the retail, if you go to a grocery store, you're gonna see numerous tomatoes of different types. You can see them up on the table there. So in general, yes, I compete with everybody here on our side. But by the same token, we also work together as an industry to try to maintain the U.S.-grown and the domestic farmer base.

So from my standpoint, we directly compete with Mexico more than we do with the people at this table. We've found that the shelf space allocated to TOVs is relatively consistent. Certain retailers will go different routes, depending on what they wanna promote or what they want to sell to their consumer base.

But the space that I'm competing with on the shelf in a retail chain isn't normally with these gentleman. It's with TOV from Mexico. So that would be the best response I have as a greenhouse grower to your question.

MR. PAPPAS: I'd like to reiterate the interchangeable aspect of the greenhouse, mature green and vine-ripe tomatoes displayed in front of you. Those three specialty packs, the 10-pound, 20-pound and 15-pound pack can use -- our customers in our operation can use either of the three tomatoes. Our customers are looking for the best tomato at the best price. And often the price point is what draws us to one of the other tomatoes.

COMMISSIONER WILLIAMSON: Okay.

MR. DIMARE: Forget about the fact that the cultural practice, greenhouse versus open-field, mature green, a tomato is a tomato. Round-type tomato is a round-type tomato. I challenge you to tell me the difference of the Mexican Volume 5-6 tomato versus the Florida Volume 5-6. They're round tomatoes. They compete equally at the retail level in shelf space.

The difference is, what is the price the product was sold for, and the cost of goods to the buyer. That's the difference. But you can't tell me that there's a difference physically looking at a round tomato, is Florida, California, Michigan, versus a Mexican tomato, because quite frankly, the majority of what the Mexican produce are round tomatoes. Roma tomatoes, the same difference.

There's a box of Mexican Romas, a box of Florida tomatoes. There's no difference. You physically can't see a difference. So what is the challenge of the difference is? It's generally in the price that that product is sold for and what it's bought for on the retail end. But from a physical standpoint, there's no difference. It's a round tomato.

COMMISSIONER WILLIAMSON: Okay.

MR. SCHADLER: May I make a comment?

COMMISSIONER SCHMIDTLEIN: Sure.

MR. SCHADLER: Thank you, Commissioner. You know, I think when, you know, in the afternoon, you will continue to probably to hear a lot about mature green tomatoes from Florida. I guess every time we hear that, we'll all try to keep in mind that there's mature green tomatoes grown in every major tomato-producing state in the country, not just Florida, just like there are vine-ripe tomatoes grown in every major producing state in the country, not just in your state. Not just California, Florida as well.

One of the biggest innovations that came out of the United States in the early 2000s, as was noted by one of the witnesses today was this varietal innovation in the snacking category, grape and cherry tomatoes. As was mentioned, the grape tomato, specifically, was, it was bred and innovated by a company in Florida.

So every time you hear mature green, keep in mind that no cherry or grape tomatoes in the United States or Mexico are ever picked green. Every cherry and grape tomato in the United States is picked in a ripe color.

Now, look at what has happened in the Mexico versus U.S. trade trajectory in those two varietals where mature greens don't come into play at all because there's no such thing as a mature green grape or cherry tomato. The exact same thing with low-priced Mexican cherry and grape tomatoes taking market share away from U.S. cherry and grape tomatoes.

MR. CANNON: So, if I could just point to Slide 29, when the Respondents argue that we basically are all greenhouse tomatoes and the U.S. industry is all field grown, right? First of all, it's not true. We have a lot of greenhouse production in the United States. We have one of them here.

But secondly, the way they get to this number on Slide 29 what they do is the add greenhouse and Roma, more or less. Their economist does it in his study. He assumes that the Romas are all greenhouse. Okay, fine. It might be under shade, not in a greenhouse. It might be in a greenhouse, but whatever, except that -- or in a greenhouse.

When you're talking about Romas -- if you look at the box of Romas that Aris has out here in the middle, the bulk package, Romas compete with U.S. Romas grown in the field or in a greenhouse or anywhere else.

When you go in the market and you see Slide 11 this is how Romas are sold. There isn't a different price for the box from Mexico or from the U.S., right? So, that's head on so-called greenhouse in Mexico competing against U.S. field tomatoes, right, head-to-head, head on.

And I suspect for the vine ripe in the U.S., such as Fred, he probably has to compete against the Mexican vine ripe, which vine ripe is being grown in dirt, even under plastic or under shade to keep the heat off, to get that 52-week production, keep the bugs out, the other things the Mexican industry has to deal with just like we do, but the point of my observation here about the data is that they are trying to create a distinction that really doesn't exist in terms of greenhouse, say, Roma versus greenhouse in Mexico Roma.

This is what I was talking about earlier; the definition of a greenhouse is a problem in this case because there is a range of what can be a greenhouse. The range being what we showed in Slides 15 and 16, the greenhouse under plastic and then the greenhouse under shade.

COMMISSIONER WILLIAMSON: Okay, thank you for those answers.

COMMISSIONER SCHMIDTLEIN: I just had one question and that is do you want to respond to the like product argument that the Respondents raise?

MR. CANNON: Sure. So, as I read their argument, there's a sort of a hole in it because they first commence with the argument that there's a difference in like product between snacking tomatoes grown in greenhouses and everything else. And so a basic problem with that argument is that snacking tomatoes are also grown in open in field and so what is the Commission supposed to do with that?

I mean it's the identical tomato, growers here who grow them, grape tomatoes, for example. I think we heard Florida invented the category and so their construction of the statute would essentially leave out field grown snacking tomatoes. They would be part of what like product? You should ask them that.

Secondly, if we just go through the data, we see that although growing snacking, so grape, plus cherry imports this is tiny in the market. You know we're talking 6.1 percent of imports. The USDA you are basically talking 5.0 percent in the U.S. market are these snacking tomatoes.

Turning then to the physical characteristics and uses, there is a continuum of sizes and shapes of tomatoes. They go from very small to nice beef steak, large tomatoes.

The Commission typically looks for clear dividing lines. There are not clear dividing lines between the tomatoes. What there are is variety because the retail establishments want to present a variety from small to large.

Thirdly, in terms of uses, they are used in the same manner, right? It's all tomatoes. You use them in salad. We sell through retail grocers and food service as well. They can use the small-sized grape tomatoes, for example.

Fourth, in terms of growing process and facilities, you heard testimony that growers here took grape out of production and put in other types of tomatoes. It's grown in the same soil, using the same processes by the same companies and it's packed in the same packing houses by the same companies. I think Aris would agree that he packs all kinds. He showed you his repackages of snacking tomatoes versus the larger sizes.

In terms of the channels, it's moving through the identical channels and it's reaching the same end users. In terms of producer and consumer perceptions, yes, there are differences. We talked about this. You've got vine ripe. You've got tomatoes on the vine. You've got plums, a variety of different species of tomatoes, but each on of those is not a separate like product. The Commission has never found that and so likewise here there's no basis to carve that out as a separate like product.

COMMISSIONER SCHMIDTLEIN: Okay, alright. Thank you very much. I don't have any further questions.

COMMISSIONER WILLIAMSON: Just a couple of quick things and this can be done post-hearing. I was just wondering if any of the producers are doing R&D or developing types of tomatoes with longer shelf life. And if that's the case, how long does it take for these things to develop each new variety of tomatoes? And as I say, if you want to do it post-hearing that's fine.

MR. DIMARE: I'll touch on it. There are some member companies here. Some of them are not witnesses today that have their own breeding companies within their own organizations that are continually looking at improved varieties of all species -- grape, Roma, round, so and so forth.

We, as a company, rely on the University of Florida, UC Davis, for example, with developing varieties as well as commercial companies to look at improving all types of characteristics from flavor, as you touched on earlier, taste, to shelf life. There were actually specific varieties developed actually Mexico and the U.S. years ago, long shelf life varieties that were developed. In the infancy stages, there were some problems with those varieties. Some of them did not ripen very well, whether they were picked mature green or vine ripe and had some challenges. But like anything else with Research & Development, things advanced, got better, and improvements have been made.

I'd like to think that the varieties we all grow today are state-of-the-art. They continue to improve through Research & Development. I mean that goes for anything for that matter, not just tomatoes, but a lot of other commodities. So again, I think the key is that we all are looking as growers to advance what we're producing to ultimately have a better product from a consumer standpoint, food services standpoint and that covers the whole gamut -- firmness to shelf life to flavor.

MR. IANNEO: Real quick, so we work with our seed suppliers to develop different varieties. Mainly, we focus on flavor profile and yield only because post-harvest handling dictates a lot of shelf life and proper handling can increase your shelf life. Proper handling you can have a TOV in our case on a shelf for quite a few days before any quality defects become an issue, so we focus mainly on, again, flavor profile and yield with our breeding partners.

MR. LEITZ: Same thing Tony said. We do not have any proprietary varieties, but we work with the major seed companies and probably do a hundred trials a year during our season because it's such a short season it's different varieties than they grow in Mexico and Florida. And as we find something that looks good over two or three years, we'll put a two or three-acre trial in before we go to the larger production.

And I would like to speak to one thing a little earlier. The Mexicans are always saying that we're all mature green and we don't have many vine ripes in the U.S. and that's all a marketing ploy. I mean have state-grown vine ripened on my box. Follow the sun. We do something and that's what they -- they're just trying to differentiate yourself, but a tomato is a tomato. Thank you.

MR. SINGH: Throughout our season, we actually run various trials, working with seed distributors that will bring us these varieties that we can test. I'll put in maybe five trials throughout my year, depending on when I'm growing it and 80 different varieties and select them based on consistency, flavor, firmness. We look at the whole gamut, color, everything, so we're definitely always trialing new varieties to find the next best variety out there.

MR. DIMARE: I just want to add one more thing. You're talking about investment and commitment to the industry, the DiMare Company probably five years ago invested a million dollars. We created a breeding chair at the University of Florida. Not for the DiMare Company, for the sake of the Florida tomato industry to hire a tomato breeder specifically for the University of Florida to develop tomato varieties of all type -- round type, Roma, and grape. So, that was our commitment to the industry and I've heard the comments in the media by the Respondents that the industry has just stayed stagnant. They haven't advanced in 20 some odd years. Well, that' absolutely not the case and I think a million dollars is no small amount of money for a company to invest in for the sake of the industry. I think we have all invested in technology for the betterment of what we're producing.

COMMISSIONER WILLIAMSON: Okay, thank you for those answers. Post-hearing, I was wondering, Mr. Leitz and Mr. Pappas, your firms did not submit questionnaires, so you might address why you didn't do that post-hearing. Thank you.

MR. CANNON: I'm sorry, Commissioner, which folks?

COMMISSIONER WILLIAMSON: Mr. Leitz and Pappas & Sons.

MR. LEITZ: Would you like me to respond? Because I didn't get a questionnaire. Previously, I had questionnaires, I think, in '96 and then sometime in the 2000s, but I didn't receive a questionnaire until last

Thursday. I wasn't aware of it. Before I filled them out, but as a small grower, it's on me personally to fill out that monstrous questionnaire. And if you have growers that don't turn them back; especially, if they're small growers it's a pretty intimidating thing to do.

COMMISSIONER WILLIAMSON: Okay.

MR. LEITZ: And yes, I am going to do it. I'm sorry.

COMMISSIONER WILLIAMSON: Okay, thank you. We always try to make our questionnaires more efficient and easier to fill out.

MR. CANNON: Who was the other?

COMMISSIONER WILLIAMSON: Pappas & Sons.

MR. PAPPAS: I have not seen the questionnaire, but I will happily do the questionnaire. I would love to put forward our information for your panel.

COMMISSIONER WILLIAMSON: Okay. Okay, thank you. I'd like to thank all the witnesses, but does staff have any questions for this panel?

MR. ROBINSON: Staff have no questions.

COMMISSIONER WILLIAMSON: Do the Respondents have any questions for this panel?

MR. WILNER: No, we do not.

COMMISSIONER WILLIAMSON: Okay, well, I think with two Commissioners we took three and a half hours, so I think it's time for a lunch break and we will come back at 1:55. I want to remind everybody that this room is not secure, so please take any confidential business proprietary information with you and we'll stand in recess until 1:55.

(Whereupon a lunch recess was taken to reconvene this same day at 1:55 p.m.)

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

MR. BURCH: Would the room please come to order. Everyone please be seated.

COMMISSIONER WILLIAMSON: Good afternoon. It's time to resume so Respondents can go when you're ready. Excuse me, Mr. Secretary, are there any preliminary matters?

MR. BURCH: Mr. Chairman, there are no other preliminary matters. Those in opposition to the continuation of antidumping duty order have been sworn in and are seated and I would like to note they have sixty minutes for their direct testimony. You may begin when you're ready.

MR. WILNER: My name's Tom Wilner. I'd like to make a few very brief comments first before turning it over to our witnesses. I need to say that I think the presentation we heard this morning was largely an attempt to divert the Commission's attention from the real facts.

For example, they put up before you Mr. Lee who seems like a very nice guy and a small grower of vine ripe tomatoes in Michigan. They put another fellow up who seemed like a very nice guy who's a small greenhouse grower in the United States. But these guys are the exception.

Florida, which accounts for the largest share of production, less than 0.1 percent of their production today is in greenhouses or protected agriculture. U.S. as a whole is in low single digits as greenhouse protected agriculture. Florida's vine ripe production is really very tiny. I just want to read you what the Department of Agriculture has said in one, describing their production.

It says "there are two types of round field tomatoes, mature green and vine ripe. Mature green tomatoes are the backbone of the U.S. fresh field tomato industry and the major type of tomato grown in Florida and California with minimal production in Mexico. They are harvested in their early stage while still green and treated with ethylene gas.

Mature green tomatoes are firm, have a long shelf life and slice well. They are also one of the lower cost tomatoes. Mature green tomatoes are the dominant tomato in food service, particularly in fast food. That's really what they produce, a gas green tomato. That's their main product.

What does Mexico produce? They put up for you for comparison a gassed green tomato grown in Mexico. Less than 2 percent, less than 1.5 percent of Mexico's exports are gassed green tomatoes and they are only done at the request of a buyer in the United States.

About 90 percent of Mexico's exports we said today are protected agriculture tomatoes, which is very different from what the Florida producers produce. Let me also say with respect to price, price may matter when you're comparing two of the same types of tomato, when you compare the price of a mature green tomato with another mature green tomato.

But the real question here, how does price comparison and what does it matter when you're comparing the different types of tomatoes that are produced in the two countries? On one side, basically a vine ripe protected agriculture greenhouse tomato with a mature green, gassed green field grown tomato. All the data shows that the prices of those, when you compare those, that the Mexican price is much higher, it's much higher at the retail level, it's much higher at the wholesale level and weighted averages of the Commission's data, which was only collected for a small portion of U.S. Producers shows that as well.

The fact is that these two types of tomatoes are not a commodity product. They are very different products and they are viewed very differently in the marketplace. With that, I'd like to turn to our witnesses, Mr. Crisantes first, please. Thank you.

STATEMENT OF THEOJARY CRISANTES ENCISO

MR. CRISANTES: Good afternoon. My name is Theojary Crisantes. I'm the President of the Board of Wholesome Family Farms, a family owned business that dates back 95 years. We own and operate organic greenhouses both in Arizona and in Mexico.

I came into the family's tomato business in 1966 after graduating in Agronomy from the University of California, Davis. For the past thirty years the story of the Mexican tomato industry has been one of constant innovation and investment in order to bring the best possible product to market.

Unlike the Florida growers who pick the majority of their tomatoes before they begin to ripen and gas them, Mexican growers have always produced primarily a vine ripe tomato. Even with the refrigerated trucks the vine ripe tomatoes grown during the 1980's could be transported only limited distances.

We initially approached two U.S. seed companies to help us solve the problem by developing a vine ripe tomato with longer shelf life. They turned us down and told us that they feared backlash from Florida growers if they tried to help us. As a result, we were forced to turn elsewhere for help.

In the 1980's we worked closely with Israeli scientists at the Volcani Institute to develop a tomato with longer shelf life that could be transported greater distances without spoiling. They enabled us to bring a better tasting, vine ripe tomato to market in much of the U.S., Canada and Mexico.

We also worked with the Weisman Institute in Israel also to adopt other growing practices. We visited and studied the methods used in the Netherlands and the warmer climates of Spain and we adopted what they had done to meet our own climate and conditions in Mexico.

The last 20 years have been a true revolution in our agricultural production. Mexican growers have converted almost completely from growing in the open field to growing in protected environments. The advantages of protected agriculture are enormous.

Tomatoes in the open fields are grown naked, they are exposed to the elements, vulnerable to damage from the weather and pests as well as to animal contamination which can spread sickness and disease. Tomatoes grown in a protected environment avoid much of these problems. They can be grown with few if any pesticides, are free from animal contamination and therefore are much safer from a food safety standpoint.

They are more uniform in quality and appearance. They can be brought to market fresher. Protected agriculture plus new seed varieties have enabled us to offer consumers a wide variety of different shapes, sizes, colors, and even flavor of fresh tomatoes; those that are appealing to the end consumer.

As I said, Mexican growers have converted almost entirely to protected agriculture. In 2003, according to a document published by the Michigan State University, the United States had 330 hectares of greenhouse grown tomatoes, while Mexico had 950 hectares.

According to Mexican Agriculture Department data, that figure increased to 15,196 hectares in Mexico during 2017. Today almost 90 percent of our tomatoes are greenhouse-protected agriculture. The investment to do so has been enormous -- conservatively speaking more than a billion and a half U.S. dollars but the investment has been worth it.

In summary, we carefully crafted a goal to have a better tomato. We then worked on the strategies to be able to carry the goal out and therefore we're harvesting what we sowed. As I mentioned at the outset, our company grows in greenhouses in the U.S. as well as in Mexico. As of right now we are investing in additional greenhouse acreage here in the U.S.

Florida growers could produce the same tomatoes we do but they need to invest and study technologies to do it. They have chosen not to make those investments. Thank you very much for your attention.

MR. WILNER: Mr. Agostini.

