

THE UNITED STATES INTERNATIONAL TRADE COMMISSION

In the Matter of:)
) Investigation No.:
 CERTAIN ORANGE JUICE) 731-TA-1089 (Final)
 FROM BRAZIL)

Tuesday,
 January 10, 2006

Room No. 101
 U.S. International
 Trade Commission
 500 E Street, S.W.
 Washington, D.C.

The hearing commenced, pursuant to notice, at 9:30 a.m., before the Commissioners of the United States International Trade Commission, the Honorable STEPHEN KOPLAN, Chairman, presiding.

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P R O C E E D I N G S

(9:30 a.m.)

1
2
3 CHAIRMAN KOPLAN: Good morning. On behalf
4 of the United States International Trade Commission.
5 I welcome you to this hearing on Investigation No.
6 731-TA-1089 (Final) involving Certain Orange Juice
7 From Brazil.

8 The purpose of this investigation is to
9 determine whether an industry in the United States is
10 materially injured or threatened with material injury
11 or the establishment of an industry in the United
12 States is materially retarded by reason of less than
13 fair value imports of subject merchandise.

14 Schedules setting forth the presentation of
15 this hearing, notice of investigation and transcript
16 order forms are available at the Secretary's desk.
17 All prepared testimony should be given to the
18 Secretary. Do not place testimony directly on the
19 public distribution table.

20 As all written material will be entered in
21 full into the record it need not be read to us at this
22 time. All witnesses must be sworn in by the Secretary
23 before presenting testimony. I understand the parties
24 are aware of the time allocations. Any questions
25 regarding the time allocations should be directed to

1 the Secretary.

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

6 Madam Secretary, are there any preliminary
7 matters?

8 MS. ABBOTT: No, Mr. Chairman.

9 CHAIRMAN KOPLAN: I think I've covered
10 preliminary matters.

11 Very well. Let us proceed with opening
12 remarks.

13 MS. ABBOTT: Opening remarks on behalf of
14 Petitioners will be made by Matthew T. McGrath,
15 Barnes, Richardson & Colburn.

16 MR. MCGRATH: Good morning, Mr Chairman,
17 members of the Commission. I'm Matt McGrath of
18 Barnes, Richardson & Colburn representing the
19 Petitioners in this case, Florida Citrus Mutual and
20 three of the Florida-based juice extractor/processors.

21 When we brought this petition to the
22 Commission a year ago, the Florida industry was trying
23 to shake off the effects of a long period of depressed
24 pricing for juice and for fruit followed by an unusual
25 three hurricanes in the same season. Imports had

1 built inventories to clearly unsustainable levels.

2 Now, a year later, after the DOC's final
3 determination yesterday and another hurricane this
4 past fall, some of the current market indicators have
5 changed a bit, but the injury from increased dumped
6 imports is just as apparent.

7 We will present testimony today showing that
8 during the period of this investigation imports
9 increased from eight percent to more than 25 percent
10 of domestic production. Inventories of domestic and
11 imported juice increased to an all-time high of 28
12 weeks. Even after the 2004 hurricanes, they still
13 increased by 21 percent over the period.

14 Juice futures prices declined to an all-time
15 low of 54 cents per pound. Returns to growers
16 declined. Profits to growers measured by
17 questionnaire responses dropped 100 percent. Growers'
18 net income, employment, capital expenditures all
19 declined dramatically.

20 Processors' operating incomes plunged deeply
21 into the red. Processors' production, capacity
22 utilization, employment, productivity -- almost every
23 traditional indicator of injury evaluated by the
24 Commission -- was down.

25 We will discuss how low pricing has

1 undermined this industry's efforts to recover from
2 natural phenomena like hurricanes and canker because
3 of the increased costs of not just the lower output
4 per acre, but increased renovation activity that's
5 necessary to improve in the future.

6 It's important to recognize the role that
7 the futures market plays in pricing of all orange
8 juice and in prices and returns for fruit both
9 directly and indirectly. Many indexes and prices in
10 the orange juice business are tied to that market, so
11 we'll talk a lot about that today.

12 Now, Respondents will revisit some of their
13 arguments from last year, namely that low prices are
14 purely a matter of big Florida crops and that imports
15 don't have any material impact. Then they'll argue
16 that the imports are complementary and important to
17 the industry's recovery for blending and viscosity and
18 other purposes, and then they'll argue that our
19 problems are over because fruit reduction and a
20 decline in the inventory from last year mean that
21 price levels might rise enough for us to get out of
22 the red this year.

23 To the growers of Florida, these arguments,
24 having listened to them, sound a little like a mugger
25 blaming the victim for carrying cash and then telling

1 him that he's taking it from him for his own good and
2 then telling him without the extra money he can run
3 faster so there's no threat of future muggings. We
4 see these facts differently, and we will cover them.

5 We'll also explain why FCOJ and NFC should
6 be treated as the same like product based on all the
7 statutory criteria and respond to the concerns listed
8 by some of the Commissioners in the preliminary
9 determination.

10 The Commissioners and staff have now had an
11 opportunity to visit the plants and see the production
12 for themselves. It's clear that FCOJ and NFC are
13 simply different forms of the same product. The
14 oranges are the same, production lines are the same,
15 employees are the same, and most of the processors
16 concerned make both products in both forms.

17 The differences in evaporation and storage
18 costs between the two are simply not sufficient to
19 offset the obvious similarities. The storage life
20 differential is also going to be discussed today.

21 These products and the products made from
22 them are sold side-by-side at similar or sometimes
23 even identical prices. There's no clear dividing line
24 for the Commission to be making a legal distinction
25 between them.

1 Finally, there can be even less challenge to
2 the notion that round orange growers are part of the
3 domestic industry producing this single like product.
4 Approximately 95 percent of their output goes into
5 these forms of juice. They don't see themselves as
6 part of any industry but the orange juice industry,
7 and juice is simply the final stage in the production
8 line of their product, so indicators of their health
9 rise and fall only with the juice industry.

10 Finally, we hope that you'll take advantage
11 of our sampling of orange juices, which we'll do
12 during our presentation. These are common brands that
13 you've seen in Washington area supermarkets. We're
14 offering juice both from the Respondents and entirely
15 from Florida product. The only differences you'll
16 find in most cases are differences in origin labeling
17 on the side of the product.

18 It's going to be very difficult to
19 distinguish between them. One is made from
20 concentrate. The others are not-from-concentrate
21 product, but they're interchangeable, high-quality
22 products.

23 We do not seek to prevent importation of
24 Brazilian product which has been a part of this market
25 for many years. What we seek only is fair and

1 rational pricing so the Florida industry can remain
2 healthy and in business.

3 CHAIRMAN KOPLAN: Thank you.

4 MS. ABBOTT: Opening remarks on behalf of
5 Respondents will be by Christopher Dunn, Willkie Farr
6 & Gallagher.

7 CHAIRMAN KOPLAN: Good morning. Your
8 microphone?

9 MR. DUNN: Good morning, Mr. Chairman and
10 members of the Commission.

11 There is one point that should be clear from
12 the record in this case. It is this. Imports of
13 orange juice from Brazil have virtually nothing to do
14 with the condition of the domestic industry. Rather,
15 the condition of the domestic industry is
16 overwhelmingly a function of the size of the Florida
17 crop and to an extent of the domestic demand for
18 orange juice.

19 Brazilian exporters and importers have
20 nothing to do with either. In fact, the period of
21 investigation provides almost a textbook study in how
22 the size of the Florida crop affects the condition of
23 the domestic industry.

24 About six months before the petition in this
25 case was filed, the domestic industry had experienced

1 two crop years out of three where production soared.
2 In one of those years, U.S. production was higher than
3 total U.S. consumption. Prices fell to their lowest
4 level in years.

5 What a difference a year makes. In the late
6 summer of 2004, three hurricanes in a row pummeled the
7 Florida citrus belt, causing a 40 percent drop in
8 Florida production. Prices recovered rapidly. As
9 domestic inventories were drawn down, prices continued
10 to rise.

11 Then, in 2005, another hurricane hit
12 Florida's crop resulting in a second weak crop in a
13 row. Prices are now at their highest level in years.
14 As a result of these price rises, the Florida
15 Department of Citrus predicts that even with lower
16 crop sizes the price per box received by Florida
17 farmers will be the highest since 1992, and total
18 income for the Florida farmers as a whole will be
19 higher than it was in 2003, a near record crop.

20 To be sure, many Florida growers and some
21 domestic processors, including the people that I
22 represent here today who are processors of Florida
23 orange juice, have suffered as a result of the
24 hurricane damage. Processors in particular who have
25 much less fruit to crush feel the effects.

1 While I've seen maps on the internet which
2 attempt to blame the 2004 hurricanes on George Bush,
3 no one, not even the most xenophobic Floridian, blames
4 the hurricanes on the Brazilian industry. Blame it on
5 Rio may work in a movie title, but it cannot work for
6 the orange juice industry.

7 What then is the role of Brazilian imports
8 in the U.S. market? The answer is that if there's any
9 role at all it is a positive one. Imports rise when
10 prices rise and fall when prices fall. It's only a
11 little facetious to claim that if U.S. producers want
12 higher prices they should import more.

13 The real truth, though, is that imports are
14 supplementary suppliers to the U.S. market. Imports
15 increase when there's a shortage of U.S. product and
16 decline when there's a surplus. The record
17 demonstrates this beyond dispute.

18 Some imports from Brazil are always
19 necessary for the U.S. market. As you will hear this
20 afternoon, imports are necessary to blend with U.S.
21 juice so that the U.S. juice will meet color, taste
22 and viscosity characteristics demanded by the U.S.
23 market. By being blended with domestic juice, imports
24 allow more domestic juice to be sold than would
25 otherwise be the case.

1 Imports also permit more domestic juice to
2 be exported because of duty drawback which allows
3 domestic juice to compete with the world market.
4 Again, without imports there would be less domestic
5 juice sold for export.

6 Imports from Brazil are particularly needed
7 now when domestic orange production is falling far
8 short of what is needed to meet domestic consumption.
9 Without supplementary imports to provide a stable,
10 reliable supply, orange juice suppliers in this
11 country would lose market share to competing
12 beverages. These customers, once lost, would take
13 years to replace.

14 If prices are now so high and the shortage
15 of domestic supply so great, why is this case being
16 maintained? The answer is simple. This case is not
17 about protecting the industry, the Florida industry,
18 against imports from Brazil. Unlike virtually all
19 other cases before this Commission, this case has been
20 brought only against certain Brazilian companies,
21 producers of FCOJ, not coincidentally excluding those
22 Brazilian companies who supply the Petitioner.

23 This case is about one Petitioner seeking
24 favored treatment over other domestic producers. If
25 the Commission were to find injury in this case, there

1 would probably be no noticeable reduction in the
2 overall amount of juice imported from Brazil. It
3 would just be non-subject Brazilian juice. The U.S.
4 growers will gain nothing.

5 One U.S. Petitioner, however, Southern
6 Gardens, will gain. The Commission should not allow
7 this proceeding to be abused in this manner. It
8 should find what the record demonstrates; that there
9 is no injury by reason of imports of subject orange
10 juice from Brazil.

11 Thank you.

12 CHAIRMAN KOPLAN: Your microphone?

13 MS. ABBOTT: The first panel in support of
14 the imposition of antidumping duties, please come
15 forward and be seated. The witnesses have been sworn.

16 (Witnesses sworn.)

17 CHAIRMAN KOPLAN: Thank you, Madam
18 Secretary.

19 You may proceed.

20 MR. MCGRATH: Thank you, Mr. Chairman.
21 Again for the record I am Matt McGrath of Barnes,
22 Richardson & Colburn representing the Petitioners.

23 Rather than go through the entire
24 introduction, I'll go one-by-one through our panel of
25 witnesses. We have three growers, two processors, two

1 economists -- three economists, two of whom are
2 growers. We're not saying the economists are part of
3 the industry, but they happen to be in there, with
4 their other hats, part of the industry.

5 Two additional witnesses are here for
6 answers to questions that I want to identify who won't
7 be presenting a direct statement, and they are Mr.
8 Andy LaVigne, who is the executive vice president of
9 Florida Citrus Mutual. He's been sworn.

10 Also Dr. Thomas Spreen, who is an economist
11 at the University of Florida who's done probably more
12 work in the field of orange juice economics than most
13 economists in the world. He's also available here to
14 answer questions, and he'll be available for
15 questioning.

16 I'd like to start with the president of
17 Florida Citrus Mutual to my right.

18 MR. MCKENNA: Good morning, and thank you
19 very much. Mr. Chairman and members of the
20 Commission, I'm Marty McKenna, president of Florida
21 Citrus Mutual and an orange grower for the past 25
22 years. I currently grow 320 acres of citrus in Polk,
23 Hardee and Highlands County and also manage an
24 additional 5,000 acres of orange groves owned by
25 others.

1 The oranges on this acreage are utilized
2 interchangeably in the production of FCOJM and NFCOJ.
3 We have no knowledge of how they are used. We supply
4 almost every processor in Florida.

5 I appreciate the opportunity to appear
6 before you again to detail the impact of the Brazilian
7 price dumping on our industry. I testified before the
8 Commission staff last January in the preliminary
9 investigation. Since then, the industry was hit by an
10 additional hurricane.

11 The price for bulk juice on the futures
12 market finally rose after only slight improvement last
13 season. Brazilian imports increased. More growers
14 have left the business because of long-term low
15 prices. Our break-even price for fruit has risen from
16 75 cents per pound to at least \$1 per pound. Some
17 things have not changed. We still do not see a profit
18 for the fourth straight year.

19 The inventories of Brazilian juice that
20 built up before the fall of 2004, as we predicted,
21 served as a cap on the normal price recovery we should
22 have seen in the wake of the drop in fruit production.
23 When our production dropped by 30 percent after the
24 2004 storms, the price increase which we saw was less
25 than 30 percent over the course of the rest of the

1 season, which was insufficient to cover the
2 shortfalls.

3 We have reduced our productive acreage by 20
4 percent over the last three years due to low returns,
5 crustacea and tree damage. We have also seen
6 significant increase in the cost of fuel and ammonium
7 nitrate. We have tried to cut our cost whenever
8 possible, but in the process probably cut our
9 productivity as well.