STATEMENT OF MICHAEL J. AGOSTINI

MR. AGOSTINI: Good afternoon, Commissioners. My name is Michael Agostini and I'm what they call an old "cabbage head" in the produce business. Life-long produce guy for the last 40-plus years. In the 1990s, I was a vegetable buyer for Food Lion, which operated approximately 1,400 grocery stores at the time, and I eventually served as Director of Produce and Floral for that operation. I subsequently joined Walmart in 2002 as one of four senior produce buyers. In 2004, I was promoted to Director and in 2009 as Senior Director covering all fresh vegetable procurement and merchandising for Walmart. During my time at Walmart the grocery store operations expanded from approximately 4- to 500 stores up to almost 5,000 stores offering food.

My eight years in charge of vegetable purchasing at Walmart saw a real shift in the retail market away from the mature green tomatoes, which are the predominant product of U.S. field tomato growers, over to vine-ripe and protected agriculture tomatoes. Those products have now largely replaced the mature greens in retail markets.

Let me give you some background. In some respects, it might be said that we, the retailers, pushed the mature greens on the consumers for our own benefits -- mature greens stayed firm, they were easy to ship, they lasted forever and they looked good on the shelf. But they were basically tasteless. Consumers didn't like them and they complained, and we became a running joke on late-night televisions shows.

The introduction of vine-ripe and protected-agriculture tomatoes was really a revelation to us at retail. They made us realize that customers were willing to pay more for a tomato with better quality and better taste. And these better quality products actually increased overall demand for fresh tomatoes at retail level. Although they were more expensive, consumers bought more of them.

The market has shown that the consumers are willing to pay more for the vine-ripe and protected-agriculture tomatoes because they perceive them to be better. At Walmart we paid more for them as well, even though there was a bit more risk for spoilage in the process. In fact, in my eight years, I cannot recall an instance where the price offered for the Mexican product contract was below that offered us for domestic mature green tomatoes.

In many respects, I think that what has happened in the tomato market is an indication of a growing and continuing trend in the produce market overall. Consumers are willing to pay more for what they believe and perceive to be better and more flavorful produce, and this has been the case in particular for the younger generations, such as Generation X and the millennials.

These generations continue to make up a growing share of the retail consumers, which will likely continue the increase the demand for higher-quality produce. Millennials, much more so than earlier generations, value eating higher-quality protected-agriculture tomatoes. Generation X has also started to spend more on higher quality produce in recent years. Based on my experience as a retail produce buyer and merchandiser, the customers will continue to be willing to pay a premium for what they perceive to be a higher-quality product.

You must understand that I was a huge supporter of Florida and U.S.-grown tomatoes up to the day I left Walmart. We continued to buy millions of pounds a year of these items. But I must tell you, in the face of a clear trend away from lower quality, less-flavorful tomatoes, that Florida and other U.S. field growers still produce primarily the same product they did before, mature green tomatoes. This is not the product retail consumers prefer these days; they want higher-quality, more flavorful tomatoes. Consumers believe the vine-ripe and protected-agriculture tomatoes provide that. Thank you for your time.

MR. WILNER: Ms. Arboisiere.

STATEMENT OF FELICE ARBOISIERE

MS. ARBOISIERE: Hello. Can you hear me? Good afternoon, Commissioners. My name is Felice Arboisiere. I work for Yum Brands. Yum Brands is the parent company to Taco Bell, Pizza Hut and Kentucky Fried Chicken. I am the Corporate Microbiologist, as well as the Commodity Manager for all produce. I feel that this is a contentious conversation on trade. I am not here to discuss that. I am here to tell a story about food safety.

We spent a lot of time and energy in Yum Brands working on leafy greens. That's where our focus was predominantly on. I am sure many of you have seen the news on various outbreaks that have happened throughout the years. And so my job is to ensure that our brand is protected, as well as our 45 million consumers that we feed a week.

After we did a lot of work on leafy greens, we moved over to tomatoes. And I was tasked with writing tomato initiatives for our brands. And the story I wanna tell is what it took to do that. I visited every single region where we purchased tomatoes at that time. This project started approximately two years ago. I visited California, the Carolinas, Florida, Sinaloa, Aguas Calientes, Jalisco and really, boots on the ground, myself with a lot of our scientific advisory committees.

And what we were looking for were where were gaps in the industry from a food safety standpoint. And could we close those gaps to make a better food safety operation for our brand. Taco Bell operates domestically over 7,500 restaurants. Yum worldwide is over 50,000 restaurants. So food safety is the Number One concern for us.

Price is probably third or fourth on our list. That is not something that I concern myself with. I concern myself more with the food safety of the product. So after visiting all the different regions, my job is to do a risk assessment. I did a risk assessment on every region that I visited. And it was very apparent that Mexico had made a lot of investments in their infrastructure.

The protected-agricultural was huge for us. The packing houses where the product is getting packed, are enclosed. And what that helps with is with animal intrusion. If you've seen anything about the difference outbreaks that have occurred, it's often talked about that when animals come into play, you could potentially have E. coli outbreaks. You could potentially have salmonella outbreaks. Because these are things that are inherent in some of these animals.

And so my job is to make sure that we minimize that risk any way that we can. Also, what I saw in Mexico was, they do not grow in soil. They grow in sterile coconut husks from Holland, which I found to be extremely interesting. Soil does have a lot of pathogens that could potentially get into the product.

And so, after conducting all these risk assessments, what it pointed us to was, Mexico did produce a safer product for our brand. Our specification calls for Romas. We consider Roma a premium item. And so we only buy Roma tomatoes. We do buy some Romas from Florida. We have partnered with one of the larger growers in Florida.

And the reason we have partnered is because we've met and we've had a heart-to-heart meeting about where we felt there were some gaps in food safety. They really came to the table and made a lot of improvements. So we partner with them. And what that ended up to be was, we chose six Mexican growers and one Florida grower. And what that really helps with is traceability as well.

I heard earlier testimony around which was a little bit concerning for me, around when our tomatoes leave and they go to a distribution center, we do not know where they go after that. That is very concerning to us because traceability is key in food safety, especially during an investigation. We need to know where the product came from. And so the way we wrote our tomato initiatives is to where we know where every single tomato is coming from, what processors they are going to and what restaurants they are going to.

And so really, that's what I'm here to talk about is with respect to food safety, we fear that if we should not be able to use our initiative programs, this could put our consumers at risk because we spend a lot of time and energy ensuring that consumers are eating food-safe product. We are on a continuous mindset always at Yum Brands and so we're always looking for companies that also have that continuous mindset, that are innovative, innovative on technology and really helping to move that needle on food safety. Thank you very much for your time. And I welcome any questions that you may have for me.

MR. WILNER: Thank you. Mr. Chamberlain.

STATEMENT OF JAIME CHAMBERLAIN

MR. CHAMBERLAIN: Good afternoon, Commissioners. My name is Jaime Chamberlain. My family started our business as distributors and marketers of Mexican Fruits and Vegetables almost 50 years ago in Nogales, Arizona.

We represent 13 different farmers who farm tomatoes, squash, bell peppers, cucumbers and beans. We sell these products throughout North America, but primarily to U.S. retailers, wholesalers and foodservice companies.

American companies like mine source our tomato products from Mexico because they offer what American consumers demand. The taste, the quality, the varieties and the reliability of supply of tomatoes from Mexico are characteristics which Florida tomatoes do not have. Our successes are directly related to our Mexican farmers' willingness to invest in the breeding of new seed varieties for specific areas of the country and specific climates for taste. They have also invested in sophisticated protected environment structures for better reliability in supply as well as to assure consistency in quality demanded by the market. As a result of these agricultural improvements, U.S. consumption of tomatoes has increased significantly. And as Americans, we now enjoy the resurgence of American cuisine partially because our grower-partners recognized and appreciated our customers' needs.

The FTE would have you believe that Mexican tomatoes are in demand by American consumers because they are cheap and unfairly traded. Nothing could be further from the truth.

A USDA report issued last week shows that Mexican tomatoes are in full compliance with the Suspension Agreement reference prices and most often selling much higher than the reference price.

This first chart is for round tomatoes, which is the Florida Tomato Exchange's largest product line.

The blue line in the first chart represents the sale to the first unaffiliated customer in the United States. As you can see, the price is rarely close to the reference price and often double or triple the reference price.

The next chart is for specialty tomatoes. These are primarily snacking tomatoes like cherries, grapes, and cocktails.

Again, this blue line represents the price for the sale to the first unaffiliated customer in the United States. This chart shows the price is even less close to the reference price and consistently double or triple the reference price.

This clearly demonstrates that the pricing below reference price that FTE alleges is simply not happening. Moreover, FTE's other allegations of holding inventories and making post-sale price adjustments that are prohibited by the agreement are having no impact on prices in the market. This is likely because they are not happening either. As a practical matter, the adjustments to price permitted by the agreement -- which are the buyer's right under several different U.S. laws -- happen in less than 1% of all transactions. Our family business has grown largely because of the quality of our products and their reputation in the marketplace.

This brings me to my final point. The largest FTE members representing almost all the volume reported to the Commission in this review are both domestic producers and domestic importers and distributors of Mexican produce like my own company. For over a year they have been trying to force the Commerce Department into changes to this Agreement. They are even asking for such changes as applying the Agreement to downstream sales with the ultimate goal of cornering the market for themselves.

While on one hand, FTE forced the Commission to undertake this Sunset Review, at the same time these Florida companies have increased their own production in Mexico and their purchases of Mexican tomatoes. They have also begun to systematically acquire and expand distribution networks in the United States. Their goal is to prevent American importers like myself from distributing Mexican tomatoes as we have for over a century to our valued North American customers.

In my opinion, the FTE is using this process here at the ITC to intimidate the Mexican producers into accepting these changes.

As you can see from the evidence before you, there is no need for this suspended investigation to continue. As FTE itself argues -- any injury FTE members may have been experiencing has nothing to do with the imports of high-quality Mexican tomatoes covered by this suspension investigation.

These intimidation tactics will not deter our Mexican farmers, nor American importers from adhering to the commitments we have made to our faithful American consumers.

Thank you for your time.

MR. WILNER: Mr. Ambelang.

STATEMENT OF BRYANT AMBELANG

MR. AMBELANG: Good afternoon. I'm Bryant Ambelang. I'm the President and CEO of NatureSweet tomatoes. I've been in the produce industry for about 23 years. We started with five acres of greenhouses back in 1996 and I'll walk you through where we're at today. I'd really like to suggest or ask you to think the thought that this is the core issues what's up on the slide right now to consider as we talk about this, which is, over the past 25 years, the U.S. tomato market has shifted from mature green open-field production to high-quality greenhouse production, driven by the U.S. consumer demand for high-flavor tomatoes. And I could add on there, high-quality tomatoes and food safety tomatoes. And sustainable tomatoes.

I think the biggest surprise to me is I listened this morning to the testimony of the other witnesses, was the absence of a conversation around the consumer. In any other business environment, can you imagine a lack of research on what drives consumer behavior? There were multiple questions asked about flavor preferences. There were multiple questions asked about purchase decision matrices. None of those questions could be answered. And what I'd like to do with you today is to start to answer some of those questions. Because actually the U.S. consumer has a very strong opinion about these things.

Let me introduce you, first of all, to the company. So NatureSweet is the ground-breaking leader of the fresh produce industry driven through unleashing the power of people. Hopefully you've seen our brands inside the grocery stores. We distribute in all 50 states. We grow, package and distribute in all 50 states, Mexico and Canada. We have 6,000 associates, or employees, who are remarkable. And they are 52 weeks out of the year, 500 of those employees are in the United States.

Let me show you where our growing locations are. If you can see, the vast majority of our growing locations, or actually all of them are far in the interior of Mexico to take advantage of some fantastic and weather conditions inside of our greenhouses. And then we also have a 250-acre complex in Willcox, Arizona that we also proudly grow those products in.

So let me introduce you to Anna. Anna actually is the person we've named as the U.S. consumer inside of our company. She is the, what I would call, the best example of who goes out and buys groceries for her family. Anna has a very strong opinion about tomatoes. She wants them to taste great. She also has a very strong opinion about a lot of things that have gone on in the grocery industry. And if you look at what she wants in tomatoes, she wants exactly the same thing that she wants in the rest of the grocery industry.

I'm just gonna share this with you, because this information has been available from a consumer research standpoint for over 25 years. So what's the first thing that Anna wants? Well, she wants something that's healthy. She wants to know that she can give her family something to purchase and that her family's gonna eat that and be safe.

Secondly, she wants high-quality. So Anna wants to know that the product that she's purchasing is gonna last. It's not gonna shrink inside of her home, and that, again, her whole family's gonna enjoy that. She wants it to be snackable. Now, this is an interesting change in consumer dynamics, particularly in the last 25 years because of the nature of people always being busy and on-the-go.

She wants it to be portable, meaning that she can take that food and be able to move, whether it's heading to her office or whether it's heading to an activity with her family outdoors. She wants it to be great-tasting.

It has been remarkable to me to listen to the testimony this morning, talking about that there's no differentiation between the products that are in the marketplace. Because I'm gonna show you a chart in just a moment that demonstrates that that's otherwise.

And finally, she wants to know that the companies that she's purchasing for are transparent and purpose-driven. We're seeing this more and more where people want to, as they say, "meet the maker". They wanna know who is it that is feeding their family and who's growing and manufacturing their foods. Now, I wanna make the point again. This is all available data. With a little bit of research, you can pull every single piece of this information off the internet and find out what the consumer trends are, and then build a product that will meet the consumers' demand in these six areas.

Now, that's not the only thing you can pull off of the internet. You can pull off how things are actually picked and packed and shipped. You can do that for our company. You can also do that for how it's done in Florida. So what I wanna share with you today is how that's done in the average growing operation, and this happens to be in Florida. Now, I think, and somebody start that, and then I'll just start to describe.

Well, that's unfortunate. So those green crates are tomatoes. This is actually a re-packing -- not a re-packing -- this is a growing operation in Florida that is then taken to a packing operation next to it. And what I would walk you through is a significant difference in how that happens versus how it happens in a greenhouse-grown facility. I can get it to you later on, and you guys can see the differences. Because I thought it was important to allow you to be able to see what goes on inside of a field-grown product and what goes on inside of a greenhouse product.

Something you did hear this morning is that, "Well, there's no difference between whether or not a product is harvested at ripe, or whether or not a product is harvested at 1, 2, 3, 4, 5 or 6." There was a color chart, if you recall. That's just not true.

There is a bricks difference for every day of harvest. Once you get a product to breaking, particularly on a snacking tomato, you will see a one-degree improvement in bricks in that product. What is bricks? It is a measurement of solid solubles inside of that product. Or what you would also call, as you eat it, a sweet taste. So the differentiation between products and how they're handled and how they're harvested, it is absolutely critical for the quality of that fruit to be harvested at color.

Since we're unable to see the rest of that video, I won't share with you how it gets into those very unique packages. Because that unique package is how the consumer can tell the difference in the product. Now, everyone of the people that are here today who are growers that are here representing the Mexican growers, have different marketing tools to get across to the consumer how they can have a better, higher-value, better-tasting product. It really belittles the American consumer that she can't tell whether or not the product is gonna have higher quality or not. That's is not the experience we've had.

So here is just a chart that will demonstrate -- I think that question before is, what's the trend within consumer buying habits? This is IRI, this is retail shelves. This is how much product moves through the retail grocery shelves today.

The top line demonstrates where the large tomato category is growing. And if you look over the past five years, it's actually declining by 10%. Now that's driven by the mature green market. Because the consumer has voted. Again, I wanna be really clear. This is consumer takeaway at the grocery store. This is not sales into the grocery stores or sales into the distributors. It's actual takeaway at the grocery store.

If you look at the exact same chart for small tomatoes, it's gonna demonstrate that over the last five years, that category has grown over 30%, in fact, almost 33%. And when I heard this morning that people actually pulling out of small tomatoes, that was just shocking to me and somewhat pleasing. Because this is a fantastic market to be inside of.

Moving forward, in all of this last 25 years, all of this consumer information has been available. The U.S. growers have had ample opportunity to respond to what the consumer needs are. In the last five years, NatureSweet has invested in 250 acres of production in the State of Arizona. Today, in Florida, we have 81 acres of greenhouses.

Now, what you heard before was, "Yeah, but I can't get the price in the market, so I can't go out and build this kind of infrastructure." And what I wanna share with you today in front of everyone, is our average price per pound, this is NatureSweet's audited financials' average price-per-pound for the last 26 months.

And what you're gonna see is, first of all, it's a very straight line, that we're selling that product at its height, at $2.67 per pounds in 2017 and the lowest it ever got was $2.47 a pound. In 2018, which we all heard was a really rough year, our high point was $2.64 and the low point was $2.32. So consistently we're able to sell at these kind of prices, putting that kind of value inside the package. The bottom line is the suspension price agreement.

So at any particular time, we are five, six, seven times above the market. I think we heard this morning that right now you can only sell grape tomatoes or snacking tomatoes at about $8 a case. This is $23.75 a case. If you put that kind of value inside that kind of marketing element, the consumer will reward you for it.

So in conclusion, I do ask that, or I would suggest to you that these are the benefits of ending the investigation. First of all, that the American consumer would get higher-quality products. Secondly, that ending the investigation will actually promote the kind of innovation that you see that's sitting in front of you in our packages and in the other growers' dedication to their products as well. And finally, it would promote investment in the U.S., not dissimilar to what Wholesome Foods has done and what NatureSweet brands have done. Thank you very much.

MR. WILNER: Dr. Singer.

STATEMENT OF DR. HAL SINGER

DR. SINGER: Good afternoon. My name is Hal Singer. I am a manager partner at Econ One and an adjutant professor at Georgetown's McDonough School of Business where I teach strategic pricing to MBA candidates. I'll make a brief, affirmative statement now, after which I'll be happy to answer any questions the Commission may have.

I reached three conclusions in my report. First, Mexican pricing is having no impact on Florida growers. While FTE claims loses, including lost sales, lost market share, lost jobs, and financial loses, there is no indication that those loses are attributable to Mexican pricing.

Per my econometric model, it appears that Florida output decreased over the past 20 years, not because of Mexican pricing, but because of a shift in taste among U.S. consumers that began well before the 2013 agreement. In particular, tastes have shifted to vine ripened greenhouse tomatoes among an important channel of U.S. consumers at retail grocery stores. Rising Mexican imports and falling domestic output likely reflect this change in taste and not any unfair competition by Mexican growers.