10 At last season's prices of 75 to 95 cents
11 per pound solid and a decrease in production, we
12 remain in an unprofitable situation. Low production,
13 coupled with low prices, is very detrimental to the
14 Florida citrus grower. We are still trying to decide
15 whether and how much to reinvest in our recovery
16 efforts. Both smaller and medium sized growers find
17 it very difficult to obtain working capital due to low
18 pricing.

19 As you know, the commodities futures market
20 for FCOJ also plays a role in how much is paid for
21 juice and how much is paid for our fruit. The sheer
22 size of a few Brazilian processors and their
23 overriding presence in the United States market gives
24 them an unusual power to influence the futures market,
25 which in turn directly impacts how much they or any

1 other processor will pay for our fruit in the United
2 States.

3 We know, for instance, that individual
4 Brazilian processors more frequently delivered
5 significant volumes of juice in 2004 at low futures
6 prices and were able to draw down the market price for
7 fruit by their own actions. Our price for fruit
8 delivered into the cash market is usually based on
9 some factor tied to the near term futures price.

10 The Brazilian owned processors also buy
11 Florida oranges from Florida growers. The practice of
12 driving the futures price down allows them to purchase
13 Florida oranges at a lower cost.

14 As I indicated previously, low prices have
15 had a long-term impact that can't be measured in the
16 same season; the low prices in 2004 and 2005 and the
17 high juice inventories that we had to cut our input
18 expenses, which will affect our output and
19 productivity in the long run.

20 Even if the Respondents predict that we will
21 see profits this year for the first time in years, a
22 break-even scenario can't begin to reflect the losses
23 we will see from cutting back on cultivation and
24 improvements due to the past four seasons on poor
25 returns.

1 Two years ago we spent approximately \$800
2 per acre, but dropped back to \$600 last season due to
3 chronic low returns and high increased juice
4 inventories. This year we're spending as much as
5 \$1,000 per acre, partially to offset hurricane losses
6 and partially to make up for the corner cutting forced
7 on us last year. The reduced fruit output this year
8 is not due solely to hurricane and canker related
9 losses, but to reduced grove care and abandonment of
10 acreage in previous low price years.

11 Unlike many products you might examine, if
12 the prices for fruit are low we cannot simply shift
13 crops, reduce our production volume, cut a shift or
14 run a factory a few less hours. The factory is a tree
15 which cannot be turned off for at least 25 years.
16 Like most businesses, we still have fixed costs per
17 acre, and a low volume or low yield means low or
18 negative returns.

19 After the hurricanes, President Bush visited
20 our grove personally to see the damage. When we told
21 him that we would rebuild he pledged, "I will also
22 ensure that Florida farmers are treated fairly on the
23 global market and that no country takes advantage of
24 citrus growers during this time of disaster."

25 We are just asking to be allowed to compete

1 without the burden of artificially low Brazilian
2 prices. Thank you very much.

3 MR. CHAPMAN: Good morning. I'm Tristan
4 Chapman, the Vice President of Citrus Plant Operations
5 for Southern Gardens Citrus in Clewiston. I've been
6 working in a citrus processing plant really all my
7 career, 39 years, 1967, and I've worked for Southern
8 Gardens for about 10½ years.

9 Prior to that I served in various capacities
10 at Tropicana Products, Inc. for 28 years. I started
11 in the industry sweeping the floors in Tropicana's
12 Bradenton facility and progressed through various
13 operator jobs, eventually getting into supervision and
14 finally became director of operations for Tropicana's
15 Ft. Pierce facility over on the east coast. Recently
16 I just completed six years of service as a member of
17 the Florida Citrus Commission, a position appointed by
18 the Governor of the State of Florida.

19 My goal today is really to help you all
20 understand why NFC and FCOJ are like products produced
21 by the same grower/processor industry. I expect to do
22 this primarily from my experience of having been a
23 processor for my entire career, but first I'd like to
24 make a point about a relevant aspect of the orange
25 juice market programs from the Florida Citrus

1 Commission perspective.

2 The Citrus Commission, the Florida
3 Department of Citrus, is wholly funded by grower
4 dollars to market generic orange juice, Florida orange
5 juice. Never in the 70 year history and the hundreds
6 of millions of dollars in expenditures for advertising
7 this orange juice has there been a distinction made
8 between not-from-concentrate and reconstituted orange
9 juice.

10 Southern Gardens owns 20,000 acres of orange
11 groves and a citrus processing facility which I run.
12 Historically we purchase about two-thirds of our fruit
13 from other growers in Florida. We produce both FCOJ
14 and not-from-concentrate, although in the past year
15 our output has been predominantly NFC.

16 We are the largest producer of non-branded,
17 bulk NFC in the State of Florida. We're recognized as
18 the lowest cost producer of bulk NFC and the most
19 efficient citrus processor for extractor utilization
20 in six of the past seven years. Our plant is ISO
21 certified, and as such our operations are driven by
22 customer requirements.

23 We deliver juice to our customers in
24 tankers, and they package the orange juice. Our
25 customers' expectations are set by the ultimate

1 consumer, who purchases both branded and non-branded
2 products.

3 As a grower and a processor, we have
4 experienced the same problems as the rest of the
5 industry in recent years and have persevered in the
6 face of these many challenges. Recently Hurricane
7 Wilma reduced our fruit supply after multiple years of
8 low prices in the industry.

9 FCOJ and NFC are simply different forms of
10 the same product -- orange juice for processing into
11 ready-to-drink consumer juice. The types of round
12 oranges used by Florida processors to make both types
13 of juice vary of course by grower and by season, but
14 basically nearly all Florida oranges are used to
15 produce both types of juice.

16 Our contracts with our customers do not
17 designate which varieties to use, but they do
18 designate color, flavor, sugar content, brix and ratio
19 and other quality specifications. When we purchase
20 oranges from outside groves, we do not pay different
21 prices for NFC oranges or for FCOJ oranges. We do
22 recognize different levels of maturity or quality in
23 the compensation for this fruit.

24 Giving a little bit about the plant
25 operations, when oranges are received in the plant

1 each load is inspected and approved by the Florida
2 Department of Agriculture, which is on site 24 hours a
3 day. The fruit is then washed, graded and sized and
4 then is sent to the juice extractors.

5 Southern Gardens has recently been running
6 two of our extractor lines for not-from-concentrate
7 and the other one interchangeably between not-from-
8 concentrate and FCOJ. The same extractors, which are
9 manufactured by FMC Corporation, are used by most
10 processors worldwide -- I think they have about 80
11 percent of the market -- to make both FCOJ and NFC.

12 A processor may change extractor settings
13 depending largely on the time of the season and the
14 variety of fruit being processed. Our same employees
15 deliver, unload, inspect the fruit, operate the
16 extractors and the computer controls and operate the
17 in-yard transportation regardless of which type of the
18 bulk product might be produced.

19 After leaving the extractor, the juice
20 following the NFC stream, that flow is urated in a
21 centrifuge, a function which FCOJ also undergoes, but
22 this occurs through the evaporation process. NFC, the
23 not-for-concentrate, is chilled to 35 degrees, and
24 then it's either pumped into tank trucks directly to
25 our customers or it's pasteurized at a temperature

1 above 195 degrees Fahrenheit and stored in our million
2 gallon aseptic tanks for later shipment to our
3 customers.

4 FCOJ is also pasteurized and processed
5 through the evaporator. This process removes about 85
6 percent of the water from the juice, and it decreases
7 later handling costs by reducing it to one-sixth of
8 its original volume. Some of the oils and essences
9 are removed from the water, and the reprocessor or the
10 packager will add those components back to the juice
11 when reconstituting it.

12 By comparison, some oils and essences are
13 also removed from NFC in the duration phase of the
14 pasteurization process and could be added back prior
15 to aseptic storage and also by the reprocessor/
16 packager.

17 Both NFC and FCOJ have the same basic
18 nutrients and must meet the same brix/acid ratio
19 levels under the United States Department of
20 Agriculture standard. The cost to produce NFC and
21 FCOJ at the processing plant is virtually the same.
22 The distinction between NFC and FCOJ can accurately be
23 characterized as more of a storage and transportation
24 difference.

25 I understand some members of the industry

1 have stated that NFC may be stored for only 18 months.
2 I've been involved with aseptic storage since we
3 filled the first aseptic tank in the industry in 1984.
4 I was in charge of that area at the time.

5 At first we did store and clean every tank
6 every year. We thought this was important, and we
7 didn't know how long aseptic juice would last.
8 There's no bacteria in it, so it can last of quite a
9 while. Then we went to two years. Now at Southern
10 Gardens we're on a three year cycle between cleaning
11 our tanks which contain the not-from-concentrate
12 aseptic storage.

13 I guess the bottom line is that while every
14 processor in the industry may produce both types of
15 juice in slightly different ways, for all of the years
16 that I've been squeezing oranges the simple fact is
17 that when you squeeze 47 oranges, you still get a
18 gallon of orange juice.

19 Thanks for your attention. I'm happy to
20 answer any questions.

21 MR. MCGRATH: Mr. Roper?

22 MR. ROPER: Mr. Chairman and members of the
23 Commission, I'm Charles Roper, Vice President and
24 General Manager of Roper Growers Cooperative in Winter
25 Garden, Florida, and an Organic Valley Farmer member.

1 While I've been officially working for Roper
2 Growers for the past 18 years, I was actually born
3 into the citrus industry. My family started growing
4 oranges in Florida in 1857, and my grandfather started
5 Roper Growers Cooperative in 1947. We currently have
6 about 1,500 acres of groves on which we grow mainly
7 organic oranges, but we also have some non-organics.

8 At one time we processed the oranges into
9 juice at our own facilities, but currently we have
10 them processed into orange juice for sale in the
11 United States and for export.

12 It is my understanding that at least one
13 Brazilian processor has argued that organic and non-
14 organic orange juice are different products for the
15 purposes of this investigation. I could not disagree
16 more strongly.

17 Growing fruit organically is simply one of
18 several possible horticultural practices. It still
19 produces orange juice. In the end, the fate of all
20 Florida growers and processors, regardless of whether
21 they produce organic or non-organic orange juice, are
22 tied together.

23 Our questionnaire response demonstrates that
24 we have suffered injury from Brazilian imports like
25 everyone else. The Brazilian processors' description

1 of the differences between organic and non-organic
2 juice is highly exaggerated. Oranges used in the
3 production of organic juice must be grown without the
4 use of certain inputs such as certain pesticides and
5 fertilizers prohibited by the USDA organic standards.

6 Organic and non-organic juice are both
7 processed from the same variety of oranges, and I
8 would invite the Commission to review the nutrition
9 labels for organic and non-organic juice at Exhibit 12
10 of the Montecitrus brief. They are identical.

11 Organic and non-organic oranges are
12 processed into juice by the same processors using the
13 same processing equipment and procedures. Our
14 processor produces both organic and non-organic juice
15 on the same equipment in different production runs. A
16 processor can produce one run of organic and
17 immediately switch to a production run of non-organic
18 juice, while a short down time for equipment cleaning
19 is required to switch the other direction.

20 Organic orange juice generally follows the
21 same channels of distribution with the same brokers as
22 non-organic juice. The bulk organic product is packed
23 and stored in a manner similar to non-organic products
24 and sold in similar containers and forms.

25 Once the juice reaches the grocery store,

1 only a few stores dedicate separate sections to
2 organic products, and only a very few are dedicated
3 solely to organic products. In the vast majority of
4 instances, all orange juice ends up on the same
5 grocery store shelf competing head-to-head for the
6 same customers in containers of similar shape, size
7 and form.

8 The number of customers who buy only organic
9 juice is extremely small. Most customers will
10 sometimes buy organic and sometimes buy non-organic
11 with the major determinant being the price
12 differential. In fact, market research indicates that
13 most customers do not even understand the difference
14 between organic and non-organic juice.

15 It should also be noted that while non-
16 organic juice cannot be legally sold as organic,
17 organic juice can and sometimes is sold as non-
18 organic. In fact, our company has occasionally sold
19 organic orange juice into the non-organic market when
20 economics so dictated.

21 Finally, I do acknowledge that Organic
22 Valley juice is normally sold at a higher price than
23 non-organic orange juice. However, this is not
24 necessarily true industry-wide. Data from the H.C.
25 Nielsen reports mixed results with regard to organic

1 juice. While organic NFC does sell at a premium over
2 non-organic NFC, reconstituted organic juice is
3 comparable in price to non-organic reconstituted
4 juice. Furthermore, the price of organic can and has
5 been tied to the price of non-organic juice.

6 We have previously been approached by major
7 buyers seeking to buy our juice, but only on a futures
8 plus basis. While we have not sold organic on this
9 basis, we understand that other organic producers have
10 been pressured into doing so. If organic juice were
11 excluded from the antidumping order, we would have
12 undoubtedly found that pressure much greater.

13 In conclusion, we at Roper Growers believe
14 that the similarities between organic and non-organic
15 juice far outweigh the differences. Organic and non-
16 organic juice should be treated as one like product
17 for the purposes of the Commission's determinations.

18 Thank you for your time, and I'll be pleased
19 to answer your questions.

20 MR. MCGRATH: Mr. Black?

21 MR. BLACK: Mr. Chairman and members of the
22 Commission, I am Larry Black and a shareholder of
23 Peace River Packing Company and a fifth generation
24 grower of oranges for processing in central Florida.

25 I'm pleased to appear today to ask you to

1 make an affirmative final determination in the
2 antidumping investigation of orange juice from Brazil
3 so that imports can return to fairly traded pricing of
4 the past and so that our industry can survive and
5 thrive.

6 My family first started growing oranges in
7 Florida after receiving a land grant in 1852. They
8 helped organize the Peace River Packing Cooperative in
9 1928 and became sole owners of the co-op in the 1950s.
10 Peace River is now an integrated service cooperative
11 providing caretaking services, harvesting, fresh fruit
12 packing and juice processing through our membership in
13 Citrus World, Inc.

14 My family owns over 1,200 acres providing
15 services for a total of about 3,800 acres of orange,
16 tangerine and grapefruit groves. Although we have
17 persevered and recovered in the face of many
18 challenges over the last 100 plus years, it is not
19 clear to me and my family how long this will continue.

20 The continuing presence of low-priced
21 Brazilian juice in the market over the past 10 years
22 and especially its impact through record inventories
23 and low prices in the 2003-2004 season leave many to
24 question the viability of the industry.

25 One need only look at the development of the

1 Brazil citrus industry since the last round of weather
2 related damage of the 1980s to see how difficult our
3 recovery has now become. My family was devastated by
4 the back-to-back freezes of the 1980s. Family members
5 invested cash reserves and took on debt, in some cases
6 for the first time, to renovate groves lost primarily
7 in the 1989 freeze.

8 Groves were reengineered with the latest
9 cold protection technology, and several groves in
10 colder locations of the state were sold and replaced
11 by groves in warmer areas. However, Brazil also
12 expanded its solely export-oriented output to levels
13 well beyond any anticipated growth in demand. They
14 built world inventories to volumes previously unseen.
15 They expanded shipping capacity and built tank farms
16 in the major developed country market.

17 While consumption of orange juice increased
18 slowly during the 1990s, supply increased more quickly
19 than the prices for fruit, and returns to Florida
20 growers remain low. Therefore, when the recent
21 hurricanes struck Florida, like the freezes of the
22 1980s, most of the industry assumed that we would see
23 a supply driven increase in prices to cover a portion
24 of our necessary recovery cost.

25 Our groves were in the direct path of

1 Hurricane Charley, the first of the 2004 hurricanes.
2 Fruit losses were significant, over 40 percent, but
3 our tree losses were minor. We were extremely
4 fortunate to have avoided canker infestation.

5 Much to our dismay, we saw no price
6 increase. In fact, we saw no increase in prices at
7 all, which in 2004-2005 remained approximately at
8 their 2003-2004 levels. This was clearly due to the
9 massive inventory levels remaining in the U.S. after
10 record production by Brazil and Florida in 2003-2004,
11 which prevented an increase in the finished good
12 pricing by our co-op, Citrus World.

13 That experience only confirmed the feelings
14 of several growers who sold me their property before
15 the hurricane, deciding that Brazilian control of
16 pricing has simply made the business unprofitable for
17 them. Working capital became harder and harder for
18 them to secure in the face of what appeared to be
19 permanently depressed prices.

20 What concerns me even more is the response
21 of the Brazilian processors to the current situation
22 reflects a pattern that may only worsen if action is
23 not taken now. I visited with several small growers
24 in Brazil who believe that the investment by Brazilian
25 processors in Florida plants is detrimental to the

1 growers' long-term interest in both countries since
2 commodity pricing power allows the large global
3 processors to control the price paid for the sole
4 input anywhere in the world.

5 The goal of their global profitability will
6 ultimately determine whether fruit shortages from
7 freezes, hurricanes or diseases in Florida will result
8 in even temporary price increases necessary for
9 growers to recover from such problems. For a global
10 company, an investment in a Florida juice plant can be
11 a temporary contingency which does not carry the same
12 kind of long-term commitment as investing in the
13 groves.

14 We're proud to belong to an industry which
15 provides a wholesome product to consumers around the
16 world, but we haven't seen a profit in five years. We
17 don't know yet whether we'll see one this year. We
18 don't object to Brazilian competition in the market or
19 our market absorbing millions of gallons of product
20 that Brazilians do not even consume at home, but we do
21 object to unfair and irrational pricing which prevents
22 us from earning a reasonable or any return.

23 I will be pleased to answer your questions.

24 MR. MCGRATH: Thank you.

25 Mr. Story?

1 MR. STORY: Good morning. My name is Vic
2 Story, and I'm the president of Story Grove Services
3 in Lake Wales, Florida. We own 1,800 acres of orange
4 groves and manage another 3,000 acres owned by others.

5 My father began an orange grove business
6 after World War II by saving money from multiple jobs
7 to obtain 80 acres of land near Frostproof, Florida,
8 in 1947. He planted orange groves there and kept
9 working other jobs to save enough for additional
10 property.

11 Our family all worked the property
12 ourselves, living in a small, one-room house in the
13 grove and pooling funds from other jobs to add acreage
14 to our business. After leaving for college and
15 military service in the 1960s, I returned to take over
16 the business and to keep expanding what eventually
17 grew to 2,700 acres of oranges.

18 We confronted serious setbacks in 1989 with
19 the hard freeze that hit our area. We lost about 500
20 acres of trees to that freeze alone and had to take on
21 considerable debt to pay for the necessary grove
22 renovation activity. These expenses meant that we
23 were heavily leveraged throughout the 1990s, but
24 slowly came back with a smaller acreage and with the
25 additional groves for which we provide contract

1 services.

2 Then the problems you are hearing about
3 today eventually caught up with us. The futures
4 prices and fruit prices reached so low in the 2002-
5 2003 season that we were unable to renew operating
6 loans with the local community bank. We were forced
7 to sell off about 500 acres of leveraged property in
8 order to eliminate some of our debt.

9 I have served on the loan committee of our
10 community bank board and can attest that the bank
11 evaluation of farm loans has evolved over the years.
12 While they used to be based on collateral and land
13 value, they have become more heavily focused on
14 current cashflow.

15 In the last three to five years, the
16 projected prices for fruit and income from orange
17 growing have been so low that many banks have simply
18 refused to grant a continuing line of credit to citrus
19 growers.

20 Prudent lenders do not want to have too many
21 of these classified loans on their books, which
22 require them to maintain a much higher percentage of
23 cash reserves on the banking logs. Low prices in
24 2002-2003 and 2003-2004 caused many of these banks to
25 deny loan applications from otherwise low debt

1 operations.

2 Because of the low fruit prices in the 2002-
3 2003 season, we sold off 500 acres of our own groves
4 at prices that ranged from \$4,000 to \$8,000 an acre,
5 which is a basic agricultural land value, not the kind
6 of prices paid for suburban home housing development.
7 Some of that property went to other growers who are
8 still in business. We were then able to secure
9 operating finances and also added back 300 acres last
10 year, mostly from growers who have been in the same
11 position as we were the previous year.

12 You can see that low prices and excess juice
13 inventories that keep those prices suppressed have a
14 very tangible impact on our day-to-day operations. In
15 the 2002-2003/2003-2004 seasons, after selling off
16 some of our groves, our returns were still break even
17 at best.

18 We are still in a tenuous position for the
19 future. The higher prices we are seeing in response
20 to the latest hurricanes can't quickly make up for the
21 suppressed price increases we should have seen last
22 year or the record lows we saw in the summer of 2004.

23 Even today, the inventory of Brazilian juice
24 in the United States has to be a concern to Florida
25 growers, and we urge you to make a finding which

1 permits the antidumping laws to bring the rational
2 pricing decisions back to the market.

3 Thank you, and I'll answer any questions.

4 MR. MCGRATH: Thank you.

5 Dr. Behr?

6 MR. BEHR: Mr. Chairman and members of the
7 Commission, my name is Robert Behr. I am Vice
8 President of Planning and Product Services with Citrus
9 World. Citrus World is Florida's oldest citrus
10 processing company and is a federated cooperative with
11 12 stockholder members representing about 1,100 orange
12 producers.

13 Citrus World processes oranges delivered by
14 its member growers at our facility in Lake Wales,
15 Florida, and packages both from-concentrate and not-
16 from-concentrate orange juice products under a number
17 of branded labels.

18 I testified last year in the preliminary
19 investigation and pointed out that most of our members
20 have not seen a profit in three years. Our growers
21 are paid on the basis of prices that Citrus World
22 receives for its product sales.

23 During the past four years and the last two
24 seasons in particular, the returns paid to our growers
25 were extremely depressed. For most of our growers,

1 the prices received for oranges has been less than the
2 cost of production. Imports of both FCOJ and NFC from
3 Brazil at prices below fair value, often below the
4 cost of production, have clearly had an adverse impact
5 on Citrus World and its members.

6 I previously served as the economic research
7 director of the Florida Department of Citrus where I
8 developed a very good understanding of the factors
9 that impact the supply and demand for orange juice,
10 including familiarity of the Brazil citrus industry.
11 I also serve on the Board of Citrus Associates of the
12 New York Board of Trade, the governing body of the
13 FCOJ futures market.

14 Price discovery in the orange juice market
15 occurs at the wholesale level, and the FCOJ futures
16 market facilitates this function in the U.S. Bulk
17 prices for FCOJ and NFC are highly correlated with
18 FCOJ futures market prices. FCOJ futures prices and
19 bulk FCOJ and NFC also have a strong influence on the
20 prices growers receive for processed oranges.

21 Since processed oranges account for about 80
22 percent of the cost of producing FCOJ and NFC, the
23 market value for processed oranges is derived from the
24 value of these orange juice products. Importantly,
25 more than 95 percent of Florida's orange crop is

1 processed, and virtually all that is processed either
2 in FCOJ or NFC.

3 Clearly the value of Florida's processed
4 oranges is driven by the price discovery process of
5 FCOJ futures, FCOJ and NFC. Moreover, published
6 research has shown there is a strong historical price
7 relationship between grower prices and the wholesale
8 level orange juice prices.

9 Since Citrus World is cooperatively owned,
10 the effect of low FCOJ and NFC prices passes through
11 to our member growers. Our business is dependent upon
12 a stable supply of member fruit, and in recent years
13 we have seen many member growers go out of business
14 because of the depressed pricing conditions
15 threatening the health of the entire cooperative.

16 In spite of the smallest crop in over 10
17 years, Citrus World grower returns in 2004-2005 were
18 essentially unchanged from the previous year's low
19 level. In fact, Citrus World grower returns during
20 2004-2005 were at the lowest level in over two
21 decades.

22 Historically, Citrus World returns are among
23 the highest that growers receive in our industry, a
24 fact that underscores how dire the situation has been.
25 Because of its dominant size and its export

1 orientation, there is little doubt that Brazil wields
2 extraordinary pricing power in the world orange juice
3 markets.

4 To make matters worse, a significant volume
5 of Brazilian inventory of FCOJ was simply delivered
6 into the FCOJ futures market at a time when the U.S.
7 market was already oversupplied. Typically a futures
8 market is used as a hedging and pricing mechanism, not
9 a market where one delivers or takes product on a
10 routine basis.

11 Since a futures market can be considered a
12 market of last resort because there are willing buyers
13 and sellers, it served as a convenient vehicle for
14 Brazilian processors to shift FCOJ inventory from
15 Brazil to the United States. There are rational
16 alternatives available to avoid delivering contracts
17 at excessively low prices. At least one Brazilian
18 seller chose not only to avoid using them, but also to
19 make multiple deliveries at prices that were below
20 cost of production.

21 Brazilian orange juice and domestically
22 produced orange juice are very close substitutes and
23 are used interchangeably in U.S. orange juice
24 products. Published research shows us small changes
25 in the wholesale supply of orange juice has a

1 significant impact on wholesale prices because demand
2 at the wholesale level is highly price inelastic.

3 The Respondents would have you believe that
4 the supply of Brazilian orange juice in the U.S.
5 market has no bearing on domestic prices, that prices
6 are determined by other factors, but to suggest that
7 imports of Brazilian orange juice have no bearing on
8 the U.S. price of orange juice is just simply not
9 believable.

10 One of the arguments the Respondents will
11 make is that Brazilian orange juice is needed because
12 it provides viscosity for dispenser application. This
13 argument is simply not true. Our company uses 100
14 percent low viscosity Florida FCOJ to supply many of
15 its dispenser customers, and we compete in the same
16 markets as the other leading manufacturers such as
17 Vitality.

18 You will hear that Brazilian orange juice
19 provides necessary color, but you won't hear
20 supporting evidence. The Florida Citrus Processors
21 Association reports that the average color score for
22 FCOJ and NFC produced from Florida oranges during the
23 last two seasons are more than sufficient to meet U.S.
24 needs.

25 It is important to note that dumping

1 adversely impacted both FCOJ and NFC prices in a
2 similar manner. FCOJ and NFC are orange juice pure
3 and simple. FCOJ and NFC come from the same oranges
4 and end up in the same packages.

5 The Commission and staff who visited our
6 facility saw that the same oranges are processed on
7 the same lines using the same equipment and the same
8 employees, and you can see on the screen a schematic
9 that shows the orange juice manufacturing process both
10 for NFC and FCOJ. While the method of storage is
11 different for FCOJ and NFC as you can see in the
12 schematic, the end use is the same. Both products are
13 used to make orange juice.

14 As you recall, we conducted an informal
15 flavor panel between the three leading orange juice
16 brands -- Tropicana NFC, Florida's Natural NFC and
17 Minute Maid from concentrate, and you see the cartons
18 of the three that are placed before you.

19 We discussed that a growing proportion of
20 oranges are processed into NFC. The growth in
21 popularity of NFC orange juice stems from the early
22 efforts by Tropicana to differentiate its product as
23 being not-from-concentrate, creating the image that
24 NFC is the same as fresh squeezed.

25 Today, many consumers buy Tropicana and

1 other NFC juices, including our brand, Florida's
2 Natural, because of the market efforts that promote
3 the NFC image of freshness and convenience. However,
4 as we all learned from the flavor panel, all three
5 products taste very good. They're nutritionally
6 equivalent, and in a blind taste it is very difficult,
7 if not impossible, to distinguish which product is NFC
8 and which product is from-concentrate.

9 In summary, it is evident that dumping by
10 Brazilian processors has adversely impacted the
11 domestic orange juice industry. The dumping caused a
12 decline in wholesale prices of FCOJ and NFC. The net
13 result was that Florida growers and processors were
14 injured, and that threat has not gone away.

15 I will be pleased to answer any questions
16 that you might have.

17 MR. MCGRATH: Thank you.

18 Ms. Warlick?

19 MS. WARLICK: My name is Amy Warlick. I'm
20 an international trade economist with Barnes,
21 Richardson & Colburn, counsel to Florida Citrus Mutual
22 and the other petitioning parties in this
23 investigation.

24 The U.S. industry that grows and processes
25 oranges is injured. While you've heard and will

1 continue to hear much debate about supply, demand,
2 prices and products, you've not heard much debate
3 about injury. That's because it's really not
4 debatable. U.S. growers and processors of domestic
5 like product have been injured by nearly every measure
6 of injury employed by the Commission.

7 Here's a quick synopsis of the injury
8 evidence reported to the Commission in questionnaires
9 and summarized by your staff. Chart 1 lists the
10 measures of injury to U.S. processors that are
11 publicly releasable. They include significant
12 declines across the board in operating income, net
13 income, cashflow, capital expenditures, asset value
14 and returns on investment.