Second, the bulk of the Mexican tomatoes are not substitutable for the bulk of Florida tomatoes. While it is true that there is some overlap in types, statistics from the TIC questionnaire responses as well as USDA show that Mexican produce is skewed toward protected environment and U.S. produce is skewed toward open-field gas green tomatoes. When assessing economic substitutability, as an economist, I focus on the cross-price elasticity of demand between these two tomato types and the evidence suggests a very low cross-price elasticity between protected environment and gas-green tomatoes.

This is also evident from ITC's overselling/underselling analysis. The pricing analysis was not weighted by quantity. When weighted properly, the Commission's overselling/underselling analysis shows overwhelming overselling and a pricing premium for Mexican tomatoes, consistent with higher quality and a lack of substitution.

My third major finding is that the Commission can terminate the suspended investigation without having any material affect on Florida growers. Using the same econometric model I used to isolate the impact of Mexican pricing on Florida output, I simulate a world in which the price floor is removed. Under two distinct scenarios, I find that the reduction in Florida output would be de minimis.

I've had a chance to review FTE's brief and there are several areas of agreement, including FTE's opinions that (1) Mexico is the largest exporter of fresh tomatoes in the world and the Mexican tomato industry is formidable, at page 23.

(2) First sales reported to the Commission were largely covered by the 2013 suspension agreement and did not fall below the reference price, at page 29. I agree with that.

(3) The demand for tomatoes in the United States has shifted to reflect "expanded diversity of U.S. quinine as well as increased interest in U.S. diets." That's at page 12.

And (4) U.S. growers experienced an increase in labor, fertilizer, fuel, and seed costs since 2012. That's at page 38 of their brief. Higher incremental operating costs and a shift in U.S. taste towards higher quality tomatoes provide independent explanations separate from Mexican pricing for why Florida growers have experienced a contraction in output since 2012.

Mexican growers general success abroad implies that U.S. taste for Mexican tomatoes are reflective of a general taste for high-quality produce and FTE's findings that first sales did not fall below the reference price is consistent with my analysis of the shipping point data at Table 4-A of my report. Notably, FTE acknowledges, that any purported injury to Florida growers comes from downstream sales that are not covered by the agreement and would not be covered by an anti-dumping Order.

Now, there are important areas of disagreement, however. FTE asserts that Mexican imports surged after the 2013 agreement, at page 3. It is clear from FTE's Figure 1 that the trends of rising Mexican imports and falling Florida shipments started around 2000. Indeed, a straight line that connects Mexican imports in 2000 and 2013 would almost perfectly predict the level of Mexican imports in 2017. The 2013 agreement increased the reference price by 43 t 148 percent, depending on time, the highest increase compared to all prior agreement.

The higher reference price may have lured more Mexican growers into the U.S. market. Again, an alternative explanation of rising Mexican imports to FTE's suggestion that the 2013 agreement unleashed a new round of dumping. Based on a survey of purchasers, FTE asserts that U.S. and Mexican growers compete "primarily on price," at 17; that purchasers noted a sensitivity to price for the same tomato type does not imply that price is the only dimension of competition. If it were, then one would not expect to see a significant price premium commanded by Mexican tomatoes in particular and greenhouse tomatoes generally. Those tomato types have captured market share despite their significantly higher prices.

Also, FTE asserts that resellers have incentives to hold produce until there is a "condition defect" with the aim of reducing the price below reference price. They say that at page 11. FTE provides no explanation, however, why a distributor, as an economic matter, would buy at the referenced price and then sell below the reference price. If resellers were acting strategically by holding tomatoes in inventory, one would see that in the pricing data, in particular, the terminal market data.

FTE later contradicts itself by saying resellers rather than holding the product "have the incentive and imperative to sell the product quickly." That's at page 18.

Finally, based on a survey, FTE asserts that the revocation of the 2013 agreement would cause material injury, at pages 4 through 6. That some Respondents answered "no position" and later changed their minds tells us little about the likely impact. The lack of substitution, the Mexican price premium, and the lack of explanatory power of Mexican pricing and regression imply that the revocation will have no material effect. I look forward to answering the Commission's questions and I'm happy to provide, separately, any backup data the Commission's interested in reviewing. Thanks.

MR. WILNER: Thank you. We would like to reserve the remainder of our time.

COMMISSIONER WILLIAMSON: Are you finished?

MR. WILNER: Yes, sir.

COMMISSIONER WILLIAMSON: Okay, thank you. I want to thank all the witnesses for coming today to present their testimony. This afternoon we'll begin our questioning with Commissioner Schmidtlein.

COMMISSIONER SCHMIDTLEIN: Okay, thank you very much. I'd like to thank you all for being here as well.

Alright, let me start with just sort of a general question. In listening to all of the testimony just now, it struck me that you were all talking about the Florida growers and the Florida producers and so I want to ask are you intentionally limiting your testimony to Florida growers or have you taken into account all U.S. growers?

MR. WILNER: Madam Commissioner, let me answer it from a legal standpoint.

COMMISSIONER SCHMIDTLEIN: No, no, no, I'd like to know from the witnesses.

MR. WILNER: And then they can answer.

The FTE is the one that brought the case and the one supporting it and Florida is also the largest U.S. producer and the one that competes most directly with Mexico, particularly, in the winter months, so, naturally, we concentrated on that, but it wasn't to exclude others.

As I said earlier, in terms of greenhouse production in the United States, Florida's greenhouse production is less 1 percent of their production. Overall, in the country, it's about -- it's in the questionnaire response, so I can't say it, but single digits. So, we did look, generally, at both. The witnesses can answer and I'm sure Mr. Agostini can answer too.

MR. AGOSTINI: Just to clarify, although I called out Florida a number of times in my testimony, I did also have some in there about other U.S. tomato field growers. And in my experience -- I'm a retailer. I'm not a grower, but my experience as a retailer; I had the benefit of sitting on top of an organization that had tens of millions of customers a week voting yea or nay with their dollars on what they would like to purchase and what they wouldn't.

That retailer also operated coast-to-coast from East to West and North to South, so we had a very good spectrum across the USA about what was going on, what customers liked and what they didn't. And across the scope of that, I saw declining demand in field-grown tomatoes, as a whole, from any source and increasing demand in protect-agriculture grown tomatoes.

COMMISSIONER SCHMIDTLEIN: Thank you for that.

Mr. Agostini, are you here today as a consultant for some of the Respondents?

MR. AGOSTINI: Yes. I retired from Wal-Mart a little over a year and a half ago.

COMMISSIONER SCHMIDTLEIN: So, are you being paid for your time today?

MR. AGOSTINI: My expenses and time are being covered. Yes.

COMMISSIONER SCHMIDTLEIN: Okay, by which Respondent or is it by one of the law firms?

MR. AGOSTINI: By one of the law firms.

COMMISSIONER SCHMIDTLEIN: Okay, alright. Thank you very much.

And Mr. Singer, was your testimony limited to the Florida producers because you specifically refer to them as well and not to U.S. producers or U.S. shipments.

DR. SINGER: My answer is a bit mixed. There are several analyses in my report in which I make use of ITC data, for example, that speaks to all domestic sales. I could point you to, for example, Figure 1 on page 28 of my report where I adjust the overselling/underselling analysis by volumes to show that there is, in fact, a pricing premium. That's not Florida-specific. That's for the entire country.

I also give statistics as to -- on paragraph 28, for example, as to what share of U.S. products are grown in greenhouses. That's again from the ITC and that speaks to all U.S. sales.

COMMISSIONER SCHMIDTLEIN: Okay.

DR. SINGER: It is true, however, that my regression analysis which tries to see if there's any connection at all between how aggressive the Mexicans are getting with respect to the reference price on the one hand and Florida sales on the output, is Florida-specific. That is true. And my inference is that there is no connection there and I would be surprised if there were a connection if I were to aim this apparatus at a different state's output.

COMMISSIONER SCHMIDTLEIN: Okay, I apologize. I don't have your full report sitting right here in front of me and so maybe you can -- when you answer this question, my guess is you'll refer to it, but when I heard you talk about the price premium for Mexican greenhouse product, right, that's what you were referring to?

DR. SINGER: Sure. When I speak of the Mexican price premium, I'm talking about a weighted average across all the products that are coming in from Mexico. And here's what I -- is it okay if I --

COMMISSIONER SCHMIDTLEIN: You're here today as an expert, right, and so you're on the APO? You were able to see the product pricing data.

DR. SINGER: Correct.

COMMISSIONER SCHMIDTLEIN: Okay, alright.

DR. SINGER: And I don't want to create the impression that within a category necessarily Mexicans command a price premium. What I found is that when you weight all of the responses from the U.S. importers by the quantities that were imported into the U.S. and you compare it to the domestic sales that are in the same survey, we you weigh it across all of them you find that Mexican command a significant pricing premium.

The reason why they are, Commissioner, is because the Mexican products are skewed towards the higher-priced product. It's no mystery.

COMMISSIONER SCHMIDTLEIN: So, since you were able to see the pricing products, why do we see underselling in the greenhouse products? There appears to bet three open field products, three greenhouse products. It's overwhelming underselling by the Mexicans in the greenhouse products, which is where the argument is that this is the premium product. This is the better tasting product, right? So, do you have a theory as to what we're seeing here in the pricing data? And if you don't, I'm sure Mr. Nolan or Mr. Wilner can chime in.

DR. SINGER: I haven't developed a theory yet as to why we see that. I mean it could be the sample that we're looking at, but again, my analysis is looking across everything. So, sorry, maybe someone else has a better answer.

MR. NOLAN: I think there is a coverage issue. If you look at the volumes for, for example, the open-field product, they're much larger. Your sample size is huge, but if you do the comparisons on a bunch of the greenhouse products the U.S. sample sizes are much smaller and it's going to be skewed because it depends on who reported.

If you had you know 1 percent of the industry reporting and they happened to be the high-end specialty you know very small greenhouse, then you're going to have a much higher price on your hands than a more aggregate analysis. And think part of what we're seeing in that category is the coverage is so much more limited that it's skewing the data somewhat. You're getting a much better picture on the open-field type just because of the size of the sample that you're looking at, which is anomalous to me. I was actually quite surprised when I saw that pricing series.

COMMISSIONER SCHMIDTLEIN: Okay. I mean I guess we -- you know according to our statistics -- and of course this includes the open-field, we were covering about a third of U.S. shipments of subject imports, which is pretty high. I mean that's not particularly low for a Commission.

MR. NOLAN: No, but another anomaly you see -- so, for example, with Product 6 without getting into the specifics. We did an analysis of NutraSweet's percentage of the market in that category. I think that's the grape product. And without getting into specifics, Nature Sweet is the dominate player in that market and yet it shows underselling and yet you just saw the pricing.

COMMISSIONER SCHMIDTLEIN: But those are retail prices. Those retail prices of Nature Sweet.

MR. AMBERLANG: No.

COMMISSIONER SCHMIDTLEIN: No?

MR. AMBERLANG: No, that is our average price per pound that we receive from the customer, not the consumer, from the grocery store that we sell into. That was not the retail price.

COMMISSIONER SCHMIDTLEIN: Okay. But still, that's further down the distribution line. That is not the --

MR. AMBERLANG: Well, we sell direct.

COMMISSIONER SCHMIDTLEIN: That's right. You're an importer.

MR. AMBERLANG: Yeah.

COMMISSIONER SCHMIDTLEIN: Right, you do both. Okay, right. Okay.

MR. AMBERLANG: If you actually went to Giant, which I went last night, those cherubs that you're looking at go for 3.99 for a 10-ounce package.

COMMISSIONER SCHMIDTLEIN: Okay, so those prices were your prices to -- and you sell direct to all channels?

MR. AMBERLANG: The majority of our sales are to retail grocery and club stores. We do some food service business, but not a lot.

COMMISSIONER SCHMIDTLEIN: And do you sell to distributors?

MR. AMBERLANG: No, we sell -- there's some percentage where we go through a distributor, but the relationship -- and it's less than 5 percent. Everything moves through a direct relationship that we have with our customers.

COMMISSIONER SCHMIDTLEIN: Okay, okay. Let me ask you one other question. I think it was your testimony. I believe. I'm sorry if I'm not remembering correctly, but whole idea of this vine ripened tomato that has an extended shelf life that was developed with the Israelis and the Netherlands, ok maybe I've got the wrong witness. Is that a genetically modified tomato then? Is that what we're talking about?

MR. CRISANTES: No Commissioner, not at all.

COMMISSIONER SCHMIDTLEIN: No?

MR. CRISANTES: This is a natural reocurring mutant that happens in nature. A professor from Purdue University, I think, noticed this thing first and this is where we got the idea that we should work. This is a non-GMO, not at all, not at all. It's a nature occurring mutant.

COMMISSIONER SCHMIDTLEIN: Okay.

MR. CRISANTES: Thank you.

COMMISSIONER SCHMIDTLEIN: But this is way in Mexico you don't need to do the ethylene gas.

MR. CRISANTES: We can harvest a tomato at color stages 2, 3, 4, depending on what distance that tomato is going to travel, but we tried to harvest it further down the scale because we know that further down the scale, like Mr. Amberlang said, every day it's one degree of higher sugar contents than higher solids every day it's on the vine.

COMMISSIONER SCHMIDTLEIN: Right. And so if you're harvesting earlier on the scale are you then using ethylene gas?

MR. CRISANTES: No, not at all.

COMMISSIONER SCHMIDTLEIN: No?

MR. CRISANTES: Not at all.

COMMISSIONER SCHMIDTLEIN: Okay, my time has expired. Thank you.

COMMISSIONER WILLIAMSON: Thank you. I do want to express my appreciation to the witnesses again for coming.

Continuing on that last line, so if vine ripen which you might harvest at a 2, 3, 4, depending on how long it's going to take to get to market; is that the case?

MR. CRISANTES: Of course, yes. For example, we might harvest a number 5 out of our Arizona location or -- locations which are pretty close to the market and we're going to deliver, let's say, in Los Angeles, you can do a color number 5 perfectly well because it'll just be an overnight ride into Los Angeles. Two days that tomato will be consumed.

But supposing you are going to go to Chicago, which would take four or five days, then you probably ship a number 4 tomato, okay, because you have more of a delay during the transportation. But you're trying to give the customer as much color as possible because the idea that the consumer has is of a full, ripe, red tomato. Anybody can think in their mind's view what an appealing tomato looks like. It looks red and then that's what we try to deliver to our customers and that's we went into this seeding program. You know seed developing program in the 1980s because we knew that we had to have a red tomato on our customer shelves, but that it had to be one that could withstand four or five days of travel.

COMMISSIONER WILLIAMSON: So, how is that different from what the growers of tomatoes in the United States are doing?

MR. CRISANTES: The who?

COMMISSIONER WILLIAMSON: The growers in the United States -- producers in the United States.

MR. CRISANTES: There are some greenhouse growers here in the U.S. too, of course, and we're doing basically the same thing in Mexico or here in the States. The thing is that Florida does complaining their market share decline, but --

COMMISSIONER WILLIAMSON: But Florida isn't the only producer of a minority of the tomatoes produced in the U.S., I believe.

MR. CRISANTES: But they produce a different tomato that's not appreciated right now by consumers.

COMMISSIONER WILLIAMSON: But we are looking at the industry as a whole. Is there injury to the industry as a whole that's why keep harping on why do you folks just talk about Florida. I'm sorry. Go ahead.

MR. AMBERLANG: So, there were a couple of things said this morning that I'd like to speak toward.

Number one, there are literally thousands of different seed varieties out there. So, knowing what kind of seeds you have and what the capabilities of that seed variety are and what the potential of the sweetness of the product, the potential of the shelf life of the product, the firmness of the product those are all within the genetics of the seed. That represents somewhere between 35/40 percent of what that product's going to end up being.

The next part of that is what is your growers skill set. How good are the people who are actually working on these products? These are amazing human beings who really know how to take care of these plants. And the next part is what's the technology of the greenhouses you have invested in? So, for the folks that are growing these products in open fields, regardless in the United States, I would suggest there's significant disadvantage versus our products because of those three factors, but there's some great growers that testified this morning and they grow a great product. Now, you have to ask them why they're not getting the price in the market because I'm getting that kind of a price in the market consistently.

But it would probably have something to do with the marketing and sales management on the other side of that, of going directly into the retailer and presenting the kind of product that you can do all year round and supporting that with the sort of advertising, et cetera, that can move those products off of their shelves.

MR. WILNER: Commissioner Williamson, may I just make a clarification to you. As the USDA points out, talking about it, the two major areas of production in the United States are Florida and California, with Florida being the largest. I believe together they account for more than 70 percent of U.S. tomato production. And the USDA has said, mature green tomatoes is the backbone of U.S. fresh field tomatoes and are the major type of tomato growing in both Florida and California. So, when we talk about mature greens that's the major U.S. -- the gas green is the major product of both major production areas, just to clarify.

MR. AGOSTINI: May I add to that a little bit?

COMMISSIONER WILLIAMSON: Yes, go ahead.

MR. AGOSTINI: I can try and clarify this a little bit. From a retail standpoint, there's a step up in tomato quality. We call it a price value ladder. What can you offer the customer for what they have to pay for it?

And the gas green or the mature green is at the bottom. It's a cheaper tomato. It's more resilient so there's less waste so you get in at a good cost you can sell it cheap and there's a role for that at retail. There still is a role for low-price/low-value. There's customers that's going to respond to that.

Fine ripe is the next step up, which is better than a mature green, little bit better flavor and you get a little bit more money for that in exchange from the customer. Hothouse goes to the next step, then it takes it to more ripeness, more flavor, more cost, but also greater retail. So, what I've seen in the last 10/15 years as a retailer is a consumer demand on the mature green the customer that's looking for price before quality is shrinking, has shrunk, and is continuing to shrink, so that market's kind of going down and I expect it to continue to do that.

The demand from the consumer that's now putting quality before price has increased during the same time and that's been fueled largely by expansion of hothouse growing and new varieties for the hothouse side of the business. So, everything as a retailer you try and fit into that price value ladder about what do you get for what the price is and it's the roles within there that I've seen changing over the last few years that are probably in large impacting the field growers of both of those items as more and more goes to hothouse.