15 They also include falling production,
16 exports, capacity utilization, production workers,
17 worker hours and productivity. In addition, they
18 include record high inventory levels that grew
19 throughout the POI as a ratio to U.S. production.

20 Chart 2 lists the measures of injury to U.S.
21 growers. They include significant declines in
22 operating income, net income, employment, capital
23 expenditures, production, yield and acreage.

24 In addition, there should be no debate about
25 the increase in imports from Brazil, their growing

1 U.S. market share or the huge growth in imports as a
2 percentage of U.S. production. See Charts 3, 4 and 5
3 here.

4 According to the Commission staff report,
5 the quantity of certain orange juice imports from
6 Brazil more than doubled during the POI. Their share
7 of the U.S. market likewise more than doubled to 16
8 percent in 2004-2005, and their ratio to U.S.
9 production more than tripled to 26 percent in 2004-
10 2005.

11 The injury and import data in this
12 investigation are decisive. The remaining issue is
13 causation. Despite this clear evidence of the strong
14 and growing influence of imports in the U.S. market,
15 Respondents' economist, Dr. Carter, bases his entire
16 econometric analysis on the premise that "Imports from
17 Brazil are a relatively small share of overall U.S.
18 supply," and "During the POI there was no measurable
19 increase in the growth of U.S. imports of FCOJ from
20 Brazil."

21 These faulty assumptions are the basis for
22 his assertion that imports have a more elastic demand
23 curve than domestic product, which in turn leads him
24 to conclude that imports have little bearing on U.S.
25 price.

1 The implication here is that the Brazilian
2 industry satisfies the small country assumption. This
3 assumption, which is a staple of trade analysis,
4 implies that the exporter is a price taker if it can
5 ship unlimited quantities of product and have a
6 limited effect on the importing country's price.

7 With Brazil being the dominant supplier to
8 the world export market, common sense tells us that
9 Brazil clearly violates the small country assumption.
10 This major flaw renders his analysis useless in this
11 investigation. Brazil is a big country, especially
12 when it comes to orange juice, and dumped imports from
13 Brazil of certain orange juice have undersold domestic
14 like product and contributed to the fall in U.S.
15 orange and orange juice prices.

16 Chart 6 shows the landed duty paid import
17 unit values of FCOJ from Brazil, the black line,
18 underselling U.S. FCOJ prices in almost every season
19 during the past 15 years. In 2001-2002, imports from
20 Brazil were actually priced lower than futures prices.

21 In his opening comments, Mr. Dunn used this
22 quote. If we want higher prices, we should import
23 more. I believe that this table proves his statement
24 is dead wrong. The depressive impact of dumped
25 imports on U.S. prices is difficult to illustrate via

1 linear correlation. However, it's a widely accepted
2 economic principle that two variables may be highly
3 related in a non-linear way and still result in a low
4 partial correlation co-efficient.

5 Petitioners submit that dumped imports of
6 certain orange juice from Brazil have a profound
7 impact on U.S. prices and were a significant cause of
8 material injury to the domestic industry, especially
9 to the extent that they compounded the effects of the
10 other problems in the industry.

11 Respondents charged at the preliminary
12 hearing here last year that high U.S. inventories
13 caused the U.S. price decline, but they never mention
14 the fact that our inventories contain large and
15 growing quantities of Brazilian juice, some of which
16 was dumped into this market via direct deliveries into
17 the futures market as Bob Behr has explained.

18 During the first three seasons of the POI
19 when U.S. production was stable, dumped imports
20 undersold domestic like product and contributed to
21 price decline, which caused inventories to rise
22 dramatically as processors could no longer cover their
23 cost in the market. Chart 7 illustrates the inventory
24 escalation.

25 In addition, imports contributed directly to

1 inventories when Brazil exported juice to this country
2 that had no buyer and ended up in tank farms. During
3 the last season of the POI, 2004-2005, when the U.S.
4 crop experienced heavy damages dumped imports
5 encouraged by Brazil's very large 2004-2005 crop
6 suppressed the U.S. market's price response to the
7 U.S. crop loss and impeded the pace at which U.S.
8 inventory should have fallen in the wake of hurricane
9 and canker damage.

10 In their prehearing brief, Cutrale has told
11 you that the orange juice industry needs to maintain
12 large inventories. We submit that at the beginning of
13 the season, say October 1, U.S. processors need at
14 least 12 weeks of supply to take them to January when
15 the Hamlins are processed, and they would prefer a
16 comfort level of between 16 and 20 weeks.

17 However, beyond 20 weeks inventories are a
18 costly liability. At the end of every season in the
19 POI, U.S. inventories range from 21 to 28 weeks of
20 U.S. orange juice supply and remained at 24 weeks at
21 the end of the 2004-2005 season, still a very high and
22 costly level.

23 Depressed and suppressed wholesale U.S.
24 orange juice prices eliminated U.S. processors' profit
25 margins and made it difficult for them to cover their

1 cost of oranges, let alone their processing and other
2 costs.

3 Chart 8 explains the predicament Florida
4 orange processors are now in. Note that the price of
5 Florida FCOJ on the brown line falls well below the
6 cost of goods sold on the green line, while
7 inventories in gray rise.

8 At the same time, depressed and suppressed
9 U.S. orange prices eliminated U.S. growers' profit
10 margins and made it difficult for them to cover the
11 cost of growing, harvesting and delivering their
12 oranges to market. See Charts 10 and 12.

13 In the testimony that you have of mine there
14 is a typo there. It says 8 and 10. You'll want to
15 change that to 10 and 12, which show significant
16 losses in every season of the POI as delivered values
17 fall far short of delivered costs.

18 The data for these charts are in Charts 9
19 and 11, and they will help to explain how even in
20 2004-2005 when orange prices increased the fact that
21 the increase was suppressed translated into financial
22 ruin for southwest and central Florida orange growers
23 who were faced with severely reduced yields.

24 Respondents would like you to believe that
25 whatever injury had occurred before these hurricanes

1 is now a problem of the past because prices have
2 increased during the past few months. Nothing could
3 be farther from the truth. The hurricanes reduced
4 Florida's orange grove yields by 33 to 38 percent so
5 that roughly a third fewer oranges could be harvested
6 per acre, while the price of those oranges only
7 increased eight to 12 percent.

8 Charts 9 and 11 will help you do the math
9 here. In the case of both Hamlin and Valencia
10 growers, observe the recent growing spread between
11 delivered values and costs and observe the increasing
12 losses. This has inevitably caused the abandonment of
13 tens of thousands of bearing acres each year. Chart
14 13 illustrates the increasing rate of acreage lost.

15 It's true that some of the most recent U.S.
16 orange juice price increases appear enormous, rising
17 from such depths, but it must be understood. We did
18 not have a price decline during the summer of 2004.
19 We had an all-out price collapse.

20 In Chart 14, compare the small increase in
21 2004-2005 in both orange and juice prices to the long
22 history of price decline punctuated by the price
23 collapse during the POI. To characterize the
24 relatively modest price increases from a collapsed
25 state is somehow remedial for our industry or capable

1 of insulating us from future injury dismisses the true
2 plight of our growers and processors as irrelevant.

3 The reality is that the recent price levels
4 are relatively small as they have been suppressed by
5 dumped imports. They do not enable our growers or
6 processors to recover cost, let alone turn a profit,
7 and they are only a temporary response to several
8 unique recent events -- hurricanes, citrus canker and
9 this investigation. They do not reflect any permanent
10 change in the underlying problems that depressed
11 futures throughout the first three years of the POI,
12 namely dumped imports.

13 When observed month-to-month in Chart 15, it
14 becomes clear that following Hurricane Charley the
15 futures price did not rise above 90 cents per pound
16 solid for six months despite the landfall of two
17 additional powerful hurricanes.

18 This is a slow and suppressed response
19 compared with the market's response to the last major
20 natural disaster, the severe December 1989 freeze.
21 See Chart 16. The effects of that freeze are
22 comparable to the effects of Hurricane Charley.
23 Within two months of that 1989 freeze, prices jumped
24 62 cents per pound solid. Within two months of
25 Hurricane Charley, prices increased only 15 cents per

1 pound solid.

2 In fact, the futures price did not rise
3 above 90 cents per pound solid until the Department of
4 Commerce initiated this investigation and the
5 Commission found injury in the preliminary phase
6 during February and March of 2005 respectively. See
7 Chart 15 again.

8 Prices did not clear \$1 per pound solid
9 until after Commerce found dumping in the preliminary
10 phase in August 2005, and Hurricane Wilma made
11 landfall in October 2005. While we are grateful for
12 any increase in prices, we know that these prices are
13 wholly contingent upon this case and the hurricane
14 induced low production figures that are killing our
15 growers' revenues, so the modest increases do not
16 bring relief.

17 USDA's latest gain report on Brazilian
18 citrus shows a future of soaring Brazilian orange
19 juice production. Brazil produced a record high
20 volume of orange juice in 2004-2005, and a very high
21 volume is estimated for 2005-2006. In addition, the
22 early forecast for 2006-2007 orange juice production
23 in Brazil is exceptionally high and indicates that
24 Brazil will likely produce a new record volume of
25 orange juice in 2006-2007.

1 It's important to note that Brazilian
2 sources have historically underestimated the size of
3 both their orange and orange juice production in early
4 estimates. See Charts 17 and 18. Eleven of the last
5 12 early orange juice forecasts for Sao Paulo have
6 seriously underestimated actual orange juice
7 production by an average rate of nine percent. By
8 contrast, six of the last eight USDA forecasts of
9 Florida's orange crop were overestimates.

10 This represents a continued effort by Brazil
11 to hide the magnitude of their production, possibly to
12 manipulate the futures prices on a seasonal basis to
13 their advantage, possibly to make their production
14 appear to be a smaller threat for purposes of free
15 trade negotiations or investigations such as this one.

16 In any case, if Sao Paulo's actual 2006-2007
17 orange juice production turns out to be nine percent
18 higher than the early estimates, then Sao Paulo alone
19 will produce in 2006-2007 1,446,000 metric tons at 65
20 brix equivalent, which is over two billion gallons at
21 single strength, and Brazil will likely produce the
22 greatest volume of orange juice ever produced by any
23 country in any year.

24 Since I have a bit of time, I'd like to go
25 to two charts that might help to explain some other

1 things we'll probably be hearing from the Respondents.
2 The first will be the chart that shows possible
3 accumulation of drawback credits.

4 We will likely hear from Respondents that we
5 need imports in order to export. This table shows how
6 much dutiable imports for consumption of FCOJ from
7 Brazil exceed our domestic exports of FCOJ to the
8 world.

9 I've taken here on the red line I've
10 accumulated the excess over the last five years. The
11 drawback is available for five years. You can see
12 that there is plenty of drawback that is unused and
13 currently available if it's "needed" for exporting.

14 CHAIRMAN KOPLAN: Just for the record, those
15 charts haven't been provided to us. Is that right?

16 MS. WARLICK: I'll provide them. I didn't
17 know if I'd have time to use them, but I will
18 definitely provide them.

19 Also, I wanted to show here that injury to
20 processors of orange juice is equal no matter if
21 you're talking about FCOJ or NFC. We've got declining
22 profits, declining operating income, net income,
23 cashflow, capital expenditures, escalating inventories
24 and certainly an increase in imports for both
25 products.

1 I'll turn over the remainder of my time to
2 Matt.

3 MR. MCGRATH: Thank you very much. That
4 concludes our panel of witnesses and the prepared
5 testimony.

6 One point I would like to at least comment
7 on before much of the day goes by without any
8 response. We've heard now -- I think it's become a
9 staple of Respondent's argument here -- that we have
10 somehow managed to carve out -- what it comes down to
11 is an argument that Southern Gardens, a major Florida
12 processor, has prevailed upon us and the government to
13 carve out a protective niche or something for its
14 favored supplier, Citrovia, because Citrovia is not
15 covered.

16 That's not the case at all, and they've
17 introduced an affidavit that's completely inaccurate
18 and incorrect in many respects. I'll respond to that,
19 but the fact of the matter is that Southern Gardens is
20 a grove owner in Florida, a significant grove owner.
21 They purchase imported product. All of the
22 processors, including the ones represented here,
23 purchase imported product.

24 The reason that one major Brazilian
25 processor is not included in this case is a function

1 of the unusual circumstances under which we first
2 brought the case. It is a very unusual case. We
3 wanted to bring a new case against imports of FCOJ and
4 NFC in the summer of 2004 when the price collapse
5 occurred, as Ms. Warlick just discussed.

6 There was, as you recall, still the old FCOJ
7 order on the books, which at that time the only major
8 producer covered, still covered by that order, was
9 Citrovia. The Commerce Department decided that the
10 way to resolve that was to move ahead with a new case
11 only against processors that had been excluded from
12 that previously existing order, so what that left was
13 an overlap in the time period between when the new
14 investigation started and when the old order against
15 the smaller portion of product was still on the books.

16 After that old order was sunsetted we did
17 ask the Commerce Department for a scope interpretation
18 that would cover the product that was manufactured by
19 Citrovia, which at that time was still technically
20 excluded. The Commerce Department decided that that
21 would not be appropriate for them to do. They
22 suggested we might want to file an amendment to the
23 petition. By this time we're halfway into the case.

24 We looked at filing an amendment. We
25 discussed it among the petitioning group. We looked

1 at all of the data that we had and decided we did not
2 have data to support proceeding with an amendment that
3 would be that expansive at that point in time and
4 chose not to proceed ahead.

5 Now, Southern Gardens is here today.
6 They're testifying. The Petitioner group is not
7 seeking to exclude Citrovia or any particular
8 processor in Brazil from coverage. The bigger issue
9 here is the fact that the Brazilian industry no doubt
10 is far more concerned about the possibility that there
11 might be a dumping order that does not include
12 Citrovia because they see Citrovia as more of a
13 threat to themselves in this import market.

14 We will continue to follow the situation
15 with Citrovia, and if circumstances are appropriate
16 if there is an order issued there may be further
17 action from the domestic industry, but that's really
18 the explanation in a nutshell. There's no special
19 effort to try to produce a specially circumscribed
20 scope here that's going to give special treatment to
21 anybody.

22 I'm sure we'll hear more about it and we'll
23 end up agreeing to disagree, but that's the fact.
24 Everybody is available now for questions, and we
25 certainly invite your inquiry.

1 CHAIRMAN KOPLAN: Thank you very much. I
2 want to thank all of the witnesses for their
3 presentation. I appreciate the fact that you've
4 traveled here to be with us today and contribute to
5 this hearing and will begin the questioning with
6 Commissioner Hillman.

7 COMMISSIONER HILLMAN: Thank you, and I
8 would join the Chairman in welcoming all of you here.
9 We very much appreciate the time and effort that
10 you've made to be with us this morning.

11 I want to start, if I could. I've heard all
12 of your testimony, and I understand your views on this
13 issue of the relationship between the FCOJ versus the
14 NFC orange juice, but given that I was one of the
15 people that in the preliminary decision determined
16 that they were two separate like products, I would
17 like to try to explore a little bit to make sure I
18 understand sort of the difference in the record and
19 the testimony that we have before us today versus what
20 we were looking at in the preliminary determination
21 when we made that distinction between NFC versus FCOJ.

22 Perhaps, Mr. Chapman, if I could start with
23 you just to make sure I understand the process part of
24 it because I will be honest. Your testimony said
25 something to me that was a little bit different than

1 my understanding of it from all that we had seen and
2 the charts, and that is to try to help me understand
3 once the extraction, the juicing process, is finished
4 how different are the processes for FCOJ versus NFC?

5 One of the things that I wanted to focus on
6 is in your testimony you stated that both FCOJ and NFC
7 are pasteurized. Again, at least a lot of the charts
8 and other things that we have seen and some of the
9 information in the record would suggest to me that NFC
10 is typically pasteurized, but that FCOJ is not and so
11 I just want to make sure I understand exactly your
12 testimony and whether everybody would agree that from
13 the extraction process onward help me understand what
14 happens on the NFC side versus what happens on the
15 FCOJ side.

16 MR. CHAPMAN: Well, Commissioner, both
17 products are pasteurized. The not-from-concentrate is
18 pasteurized, urated, and then we either send that
19 directly to our customers or we send it in to the
20 million gallon aseptic tanks and so both are
21 pasteurized.

22 FCOJ is also pasteurized. It is the initial
23 step in the process of evaporation so that's the
24 stage --

25 COMMISSIONER HILLMAN: And the

1 pasteurization process for both are exactly the same?
2 The same temperature, same process, same tank, same
3 everything?

4 MR. CHAPMAN: Well, the pasteurization
5 process is to heat up the orange juice to both
6 sterilize and neutralize the pectinesterase.

7 What occurs immediately after the
8 pasteurization in the evaporation process in the
9 process of FCOJ, it isn't chilled down immediately.
10 It is turned into -- the water is removed, and then
11 it's chilled after that.

12 COMMISSIONER HILLMAN: But in terms of the
13 process itself, the pasteurization process, they are
14 exactly the same whether it's going to be NFC or FCOJ?

15 MR. CHAPMAN: They both run a shell and tube
16 heat exchanger that's called a pasteurizer.

17 COMMISSIONER HILLMAN: Okay.

18 MR. CHAPMAN: That's correct.

19 COMMISSIONER HILLMAN: All right. In your
20 testimony you stated after leaving the extractor and
21 then you go through the processes. After leaving the
22 extractor are the lines exactly the same, or is there
23 a sort of divergence in terms of what happens?

24 Again, even if I look at your chart here
25 again I look under NFC, and I see this pasteurization

1 and storage.

2 MR. CHAPMAN: Yes.

3 COMMISSIONER HILLMAN: If I look under the
4 FCOJ I have concentration, evaporation and storage.
5 I'm trying to understand how different are those two
6 processes?

7 MR. CHAPMAN: Well, when you remove 85
8 percent of the water from the orange juice we run
9 through what's called a TASTE evaporator, a thermally
10 accelerated short-term evaporation process, and so
11 that is significantly different because it takes the
12 water out of the orange juice. Of course, that occurs
13 after the pasteurization, and then the orange juice is
14 reduced to about one-sixth of its former volume, and
15 it's easily stored.

16 I think a good way to kind of describe the
17 process is that orange juice in the late 1940s and
18 early 1950s -- we came up with the process of
19 evaporation, which allowed orange juice to be stored
20 and transported easily throughout the world. That
21 process is still used today.

22 In the early 1980s we came up with the
23 aseptic storage process, and that allowed really not-
24 from-concentrate orange juice, and I hope that at some
25 point in the future we come up with still other

1 processes that allow us to ship our product throughout
2 the world, so that's really been an evolution.

3 COMMISSIONER HILLMAN: Tell me a little bit
4 about the difference between the holding and
5 transporting in the aseptic containers versus frozen
6 in blocks.

7 First of all, just help me understand. Of
8 the NFC, do you have a sense of what portion of it
9 moves and is stored in aseptic containers versus the
10 frozen in blocks?

11 MR. CHAPMAN: Sure. Well, the frozen
12 concentrated orange juice is really --

13 COMMISSIONER HILLMAN: No, no, no. NFC that
14 is transported frozen in blocks.

15 MR. CHAPMAN: Okay.

16 COMMISSIONER HILLMAN: Not the FCOJ.

17 MR. CHAPMAN: Okay. NFC is transported.
18 Really it would be transported in frozen drums.

19 COMMISSIONER HILLMAN: Okay.

20 MR. CHAPMAN: That would be, and so what
21 happens there is that we would pasteurize the juice,
22 put it in a barrel, fill the barrel up, a 55 gallon
23 barrel, freeze it down to less than zero degrees, and
24 then it would be shipped to wherever, maybe Europe or
25 wherever.

1 COMMISSIONER HILLMAN: And of the NFC, what
2 portion is stored and shipped like that frozen in a 55
3 gallon tank as opposed to stored and transported in an
4 aseptic container?

5 MR. CHAPMAN: Today?

6 COMMISSIONER HILLMAN: Yes.

7 MR. CHAPMAN: Less than one percent.

8 COMMISSIONER HILLMAN: Less than one percent
9 moves frozen in blocks?

10 MR. CHAPMAN: Yes, ma'am.

11 COMMISSIONER HILLMAN: Okay. Is there a
12 cost advantage of using aseptic containers versus --

13 MR. CHAPMAN: Absolutely. It would take
14 about a 15 person crew to fill the barrels and store
15 them, whereas I have one employee who operates my
16 entire 56 one million gallon tanks.

17 In terms of that difference between
18 different forms of NFC really, aseptic storage
19 displaced frozen drums starting about 20 years ago.
20 There's been an evolution where it all used to be NFC
21 frozen probably 20 or 25 years ago that was
22 transported. It's evolved now to where it's virtually
23 almost nothing.

24 COMMISSIONER HILLMAN: Okay. That's very
25 helpful. That had not been as clear to me from the

1 record previously. Thank you.

2 If I can then go more onto the sort of
3 consumer perception on the NFC versus the FCOJ? I
4 mean, I've heard you all say orange juice is orange
5 juice is orange juice, and it doesn't make any
6 difference which it is and at some level it all tastes
7 the same. It's all used for the same. It's the same.

8 Yet if you step back and look at the big
9 picture you clearly see overall a very significant
10 rise over time in the preference in the market for NFC
11 versus FCOJ. If in fact they are the same and they
12 make no difference, why the big increase in NFC and
13 the decline in FCOJ?

14 If it doesn't make any difference and it's
15 all the same thing, why are the trends different for
16 the two?

17 MR. MCGRATH: I think probably the best
18 person to answer might be Dr. Behr, but I would also
19 point out that we're talking about basically a market
20 that has evolved to a ready-to-drink market. Most of
21 the juice that ends up in the supermarket tends to be
22 non-FCOJ in a small, concentrated form, but it is
23 reconstituted juice in one of these cartons that you
24 see in front of you.

25 The Minute Maid product is the reconstituted

1 product -- it comes from FCOJ -- whereas the Tropicana
2 product is really what established and drove the NFC
3 market by heavily promoting NFC and the image of
4 freshness.

5 Let me let Dr. Behr answer that.

6 MR. BEHR: I think Matt answered the
7 question pretty well. The market for orange juice has
8 evolved at the consumer level over the last 30 or 40
9 years.

10 Even prior to frozen concentrate in a can,
11 consumers here in the United States used to consume
12 juice in single strength in cans. It evolved into
13 frozen concentrate. It became an easy and more
14 efficient means to get the juice to the market, and
15 consumers had refrigerators and could reconstitute the
16 juice at home.

17 Over the last 20 years the consumer has
18 preferred the greater convenience of chilled juice,
19 and initially the reconstituted orange juice was the
20 primary form of chilled juice that the consumers
21 consumed here in the United States.

22 Tropicana, through their efforts on
23 marketing not-from-concentrate, created the imagery
24 that not-from-concentrate is more fresh, more close to
25 the orange. I would put forth that they've done a

1 wonderful job of that, but more of that I think is
2 imagery than reality. We certainly would encourage
3 the panel to sample the juices and try to distinguish
4 those differences.

5 Today in the refrigerated section of the
6 store reconstituted orange juice like you see there
7 with the Minute Maid product and Tropicana and
8 Florida's Natural, basically reconstituted orange
9 juice accounts for about half of the sales of chilled
10 juice, and NFC accounts for the other half. Both have
11 an important presence today in the chilled juice
12 market.

13 COMMISSIONER HILLMAN: I appreciate those
14 answers. Thank you.

15 CHAIRMAN KOPLAN: Thank you, Commissioner.

16 Dr. Behr, I noticed that you had intended to
17 have us do a sampling during the direct presentation,
18 and we ran out of time. We'll do that during the
19 break rather than interrupt the hearing now.

20 MR. MCGRATH: Yes, Mr. Chairman. I was
21 remiss in not offering that, and I left it out of my
22 presentation, but hopefully it'll be available for
23 everybody, everybody in the room to sample.

24 CHAIRMAN KOPLAN: Questioning now will go to
25 Commissioner Lane.

1 COMMISSIONER LANE: I don't know. If I get
2 to the orange juice first I may drink it all and there
3 won't be enough left for anybody else. I might take
4 you up on that offer when the next questioner starts.
5 It looks a lot better than the water that I've got up
6 here.

7 I think I will start with Dr. Behr. First
8 of all, I want to thank everybody in the room. The
9 tour that we took of both the Petitioners' and the
10 Respondents' facilities were very, very helpful, and
11 everybody gave us a lot of good information, and
12 everybody was very nice to us.

13 I learned a lot, and I have to say that even
14 though I've been a consumer of orange juice I never
15 really understood until this case that there were so
16 many different varieties, and I never fully
17 appreciated what went into providing all of these
18 products.

19 Dr. Behr, I have questions about the futures
20 market. One of the questions I have, and I think that
21 you may be the right person to talk about this, but if
22 not somebody else can.

23 I would like for you to explain the extent
24 to which there are actual deliveries of product made
25 under futures contracts and the instances of actual

1 physical deliveries extensive on a regular basis or,
2 if not extensive, what percentage of contacts result
3 in actual physical deliveries of orange juice?

4 MR. BEHR: Commissioner Lane, we loved
5 having you at our facility and we appreciate the fact
6 that you love orange juice. If we had only more
7 consumers like you it would be a wonderful world I
8 think for both the Petitioners as well as the
9 Respondents. The futures market for orange juice and
10 in reality for most every other commodity are really
11 not intended for the delivery or taking of product.

12 I think I would argue the primary function
13 of a futures market is more price discovery and
14 hedging and orange juice like other markets, really
15 only a relatively small percent of the contracts that
16 are traded on a market is actually delivered.

17 In this particular case we saw at least
18 since the January 2003 time period where we began to
19 see deliveries of Brazilian concentrate into the
20 futures market on a routine basis approximately 30 to
21 40 million pounds over that period of time. When you
22 think about that and put it in context of the amount
23 of orange juice imported from Brazil on an annual
24 basis that's about 15 to 20 percent.

25 So from that perspective a significant

1 amount of the imports from Brazil during that period
2 of time actually were delivered which is, again,
3 unusual and is the reason why we are here today.

4 COMMISSIONER LANE: Would you characterize
5 the futures market as a robust or thin market relative
6 to the size of the fiscal market for orange juice, and
7 specifically what is the typical monthly volume of
8 futures market outstanding contracts as compared to
9 the fiscal market?

10 MR. BEHR: Like other commodity markets the
11 orange juice market, the volume of trade and the open
12 interest generally doesn't represent the large part of
13 the physical market. However, like other commodity
14 markets the orange juice market does provide an
15 important price discovery feature.

16 There is sufficient volume traded, there is
17 sufficient deliveries and taking that is made in the
18 futures market and in the FCOJ futures market that
19 creates a basis for the markets to act as an efficient
20 means of price discovery for the bulk orange juice
21 market both for FCOJ as well as NFC.

22 COMMISSIONER LANE: Okay. Would you say
23 that it is basically a price discovery tool that
24 controls your contracts or do you use it more for
25 physical delivery purposes or hedging purposes?

1 MR. BEHR: I would argue that it's primarily
2 a price discovery mechanism as well as a hedging
3 mechanism. Our company would both use that as a means
4 to understand pricing of bulk juice in the domestic
5 market, as well we use the market to either hedge our
6 procurement requirements or our inventory.

7 COMMISSIONER LANE: How far into the futures
8 are contracts for orange juice traded?

9 MR. BEHR: Generally speaking they list out
10 about 18 months if memory serves me correct, but
11 primarily most of the futures trading occurs in the
12 nearby months going out two, to four, to six months.

13 COMMISSIONER LANE: From the standpoint of
14 producers, either growers or processors, would you say
15 that the current futures contract prices which are in
16 the \$1.25 to \$1.30 per pound range represent an
17 opportunity to lock in attractive prices for at least
18 the next 12 to 18 months?

19 MR. BEHR: The current futures prices are
20 clearly higher than they have been, but I think it's
21 important to recognize that the futures price only
22 represents the selling price of bulk juice. From a
23 grower perspective as well as from a processing
24 perspective we each have different cost structures and
25 depending upon those cost structures the price may or

1 may not be attractive.

2 For some it may be, for others the futures
3 price may not be high enough to warrant hedging
4 because of their cost structures.

5 COMMISSIONER LANE: On page 79 of the
6 Petitioners' brief you argue that Brazilian
7 processors' deliveries through the futures market
8 threaten the domestic industry.