COMMISSIONER WILLIAMSON: I guess the scope doesn't really define greenhouse. The Petitioners were making the point that there's a wide variety of types of growing conditions that could take place that would qualify as that. So, I was wondering if you all would like to discuss that in terms of what is prevalent in Mexico and the product that's being sold here.

MR. AGOSTINI: I'm not a grower.

MR. CRISANTES: Was your question what is the prevalent --

COMMISSIONER WILLIAMSON: I mean greenhouse is kind of an undefined term. It can be something that's shaded. I guess it could be something that has glass over it or something that has plastic over it. You know there's just a wide variety of situations.

MR. CRISANTES: As I mentioned, the Mexican Department of Agriculture figures for 2017 were for 15,196 of protected agriculture. Of that, about 50 percent was greenhouses, okay, and 50 percent were shade houses or tunnels.

COMMISSIONER WILLIAMSON: Okay.

MR. CRISTANES: Okay.

COMMISSIONER WILLIAMSON: And what percentage is open field?

MR CRISTANES: Very little, 10 percent.

COMMISSIONER WILLIAMSON: Okay, thank you.

MR. WILNER: Commissioner, the USDA report has a great -- or one of them -- and I will need to give the site later. It's in our pre-hearing brief, but it has a great description which was revelatory to me about what protected agriculture is. It's on page 6 of the report, but it starts out -- you know go from naked and then you put the protection in that the site requires and then go up. Some sites just require a shade house like this. Others require more plastic or glass and you go up, but that's how it breaks down, but it's a sort of good thing. It's on page 6 of the USDA report.

COMMISSIONER WILLIAMSON: Okay, thank you.

Just before my time expires, I'd asked the Petitioners this morning about the effect of the exchange rate in Mexico in terms of what role did that play in terms of the competition between imports and domestic product? Does anyone here want to offer a view on that?

MR. AMBERLANG: I thought the answer that was provided this morning was a good one. That would have a positive impact on the labor cost, but on all of the fixed costs really -- the fertilizers, chemicals, seeds, and these assets that cost, as was mentioned before, 1.2 or $1.3

billion that's been invested in Mexico. Those are all dollar denominated.

Now, again, from a labor standpoint, there are benefits, but the labor environment in Mexico has gotten significantly more competitive as this has expanded and that has caused higher costs on the labor side in Mexico, but have been offset by incredible productivity of the people who work there.

COMMISSIONER WILLIAMSON: Okay. Is that not possible in the U.S. in terms of productivity?

MR. AMBERLANG: It is absolutely possible. Yes.

COMMISSIONER WILLIAMSON: Okay, thank you.

MR. NOLAN: And that points up a little bit of an issue here because you know if you're going to say Mexican costs are lower, but they've been willing to invest millions, hundreds of millions of dollars in greenhouses to create a more effective, efficient environment what does that tell you about the lack of U.S. interest in doing exactly the same thing?

If you don't maintain competitive, I think Mr. Wilner said it once, if you keep trying to drive a '65 Chevy when everybody's selling 2019 models what'd you're going to do? You're not going to sell many cars, right?

COMMISSIONER WILLIAMSON: Okay. Well, my time has expired, but thank you for those answers.

COMMISSIONER BROADBENT: Mr. Nolan, why do you think the domestic industry doesn't want to invest?

MR. NOLAN: I think that's a question you need to ask the domestic industry at this point. It's a bit of an enigma as to why they have not done so. They've elected not to do so. It's not as if the financing or the ability to do it wasn't there. Mexico didn't wake up one morning and have a huge multimillion greenhouse industry. It had to be invested in, grown and built over a long period of time. And clearly, people like Nature Sweet, which is one of the larger producers figured out that they could make a lot of money.

MR. WILNER: Commissioner, can I speculate a bit about it, and I think Mr. Nolan's right, you need to ask them. And unfortunately, they're not here now, but in speculating about it -- you know I'm older than anyone in the room, but I think you know when we grew up you know their tomato dominated the market, both the food service market and the retail market. And remember we'd get a little package with three tomatoes and we'd all taste them and say, ugh, they're not very good. I can't wait till summer.

Well, they had so much of the market. It takes investment to change it. Things changed on them. As they said, they didn't do consumer studies or research of what was -- and they have a captive market in the food service market, more or less, because not like yum brands, which uses a Roma tomato, but when we go to Burger King or McDonald's they all say they need a slicing tomato and the gas green tomato is a perfect food service tomato. You could put it through an automatic slicer. It doesn't mush because it is like cardboard and tastes like cardboard. But nevertheless, it goes well on that hamburger. So, they have that market as a captive market and they just haven't had you know the spur to invest and change, I think.

MR. LEY: We are a family of growers and distributors in Mexico and the United States. We've done a lot of work in establishing our brand and our reputation both in the Mexico and the U.S. and Canada markets.

Earlier, Mr. Esformes and Mr. DiMare talked about their fathers testifying in front of the Commission in 1996. My father did not testify. I did, along here with Mr. Wilner. I want to go back a little bit into your question and in the question about the shade houses. Shade houses is the outcome of a lot of research that Mr. Crisantes mentioned earlier of finding better technologies to get a better output and a better product that the consumer was looking for in terms of quality and flavor. And we found that weather conditions -- I think that there's been a lot of discussions about labor, but there is a big component of weather conditions that we can grow very efficiently in Mexico with a lot of technology and sophistication with the application and the use of shade houses, which is form of a very sophisticated method of growing using irrigation systems in high attitude varieties that need to grow under a protected environment.

So, that's one part that has created a lot of shift in Mexico and we're seeing that. And to your question of the U.S., we know, and they are very exposed to weather conditions, to hurricanes and stuff like that. There's very significant investment to be on the greenhouse -- a shade house like that, that you are seeing in the picture that can incorporate a lot of that technology to increase yields to the ratio of anywhere on a grower that is not very efficient, that can be arranged between three and five times what open field does -- to a grower that can be about 15-18 times what an open field acre does.

So, again this is a type, but is a tropicalized greenhouse. When you go into other weather environments, other different sites, you're going to more sophistication like glass and other types of components, but they're all under the conservation umbrella -- all three houses are protected environment.

COMMISSIONER BROADBENT: So, are the imports from Mexico of tomatoes, I think they're what -- 35% grown in these protected environments and then the balance is not, is that correct?

MR. WILNER: No, no ma'am, excuse me, about 90% now are grown in protected environments.

COMMISSIONER BROADBENT: Oh, is that right.

MR. WILNER: Yes.

COMMISSIONER BROADBENT: Okay, that's interesting.

MR. WILNER: Shifted almost entirely to protected environment.

COMMISSIONER BROADBENT: Okay, and then domestic production is -- what's the percentage in domestic?

MR. WILNER: U.S. production is -- and I think it's in the data, so I need to be careful but it's single -- oh, yeah, it's -- oh no, no, that's Florida, that's Florida. Florida's protect environment production is under 1%.

COMMISSIONER BROADBENT: Right, but for --

MR. WILNER: The U.S. as a whole is in the single digits, the lower part of the single digits.

MR. NOLAN: There's a little bit of a dichotomy, this is Matt Nolan, in that when you recorded the 35-36%, I think that's what's showing up in the sample data that you all collected.

COMMISSIONER BROADBENT: Yeah, right.

MR. NOLAN: But that's an incomplete sample in the sense of the entire market, if you look at the USDA statistics that Mr. Wilner is talking about, the percentage is much higher in Mexico, and that's just the way the data seem to be collected -- again it's the sample size we're looking at.

And the numbers are -- I'm sticking somewhere, it's either high single digits or very low teens on the U.S. size.

DR. SINGER: It's in my -- I have it on paragraph 28 of my report, ITC, I won't say the number out loud, but in the un-redacted version you can get both on an evaluated basis and a quantity weighted basis, which share of U.S.'s is in greenhouse.

COMMISSIONER BROADBENT: Okay, great, that solves it to me, thank you. Mr. Agostini, or anybody else can chime in on this, but I was not here. I had to miss this morning but I understand that the domestic industry is saying that the imports are coming in above the reference price, and then there's something going on with the distributors or the next level of sale where the price is being reduced, and there's underselling going on there. Is that realistic to think about?

MR. AGOSTINI: It's realistic to think about. There's -- in my experience, there's no 100% in produce. There's so much complexity and fragmentation and supply chains that anything you could probably conceive in your mind has probably happened at least once.

COMMISSIONER BROADBENT: So, they're going to either switch you out some peppers for some tomatoes and make up for the higher price that they had to charge coming in as the import?

MR. AGOSTINI: It's possible. In my experience of buying billions and billions of dollars-worth of fresh produce a year, I've honestly never seen anything like that.

COMMISSIONER BROADBENT: Okay.

MR. AGOSTINI: I've never actually witnessed anything like that going on in my world.

MR. CHAMBERLAIN: Commissioner?

COMMISSIONER BROADBENT: Yep, say your name, sorry?

MR. CHAMBERLAIN: My name's Jaime Chamberlain, from Lagos, Arizona.

COMMISSIONER BROADBENT: Yeah.

MR. CHAMBERLAIN: I'm an importer of Mexican fruits and vegetables. I have to tell you I've not experienced that one at all in my career. I've been in the business now for 32 years, my family's been in the business a little over 48 years.

I have a commitment to my growers. We have a contract, and I have a commitment to them that I will adhere to the suspension agreement under the terms of which they are signatories to, so I will be in breach of contract with my grower if I actually did that.

So, all of my product is grown -- is sold at the minimum price or higher. Obviously, we try to get a higher price than that, but it doesn't make sense what I heard this morning at all and there is no actual prove to it at all.

MR. CHAMBERLAIN: Commissioner, I mean I would commend that the Commission -- this is Matt Nolan again, if that is in fact true, then there would have been complaints lodged under the suspension agreement because there is a procedure to complain about cheating under the suspension agreement.

I would request that the Commission staff go back and look for the last 5 years for the number of complaints that have been lodged by the U.S. industry with regard to cheating on the suspension agreement, and they know what's going to happen when you do it.

DR. SINGER: Commissioner, can I weigh in on this one?

COMMISSIONER BROADBENT: Yeah.

DR. SINGER: My primary analysis made use of the -- what's called the shipping point data. That's the transaction on the first instance, but then I redid my analysis using the terminal market data which are the secondary transactions, and I found the same patterns. Almost never do you find prices that go below the referenced price, even in the secondary market.

So, if this was happening as they suggested, I think you would see it in the terminal market data, and you don't. That's just empirically, but from a theoretical matter I mean just think about it as a business proposition -- would it ever make sense to go into business?

Would you ever lend me money if I told you my plan is to go buy at a high price and then resell it at a lower price? I don't think I'd do very well in the marketplace.

COMMISSIONER BROADBENT: Okay, well hopefully the domestic industry will give us some more evidence on that issue as well because it doesn't quite make sense to me either, but.

MR. WILNER: Let me explain because I think there's been some confusion. What the suspension agreement requires is the Mexican growers first sale to an unrelated purchaser needs to be added above the referenced price.

If he sells to an unrelated you know, importer in the United States, that first sale needs to be at or above the referenced price. If he sells to an unrelated, you know, importers in the United States, that first sale needs to be at or above the referenced price.

If he or she sells to an agent on consignment in the United States, then that agent needs to enter into an agreement that he will not sell, or she will not sell the next sale to the unrelated below the referenced price.

So, what they're saying is after that first sale to an unrelated purchaser if he buys it at referenced price or referenced price plus something, that person is going on and then selling at a loss. It doesn't make sense and as Mr. Chamberlain said, these adjustments occur in less than 1% of the cases.

So, it just makes no sense and we haven't seen it. Interestingly, Mr. Pappas, who was here this morning is in that position where is a guy who buys in the terminal markets and then resells. He didn't -- I'm sure he wouldn't be doing this. I don't know if he knows of other people that are doing this, but we have not known.

And if people are doing it, they should be found and penalized, but it makes no sense. The best assurance against people selling and violating is that they pay more, and you don't sell for less.

COMMISSIONER BROADBENT: Okay, I appreciate that, thank you.

COMMISSIONER SCHMIDTLEIN: Back to me, okay, alright let me follow-up with this question first. Mr. Ambelang, did I get that right? Okay, I can't see your name plate from here but there you go, okay thank you. You talked about consumer preferences.

Do you have any research or studies or surveys that Nature Sweet has relied on that you could share with the Commission?

MR. AMBELANG: Yes.

COMMISSIONER SCHMIDTLEIN: As proprietary information? Not something that's been prepared for the purpose of litigation, but something that you all use because it sounds like your company is doing that?

MR. AMBELANG: Yes.

COMISSIONER SCHMIDTLEIN: In this --

MR. AMBELANG: And I can provide you with all of that. We do significant amounts of market research every single year.

COMMISSIONER SCHMIDTLEIN: Okay, that would be very helpful, alright great. Alright let me turn to I guess another question which I know my aide John, was asking about after the opening this morning which is -- Mr. Wilner, you included a slide in your opening statement which unfortunately I missed, but it has -- that is it, yes. The retail market -- what's that?

MR. WILNER: Good slide.

COMMISSIONER SCHMIDTLEIN: Good slide, huh? Alright, so can you tell us where you got these numbers?

MR. WILNER: Yes, and I talked with staff during the break.

COMMISSIONER SCHMIDTLEIN: Okay.

MR. WILNER: And let me say earlier -- I think one of the seminal reports to read is the USDA report that first came out in actually 2005 called, Greenhouse Tomatoes Change the Dynamics of the North American Fresh Tomato Industry, by Roberta Cook and Linda Calvin.

And they point, and they have updated that yearly with slides, and what it points out is that the mature green -- gas green tomato has lost its retail market share, and that's at page 49 it goes through this.

And the first two figures, what it says here is -- I think it's page 49, yeah, it says that in 1999 mature green tomatoes made up approximately 78% of the retail quantities sold around tomatoes compared with 39% in 2003. And then to get to 2018 we've looked at, and we have the cites underneath for the updates on that report, and it shows that the continuation of the loss of retail market share by the gas greens in the U.S. market, and that's all U.S. not just Florida.

COMMISSIONER SCHMIDTLEIN: Right, this is U.S. plus all imports you're talking about, this is just the ground share of the U.S.?

MR. WILNER: This is -- this is U.S. sales of gas green tomatoes as a percentage of sales of round tomatoes in the U.S. market. So, it's -- that's what's happened.

COMMISSIONER SCHMIDTLEIN: This is just the U.S. producer shift?

MR. WILNER: Yeah, U.S. producer.

COMMISSIONER SCHMIDTLEIN: Not the -- okay, so I wasn't sure whether this was the share of round tomatoes or the share of U.S. producer's round tomatoes.

MR. WILNER: Yeah, but the total would be all U.S. sales of round tomatoes and this would be U.S. producers mature green, their sales of round tomatoes.

COMMISSIONER SCHMIDTLEIN: Okay.

MR. WILNER: So, it's gone down like that and that's -- that's what I say, that's the question she puts out. Why has that happened? That's the whole question and has that happened because of underpricing or something else?

COMMISSIONER SCHMIDTLEIN: Alright, so and is it you all's contention that subject imports of round tomatoes have taken the place?

MR. WILNER: Yes, of --

COMMISSONER SCHMIDTLEIN: Of round tomatoes?

MR. WILNER: Yeah, well -- yes because this is sales of round tomatoes, so it's round tomatoes to round tomatoes, so yes, yes. And subject -- not only subject imports, in the last USDA report, and I don't have it right here but there's a chart showing Mexico's increase of protected agriculture imports which have gone up really to take most of that and then a little bit from Canada.

So, that's what's replaced. It's protected agriculture -- tomatoes have replaced that, and that's what this report says. It's a -- so they've dropped due to the increase of imports of protected agriculture -- that's greenhouse, shade house, hot house tomatoes coming in the U.S. market.

COMMISSIONER SCHMIDTLEIN: And I'm sorry if I missed this, but what's the difference between a hot house and a greenhouse?

MR. WILNER: A greenhouse -- can I refer to Mr. Crisantes who is the --

COMMISSIONER SCHMIDTELIN: Yes, okay.

MR. CRISANTES: A greenhouse is site specific, okay? A greenhouse is an enclosure that provides protection from the elements, but it has to be site specific, that definition of course. If the site is -- for example, in Buffalo, New York there is a greenhouse. That has to be a very heated greenhouse, correct? So, it's a heated house.

Now, let's say it's a greenhouse in Culiacan, where the temperature once every 10 years might drop down to 32 Fahrenheit. It is not a heated greenhouse, but they both provide the protection from the outside elements except on temperature, but in Culiacan, temperature is very seldom a problem.

In Buffalo, New York, that greenhouse of course, temperature is a big problem. And, for them also sunlight is a big problem, so they have to have grow lights, they have to have temperature controls, and such. And so, there's a wide array of difference.

COMMISSIONER SCHMIDTLEIN: So, is the one in Mexico a hot house then? So, what would you --

MR. CRISANTES: It would be a greenhouse, that one in Culiacan, but there is some for example, the ones we own in Imuris Sonora. They are similar exactly to the one in Buffalo, New York in the sense that we have heating and cooling controls in there, yes, and we --

COMMISSIONER SCHMIDTLEIN: So, what's a hot house, though? So, I understand --

MR. CRISANTES: The one that needs heat.

COMMISSIONER SCHMIDTLEIN: Ah, the one that you have to have electricity and heat?

MR. CRISANTES: Yeah, yeah, yeah.

COMMISSIONER SCHMIDTLEIN: Okay, alright, fine.

MR. CRISANTES: Alright.

COMMISSIONER SCHMIDTLEIN: Okay, so in the staff report, in the pricing products and this is probably for one of the lawyers I guess, when we broke it out between you know, the same product being grown in a greenhouse versus open field versus I think the words were adapted -- adapted environment.

So, how do the Respondents interpret that? Does that include hot houses?

MR. LEY: If I may answer that Commissioner, this is Martin Ley, the last negotiations of the special agreement brought us into a definition of adapted and control. The difference basically is controlled as a high-tech greenhouse that is hydroponic and has glass and it has heating as Mr. Crisantes explained. I would like to add that hot house is a portion of greenhouse.

Greenhouse is a generic term and that includes hot houses, shade houses, et cetera. Hi-tech, no-tech, so the term adapted environment goes to greenhouses that do not have heating, hydroponics, tube irrigation or any of those aspects. A controlled environment has to have all those technologies included.

Today the questionnaire that the condition of products, it was a little bit confusing for us because the product type definitions was open field/adapted, and the reason why is because the price -- the minimum price for just the products are the same.

So, that was -- and the quality is different.

COMMISSIONER SCHMIDTLEIN: So, I know that each side had an opportunity to comment on the pricing products, right? So, what did you all think it was supposed to be? What did the lawyers think it was supposed to be?

MR. NOLAN: Well, as the witnesses have already -- this is Matt Nolan again, the witnesses have already testified that adaptive environment is a term that's defined in the 2013 suspension agreement.

And so, there are categories of adaptive and control. Adaptive doesn't have the full range of heat and cooling that's required, for example they actually ran into this because Nature Sweet has adaptive environment greenhouses, but we thought they were controlled environment, but Congress said no, because you don't have to air-condition them.

COMMISSIONER SCHMIDTLEIN: Okay.

MR. NOLAN: So, we're back to adaptive. But, if it's got a structure, and it's growing a greenhouse, it's adaptive environment.

COMMISSIONER SCHMIDTLEIN: So, what's included in greenhouse then in the pricing products, because there's -- anything that's -- anything that's not controlled or?

MR. NOLAN: If it's a greenhouse, a greenhouse doesn't necessarily have to have heating and cooling. It's a greenhouse.

COMMISSIONER SCHMIDTLEIN: But adaptive

environment does? So, --

MR. NOLAN: No, controlled environment.

COMMISSIONER SCHMIDTLEIN: Controlled environment. So, I'm just trying to get clear like what did the Respondents -- how did the Respondents, at least the ones that are here answer these pricing product questions right? So, the pricing products are broken out -- round, round, greenhouse, open field, or adapted environment?

MR. WILNER: Madame Commissioner, let me say honestly.

MR. BURCH: Will you please bring your mic up?

MR. WILNER: We wanted this to be defined more clearly.

MR. BURCH: Will you please bring your mic up?

MR. WILNER: Oh, I can't come up -- we wanted it to be done more clearly, and I think that the data collected by the Commissioners -- in the Commission staff report, probably isn't all together clear. Honestly, the real distinction is between open field and protected environment and I've learned this through studying now, and I said I do recommend at page 6 on that USDA report, because it goes through all this, but once you -- open field is naked, then protected environment is a series of things from shade house all the way up to a high-tech greenhouse, to protect it from the environment, weather, animals, dust, you know, everything else.

And all protected environment in this way should be looked together, it's a way of growing. It protects from all those things and it actually increases the yields in the greenhouse, I've learned that now.

I don't think the questionnaire was clear to everyone, and I bet people answered it differently. I'm sorry to say it, but that's probably true. But the USDA -- there was ways to get the data on how much protected environment growing there is. And it is all different from open field because of the protections it gives. I hope that's useful.

COMMISSIONER SCHMIDTLEIN: Well that's helpful, but I wish -- did you all not comment in that regard when the --

MR. WILNER: We did comment, I don't recall particularly what the comments were, but we were concerned that we wouldn't get all protected environment in the way that the staff was asking in the questionnaire.

MR. AMBELANG: Bryant Ambelang, Nature Sweet. Some of the phrasing in the questions are comingled with concepts that were negotiated in 2013 suspension agreement. I think the clearest way is are you open field? Are you in any type of controlled environment, whether you're in a shade house, a greenhouse, a hot house, or any form of technology where you have covered agriculture -- that would be my suggestion as a way of eliminating the confusion around this and that's how we reported it.

COMMISSIONER SCHMIDTLEIN: So, oh, well my time is up, so let me end there and then I'll come back to this.

COMMISSIONER WILLIAMSON: Thank you. Respondent's brief states that approximately 87% of tomato imports from Mexico are grown in protected environments. The staff report using questionnaire data show that 31.8% of imports were produced by greenhouse, and 68.2% by field -- this is Table 4-3. Can you explain this difference?

I know we'll be talking about protective environment, greenhouse and all that -- no one has said that open field is the same as protective environment.

MR. WILNER: I think this is the question that was before. There's confusion, because what was -- there are all sorts of categories in the suspension agreement and also in USDA data and Custom's data, and they break it down. Some people don't distinguish open field from adopted. Adopted is a protected environment. That is the adopted category it's excluded from those figures, I think incorrectly, but it's excluded from those figures.

COMMISSIONER WILLIAMSON: Adopted? Adapative?

MR. WILNER: Adapted, is that how you say it? Adopted is what it mean -- is something like a shade house like on a controlled environment the way the people are interpreting is really a high-tech greenhouse basically. In between that, below that you go to a continuum, which is still protected environment and not open field. That is the problem in the data.

COMMISSIONER WILLIAMSON: But you've made a big argument that -- okay, the reason why the domestic producer is not competitive is because they're doing open field, and yet what we have in our questionnaire data seems to show that two-thirds of the production in Mexico is open field?

MR. WILNER: To the extent that --

COMMISSONER WILLIAMSON: And that's a pretty big difference there.

MR. WILNER: It is, and to the extent that the data shows that the data is incorrect, and the data -- and we can show it from other public data, that basically 90% of Mexico's exports today are protected environment and that means they're not open field, they're grown in a protected environment that is protected from open field, dangerous and all that.

COMMISSIONER WILLIAMSON: Okay, Mr. Chamberlain?

MR. CHAMBERLAIN: Yes. I don't have any data with me, but I do -- can tell you a story about my family and my business. My parents started our business in 1971 together and they primarily were buyers and brokers of green tomatoes, which at the time in the '70's, was the tomato that was available for consumption in the United States and had a great majority of the business toward it.

In the late 1980's when more of the longer shelf live, vine-ripe tomatoes became available, we made the switch immediately because our customers asked us to, and they said, "This is what we want. This is the type of tomato that we want to continue with. Is this vine-ripened tomato is going to replace a large portion of green tomatoes."

We made a decision at that time to become importers ourselves of tomatoes and vine ripes from growers that primarily had this product to offer. And it was because of what our customers were asking us for.

COMMISSIONER WILLIAMSON: And those were vine-like and open field right?

MR. CHAMBERLAIN: In open field at that time. Over the course of time the majority of our products, which now 2019, are coming and still vine ripes, and vine-ripened tomatoes, but all of them -- almost all of them are in shade house or plastic house protected environment.

As an importer, I would not be comfortable in telling my customers that I had either greens for them in an open field because customers want consistency and they want reliability. And the only way we could provide that is to go into protected agriculture.

So many diseases and weather issues have to do with agriculture in general. We wanted to eliminate those as best as we could, so we had -- we found growers like Mr. Crisantes who were pioneers in the business and many others that were pioneers in the protected agriculture business.

They found a better way to be more efficient with their water, to be more efficient with their labor, to be more efficient with their seed usage -- that was incredible for us and we wanted to promote that, and we still promote that to this day.

I think it's just being smarter with the resources that you have and the investments that you have. As a businessman I always look at my best return on investment, and my best return on investment has been Mexican tomatoes in protected agriculture, and it's mostly because our customers ask for that.

I would never go back to selling greens unless our customers asked for that and I don't think they will, knowing what they know now.

COMMISSIONER WILLIAMSON: Let me get out of my head, just a second, just a minute please. I remember going to my grandmother's house and you had those four or five tomatoes on the shelf in the window and you know, you sort of ate them as they became ripe. And I know that's a by-gone era, but they tasted good, but anyway I'm sorry, go ahead.

DR. SINGER: I just wanted to point you to the question about what share of the Mexican imports are in protected environment. I provide statistics and I just want to refer you to paragraph 28 in my report. And this is in the public record, it's not redacted. I've got a statistic of 73.7% at the bottom of 28 that turns over to the next page, were grown in a protected environment. That's based on the USDA's movement data and its footnote 31.

And then the next sentence I've got another statistic that we calculated. 87% of round tomatoes were grown in a protected environment and that's coming from ITC data, and that's in footnote 32.

COMMISSONER WILLIAMSON: So, that contrasts with what do we have in our --

DR. SINGER: It contrasted the stats that you just read aloud, yes.

COMMISSIONER WILLIAMSON: Yeah, okay. Post-hearing could people please address this and kind of help us, thank you, if there is anything you could say post-hearing that's going to clarify this.

MR. WILNER: Commissioner, yes we will in our post-hearing brief give you all the data back-up for these definitions of protected environment versus open field, and also we'll -- the definition the USDA uses, so we'll back it up and give it to you.

COMMISSIONER WILLIAMSON: Okay, will ask the Petitioner's I'm sure will want to comment on all of this.

MR. WILNER: Yeah.

COMMISSIONER WILLIAMSON: Added to post-hearing.

MR. LARUSSA: Commissioner, I think I can straighten this out and I do know it's confusing.

MR. BURCH: Please identify yourself.

MR. LARUSSA: I'm Robert Larussa with Shearman & Sterling, representing the Mexican growers. So, basically our argument is that we have tomatoes that are grown and protected agriculture.

Protected agriculture is as we said, anything from shade house up to sophisticated greenhouses with cooling and heating. 90% of what's done in Mexico is that, and that is our argument.

In the United States, only 10% is done like that and so that's what's confusing you is that in the suspension agreement the protected agriculture is broken into two different groups -- controlled, which is a high-tech, and adapted which is a shade house.

That was only done for purposes of the suspension agreement.

COMMISSIONER WILLIAMSON: I'm sorry, which is what a shade house?

MR. LARUSSA: Shade house, so adapted is shade house.

COMMISSIONER WILLIAMSON: Oh shade, I'm sorry, okay.

MR. LARUSSA: Shade.

COMMISSIONER WILLIAMSON: Okay.

MR. LARUSSA: The only difference is the market still is 90% is now, will be 90% next week, but the terms in the suspension agreement which were written only for the suspension agreement -- protected agriculture is broken into controlled which is the more sophisticated, and adapted which is shade house -- that's the only difference and that definition came, because I was negotiating the agreement five years ago.

That definition came from a California group of growers who had designed that definition and had that on their website and asked for it and the Commerce Department agreed to it. So, basically there shouldn't be any confusion. Protected is what we do, 90% of our work.

COMMISSIONER WILLIAMSON: Okay, one question -- there is, I'm looking at this USDA report, I guess the most recent one on page 6 where they do talk about I think at least 200, I think it's 200 million pounds of greenhouse-grown tomatoes in the United States, production seems kind of low, but that is part of the domestic industry and so we are thinking about the impact of the imports on that.

I know it's a small segment, but it is a part of the industry, so I just make that comment. What about domestic Mexican sales -- sales of tomatoes produced in Mexico into the Mexican market. Is all of that greenhouse too? I mean other than -- more than what people are growing say in their backyards?

MR. CHAMBERLAIN: Yes, a large portion of that is. There is, but there is also open field product being sold in Mexico as well that is only directed towards Mexico and that is they're grown for that purpose as well, so there's a combination.

MR. WILNER: Mr. Commissioner, we can provide statistics on that afterwards, we don't have an exact --

COMMISSIONER WILLIAMSON: Okay.

MR. WILNER: But if you're interested, we shall do it afterward.

COMMISSIONER WILLIAMSON: Okay, okay, thank you. Okay, Commissioner Broadbent?

COMMISSIONER BROADBENT: I wanted to talk about kind of the suspension agreement a little bit. Occasionally parties will request that Commerce and the Commission reach a final determination in suspended investigations under 19

U.S.C. 16 73 CG, why are we not -- why is your industry not asking for a final determination in that suspended investigation?

MR. NOLAN: You're talking about the suspended dumping investigation? So, the dumping investigation -- I'll let Mr. Wilner talk about it as well because he's got deeper roots than even I do in this one. The suspension agreement has been in place since 1996. At that time there was a feeling I think that it was almost impossible to go through verification and all the other activities necessary to get to a final in any reasonable sense of the word, and all parties agreed that a suspension agreement was probably a better thing to do at that time to maintain stability in the market.

The problem we have now, quite honestly, is we have an agreement that is what 23 year's old, and if you restart the investigation, you're looking at 23-year-old data, right now. I don't know how you -- actually I don't even know how the Commerce Department's going to pull it off frankly.

COMMISSIONER BROADBENT: Well we do that -- it happens in a lot of sunset reviews.

MR. WILNER: Commissioner, was your question why aren't the Mexican producers asking for a final determination to revoke the suspension agreement, is that?

COMMISSIONER BROADBENT: Yeah.

MR. WILNER: Okay, you know, I think there's a different explanation. I represented the Mexican producers 22 years ago and we negotiated this agreement. Ask Mr. LaRusso who's sitting behind me, was at that time Assistant Secretary of Commerce for Import Administration and then became Undersecretary of Commerce.

COMMISSIONER BROADBENT: He's in the room, really?

MR. WILNER: Yeah, how do you like that? That's why I said I'm the oldest guy in the room. I saw -- and really what had happened, we -- the Mexican tomato growers had been in a battle with the Florida producers, and that's why we say Florida, it was always Florida.

It was over supply to the market in the wintertime, and it used to be that only Florida could supply the market in the wintertime and then Mexico started producing tomatoes. And there were a number of dumping case and 201 cases, and honestly, we kept winning, but it kept going on.

And we thought maybe we should try to do something working in a way that would solve the problems and the problems in the market, you know, with agriculture you'd have real dips in the market and things like this.

So, while your average prices could be fine, you'd have dips. And the idea of the suspension agreement -- it was the first time it was really used, was to use this unique part of the -- anti-dumping laws which allows the suspension agreement to eliminate completely the injurious effect.

And what Mr. LaRussa and I did came up with an idea of a reference price which would really stop, you know, really low prices in the market that would hurt everyone to allow to give stability to the market to grow and for consumers. And we entered into that.

And frankly, from the Mexican standpoint, we think there is no dumping -- there will be no dumping. The order doesn't do it. We've always complied with the suspension agreement, but we like a suspension agreement. They're putting us in position by withdrawing from it, forcing us to win the case again, but we think the agreement was actually a stabilizing force in the market that would help both U.S. producers, Mexican producers and U.S. consumers.

So, that's why we would prefer the agreement to be renegotiated if they think there's cheating going on, we'd like to stoop that. We don't want any cheating, so that's the answer. We actually think the agreement's been beneficial. But we are quite convinced A -- that there is no dumping.

We'd hate to go back to an investigation and B -- that the Mexican imports have not injured or causing injury or threatening injury to the U.S. industry because we're really making, as Mr. LaRussa said, now a different type of tomato. A tomato that's a protected environment tomato that has been very accepted in the retail market.

And we've invested well over a billion and a half dollars to do that.

MR. NOLAN: This is Mr. Nolan again, Commissioner Broadbent. Curiously Nature Sweet, which used to be called Desert Glory, was originally not subject to the suspension agreement because it made a tomato that wasn't under scope and it wasn't until the 2003 amendment to it, that they got pulled into it and we got involved in it at that point really.

Nature Sweet's position is that we would, if the investigation was fair, complete and doing it's job, we would be found to be not dumping. If you take one look at the prices that went up on the sheet earlier today from Mr. Ambelang, I can categorically say there is no way that that company is dumping tomatoes into the U.S. market.

So, if it comes to that, we'll go through it and hopefully the Commerce Department will examine us and decide that we're not a problem child, and I think Mr. Wilner's point is well taken that the Mexican industry in general does not feel like it's dumping.

However, having said that, for the sake of stability, we are willing -- have been willing so far to entertain the idea. It depends on what's in the agreement, that's part of the sticking point. We had all this discussion this morning about resale prices, right?

And what's the fair price? And we've got a problem here because if you start saying that any agreement has to take into account prices at the grocery store or prices in the secondary market, you're engaging in activities which frankly, our anti-trust lawyers might have a little bit of a problem with because you're telling us that we have to maintain price controls all the way down the chain, right? And that's not what the law says.

The dumping rules say once it crosses the border, that's the price you look at, that's the price that Commerce looks at. You don't look at what happens three levels down, but this is what we're kind of getting hung up on now, right?

MR. WILNER: Commissioner, I don't want to pile on, but since you weren't here in the morning, another point we made is -- this morning, the suspension agreement is required by law to eliminate completely the injurious effect of dumping, and to eliminate price suppression and price undercutting.

The Commerce Department made a determination, really fairly recently in 2016, that the agreement is doing exactly that -- that it eliminates dumping and price suppression and price undercutting.

So, what's odd to us is that so what all the problems that the U.S. industry's complaining about now occurred when by definition there was no price suppression, price undercutting or dumping. So, we're confused. If that's so, a dumping order really can't help them because it's already been eliminated, so you know, it just makes no sense, that's how the suspension agreement comes into effect.

But we're not going to dump, we haven't dumped, we agreed not to in this.

COMMISSIONER BROADBENT: But then you haven't -- you don't, what's Commerce saying at this point about what the status of the suspension agreement is. I said they've announced their going to renegotiate, is that right?

MR. WILNER: No, they have simply announced as we know that they are terminating the suspension agreement and I might as way say it now, and they've also announced that they are terminating it as of May 9th, or May 7th, excuse me.

COMMISSIONER BROADBENT: So, they have a date?

MR. WILNER: Yes, May 7th, and you know, and honestly, we should all be disturbed about this because they announced that -- that's two days, I think, before you're scheduled to vote. When that came out, we saw that that announcement came and it's in the record, shortly after the Secretary of Commerce had a call with the FT's lawyer, Mr. Cassidy.

And we feel a little bit manipulated by the whole thing. It really -- so we and you are spending a fortune going through a procedure that they say you know, well you won't even end it up. And I want to say it right now, there's nothing in the statute that makes you wait until after the Commerce Department makes a determination.

And we would like you to make a determination in this investigation no later than May 6th. We call on you to make a determination so this sham can stop. We shouldn't be manipulated and you shouldn't either, so but they said they're terminating, so I think the ITC should make its determination before that, thank you.

COMMISSIONER BROADBENT: So, we do this sort of every five years somebody wants to review the suspension agreement and change the terms, is that right?

MR. WILNER: Every five years?

COMMISSIONER BROADBENT: Every five years or so.