9 More specifically you indicate that Cutrale
10 issued a notice of delivery for 510 contracts of FCOJ
11 equivalent to 7.4 million SFC gallons to be delivered
12 into the futures market at Port Newark, New Jersey, on
13 September 15, 2004, at 78.5 cents, and that in
14 November 2004 Cutrale issued notices of delivery for
15 451 contracts of FCOJ to be delivered into the futures
16 market at Port Nureg during November 2004 at around 76
17 cents.

18 Basically I would like you to explain
19 exactly what is meant by issuing notice of delivery,
20 and in your response please indicate if Cutrale
21 offered to sell futures contracts at these prices and
22 if so are you saying that the price quoted was
23 significantly below the prices that futures were
24 trading at or were you indicating that Cutrale issued
25 notice that it was going to make physical deliveries

1 pursuant to pre-existing futures contracts at those
2 prices?

3 MR. BEHR: I can't tell you exactly what
4 Cutrale's position in the futures market was prior to
5 that point. I don't know at what point the Cutrale
6 company may have put on a short position, but by
7 noticing to sell clearly they were short to market and
8 by noticing on that day at that price they were
9 agreeing to deliver FCOJ at that price to whoever was
10 the taker of that particular product.

11 The pattern that we saw of Brazilian
12 concentrate deliveries into the futures market since
13 early 2003 and continuing into 2004 is what has
14 concerned us. We believe that the prices at which
15 that product was being delivered at was being sold at
16 less than fair value, less than cost of production.

17 The product was basically being shifted from
18 Brazilian inventory in Brazil to the United States and
19 being delivered into the futures market. Certainly
20 the Brazilian processors had other alternatives. The
21 markets in Europe as well as in Brazil were at higher
22 prices.

23 That product certainly could have been
24 delivered in those markets, but as it occurred
25 apparently there was no other buyer in those markets

1 at the price that Cutrale wanted to deliver at so they
2 dumped it in the U.S. market at the low futures prices
3 that you had indicated.

4 So that's really the concern that this
5 industry has is that the futures market was a
6 convenient tool for the Brazilians to simply move
7 inventory from Brazil to the U.S. because there were
8 willing buyers and sellers and the futures market
9 represents generally speaking the lowest priced market
10 for bulk FCOJ.

11 By delivering into that market Brazil was
12 simply moving product into this market that wasn't
13 needed. We already were in a surplus situation.

14 COMMISSIONER LANE: Thank you.

15 MR. BEHR: You're welcome.

16 CHAIRMAN KOPLAN: Thank you, Commissioner.
17 Commissioner Pearson?

18 COMMISSIONER PEARSON: Thank you, Mr.
19 Chairman.

20 My greetings also to the panel and also to
21 the Respondents out there because I, too, benefitted
22 significantly from the tours and explanations of your
23 facilities. I would say, though, that I came back
24 from Florida still not entirely certain what the right
25 conclusion is in this case. Maybe after today I'll

1 know.

2 Mr. McKenna and Dr. Behr, both of you in
3 your statements made references to what had been going
4 on in the futures markets and Commissioner Lane has
5 been addressing some of those questions. I want to
6 touch on some related issues. How many functioning
7 futures markets for orange juice are there in the
8 world and where would we find them?

9 MR. BEHR: The only one is in this country
10 and it's in New York, but delivery locations are in
11 Florida. The contract calls for delivery locations in
12 Florida as well as in the northeast.

13 COMMISSIONER PEARSON: Okay. So there is no
14 equivalent market in Europe, in Asia or in Brazil
15 itself?

16 MR. BEHR: No, there is not. Not that I'm
17 aware of.

18 COMMISSIONER PEARSON: Then to what extent
19 does the U.S. market reflect the global value of
20 orange juice as compared to just a U.S. value of
21 orange juice?

22 MR. BEHR: Generally speaking the market in
23 the U.S. should reflect what's going on in the world
24 market.

25 We did see during this period of time as we

1 just recounted with Commissioner Lane there were a
2 series of deliveries into the futures market by
3 Brazilian processors where that product was simply
4 shifted from Brazil to the U.S. and delivered into a
5 market because there were willing buyers and sellers
6 again in that market.

7 The question is could that product have been
8 sold in Europe or sold in Brazil at higher prices? We
9 would argue yes, that volume could have been. The
10 prices at that time were less than what the market was
11 in Europe.

12 COMMISSIONER PEARSON: One of the comments
13 in your testimony is that there was Brazilian juice
14 delivered on U.S. futures at less than the cost of
15 production. My question is is it relevant to our
16 analysis that delivery may have occurred at less than
17 the cost of production?

18 I say this because having some familiarity
19 with agricultural commodity markets for commodities
20 other than orange juice it's not at all unusual that
21 in times of large supply in the world that the price
22 would get depressed to a level that it would be below
23 the cost of production for most all producers in all
24 countries, okay, and yet we have a lot of trading that
25 happens at below the cost of production and the market

1 clears, and eventually something will happen and the
2 price will rise again otherwise people would stop
3 growing the stuff and we wouldn't have any.

4 What's the significance in this case of the
5 possibility that there was a delivery at below the
6 cost of production?

7 MR. BEHR: I would agree with your comment.
8 In a commodity market the market clearing price can be
9 below cost of production depending upon the unique
10 supply and demand conditions of that particular time,
11 but in this case it's different. The product was
12 delivered in this market on the futures market at less
13 than fair value.

14 The price in Brazil and the price in Europe
15 was significantly higher than the futures price on the
16 date of delivery. So at least in my understanding
17 that product was dumped in the United States.

18 COMMISSIONER PEARSON: Mr. McKenna?

19 MR. MCKENNA: If I could also add the
20 commodities markets do operate in some ways I guess to
21 relieve excesses, but what we're looking at here is a
22 unique type of a price discovery product where the
23 most obvious answer to your question I guess is that
24 the significance of it being sold and delivered in the
25 futures market at less than the cost of production is

1 that it was also dumped and we feel that it was
2 directly causing injury because of its great influence
3 on pricing and prices all up and down the line: price
4 of bulk juice, prices paid to growers.

5 I suppose if imported product is sold at
6 less than its cost of production, and is essentially
7 sold at a dumped price, and perhaps that commodity
8 price is divorced from whatever sort of result takes
9 place for a grower or some input provider that input
10 provider might not allege that there's any injury
11 being caused by that period of time.

12 I think Dr. Behr made mention of the fact
13 that on the futures market especially for orange juice
14 futures there are alternatives to delivering a product
15 at the low price that might be in place on a given day
16 and most of the traders take advantage of those
17 options.

18 They roll the contracts or they move them
19 forward to try to sell the product at a future period
20 when they think that the price might go up in some
21 fashion. What was particularly of concern, the
22 industry here was -- the timing of when this was done
23 and how it was done.

24 That's why we were in such a hurry to try to
25 file something in late 2004 because of the fact that

1 those particular deliveries into the futures market
2 really were making a very, very low price situation
3 even worse because that's the place where everyone
4 looks to price discovery.

5 COMMISSIONER PEARSON: Right, but as I
6 recall from my study some years ago of Hieronymous:
7 The Economics of Futures Trading, a book that Dr. Behr
8 probably also is familiar with, at least it was much
9 in vogue in the 1970s, deliveries on futures markets,
10 although not common, is really at times essential if
11 indeed we're starting to see a price divergence
12 between cash and futures.

13 Do you have any documentation that the
14 deliveries that occurred that are referenced in your
15 statements, were those deliveries somehow done in a
16 way that did not reflect some difference in value
17 between cash and futures? I mean, are you saying that
18 the deliveries were economically irrational for the
19 owners of the juice at that time and if so I'd love to
20 see documentation of it. Thank you.

21 MR. BEHR: Well, I would argue that at the
22 time that the product was delivered the cash market
23 for juice in the United States was trading at a
24 premium in the futures, so it would have seemed to
25 have been irrational for product to have been

1 delivered when it was delivered.

2 Normally when you see a market wanting a
3 futures delivery you typically see an inverted market
4 where the futures price tends to gravitate towards the
5 cash market. That wasn't the case during the 2003-
6 2004 period. The market was oversupplied. The need
7 for Brazil product to be delivered in the market
8 during that period of time was simply not necessary.

9 MR. RIGGS: Right. However, you don't have
10 any information about the location of product that was
11 delivered.

12 I mean, hypothetically at least it would be
13 possible that there was orange juice in a tank in New
14 Jersey in a location that was regular for delivery
15 that was owned by a Brazilian company and that given
16 the alternatives they had it wouldn't make sense to
17 put it back on a vessel and ship it to Europe even if
18 the European price is higher because that's going to
19 cost them a lot of money.

20 MR. BEHR: Excuse me. If you look at the
21 period of those two years there was successive
22 shipments of product from Brazil to the United States
23 to the northeast tank farm where product was
24 delivered, so there was a systematic routine of
25 shipping juice to the northeast delivery when the

1 market was clearly oversupplied, when the price in the
2 futures market was clearly at less than cost of
3 production and also lower than alternative outlets for
4 their product.

5 COMMISSIONER PEARSON: Show me more in the
6 posthearing because it's entirely conceivable that
7 product existed in a tank that was regular for
8 delivery if that's indeed how it works in juice and
9 that a decision was made simply to transfer ownership
10 of the product by delivering it, never having to take
11 it out of the tank which would be a very low cost form
12 of delivery if indeed that's the way the market works.

13 If that's not how delivery can occur in
14 orange juice then explain that to me as well.

15 MR. BEHR: Well, in this particular case the
16 product is being moved from Brazil, shipped in large
17 vessels to New York or to the northeast and put in a
18 tank farm successively over a period of more than 18
19 months. The cost of shipping juice from Brazil to the
20 U.S. is not insignificant.

21 It certainly appeared that there was a
22 routine characteristic of the pattern of futures
23 deliveries over that period of time.

24 COMMISSIONER PEARSON: Mr. Chairman, if I
25 may? My time having expired my question is simply

1 isn't it true that a normal port of entry for juice
2 from Brazil and other countries is the New York area
3 and that you've got a lot of juice coming in there and
4 only a relatively modest portion of it being
5 delivered?

6 MR. BEHR: That is true. The Respondents in
7 this case all have customers in the northeast. Most
8 of the time they contract directly with their
9 customers and bypass the futures delivery process
10 altogether. Perhaps only when they don't have a buyer
11 for their juice at this particular time they chose to
12 execute a delivery procedure as they did.

13 COMMISSIONER PEARSON: Thank you.

14 Mr. Chairman, thank you for your indulgence.

15 CHAIRMAN KOPLAN: Thank you, Commissioner.
16 Commissioner Aranoff?

17 COMMISSIONER ARANOFF: Thank you, Mr.
18 Chairman.

19 I'd like to join my colleagues in thanking
20 all of the witnesses for being here with us this
21 morning particularly in my case since I missed the
22 opportunity to visit your facilities last month. I
23 want to ask a series of questions that deal with the
24 issue of blending.

25 Why people blend different kinds of orange

1 juices. This has been something which has been argued
2 back and forth in the briefs, but I don't think is
3 very clear on the record. Perhaps I can start with
4 some of the processors on the panel. Maybe Mr.
5 Chapman or one of the others.

6 Can you explain to me why and under what
7 circumstances U.S. and Brazilian juice are blended
8 together and whether there's any distinction between
9 FCOJ and NFC in your answer?

10 MR. CHAPMAN: Okay. Why is U.S. and
11 Brazilian juice blended together, and then the second
12 part of the question was what again?

13 COMMISSIONER ARANOFF: Is there a difference
14 in the reasons why or the way in which blending occurs
15 for NFC versus FCOJ?

16 MR. CHAPMAN: Okay. Well, the reason why
17 Brazilian and Florida juice would be blended together
18 would be a supply issue I suppose. You need more
19 orange juice and that could be one of the reasons. At
20 our company we have been known to purchase some
21 Brazilian concentrate and we'll blend that with our
22 concentrate and ship it to our ultimate customers who
23 do the packaging of it.

24 COMMISSIONER ARANOFF: One of the things
25 that the Respondents argue is that it's essential to

1 mix domestic and Brazilian juices in order to achieve
2 various qualities in the juice that customers request.
3 I take it from your answer that you don't believe
4 that's the case.

5 MR. CHAPMAN: Maybe Dr. Behr is the best one
6 to talk about this one, but there's plenty of color
7 according to Florida Citrus Process Association that
8 you could mix the FCOJ or the NFC and achieve the
9 customer requirements.

10 COMMISSIONER ARANOFF: Dr. Behr?

11 MR. BEHR: Yes. I'll comment as well.
12 Generally speaking when our company would import,
13 typically our growers don't produce enough fruit and
14 we need to import to meet the marketing requirements
15 of our customers. Generally speaking we do not import
16 Brazilian product to blend to a particular color
17 specification.

18 Our company, our growers produce enough
19 valencia fruit, which is the high color fruit, to give
20 us sufficient color in the juices that we pack. I
21 didn't mention this in my testimony, but as we look
22 over the next decade valencia orange production, which
23 is the high color fruit produced in the State of
24 Florida, will outstrip early/mid-production in every
25 year according to the Department of Citrus.

1 That did not use to be the case. Twenty
2 years ago our early/mid-season fruit was more
3 important, but today high color valencia fruit
4 dominates production of early/mid-season fruit and
5 that will be the case for the next 10 years according
6 to the Florida Department of Citrus, so the argument
7 that we need color from Brazil to meet minimum color
8 requirements is simply not true.

9 You're probably also going to hear that we
10 need low viscosity juice from Brazil, you need low
11 viscosity juice concentrate to put in the dispenser
12 units so the juice will flow freely when it's
13 dispensed. We don't use Brazilian juice really at
14 all. This past two years we used strictly 100 percent
15 Florida juice in our dispenser program.

16 So you're going to hear today that we need
17 Brazilian for viscosity. We really don't. I think
18 the bottom line is that we're not here suggesting that
19 we don't need imports. This industry, this market has
20 historically had imports typically when the Florida
21 crop is short. We're not here to stop that, but to
22 argue that we need imports for color, or viscosity, or
23 for other reasons is just simply not true.

24 COMMISSIONER ARANOFF: I appreciate that
25 answer, but I do want to still try to understand. Is

1 there anyone on the Petitioners' panel who can give me
2 a sense of what percentage of the chilled orange juice
3 that's sold at retail in the United States consists of
4 blended product versus 100 percent domestic product?

5 MR. BEHR: Let me see if I can attempt to
6 answer that. I suggested earlier in the Q&A that in
7 the chilled juice category which accounts for 90
8 percent of all retail orange juice sales about half of
9 the juice is sold as not from concentrate, half is
10 sold as reconstituted orange juice. Probably most of
11 the labels, more than half of the labels say contains
12 orange juice from Brazil.

13 Now, how much Brazilian orange juice is in
14 those packs I don't know, but more than half of the
15 labels on the shelf probably have on the country of
16 origin declaration contains orange juice from the U.S.
17 and Brazil.

18 MR. MCGRATH: Could I just add, we want to
19 clarify our position. It's not that blending doesn't
20 occur. Yes, blending does occur throughout the
21 industry. The disagreement here is over the need for
22 a particular origin of juice in order for that
23 blending to take place. That's what we're trying to
24 point out is that color and viscosity do not create
25 needs for something unique about the Brazilian juice.

1 Most people do some blending and at any
2 given time in the season they're going to say I need
3 more color, I need less color. They're going to take
4 what they have and what they're producing and they're
5 going to then take a look at what they've got in
6 stock.

7 If they've got some Florida valencia in
8 stock, if they've got some Brazilian product with more
9 color they may choose what's there to blend what
10 they're going to end up with at the end.

11 All we're trying to say is there's nothing
12 unique about Brazilian juice that it absolutely has to
13 be available here to be blended and of course
14 qualifying that further that we're not saying that
15 there should be no Brazilian juice in the market.
16 It's a part of the market, but it's not physically
17 somehow intrinsically needed for these blending
18 requirements.

19 COMMISSIONER ARANOFF: I appreciate that
20 clarification, and I still have more questions on
21 blending. One of them is is there any 100 percent
22 Brazilian product sold into the chilled market at
23 retail in the United States?

24 MR. BEHR: I'm not sure. You probably would
25 have to ask the Respondents. There may be some. We

1 just don't know. As I said you can look on the
2 cartons that are sold in the retail stores and most of
3 them are going to suggest on the back panel that
4 they're from either U.S. or Brazil.

5 Some may have a lot of Brazilian product,
6 some may have very little, but I don't know the answer
7 to your question and I don't know that unless one of
8 the Respondent's has knowledge of that whether or not
9 that information is publicly known.

10 COMMISSIONER ARANOFF: All right. So in
11 your view it's not a consumer driven issue that
12 somehow consumers don't want to see a label that says
13 their orange juice is coming from Brazil?

14 MR. BEHR: Generally speaking most consumers
15 think orange juice comes from Florida if you were to
16 ask them, but the reality is most of the cartons that
17 are on the shelf say orange juice either from the U.S.
18 and/or Brazil.

19 COMMISSIONER ARANOFF: Okay. Appreciate
20 those answers.

21 Is there anyone on the panel today who
22 produces private label orange juice?

23 MR. BEHR: Yes.

24 MR. MCGRATH: Citrus World.

25 COMMISSIONER ARANOFF: I guess I'm

1 interested in both how do you determine -- normally if
2 you're selling for a brand name there's a specific
3 formula or various requirements for the juice that you
4 sell. How are those requirements set for a private
5 label product?

6 MR. BEHR: Generally our private label
7 product customers want the highest quality as well as
8 our own brand, so typically the quality specifications
9 for a private label customer are pretty high and match
10 what we do with our own branded products.

11 The big difference is primarily in the
12 marketing of our brand whereas the private label brand
13 typically is not marketed as intensively as the major
14 brands that you see before you.

15 COMMISSIONER ARANOFF: Okay. My time is up,
16 but I will try to pursue this with you in the next
17 round. I'm a private label orange juice buyer myself.

18 MR. MCGRATH: I think Mr. Chapman when we do
19 get back to that he also can offer some comments on
20 that.

21 CHAIRMAN KOPLAN: Thank you, Commissioner.

22 I want to join with my colleagues who have
23 already thanked you for the trip that we took in mid-
24 December. I want to thank both sides for their
25 assistance to us.

1 I think that you'll be able to tell from the
2 trip notes which have been circulated to counsel for
3 review for accuracy and possible bracketing how much
4 we learned from the trip that we took, and when we get
5 that back from you all those notes will ultimately
6 become part of the record in this case, so I thank you
7 as well.

8 I think those of my colleagues who traveled
9 with me probably thought that I was preparing for the
10 Indy 500 during the two days that we spent there. I
11 see Dr. Behr is smiling because we ended up side-by-
12 side for awhile on the road.

13 MR. MCGRATH: But you were far ahead of me,
14 Mr. Chairman. I lost sight of you.

15 CHAIRMAN KOPLAN: Thank you for that, Mr.
16 McGrath.

17 So now having said all that let me start
18 with my questioning if I could with Mr. Levine and Dr.
19 Behr at first. On page 22 of your prehearing brief
20 you state and I quote "although the industry has
21 sought a retail price premium for years from the NFC
22 product the fact is that the two products are often
23 priced comparably or identically on the supermarket
24 shelf."

25 However, this investigation deals with NFCOJ

1 and FCOJM at the wholesale rather than the retail
2 level of trade. Prices at that level of trade as
3 listed in Tables 1-4, 5-1 and 5-2 of the prehearing
4 staff report show significant differences in pricing
5 for the two products.

6 I can't get into the specifics of those
7 tables here because they are BPI, but I would
8 appreciate it if you would address the significant
9 price premium for not from concentrate orange juice at
10 the wholesale level because I don't think that was
11 discussed in the brief.

12 Do you want to start, Dr. Behr?

13 MR. BEHR: Yes. I'll go ahead and start.
14 Basically as I suggested in my testimony we've seen a
15 growing demand for NFC over the past 20 years and that
16 demand largely has evolved from the marketing efforts
17 that Tropicana and the rest of us in the not from
18 concentrate business have done.

19 Again, the concept of the freshness and
20 convenience was the perception that the consumers have
21 and that demand for NFC has created a drive demand for
22 the bulk product NFCOJ. I would argue that the growth
23 and demand for NFC has led to higher prices for NFCOJ
24 at the bulk wholesale level.

25 Now, we've stated in the testimony that the

1 prices of retail NFC and from recon are similar. I
2 think the truth is that there is probably a small
3 price premium or a price premium at retail for NFC on
4 average relative to recon juice.

5 On a percentage basis the difference at
6 retail is not that great because you have a lot of
7 transportation and marketing costs that exist between
8 the point of the plant where bulk FCOJ and NFC are
9 sold and the point at which consumers buy the retail
10 carton.

11 So when you look at the relative differences
12 at the two different points in the distribution chain
13 you come to the conclusion well, gee there's a huge
14 price advantage for NFC versus FCOJ at wholesale, not
15 so much at retail, the point being that there is a
16 fair amount of cost, primarily marketing cost, between
17 the bulk wholesale level and the retail level.

18 Again, to me I would argue that the big
19 differences in price in my mind own to the marketing
20 and demand creation for NFC and also the cost from
21 plant to market for NFC because you are shipping water
22 versus concentrate to market.

23 CHAIRMAN KOPLAN: Mr. LaVigne, did you want
24 to add anything to that?

25 MR. LAVIGNE: Mr. Chairman, I believe that

1 Dr. Behr hit that on the head and he has greater
2 familiarity with that part of the industry.

3 CHAIRMAN KOPLAN: Thank you.

4 Mr. Chapman, if I could turn to you. You
5 had been talking about the manufacturing process this
6 morning.

7 MR. CHAPMAN: Yes, sir.

8 CHAIRMAN KOPLAN: On pages 15 to 18 of your
9 prehearing brief in arguing for one like product the
10 brief describes the OJ manufacturing process. On page
11 16 it's noted that and I quote "Only after the
12 finishing process is the juice separated from FCOJM
13 and NFC production. Juice destined for FCOJM goes to
14 an evaporation process while NFC is heat-treated and
15 pasteurized."

16 "Subsequently the production process
17 converges again as both are prepared for bulk
18 transport, sent to reproprocessors, packages, and
19 distributors and ultimately ending up on the same
20 retail shelves as orange juice."

21 Based on Table 3-10 found at 3-14 of the
22 prehearing staff report, which is now BPI so I can't
23 get into the specifics about it, but I can say that in
24 looking at that information the costs that occur after
25 the two products diverge total less than half of the

1 processing costs.

2 You also note on page 17 of the brief that
3 Respondents and I quote "have suggested in the
4 preliminary investigation that oranges going into NFC
5 production are specially selected and that NFC
6 production requires special extraction line set-ups
7 vis-a-vis frozen concentrated orange juice for further
8 manufacturing."

9 If you add in those processing costs more
10 than half of total processing costs for FCOJM and
11 NFCOJ occur when the products diverge on the
12 production line. How do you respond to that?

13 MR. CHAPMAN: Well, the processing costs are
14 higher primarily because of the utilities costs
15 associated with each of those different processes.
16 For FCOJ the fuel costs to produce the steam for the
17 evaporation process are considerable.

18 CHAIRMAN KOPLAN: For FCOJ.

19 MR. CHAPMAN: For the FCOJ. Yes, sir. For
20 NFC, when you pasteurize and then immediately chill
21 the orange juice and get ready to send it into the
22 aseptic tanks there's a tremendous cost associated
23 with taking 195 degree temperature juice running
24 through a pasteurizer at 200 gallons a minute in about
25 20 seconds down from 195 degrees down to 35 degrees

1 Fahrenheit for storage, and so the utilities costs
2 associated with running the ammonia compressors is
3 quite high and so it's the utilities costs is the
4 answer to that question.

5 CHAIRMAN KOPLAN: Thank you.

6 Anybody else want to add anything to that?

7 MR. MCGRATH: I think with respect to the
8 comparative costs of production between the two we
9 also have to remember that the total cost when you
10 take a look at the entire process the first 80 percent
11 or so is the value of the orange that goes into it.

12 The processing cost that comes along
13 afterward, we were looking at it yesterday and I think
14 we've submitted some data in connection with our brief
15 that talked about the breakdown of the specific costs
16 between the two different processes that Mr. Chapman
17 described and found that they really ended up not
18 having that much of a total cost difference.

19 The big cost difference comes along later on
20 in the cost of storing six times more water and moving
21 six times more water. That's where some of that
22 distinction will eventually work its way down to the
23 differences between the two products in delivery cost.

24 CHAIRMAN KOPLAN: You don't have a problem
25 with the table that I cited from our staff report in

1 terms of the numbers that I'm looking at? I can't get
2 into the exact figures here, but you've had an
3 opportunity to look at that I'm sure. That was Table
4 3-10 at page 314 of the staff report. I don't want to
5 hold up my colleagues.

6 If you have it handy you could give me a yes
7 or no answer or otherwise I can come back to you in my
8 next round.

9 MR. MCGRATH: Well, we'll take a look at
10 that and discuss it maybe in the next round --

11 CHAIRMAN KOPLAN: Sure.

12 MR. MCGRATH: -- if we can. Thank you.

13 CHAIRMAN KOPLAN: Thanks.

14 Vice Chairman Okun?

15 VICE CHAIRMAN OKUN: Thank you, Mr.

16 Chairman.

17 Let me join my colleagues in welcoming all
18 of you today. Appreciate having so many of you from
19 the industry, both of the grower/processor side, with
20 us today to help us better understand the industry and
21 conditions thereof, so appreciate that very much.

22 Mr. McGrath, just to help you I have written
23 on my notes that you did take issue with that
24 particular chart that the Chairman is referencing
25 mostly to do with how you think we calculated it

1 because of how many round oranges go into the
2 respective ones, but I'm just helping him out to
3 respond later to the Chairman.

4 MR. MCGRATH: Thank you. I think I do
5 recall.

6 VICE CHAIRMAN OKUN: I want to continue a
7 little bit. Again, Commissioner Hillman noted earlier
8 as one of the Commissioners who did sign two like
9 products and so it was helpful today to have you go
10 through some of the factors and what may be different
11 from the preliminary record on which I made that
12 decision and today's record.

13 Mr. Chapman, I wanted to start with you.
14 You've responded to a number of things already in
15 response to questions, but when you talk about the
16 customers for the NFC or the FCOJ, and again, I know
17 we're going to have a chance to drink the different
18 things, but typically, and these were looked at, at
19 this point I think I'm more focused on what happens at
20 the wholesale level as opposed to the retail level
21 because even for a lot of other products I probably
22 wouldn't be able to tell the difference between any of
23 those, but luckily for you that's not the way I would
24 make a like product decision, so for the wholesale you
25 referenced that customers want particular

1 specifications and that's what you're producing for as
2 a processor.

3 MR. CHAPMAN: That's correct.

4 VICE CHAIRMAN OKUN: So in terms of the
5 blends that are for an NFC versus an FCOJ if I
6 understand the record I mean, it's different. There
7 are still round oranges going into that, but how
8 they're put together for the two different things are
9 different. Am I accurate on that?

10 MR. CHAPMAN: How they're put together for
11 the two different things --

12 VICE CHAIRMAN OKUN: In other words like for
13 color. I mean, we've talked a lot about okay, you
14 need valencias for color and that Florida has the
15 valencias. When you are producing NFC for a customer
16 you're using different specifications than if you were
17 doing FCOJ.

18 MR. CHAPMAN: Well, we're using different
19 specifications for different customers. As far as
20 what meets Grade A criteria for color we have to have
21 a minimum of 35.0 end value color for NFC and a 35.5
22 end value color for FCOJ in the final product. So
23 it's very similar as far as that goes.

24 VICE CHAIRMAN OKUN: So for the Respondents'
25 argument with regard to whether you really need

1 Brazilian juice, and I heard the responses to
2 Commissioner Aranoff, but whether you need a
3 particular variety of oranges like the number of
4 valencias you'd need.

5 MR. CHAPMAN: Okay. Well, there are times
6 when it is helpful in the early season to have some
7 Brazilian which typically has a higher color.

8 We at Southern Gardens don't have as big an
9 issue because we're the southernmost citrus plant in
10 the State of Florida, and so because of the measure of
11 freeze protection that we get, Commissioner, we are
12 able to grow more valencia oranges, which are the
13 later season variety orange, without a threat of a
14 freeze and so while we have hurricanes, and canker and
15 all the other stuff we don't have that freeze threat.