MR. WILNER: If they're asked, yes. And there's been renegotiation into a new agreement in each of the last five years with prices increasing and taking into account some of the problems that people think have occurred.

MR. NOLAN: Yeah, and this is Mr. Nolan, and we have gone through this cycle now, what three times where we go through either withdrawal or potential determination and a renegotiation and we get back together again and we're all hugging, and you know.

Are we going to get there this time? It seems a little likely because in each cycle, the U.S. industry has basically required that the reference price either get increased or other additional conditions be put into the agreement that would give them further protection from "unfair imports", which we don't believe are unfair to begin with.

And yet, in the last ten years, you saw the data that came up on the board that they put up this morning about their market share generally going down, right? This is not just a blip, it's a continuous event that's been going on.

In the fact of one -- by definition fairly priced imports, and by two -- pricing of imports based on the charts you saw this morning that were far above the reference price. Doesn't that make you pause for a minute about well what is really going on here? Because if we're selling it well above the reference price, and by definition that's the lack of injurious effect, then the suspension agreement isn't doing anything -- it's not necessary because the prices are always too high.

COMMISSIONER BROADBENT: Right, and so but you still have the option of asking for the original investigation to be continued as a party to this, right?

MR. NOLAN: Yes, well at this point it's going to happen unless something changes.

COMMISSIONER BROADBENT: Okay, thank you.

COMMISSIONER WILLIAMSON: Commission Schmidtlein?

COMMISSIONER SCHMIDTLEIN: Okay, this has to do with this question about these different forms of protection in the field and so my question is -- because your argument relates to the flavor and freshness of vine-ripe tomatoes, which is based on seed development that you all have pioneered.

So, do vine-ripe tomatoes, is the taste the same or as good in an open field, as it is in any kind of protected environment? So, in other words, does a shade house better the taste of this vine-ripe tomato, or is it really just a question of yield? You're getting a better yield with a protected environment?

MR. AGOSTINI: This is Mike Agostini. I can speak to that a bit. At my last employer, we actually had access to a culinary investigation center where we could run our own food panels, taste-testers from drawn out of the community as regular shoppers, and we used that to a great degree in trying to sort out tomatoes.

Twenty years ago, a supermarket would have about four different stock-keeping units of tomatoes on the shelf. Today, the typical supermarket has 18 to 22 different tomato items on the shelf and it got very confusing for the consumer to try to figure all that out and for us as well.

So, we started using what we call tomato cuttings to bring in all these different varieties and growing methods and actually taste-test them in a scientific manner to determine what was going on. And through that we were able to create classes of tomatoes.

You heard about the grape tomato this morning out of the field which was a great item when it was introduced, and it sold really well. And then out of the hot house, even a step higher in flavor, so through this testing we were able to determine the field-grown grape is a good item. The hot house-grown grape is a premium item, so we present it to the customer as here's a good at say $1.67 a pint, and here's the best at say $2.89 a pint and to make sense to the customer and to us in how we assorted our store.

So, through that process we were able to scientifically validate that the different levels of growing from mature green to vine ripe, to low-tech protected ag, medium-tech to high-tech all did, in essence, produce more flavor in the tomato.

COMMISSIONER SCHMIDTLEIN: Okay, would anybody else like to add to that?

MR. LEY: The vine ripe tomatoes is a variety that was available --

COMMISSIONER SCHMIDTLEIN: I'm sorry, who's talking?

MR. LEY: I'm sorry, my name is Martin Ley.

COMMISSIONER SCHMIDTLEIN: Oh, in the back, okay, there you are okay.

MR. LEY: The vine ripe tomatoes are tomatoes that were developed and used widely in Mexico that are long-shelf life varieties. So, they allowed the tomatoes to be harvested at a much later flavor. The evolution into the protected agriculture has to do with controlling the environment.

And the result that we saw in terms of flavor is that when you grow tomatoes indoors, in a shade house or in a greenhouse, you are taking care of with protecting that environment, with a lot of pests and a lot of diseases, so there is less use of chemicals and basically you only feed fertilizers to the plant.

That -- the output of that plant that is less stressed by those agri-chemicals produces a better-tasting tomato, and it allows to have a fruit that can travel long distances and have a long shelf life, so we have been able to with an implementation of that technology to give a much better tasting tomato with a very long shelf life into the marketplace.

COMMISSIONER SCHMIDTLEIN: And Mr. Crisantes, did you want to add something?

MR. CRISANTES: Yes ma'am, greenhouse is a way of reducing blemishes to the fruit because the consumer wants to have a blemish-free tomato. A more sophisticated greenhouse, the more control that you have, the less probability of it being blemished by anything like a scar created by the wind or by the position of dew on the tomatoes, stuff like that.

So, yes, we're trying to give the consumer the very best tomato. It depends on what area of the country you're growing that you need to have different type of protection. But the thing is try to keep that tomato in the plant for as long as possible before taking it to market so that it reaches its best flavor.

But you have to consider like I said previously, your travel distances and your travel time. And that is what the greenhouse does for you -- it gives you, you know, blemish-free fruit like Mr. Ley said. The less chemicals you use on it, the plant has less stresses.

The more frequent irrigations that you do on it, the plant has less stresses and so on and so on, the less temperature variations, less stress on the fruit and that brings it, you know, longer-lasting and blemish free to the consumer.

COMMISSIONER SCHMIDTLEIN: Okay.

Did I understand an -- oh, I'm sorry go ahead.

MS. ARBOISIERE: Hi, from a food safety aspect I concur with everything Mr. Crisantes said. If you do potentially have blemishes on your fruit, then you're more susceptible to bacteria entering that fruit. And as you mentioned, the environment plays a huge part on I guess the wherewithal of that fruit or vegetable that you're working with.

And if you're dealing with very windy environments, you could potentially have a fruit or vegetable that maybe has to be -- that is under stress or maybe it's going to grow a little bit thicker, a little bit harder. It may change the flavor profile a little bit.

And also, scientifically, on the vine you do allow it to produce more sugars which could potentially give you a better flavor. Now, again I'm here from a strictly food safety standpoint. We do look at flavor, and we look at color because at Taco Bell, which is my predominant responsibility, the tomato goes right on top of all of our products.

We want it to look pretty, we want it to taste good, but the utmost important to us is it needs to be food safe for our consumers. And so, in protected agriculture you do get that. But as I did mention, we do work with a very large -- not just Florida grower. I call them a Florida grower, but they grow in California, South Carolina and Florida.

And the reason we work with them is because they did come to the table with the four-page list of our requirements and met them and so we do work with both, so I'm not here to choose one or the other, I'm here to say from a food safety standpoint and a risk assessment, six of our growers are from Mexico and one of our growers is domestic.

COMMISSIONER SCHMIDTLEIN: Okay, alright, thank you. Are the subject imports sold into the food service segment as opposed to the retail segment?

MR. CHAMBERLAIN: Are their products sold into food service?

COMMISSIONER SCHMIDTLEIN: Um-hmm?

MR. CHAMBERLAIN: Definitely.

COMMISSIONER SCHMIDTLEIN: From Mexico, right?

MR. CHAMBERLAIN: Oh yes, definitely. Right, in fact one of the reasons why the majority of our growers has gone into protected agriculture is specifically for those types of contracts. It gives us as the sales agent, the confidence and the reliability to go into long-term contracts with a lot of our different restaurant retailers, or just the hotel purveyors and food service all over the country.

So, that is one of the main reasons that we, as sales agents, have looked toward you know, vine-ripened tomatoes in protected agriculture because it gives us that confidence and that reliability to go into longer periods of time under contract.

MR. WILNER: Madam Commissioner, I believe that the attractiveness, of course, Taco Bell's requirement is to Roma's, for Roma's so they're unusual in the food service. I believe the attractiveness of the protected agriculture of Mexican tomato is to the higher end part of the food service establishment where that matters.

In the large part, where a fast food, where slicing -- mechanical slicing is the big requirement, they are not able to intrude in that and they have not, so.

COMMISSIONER SCHMIDTLEIN: So, has the U.S. lost market share in the food service?

MR. WILNER: I don't have statistics on it, but USDA said that the gas greens still dominate that market, but I don't know the particular percentage. I mean, I don't

--

COMMISSIONER SCHMIDTLEIN: When you broke out retail, what was left?

MR. WILNER: Food service, which is about half the market.

COMMISSIONER SCHMIDTLEIN: Okay, so you could derive it from the same was you derived the retail number?

MR. WILNER: Well except that I derived this from the USDA reports and the updates, and they haven't broken down the food service that way. They just said that gas greens still dominated, but I don't know how much -- what domination means, whether they have 80% or, but they have most of it and I think that to the extent that this is my understanding, but I don't have statistics.

To the extent its fast food restaurants requiring mechanical slicing, they've got that locked down because the tomato is harder and easier, firmer and easier to slice mechanically and the Mexican vine-ripe protected agriculture isn't. That's what they say in the report, the data exactly what that means is not there.

COMMISSIONER SCHMIDTLEIN: Okay, alright and did I understand previously there was an answer that Mexico does produce mature green?

MR. WILNER: Yes.

COMMISSIONER SCHMIDTLEIN: Field tomatoes for the

Mexican market, no? All tomatoes in Mexico are vine-ripe?

MR. WILNER: As I understand it, there was a small percentage of mature greens that as I understand is under 2%. Let me check. I know that's export. We can check on what the domestic market is of how much is mature green is sold to the domestic market.

COMMISSIONER SCHMIDTLEIN: Do any of the Mexican producers here know? Does Mexico produce mature greens?

MR. CHAMBERLAIN: Mexico does produce mature greens for the export market.

COMMISSIONER SCHMIDTLEIN: What about for the Mexican market, for the domestic?

MR. CHAMBERLAIN: Very few, very few if any at all. It's not very well accepted. Most of the Mexican market product wants to be processed into a salsa or into their products for food service, so they need a better tomato right away for Mexican markets.

So, most of the greens that are grown for Mexico -- in Mexico, are exported to the United States, but it's a very small portion now.

COMMISSIONER SCHMIDTLEIN: Okay.

MR. AMBELANG: This is an important point though for the differences between the two markets. The majority of U.S. consumers utilize tomatoes on salads or snacking. So, 65% of the consumption of tomatoes per capita, is thrown

on a salad. That's very different in Mexico.
So, it's exactly what Jaime just said.
COMMISSIONER SCHMIDTLEIN: Right.
MR. AMBELANG: Whereas, the majority of tomatoes in Mexico currently -- the utilization of that product is for salsas and for recipes, so you have a different dietary habit. But I will tell you that our sales of those exact same packages that you have up on your desk are increasing in the Mexican market, because salad consumption is going up in Mexico.
COMMISSIONER SCHMIDTLEIN: Okay. Okay, alright thank you.
COMMISSIONER WILLIAMSON: Just to clarify, those -- that's for fresh tomatoes, not processed?
MR. AMBELANG: Yeah, that's just for fresh tomatoes.
COMMISSIONER WILLIAMSON: Okay, both -- so a lot of the fresh tomatoes are used in salsas and things like that in Mexico?
MR. AMBELANG: That's right, yes.
COMMISSIONER WILLIAMSON: Okay, okay. Thank you. The -- according to this 2005 economic research service report that referred to this, I guess its attachment three of Shearman & Sterling's brief, that report says misreporting of Mexican greenhouse tomatoes regularly

complicates measuring actual greenhouse tomato imports, this is of course in 2005.

In your opinion, is that -- are importers continuing to misclassify tomatoes on entry documentation? If so, how frequently do you believe it occurs and what percentage of the entries? And do you agree that this reporting occurs frequently enough to make it difficult to precisely track the imports of various types of tomatoes?

MR. WILNER: So, I think.

COMMISSIONER WILLIAMSON: Excuse me, identify yourself.

MR. WILNER: I'm sorry, Tom Wilner.

COMMISSIONER WILLIAMSON: Okay.

MR. WILNER: I think the reporting is getting better. It's somewhat confusing because in the USDA data, there's a category that says, "Open field adopted control." I think if you add up the adopted and controlled, you pretty much get the correct data from Mexico.

The U.S. industry is not broken down at all, so you can't get that, and I think in part that's because they're mostly open field mature greens. But that's my understanding.

COMMISSIONER WILLIAMSON: Although I guess this other report that we refer to, the more recent one I guess does talk about the production that's not open field.

MR. WILNER: I'm sorry --

COMMISSIONER WILLIAMSON: Okay, I'm sorry, go ahead and finish.

MR. WILNER: Yeah, in the report that I referred to that came out last week.

MR. LEY: Commissioner, are you asking that question -- Martin Ley here.

COMMISSIONER WILLIAMSON: Yeah?

MR. LEY: Are you asking the question about the presentation earlier that says that the import greenhouse tomatoes may have reported as round tomatoes or vice-versa? Is this about this presentation that they showed?

COMMISSIONER WILLIAMSON: I don't have it in front of me, but the question was whether or not there's been -- how much misclassification is it of greenhouse tomatoes.

MR. LEY: Yeah, if I may clarify this, that is not true, and I want to elaborate why. They presented here some numbers. There's a combination of customer's data -- FTE earlier.

COMMISSIONER WILLIAMSON: No, I'm talking about the document that Shearman & Sterling attached in attachment 3 of its brief?

MR. LEY: Oh.

MR. WILNER: Are you -- excuse me, are you talking about which attachment is it that you are talking about?

COMMISSIONER WILLIAMSON: Attachment 3.

MR. BURCH: Will you speak into the microphone?

COMMISSONER WILLIAMSON: Mr. Wilner, can you speak into the microphone? Attachment 3 of the Shearman & Sterling brief.

MR. WILNER: And is that the Roberta Cook report? I don't have it here.

COMMISSIONER WILLIAMSON: Okay, well maybe post-hearing can you take a look at that attachment 3, and the questions I just asked and adjust those there?

MR. WILNER: Okay and may I just to clarify. So, I'll look at it -- is that the 2005?

COMMISSIONER WILLIAMSON: Yes.

MR. WILNER: Yes, I'm sorry, and maybe I can answer, I have it here.

COMMISSIONER WILLIAMSON: Okay.

MR. WILNER: And the question is she says there's a lack of clarification in that of what the category includes, correct?

COMMISSIONER WILLIAMSON: They're saying that the misreporting of Mexican greenhouse tomatoes greatly complicates measuring actual greenhouse tomato imports?

MR. WILNER: Yes, in 2005.

COMMISSIONER WILLIAMSON: Yes, and I'm saying is that still true and if it's not still true, what documentation or evidence do you have to support that?

MR. WILNER: And what I want to do in the post-hearing brief is do that because --

COMMISSIONER WILLIAMSON: Okay.

MR. WILNER: Because thinking of the authors of this have issued further clarifications that go on and we will cite it and say and we derive the chart we were talking about from their clarification, so we will cite that and support it and explain it.

COMMISSIONER WILLIAMSON: Good, thank you.

MR. LEY: Mr. Commissioner, Martin Ley again.

COMMISSIONER WILLIAMSON: Yes?

MR. LEY: When we import the tomatoes into the United States, we have to declare according to the HDS codes from Custom's and then there is two specifications. One is either open field and the other one is greenhouse. And greenhouse is defined by usually as grown indoors. For the purpose of special agreement is adapted or controlled, both are considered greenhouse and they are reported under the greenhouse HDS code.

There is no misrepresentation on how we are importing those tomatoes, the grower knows that. We heard some claims earlier that we were intentionally doing it to pay with a price and that is inaccurate.

COMMISSIONER WILLIAMSON: Okay, thank you. Mr. Ambelang, on page 13 of the NS Brand's pre-hearing brief, you state that Mexican fresh tomato production is concentrated in the same two varieties as in the United States, the round and plum.

So, the question -- how are they not the same product for purposes of this review?

MR. AMBELANG: Well they're not the same product for multiple reasons and some of which we've talked about. So, one is the traceability of the product back to the greenhouse, and that's been covered by the people from Walmart and from Young Brands.

The second one is a more sustainable type of agriculture -- meaning what are the environmental impacts, the benefits of environmental impacts of product that are grown in greenhouses versus grown in an open field?

The third one is the reduction of blemishes. The fourth one is the ability to actually pick the fruit ripe inside of the controlled environment giving it a better flavor. And then finally -- and this was mentioned earlier, I think you asked the question about social sustainability.

By definition, you can employ people all year round. You would have a significant, positive impact to the communities where greenhouses are built because it's a year-round employment.

COMMISSIONER WILLIAMSON: Okay, thank you. That's all I have, Commissioner Broadbent?

COMMISSIONER BROADBENT: Thank you. Miss Arboisiere, if a tomato is grown in a protective environment, is there less pesticides -- would you be pretty confident that there would be less pesticides, or do you just think different pesticides?

MS. ARBOISIERE: Less pesticides and then I can let Mr. Crisantes answer the rest because he is a grower, but yes, there would be less pesticides because you wouldn't have as much penetration from pests, because of the protected ag.

MR. CRISANTES: Most of the pests are of course, flying pests at one point in their lifetime.

COMMISSIONER BROADBENT: Uh-huh.

MR. CRISANTES: And so, by having a greenhouse with sides that are screened or that are plastic or before that maybe glass, there is no possibility or very little possibility of insects getting into the greenhouse itself and therefore you have very small pressure of pests.

By having that small pressure of pests, you can very effectively use beneficial insects which are sold at different laboratories, you know, they multiply just beneficial insects, and you can order them and buy.

And since you have a low pest pressure, plus the beneficials that you bring in, you really only spray unless you mess up with your -- with your insect count, or if something goes wrong. But if you do a good job of buyer control probably almost none.

COMMISSIONER BROADBENT: So, the beneficials eat the bad guys?

MR. CRISANTES: Yes, ma'am.

COMMISSIONER BROADBENT: Okay, and so you have the right balance?

MR. CRISANTES: Yes, ma'am.

COMMISSIONER BROADBENT: Okay, and I just --

MR. CRISANTES: There are multiple tools of that for different insects, it's not just for one -- it's for different insects. So yes, having a greenhouse reduces the amount of pesticides you apply. Usually, also greenhouses have the possibility of recirculating the drain water which we call, you know, it's the water that the plant is not going to use, so that water is put through filters, through sanitation processes, but it doesn't lose all the nutrients that it has. And that is recycled again, so therefore there you're using less of the chemical fertilizers also.

COMMISSIONER BROADBENT: Good, Miss Arboisiere?

MS. ARBOISIERE: Oh yeah, what I wanted to add to that too is it would be extremely detrimental to a greenhouse to have pests, because it could ruin your entire crop depending upon the pest. And also, with protected ag, not only is it protecting from pests, you are protecting from other animal intrusions.

Unfortunately, in open field you are subject to whatever's around that field. It can be minimally controlled, but as you know animals can walk around so there's a lot of trying to control in an open field, but again, animals walk where they want to walk.

COMMISSIONER BROADBENT: Got it, okay, thank you. Mr. Agostini, you mentioned that you're a cabbage head, so you might be able to answer this question which my staff had. Okay, if tomatoes are fruit, is ketchup a jam?

MR. AGOSTINI: Yeah, the tomato is a fruit in a Botanical sense, but the U.S. Supreme Court determined it was a vegetable in 1899, so depending on whether you're Botanical or illegal, I guess the answer to that could be different.

COMMISSIONER BROADBENT: Touche, that's good. Okay, I had, on a more serious note, for Mr. Wilner or with anyone with knowledge of how the reference price is construed, the referenced price in the 2013 suspension agreement refers to the price FOB from the selling agent.

There are specific rules about what costs are included in the referenced price as outlined in the agreements. Can you explain how we can compare these referenced price levels with the Commission's pricing data as collected in these reviews which are the first arms-length transaction by U.S. importers?

Are these apples to apples or maybe tomatoes to tomatoes?

MR. WILNER: Yeah, they should be apples to apples. The idea of the suspension agreement is the first arm-length transaction to an unrelated party as the referenced price.

COMMISSIONER BROADBENT: Okay, if there are adjustments that need to be made to make a comparison between the referenced price and the Commission's importer pricing data, can you help us with that, and you say we don't need that right?

MR. WILNER: Yes, there shouldn't be adjustments that need to be made, but if there are -- if they were both done the right way, there should be no adjustments. We should examine them to see whether adjustments need to be made to correct them.

COMMISSIONER BROADBENT: Okay, we just wanted to kind of cross-check to make sure that the import pricing data's consistently higher than the referenced prices, similar to what Mr. Chamberlain was saying.

MR. WILNER: Madame Commissioner, may I say one thing. I'm not sure all the comparisons of the products were exactly right, you know. The real comparison I'd say is not for the few mature greens that might be grown in Mexico with the mature greens in the U.S.

It would really be the bulk of the product in each side, you know, the predominant product in Mexico, against the predominant product in the U.S. I think would be the right comparison.

But then to make sure that's done correctly, we would be happy to work with the staff to make sure that they are comparable.

COMMISSIONER BROADBENT: Okay, let's see. Is the domestic industry and the Mexican industry getting more integrated or consolidated over time? Those are much of a kind of cohesive North American market being developed?

MR. AMBELANG: Bryant Ambelang with Nature Sweet. So, we grow both in the United States and in Mexico, so we're a good example of that. But in the morning testimony, many of the growers/distributors here had fields both in Mexico and the United States, so there's a significant amount of consolidation going on inside of the industry. Consolidation in the sense of sourcing is what I mean to say.

I'm not suggesting that there's a consolidation of the businesses themselves.

COMMISSIONER BROADBENT: Yeah, I was wondering yeah.

MR. AMBELANG: But a consolidation of where the sourcing of the product's coming from, so there are significant partnerships going on between Florida growers or U.S. growers, and Mexican growers where Mexican or Florida growers are acting as the marketing agent for Mexican production.

COMMISSIONER BROADBENT: Okay, alright. Mr. Chamberlain had talked about this, but I was hoping that the rest of you could address this too. Can you describe what the effect of the suspension agreements have been on Mexican export volumes and prices?

Please answer in general with respect to the other agreements -- the earlier agreements, and also with respect to the 2013 agreement specifically. So, if you could kind of look historically on the effects of the suspension agreements, I think that would be helpful. We can do that for the record.

Mr. Nolan, I was just looking at this graph up there and I'm noticing the referenced price line, the brown line at the bottom and it looks like in the neighborhood of December 16th, that that referenced price really is having a disciplining effect on the price?

DR. SINGER: Yeah, can I weigh in on this, Commissioner can I weigh in on this?

COMMISSIONER BROADBENT: Sure.

MR. NOLAN: It's -- if you want to take it, it's one month -- it's a one-month event. I'd have to go back and look at what --

COMMISSIONER BROADBENT: Well May '16 is doing the same thing almost, yeah.

DR. SINGER: Commissioner, I did a study of this and my study was on a daily basis. This is aggregated to the monthly level, right. And so, what I did is for every day in the shipping data, I looked for the lowest bid that came through from a Mexican -- for a given tomato type and I compared that to the relevant reference price.

And, I think that while I was reluctant to answer your question, I heard your question as what has been the effect on Mexican exports? My study was kind of the image of that -- the mirror image. I was looking at what was the effect of this pricing on Florida output?

If you're interested in that, I'm happy to tell you.

COMMISSIONER BROADBENT: No, I'm just looking at the effect as the suspension agreement.

DR. SINGER: Yeah, let me tell you what I observed because I was looking again on daily -- daily bids. And I found that there was a percentage of bids that were coming in, non-trivial percentage of bids that were coming in right at the floor. It wasn't zero.

Depending upon if you used the low bid or the mid bid, I found that if you used the low bid -- this is post 2013, about 27% of the low bids were coming in right at the floor. If you used the mid-point of the bids in the USDA shipping data, it was much smaller, it was something about 8% that was coming in at the floor.

So, that tells me is that if you were to take away that floor at most, you would expect that if you could assume that the floor was binding for those bids, and it's possible that those bids would come down in the absence of floor. But as an economic matter, I think that for the residual -- for all those bids that came in well above the floor, my assumption when I was trying to model this was that if you took away the floor, and if the supply and demand was intersecting at a point above that floor, then those bids would not be affected in a world without the protection, and I tried to simulate what would happen to the Florida sales if you were to remove the floor, and I found very, very small even de minimus output effects.

COMMISSIONER BROADBENT: Okay, but just for Mr. Nolan was sort of saying the suspension agreement has completely no effect on prices? Like did I mis-hear that Mr. Nolan?

MR. NOLAN: What I'm trying to get at is because the prices have gone up and stayed in a relatively high level for most of these products, if the purpose of the suspension agreement is to make sure that we're not selling at an injurious effect, then you would expect that line of the Mexican product to be literally right along the referenced price line, wouldn't you? Shouldn't it?

The answer is something else is driving the equation here and if you look at the types of products that are coming in, the higher priced products coming in, the consumer preference in products coming in, you're getting a higher price point, and if that's happening, then what is the utility of the referenced price because it's supposed to be making sure things are sold at a minimum price, right?

If the price is consistently much higher than the referenced price, is it needed? Is the investigation needed?

COMMISSIONER BROADBENT: But isn't the purpose to make sure it doesn't fall below a particular price?

MR. NOLAN: But that would then take you down the road that the line of Mexican prices would be right parallel, just above the referenced price at all times. It should be because the referenced price is the support price of making sure those tomatoes come in at 59 cents a pound.

They should all be coming in at 59 cents a pound.

This is not showing anything like that.

COMMISSIONER BROADBENT: Okay.

MR. CHAMBERLAIN: Commissioner, I just wanted to reiterate what I had said before is that the agreement in my opinion in the market is working and has worked for two decades, so we do see a great stabilization in market pricing which is helpful.

Not all commodities are like that and for us, in our business, it is something that helps us quite a bit, gives us that referenced price. We know exactly where we stand, where we need to be above as far as pricing is concerned, as far as all our contracts as well.

So, for us I can tell you that the agreement has worked and continues to work.

COMMISSIONER BROADBENT: Okay, thank you.

COMMISSIONER SCHMIDTLEIN: Okay, just a couple more questions about -- I don't think we've asked about the purchaser's survey data in the staff report which is at pages 2-20 and 2-21. So, there we asked purchasers for comparisons between U.S. produced and Mexican imports on a range of factors -- I think there's 22 different factors including flavor and freshness.

And of the purchasers that responded, so 13 purchasers responded with regard to the flavor comparison, and 10 of them said that Mexican and U.S. produced tomatoes are comparable in flavor out of the 13. One said U.S. was superior to Mexico in flavor. Two said U.S. was inferior and then on freshness, 8 said Mexico and U.S. were comparable, 3 said U.S. was superior on flavor and 2 said that U.S. was inferior.

So, my question is why are we seeing that in our purchaser survey if the Mexican vine ripe protected environment tomato is so much better in flavor and freshness?

MR. AGOSTINI: Yeah, Mike Agostini here, I'm not familiar with that survey but my question would be was it specified to like items? Was it relating the survey completer to write say, a U.S. vine-ripe tomato versus a Mexican vine-ripe tomato or a U.S. vine-ripe protected ag versus a Mexican vine-ripe protected ag or was it more-generic and kind of left to the completer to figure out, you know, which tomatoes they were comparing to which?

COMMISSIONER SCHMIDTLEIN: But at the very least, wouldn't you all's position be that Mexican tomatoes are always superior to U.S. tomatoes in terms of flavor?

MR. AGOSTINI: I would say --

COMMISSIONER SCHMITLEIN: Because they're such a small percentage of greenhouse tomatoes being grown in the United States?

MR. AGOSTINI: Yeah, in my experience, I would state unequivocably that Mexican vine-ripe protected ag tomatoes are superior to U.S. field grown tomatoes. When you start comparing Mexican vine-ripe protected ag tomatoes versus U.S. vine-ripe protected ag tomatoes, I think it does, and in my experience I honestly think it does level out a bit and that's part of the issue I think that's shaping up for the U.S. industry is there's less protected ag in the U.S.

Now, what is there is growing, acreage is expanding and of the acreage that does exist in the U.S. more of it's being converted to heated and to lit, to lighted acreage which allows them to produce through the winter in the shorter days, so as I look forward even with my prognostication head on into the future, I think the U.S. field business is going to continue to struggle more and more and more as the hot house business continues to take on more share, albeit Mexico, Canada or the U.S., which are all expanding.

So, we heard this morning about the challenges of field growing in terms of the input costs of land, labor and water. And those were all very true and very real concerns for the field growers. What's driving part of the hot house evolution is they more efficiently use all three of those land, labor and water and with higher production which continues to increase as they learn more and more and get better and better at growing.

The high cost of protected ag continues to slowly come down while the high cost of field growing, or the cost of field growing continues rising and I believe at some point in the future those two are going to meet and then cross and then we're into the science fiction movies of everything being grown in glass domes and all of that, so.

MR. LEY: Martin Ley here.

COMMISSIONER SCHMIDTLEIN: Yes?

MR. LEY: Your question is intriguing to us as well. We don't know and we cannot see the details on who responded what. I think that with industry knowledge and knowledge of the actions of the industry we could have a better understanding why certain attributes are important to that Respondent, that buyer.

As you see, we do when there's a lot of actors in the industry that are -- that they move through the roles, being growers, being importers, being buyers, re-sellers, et cetera. So, there is more than one company that responded questionnaires in multiple roles.

Again, we know that the response was very light on the purchaser's side, but on understanding or why there's an inconsistency to that and to what we have is the key here. I will first like to make two quotes here that were said earlier by Mr. Esformes where he said that customers buy tomatoes on the vine because they smell good. What smells is the vine, and that's the part that they do not eat.

And then also Mr. Schadler later on said that the customers they shop with their eyes, but they do not know what they are buying. To us was really striking, because that shows a very little understanding of the consumer. We decided to bring here independent experts on the buying side, who are the closest to the consumer.

The consumer very clearly, and Mr. Amberlang did a very good presentation earlier on how key important -- and how much they're driving our business and the transition and the evaluation that Mexico has taken is to serve and to respond to the demands of the consumer, but it's key and it's fundamental that we understand what the consumer wants, and that allows us to align our business to that, and that's what we are here to present to you.

COMMISSIONER SCHMIDTLEIN: Okay, I appreciate that, I mean it is -- we have for that particular question there were 13 responses, but I thought what was striking about it was how the vast majority of them ranked them as comparable and then even 2 said that the U.S. was superior.

So, if it was such a clear case of Mexico having developed this new seed that's vine-ripe and you have all of this that's made the taste so much better and more distinct?

MR. LEY: Correct. If I'm a purchaser, then I'm buying to resell. If I'm buying to resell, I'm not really --

COMMISSIONER SCHMIDTLEIN: With a variety of the purchasers that answered the questionnaire, there was distributors, supermarket, back -- we don't know which 13. There were 18 that submitted questionnaire responses, but 13 answered that particular question.

So, some are going to resell, but I assume, I mean the supermarkets are reselling to the consumers, the distributors have a longer chain.

MR. WILNER: Madame Commissioner, may I -- and I want to emphasize, we emphasize Mr. Augustini's point. The issue here, as it was in pricing, is what comparisons are made. We don't content, as Mr. Crisantes said, he's building greenhouses in Arizona and he said other U.S. producers can do that as well if they build a greenhouse, they will build a greenhouse that produces a tomato.

We think they'll be comparable to the tomatoes we produce in greenhouses in Mexico. So, those comparisons I think -- the point is it's still a dominant tomato grown both in Florida and California is a gas green tomato grown in the open field.

And I think if you compare the taste of the protected agricultural vine-ripe to the gas green tomato grown in the open field, you know shoppers have voted with their pocketbooks. They like the protected agriculture tomato more. I think, you know, we talk about retailers, but Mr. Augustini probably bought and sold as many tomatoes as any retailer or all retailers together, and you might be -- that's your own conclusion as I gather, right?

COMMISSIONER SCHMIDTLEIN: Were you also surprised by the survey data that showed the purchaser saying that U.S. and Mexican tomatoes are always and frequently interchangeable? So, 6 purchasers said they were frequently interchangeable, 2 said always, 4 said sometimes?

I mean again, would you expect them to be interchangeable if there was this big difference in quality?

MS. ARBOISIERE: The only thing I could speak to on that being interchangeable from our aspect, is much more food safety on the Mexican side. And so, for me they're not interchangeable, unless you can meet the specific qualifications.

And I would urge the Commission to really look at the United States today and produce being still our highest risk commodity, high outbreaks happen on fresh produce. We try our best to ensure that happens, but it's Mother Nature, and we can't always control that.

But, so in my opinion -- in my humble opinion, a tomato is not a tomato. There are so many variables that go into that. And from a food safety aspect, I think that should be a variable that is considered because that significantly changes the game in my opinion.

MR. AMBELANG: Commissioner, this is Bryant Ambelang from Nature Sweet. I am aware of one retailer that has a preference of U.S. versus Mexican grown product as a stipulation of selling to them. None of the other retailers -- and we've sold to virtually every single retailer in the United States has a complete indifference as to whether or not the production comes from Mexico, or it comes from the United States.

If the question were asked -- what do you think has better quality, a greenhouse grown product or field grown product? I promise you the answers to those questions would have been significantly different.

If the question would have been asked what's fresher? Greenhouse product or field grown product -- the questions would have favored demonstrably toward the side of greenhouse grown production, and I think --

COMMISSIONER SCHMIDTLEIN: I know, but don't we have here though the -- I'm just, we're keying off of you all's argument that Mexico is all vine ripe protected environment right? That is -- and you testified right, very, very, little field production that's not protected.

MR. AMBELANG: Right, and so my --

COMMISSIONER SCHMIDTLEIN: So, is it not reasonable to say well when they were answering that questionnaire, all Mexican product is vine ripe and protected, the vast majority of U.S. product is not?

MR. AMBELANG: I would suggest not ma'am.

COMMISSIONER SCHMIDTLEIN: No?

MR. AMBELANG: Because I don't think that the buyers know the dynamics of -- they want to know whether or not the product that they're buying, regardless of whether it's Mexico or the United States, is sourced from a greenhouse or not.

Whether or not they know the macro-economics of how that actually works, I would say they don't.

COMMISSIONER SCHMIDTLEIN: So, say that again? They want to know if a greenhouse --

MR. AMBELANG: They want to know whether or not the production -- so, what I'm consistently asked is not the country except for one retailer. I am consistently -- I'm not asked what's the origin of the product, I'm asked was that within a greenhouse environment or is that an open field product -- that's the question I'm asked.

And I think actually set on its ear, it means that the U.S. production base has the same open opportunity to have greenhouses as the Mexican production did, meaning the investment that went on in Mexico is the differentiating point, not the cost.

COMMISSIONER SCHMIDTLEIN: Okay.

DR. SINGER: Commissioner, can I weigh in on that one, is that okay?

COMMISSIONER SCHMIDTLEIN: Yes?

MR. SINGER: And I would echo this point, that I think the problem might be in how the question is posed and what tomato the Respondent has in mind. It is the case that the Mexicans are skewed heavily in one direction and the Floridians are skewed heavily in the other, but there is some overlap and if you don't clarify in the question, you could get a generic answer.

And so, I agree that if the question had been posed, you know, I'm thinking about a particular tomato now, a greenhouse tomato that is vine-ripened right from Mexico, how does that compare to?

But I also want to say this -- we don't have to rely entirely on a survey of a small sample of respondents here as to what kind of cross price elasticity of demand there is between greenhouse and open field. We have economic studies that we can look to, not to mind those that are in the literature and I would commend you to look at Thompson's in 2003 in which he found a very low, almost zero, cross-pricing elasticity between open field and the greenhouse tomato.

And I'd also commend you to look at this -- it's in my paragraph 3, it's the Cook Calvin 2005 report, and read into the record, she says that the food service industry consumes a large part of the mature green tomato supply, and in general does not substitute other tomato types, regardless of relative prices, making demand quite in elastic.

So, you have two economic studies that are telling us we're all kind of grappling with, which is what's the cross price in elasticity and what would happen if we took away the floors and the Mexicans went lower on their greenhouse tomato, right?

What we want to know to answer the question is what is the cross price elasticity of demand right, for the stuff that the Floridians are selling with respect to a change in the price of what the Mexicans are selling, and we have the answer to that and it's almost zero -- almost no cross price elasticity demand, right.

And so, I would suggest that we go with that over the responses of an ambiguous question for you know, 13 purchasers.

COMMISSIONER SCHMIDTLEIN: Okay, alright thank you, my time has long expired.

COMMISSIONER WILLIAMSON: Commissioner Broadbent?

COMMISSIONER BROADBENT: No more questions, I just want to thank the panel, it was very helpful.

COMMISSIONER SCHMIDTLEIN: Oh, I have one more okay, sorry. Alright, my last question has to do with the like product and Mr. Nolan, I think you make the argument there should be two like products in this case, right? So, can you just state for the record exactly where you think the line should be drawn?

MR. NOLAN: Right, so there's actually a couple ways to look at this. So, at the broader scale, we think there's a fundamental difference between greenhouse and open field tomato, and I think Mr. Wilner and the rest of the Mexican growers would say that's a clear dividing line.

We would set a second dividing line on top of that which is for small snack tomatoes that are grown in a greenhouse. And quite simply, there's a lot of ways to look at it. Can you do this with a full round green tomato? No.

It's the size different, right? This is tiny, right? This is not a Roma, this is not a round, it's a very small tomato. It has different growing techniques. It's only grown -- these guys are only grown in greenhouses.

MR. BURCH: Can you please speak into the mic?

MR. NOLAN: They're grown very small, their market share is direct to the consumer, right? They don't go through middle men and the other factors that we outlined would indicate that this is a separate channel, separate type of product, in a separate demand pattern because consumers are going straight to this product, and the price point on it is probably the highest in the industry.

If you go to the grocery store tonight, and look at the aisles, you will see tomatoes going from $1.49 a pound, to over $6.00 a pound. Nature Sweet is $6.00 a pound.

COMMISSIONER SCHMITDLEIN: Okay, alright, thank you very much. I guess no one make the joke today is it tomato, or is it tomato? Should I ask you since you are the experts.

MR. CHAMBERLAIN: It's tomato.

COMMISSIONER SCHMIDTLEIN: It's tomato.

MR. CHAMBERLAIN: But I would like to before we end, I would like to challenge the comment a tomato is just a tomato. I really don't agree with that and if you do agree with it, then how would you explain the significant financial investment of domestic producers in Mexico themselves, now?

I think that that's very difficult to understand a tomato is just a tomato and it's interchangeable. There are a significant amount of investments of domestic producers in Mexico as we speak and it's probably because they understand that they can grow a better tomato in

Mexico, thank you very much.

COMMISSIONER SCHMIDTLEIN: Alright thank you very much. I'd like to thank all the witnesses for being here.

COMMISSIONER WILLIAMSON: Thank you, Mr. Nolan, post-hearing could you maybe you've given some separate like products, and just let us know how large that more expensive variety that you're talking about -- what percentage of the market is that actually, in the post-hearing.

MR. NOLAN: Well yeah, we could certainly do that because basically you're looking at the progenitor of that product.

COMMISSIONER WILLIAMSON: Yeah, what percentage of imports do they account for too? Okay, thank you. If there are no further questions from Commissioners, does staff have any questions for this panel?

MR. ROBINSON: Chris Robison, Office of Investigations, staff have no questions.

COMMISSIONER WILLIAMSON: Okay, do Petitioners have any questions for this panel?

MR. CANNON: No, the Petitioners have no questions.

COMMISSIONER WILLIAMSON: Okay, fine, then it's time for closing statements and oh here it is, okay, Petitioners have only 5 minutes for closing and let's see those in opposition have 17 from direct and 5 from closing for a total of 22 minutes. Of course, they don't have to take all of that. So, with that we'll dismiss this panel.

I want to thank you all for your testimony and those of you who have traveled far for coming here and then we'll have closing statements, thank you.

MR. BURCH: Closing and rebuttal remarks on behalf of those in support of continuation of order will be given by James R. Cannon of Cassidy Levy Kent. Mr. Cannon, you have five minutes.

COMMISSIONER WILLIAMSON: You may begin when you're ready. And as soon as everybody sits down back there, too.

MR. BURCH: Will the room please come to order.

CLOSING STATEMENT OF JAMES R. CANNON, JR.

MR. CANNON: Thank you. At the outset, I'd like to just say to the Commission that we requested this case be terminated in November. We wanted Commerce to terminate it and before we ever got to this point, but now that we're here, we firmly believe that the Commission should make an affirmative determination if we get to a vote. In other words, if for some reason, Commerce doesn't terminate, I suppose this is better than nothing.

Now, first I'd like to address greenhouse versus field. We've heard an awful lot about this. We've seen that the line--wish they could run the slide for me--but you remember the bar across, which was 81% of their product is greenhouse. So I just wanna call attention to two tables in the Staff Report, and most importantly, Table 4-3 on Page 4-7. This is where the Mexican industry reports--the importers-- report that round, plum, grape and other tomatoes by field and greenhouse, so you can see the percentage.

And so you see in Table 4-3 that the imports from Mexico, 49.6% of their importers were round field tomatoes. 34.9% were greenhouse tomatoes, round. And they go down each category and they divide it up. And then total across you see 68% of their quantity was field and 31% was greenhouse. So what we're seeing now is this, what I was trying to describe as, to me, a misunderstanding or a crazy definition of what's a greenhouse. And we know there's adaptive, which is shade. In our view, in the pricing products that that be combined with field we did specifically request, because they have the same reference price.

So when Mr. LaRussa in 2013 was negotiating this agreement, they conceive that we should pay the same reference price for field and adaptive environment because those tomatoes are equivalent and they compete equivalently in the U.S. market.

Next, the types of tomatoes, we've heard that the types are different. That the U.S. industry makes mature green and the Mexican industry focuses on different types of tomatoes. Well, Table 4-3 shows the largest volume from Mexico is round tomatoes, field. The next largest volume is plum tomatoes, field. All right? Those are the top two volumes from the U.S. growers.

Table 3-3 shows you absolutely that. So they are -- I don't know what basis they would ask you to make this determination on, because they are not focusing on the record. The Staff Report before you clearly shows that the largest two categories are round and plum field tomatoes from Mexico, round and plum field tomatoes from the United States growers.

The next argument they make is that the channels are different. But then you heard Mr. Chamberlain testify, they definitely sell to all channels. Even NatureSweet said, "We sell to all channels." Well, Florida sells to all channels, California sells to all channels. Michigan, Tennessee. All of the producers are in all channels. And if there's any doubt about foodservice, consider Taco Bell. What do they do? They buy from six Mexican producers and one domestic producer. So they are also buying foodservice, obviously from Mexico.

Next the argument is made that somehow the U.S. industry just ignores the views of consumers. First of all, that's not the point of competition. Point of competition is that distributors or at foodservice companies or at retailers. You'll only get to sell your product when it's on the floor. It's not consumers that decide which products get in grocery stores. And the Commission's precedent clearly recognizes this.

Secondly, Commissioner Schmidtlein took all my steam on this. Table 2-10, which talks about the comparability of U.S. versus Mexican tomatoes. And she focused on flavor, but I would note that the same point can be made with virtually every factor. Y'all are familiar with this chart. It talks about firmness, flavor, minimum quantity, ripeness, shelf life, texture, shape, all features of the tomato, and down the middle, in highlight, in the Staff Report, overwhelmingly, purchasers found that U.S. versus Mexico, the products are comparable.

With one notable exception. Price. Overwhelming. Well, a majority of purchasers found that in terms of price, U.S. is inferior to Mexico, meaning the Mexican prices are lower, right. So the purchasers are telling you, price is important, that's in 2-9. And they're telling you the Mexican prices are lower.

So on the record that you have before you, I think you're compelled to the conclusion that if the Suspension Agreement is lifted, the increase in acreage, the unused capacity, the expanding production, the expanding market share of the Mexican tomatoes, are clearly going to cause injury to the U.S. industry which is vulnerable. All of its trends are in the opposite way. So on that basis, you should make an affirmative determination. Thank you.

COMMISSIONER WILLIAMSON: Thank you, Mr. Cannon.

MR. BURCH: Closing and rebuttal remarks on behalf of those in opposition to the continuation of order will be given by Tom Wilner of Shearman & Sterling and Matthew Nolan of Arent Fox. Mr. Wilner and Mr. Nolan, you have 22 minutes.

MR. NOLAN: So, I think -- this is Mr. Nolan speaking -- Mr. Ambelang and I are gonna talk for just a few minutes on the rebuttal, and then we're gonna turn it over to Mr. Wilner and let him close this out for the day.

COMMISSIONER WILLIAMSON: Okay, thank you. Please begin when you're ready.

MR. NOLAN: Okay, good. All right, so I'm gonna let Bryant talk for just a couple minutes to reinforce a couple of things that he said in his affirmative testimony.

MR. AMBELANG: So I would like to reintroduce Anna to the Commissioners. Just in the closing remarks that counsel had just completed, I would beg to differ as to who makes the decisions. He just mentioned that they don't have -- as we had mentioned, they don't have consumer information on what kind of products drive consumer behavior. And he said, well, that these sorts of sales determinations are made by distributors, they're made by retailers. And I would just suggest to him two things.

One, there's a brand sitting up on the Commission's desk right now that has existed for those two products over ten years and have consistently stayed at the same price. And they stayed at that same price because the consumer is willing to pay that price. And he denied 100 years of consumer package goods industry knowledge, and the ability for companies to have direct relationships with consumers regardless of the channel that that product is sold through. He also denies somehow in that that there's such things as Amazon and ability to actually buy direct from companies, but that's a different conversation.

And what I'd like to suggest to you, is this really boils down to, does the consumer have access to the best-tasting, highest-quality, environmentally-stable, its socially responsible products in the marketplace? And I would strongly recommend to you that the greenhouse industry has provided all of those things and they have done it in a profitable fashion for the people who have participated in that industry. Thank you very much.

CLOSING STATEMENT OF MATTHEW M. NOLAN

MR. NOLAN: So I'm gonna take you back to just a couple of things that Mr. Cannon just talked about and emphasized in his closing remarks. He talked about volumes, Roma and round, open-field being the predominant information on the record based on the Staff Report, based on the products' comparisons that were done.

I would remind the Commission that the product comparisons were open-field and adapted environment tomatoes, which is one of the reasons why we had a bit of confusion earlier today on the datasets. Because you're having a pure open-field and an adaptive market or environment tomato being put together. Okay? So you might be having some things mixed in together, probably are.

Having said that, if you look at the open-field material, which is by far, the single largest category of production and sale in the U.S. and on the Mexican side, and you look at the underselling and overselling analysis, it does not indicate that Mexican product is underselling the market. The predominant amount of time there is overselling and there is significant overselling.

I mean beyond what I would have expected in a case like that for what they call is a commodity product. And if this is "commodity product", why is it, when I go to the store, you can see tomatoes that are sold for $1.49 a pound up to over $6 a pound. Does a commodity do that? Wouldn't it all be sold at the same price? Or very close to the same price? Why is the consumer willing to differentiate between a tomato that costs $1.49 and still pay for the one that costs 43 times that price?

It's because consumer preference is driving this equation. Because the consumer wants to pay for something that is better, that is more flavorful, that is fresher. That is the definition of what NatureSweet has made its bank roll on. This is a company that went from $10 million to almost $400 million in sales. In the space of what? 10 years? 15 years? That is unfathomable in this industry if it's a commodity product.

There has got to be product differentiation going on in this market. And that is what we are arguing about. Is that commodity differentiation because it's small or large? Is it because it's greenhouse grown or open field? The predominant production in the United States has been and will remain open-field mature greens.

Now, yes, they do some type of on-the-vine. They do some greenhouse. Some parts of the country do more than others. But predominantly it's still that product. And that's the product that the FTE is talking about. And that is the product that is not being undersold in the market.

The other points that I'd like to make sure is that the -- we agree and accept that Mexican production has steadily increased. And that most of the growth in the market or all the growth in the market frankly has gone to Mexico. You can't escape that fact. You look at the volumes. We would be crazy not to admit that.

And the question is why? Because if the prices were higher and remained higher, why would the Mexicans continue to gather market share? But for the fact that the consumer wanted to buy that product. Even though the prices were higher.

And I do not buy the concept that a buyer in the United States would consciously buy a tomato in order to discount the price and sell it at a lower value in order to avoid the reference price, which doesn't even apply at that point, because the reference price applies to the first sale coming across the border to an unrelated U.S. party. Once that happens, game over. We're done looking at this.

And if the grocery store wants to do something different, or if they find that they're holding a product on for eight weeks and they've gotta clear a shelf and they gotta put it there, that's their business. That doesn't affect the selling price.

In the end, Mexican tomatoes are not a causation of any injury to the U.S. industry. What is happening here is the market has shifted, the consumer has shifted, and the United States production industry at large, maybe not all of it, but a big percentage of it, simply has not adapted to the market.

There is no way that you can't build a greenhouse in the United States. These guys have bought and rehabilitated a major greenhouse in the United States, which was losing money. And if you look at the specifics on our brief, you'll hear more about how much they've expended in rebuilding this facility. But they have that much degree of confidence in their ability to make money in the U.S. market, because they're gonna make that product. And if they're making that product and can make money, why can't the U.S. do it, but for the fact they're not willing to. Thank you.

CLOSING STATEMENT OF TOM WILNER

MR. WILNER: Thank you for staying around to the end of this long day. I know there's some confusion in the data in the Staff Report. Which seems ambiguous. But let me try to clarify some things that we do know and are clear.

We know that the U.S. producers continue to produce as their dominant product the gas-green tomato, tomato growing in the open field, picked before it begins to ripen, and then gassed to turn red. We also know from the staff, and I'll give the support to it, that has dropped in its market share in the United States, although sales have been fairly steady and their prices have been fairly steady. And we know that the drop from the USDA data come because it's lost its share in the retail market. And I will provide the other data for that. It's in the USDA report I gave and their updates.

And the real question, is why has that happened? Now, I know there's been some confusing data, but we know from everything that they said and what Mr. DiMare said, and what the USDA has said, that the decrease occurred due to the growth of greenhouse tomato imports into the United States market.

And in Tab 2 to our prehearing brief, was the chart from the recent USDA report that came out last week. And it shows there the growth of imports from Mexico of greenhouse tomatoes. Now, we had their chart earlier, if we could put it up. The fact is, so greenhouse tomatoes have replaced this in the retail market.

As Mr. DiMare explained, a shift in buying practices, primarily at the retail level, to source more greenhouse product is the cause of this. This, in turn, has caused market share loss for growers who produce open-field product. That's what the U.S. producers produce.

As I said in the opening, why has this occurred? Well, consumers have made a choice for this. As Mr. Nolan said, and Mr. Agostini has said, consumers have made a choice that they want a protected environment product. And the fact is, as we know, Mexico produces it and the U.S.

producers don't.

The U.S. producers in Florida, less than 1% of their production is protected environment greenhouse. Nationwide, it's single digits. You can get that from the report. So if consumers want it, you're gonna get it from Mexico or Canada and Mexico is supplying it.

Now has that occurred because of lower prices? Now, we need to go in the Staff Report again. I agree totally with Mr. Nolan and Dr. Singer's report will analyze it. We know, as consumers, when we go into this grocery store, greenhouse tomatoes aren't cheaper, they're more expensive. They're more expensive at retail and the wholesalers are paying more for them.

As Mr. Agostini said, one of the buyers and the biggest retail chains in the country with 5,000 grocery stores, he said he cannot recall an instance where a Mexican tomato would underprice the domestic product. That's the fact. Now, maybe some of the Staff Report isn't there.

But I really believe and I think if we look at the real data and the USDA data, which we will try to put together more clearly to clarify the ambiguities in the Staff Report, we will see that whatever problems the U.S. producers face is not because of underpricing, aggressive underpricing, unfair pricing from Mexico.

It's purely a result of the product that they have decided to produce and bring to the U.S. market. A gas-green tomato, which consumers, I'm not gonna do a taste test here, but consumers have voted with their pocketbook and saying, "We don't prefer that tomato. We wanna pay more for another tomato."

Let me say, I was a little shocked and for this presentation when you asked if they had done studies, with all the money they spend on the FTE, studies on consumer preferences and they said, "No, we haven't done that in 20 years." Well, as they have stood pat, producing that same product, the Mexican industry has invested more than a billion and a half dollars improving their product, improving their product and bringing a product to the market which sells not only to Walmart, but in the U.S. market at the retail level. That's what's happened in the market.

So, you know, and Mr. Nolan said this earlier, I really think what the U.S. producers are doing, they've brought a product to the market that retail consumers think is inferior. They've done nothing to improve the product. They stood pat on it and they're asking you to protect it.

It does remind me very much, I know Mr. Nolan said earlier, if we were in a different industry, if this were the automobile industry, and the U.S. producer came in with a 1996 Buick, which is when the Suspension Agreement was entered into, and they said, "Look, we need protection because all these new-fangled cars are coming into the market, and they have safety controls and electronics and computer stuff and they're killing us. They're killing us. Now, we haven't done anything to improve our product, but our product's a great product, it's been a great product for 30 years and we don't need to do anything. But we need protection from these guys. Even though they sell their product for more than us, we need you to make them more expensive so the consumers will buy ours." That's really what's happening here.

The only thing I'd like to say is, as I said before, I feel manipulated by the Commerce Department in this, that they have now scheduled, withdrawn from the Agreement, so that your vote is scheduled for after their withdrawal. I encourage you, I call on you to reach your decision by May 6th. As I say, this is the story and the question is, why has that happened? And the price data will show, it's not price. Thank you very much for your time.

COMMISSIONER WILLIAMSON: Okay, thank you. And thank everybody for participating in today's hearing. Now for the closing statement.

Post-hearing briefs, statements responsive to questions and request of the Commission and correction to the transcript must be filed by March 29th, 2019. Closing of the record and final release of data to parties April 26th, 2019. Final comments are due May 1st, 2019. And with that, this hearing is adjourned.

(Whereupon the meeting was adjourned at 5:11 p.m.)

CERTIFICATE OF REPORTER

TITLE: In The Matter Of: Fresh Tomatoes from Mexico

INVESTIGATION NO.: 731-TA-747

HEARING DATE: 3-21-19

LOCATION: Washington, D.C.

NATURE OF HEARING: Fourth Review

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: 3-21-19

SIGNED: Mark A. Jagan

Signature of the Contractor or the
Authorized Contractor's Representative

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