16 So not only do we have a lot of valencias,
17 about 60 percent of our crop are valencia oranges. We
18 have a variety called Rodi Red Valencias which are
19 extremely high color valencia that kind of mitigate
20 that for us.

21 VICE CHAIRMAN OKUN: Okay. Maybe other
22 processors could respond as well. I'm not so much
23 focused on whether it's Brazilian or Florida oranges
24 being used, the blending is occurring because to get
25 these different specifications you need to blend

1 different oranges with different characteristics?

2 MR. CHAPMAN: We do at times need to. At
3 different times our valencia product will fully meet
4 the requirements of our customer specifications, at
5 different times the Brazilian product will fully meet
6 the requirements and so it's more a matter of
7 quantity. As I said at times it's helpful to have the
8 higher color Brazilian. It's good product.

9 VICE CHAIRMAN OKUN: Then in terms of who
10 you're selling to, who your customers are -- and I
11 don't know if Mr. McGrath or if the others want to
12 comment on the chart in Chapter 2 in the staff report
13 where we now have the purchasers' responses on the
14 interchangeability between Brazilian and U.S. produced
15 FCOJ and for NFC -- I was just trying to make sense of
16 who is responding to that in terms of if your
17 customers want NFC would they take FCOJ?

18 MR. CHAPMAN: Well, we're the exclusive
19 supplier of the Kroger Company in the United States
20 and they take both NFC and FCOJ.

21 The private label industry in the United
22 States has a tendency to emulate the market leader,
23 Tropicana, which sells about 60 percent of all the not
24 from concentrate orange juice in the U.S. and so if
25 Trop is producing low acid, they want low acid, if

1 they're producing more NFC, they want more NFC.

2 Certainly the private label industry has
3 always been big on the FCOJ side, so we produce both.
4 Whatever they want.

5 VICE CHAIRMAN OKUN: Right. You're
6 producing both and then when they're purchasing it are
7 they saying that we want 60 percent NC? For someone
8 who is buying both NFC and FCOJ are they giving you a
9 percentage saying I want X percent of NFC and X
10 percent of FCOJ?

11 MR. CHAPMAN: Yes. We have a contract for a
12 specific number of gallons going to their facility
13 that might package NFC and they have other facilities
14 that might just package FCOJ.

15 VICE CHAIRMAN OKUN: So then you wouldn't
16 send the NFC to the facility that's doing the FCOJ?

17 MR. CHAPMAN: Sure. We do that, too. Yes.

18 VICE CHAIRMAN OKUN: Okay. So that for that
19 point there's a distinction. Once the customer has
20 specified --

21 MR. CHAPMAN: Yes.

22 VICE CHAIRMAN OKUN: -- then there is no
23 interchangeability at that point. I mean, I'm not
24 trying to put words in your mouth, I'm trying to
25 understand that.

1 MR. CHAPMAN: That's correct.

2 VICE CHAIRMAN OKUN: Okay. For that point.
3 The chart I was trying to reference is Table 2-4 on
4 page 213 of the staff report.

5 Maybe, Mr. Behr, I don't know if you want to
6 comment on that, again, trying to look at the
7 comparisons between FCOJM and NFC.

8 MR. BEHR: I'm not familiar with the details
9 of that specific one, but just to comment further
10 along the lines of what Tris was saying, you know, we
11 make the distinction between what you see at retail
12 and what we are packing at wholesale, but what we're
13 packing at wholesale is reflecting the desires of the
14 packers to pack at retail.

15 I think when you flavor the juice if you get
16 a chance to you'll find that the reconstituted orange
17 juice, Minute Maid's product, looks and tastes very
18 similar to the Tropicana and Florida's natural NFC
19 reflecting the fact that the specifications of that
20 juice are very, very similar to the specifications of
21 the NFC juice both in terms of nutritional value, in
22 terms of color, in terms of bricks.

23 All of the characteristics that would define
24 the specifications at the wholesale level are
25 reflected in the retail juices that you're buying. So

1 to the point that are the specifications different,
2 well, of course they depend upon the customer, but I
3 think in the main the recon juice specifications are
4 similar if not the same as the specifications for an
5 NFC product.

6 VICE CHAIRMAN OKUN: I guess the reason for
7 my continued questions is that just both the fact that
8 there's such a price divergence at the wholesale
9 level, and I know you've responded on why you think
10 that is, but also just again since we have it broken
11 out if you look at the trends on a number of things
12 they're all different.

13 That always strikes me in making a like
14 product determination that I need to understand why
15 that's different because if it's all orange juice then
16 I don't know why someone at wholesale level is paying
17 this much for one and this much for another, and if
18 that doesn't reflect differences in the product if you
19 can't interchange them.

20 MR. CHAPMAN: The cost issues are, you know,
21 I think we've discussed they're certainly at the
22 production level are very similar.

23 It costs a little bit more to transport NFC
24 to market because you're transporting water versus
25 concentrate, but at the end of the day I think the

1 increased demand for NFC created by the marketing
2 perception that NFC is fresh, that it's not been
3 processed and is convenient those are the --

4 VICE CHAIRMAN OKUN: I certainly get from
5 this that the branding makes a difference --

6 MR. BEHR: Absolutely. Absolutely.

7 VICE CHAIRMAN OKUN: -- and I think the
8 branding makes a difference to who is arguing one like
9 product versus two like products among the
10 Respondents. So we'll have a chance to explore that
11 as well, but I see my red light is going to turn on.
12 I thank you very much for those answers.

13 CHAIRMAN KOPLAN: Thank you.

14 Commissioner Hillman?

15 COMMISSIONER HILLMAN: Thank you, Mr.
16 Chairman. If I could just follow-up a little bit more
17 on this issue as well because one of the things that
18 those of us that decided that there were two like
19 products said in our preliminary determination was
20 that it was our understanding, and again, based to
21 some degree on Respondents' argument that the
22 purchasers were different to some degree for NFC
23 versus FCOJ.

24 When I say purchasers, again, we're talking
25 at the bulk level and that gets to who are you selling

1 to? The argument obviously made at the prelim was
2 reconstituters. I mean, the people that are adding
3 the water back into the product are different from
4 those that are buying the NFC since it does not need
5 to be reconstituted.

6 So let me make sure I understand this
7 argument and the facts behind it. Are your purchasers
8 the same? In other words are the reconstituters
9 separate as corporate entities, as purchasers from
10 those that are simply packaging the NFC for sale into
11 the consumer market?

12 Help me understand, again, purchasers at a
13 bulk level in terms of whether, again, there's a
14 separate class of purchasers that are reconstituters
15 and then over here are the packagers for the NFC
16 product or whether they are all one in the same. How
17 much overlap is there?

18 MR. BEHR: It's not really that simple. Our
19 company for example we produce FCOJM and NFCOJ, we
20 also purchase NFCOJ and FCOJM, but we are the
21 reconstituters so we are effectively buying our FCOJM
22 and NFCOJ and either making NFC at our facilities or
23 packaging reconstituted orange juice.

24 Other companies follow our examples. The
25 Minute Maid company does both. There are a lot of

1 examples of companies that do both. As Tris just said
2 and I'm sure he'll elaborate one of the company's that
3 he sells to both packs NFC and reconstituted orange
4 juice from FCOJM.

5 COMMISSIONER HILLMAN: I'm trying understand
6 the degree of this overlap because, again, if I
7 generally look at the market I see companies like
8 Tropicana and Florida's Natural that are almost,
9 again, I'm not going to say entirely, but they're
10 obviously very, very heavily in the NFC side of it, I
11 mean, if I look at what you see at retail.

12 Now, that's different from bulk. Now, on
13 the flip side of it I look at Minute Maid and I say,
14 okay, they're an FCOJ. That's there kind of market if
15 you will. Now, that's what you see at the retail
16 level. I'm trying to understand at the bulk level how
17 many reconstituters are there out there that are not
18 also doing NFC and vice versa?

19 How much overlap is there really in the
20 market?

21 MR. BEHR: There is a lot of overlap. For
22 those packers that are packing reconstituted orange
23 juice they are packing NFC. The market for NFC is
24 growing. I suspect that as the NFC market fully
25 matures most of those that are packing a recon product

1 will pack an NFC. The private label NFC market is at
2 this time relatively small. It's dominated by the big
3 brands.

4 As I believe you'll see greater private
5 label participation in the NFC market you'll see more
6 of the current reconstituters that are packing recon
7 product will also pack NFC product on the same lines
8 that they pack the recon product.

9 COMMISSIONER HILLMAN: Mr. Chapman, what
10 would be your sense of how much overlap there is in
11 people that are doing reconstituting versus people
12 that are packing NFC?

13 MR. CHAPMAN: Well, the private label market
14 for NFC has shrunk I think significantly. It's down
15 to I don't know about five percent of the overall not
16 from concentrate market in the United States and so
17 there's not I guess as much overlap if you're just
18 talking about in terms of volume.

19 For our customers -- and I mentioned the
20 Kroger Company is the largest retail grocer in the
21 U.S. except for Walmart I guess now -- we deliver
22 tankers of orange juice to 18 different Kroger
23 facilities all over the United States and we deliver
24 both not from concentrate and concentrate to those
25 folks and they'll run the not from concentrate and

1 tank up the concentrate, add the water, essences and
2 oils, that kind of thing, and they'll run it right
3 after that and change the cartons out.

4 It's about a 10 or 15 minute process to
5 change over to the reconstituted juice, so I mean,
6 there's a lot of overlap and I guess I need to be
7 careful to say that because of the three brands that
8 are now competing in the not from concentrate orange
9 juice market -- Tropicana, Minute Maid and Florida's
10 Natural -- that has shrunk the private label customers
11 for not from concentrate in the United States.

12 COMMISSIONER HILLMAN: Okay. No. I
13 appreciate those answers. Then a completely different
14 issue that I want to make sure I understand how it
15 works is the issue of the relationship between what
16 the growers get versus the price of the FCOJ. I mean,
17 you've all commented that, you know, there's this
18 direct relationship between what a grower gets versus
19 the futures prices and the prices of the juice.

20 I want to understand literally how it
21 happens in terms of how the prices get translated from
22 the FCOJ futures market if you will back down the
23 chain to the growers. As a mechanical matter how does
24 that happen?

25 Dr. Behr?

1 MR. BEHR: I'd be happy to comment on that.
2 The products that we sell in the marketplace are
3 highly influenced by the bulk market. Basically the
4 bulk market is a price discovery mechanism and it
5 affects the prices that we can get for our products in
6 the marketplace.

7 We're a cooperative and everything that we
8 sell, all the proceeds from the products that we sell
9 are brought back to our growers net of the processing
10 cost. So as our product prices are influenced by the
11 price of bulk juice our growers feel the change up or
12 down as the market goes.

13 VICE CHAIRMAN OKUN: All right, but just
14 walk me through it. Okay. Fine. A grower delivers X
15 amount of boxes to you on whatever date. When does he
16 actually get paid for those boxes?

17 MR. MCGRATH: Could I just interject? Dr.
18 Behr is describing what happens in his system which is
19 a cooperative system. Mr. McKenna will discuss as a
20 grower who delivers product both to a co-op and on the
21 cash market -- that works a little differently -- and
22 I think Mr. Story can also describe how a
23 participation contract works and when he gets paid how
24 much for what.

25 So there are at least three different types

1 of arrangements that we're talking about and I think
2 Dr. Behr can talk about the co-op.

3 COMMISSIONER HILLMAN: Okay. Go ahead, Dr.
4 Behr.

5 MR. BEHR: So I'll continue. We have a
6 cooperative relationship. Our growers own the
7 company. So they deliver fruit during the course of
8 the harvesting season, they get paid in advance for
9 the cost of delivering the fruit, but they're not
10 fully paid for their fruit until after the juice is
11 marketed during the course of the year.

12 The price at which we get for our products
13 is highly influenced by the bulk market for orange
14 juice --

15 COMMISSIONER HILLMAN: But you're paying
16 them eight percent of what you think the total will be
17 up front in advance and then they're getting an
18 additional payment once you know what it actually
19 sells for?

20 MR. BEHR: Exactly.

21 COMMISSIONER HILLMAN: Okay. Does that
22 percent move?

23 MR. BEHR: What they get at the beginning is
24 just an advance for the cost of the picking and
25 hauling to get it to the plant.

1 COMMISSIONER HILLMAN: So that's generally a
2 low percentage? In other words the big payment is
3 going to come in the end.

4 MR. BEHR: As the year progresses they get
5 paid throughout the year as our pool is, our pool is
6 liquidated, but based upon an estimate of what we
7 believe we will return for that juice.

8 COMMISSIONER HILLMAN: What happens if the
9 juice is in inventory for a long time? Are those
10 payments then deferred to the growers for some long
11 length?

12 MR. BEHR: At the end of the year we
13 estimate how that juice will sell out and we pay on
14 the basis of what we believe that we will get for that
15 juice in inventory.

16 COMMISSIONER HILLMAN: Okay. Now, Mr.
17 McKenna, on the cash side how does it work?

18 MR. MCKENNA: Thank you. I basically
19 participate in the cash market for the majority of our
20 fruit and we negotiate with processors throughout the
21 season for a price. The one thing that is common that
22 we both have access to is the futures market price of
23 that day, that week, whatever, so our price we're able
24 to negotiate for our fruit is very, very dependent on
25 what the futures market is.

1 Mr. Pearson, there's one situation that's a
2 little bit different that probably is not a textbook
3 scenario in this process is many of the processors
4 that we negotiate contracts with also have fruit in
5 Brazil.

6 If they can make relatively low volume of
7 sales on the futures market and have a high impact on
8 the price of futures they can buy our oranges cheaper,
9 so there is a motivation there to put lower priced
10 fruit in on the futures market when they're buying in
11 a different hemisphere oranges from Florida producers.

12 So the futures market is extremely critical
13 in how we're able to negotiate a price for fruit.

14 COMMISSIONER HILLMAN: Your cash price is
15 the futures market plus something?

16 MR. MCKENNA: Plus or minus depending on the
17 supply of oranges and the value of the futures market.

18 COMMISSIONER HILLMAN: Okay. All right.
19 Thank you.

20 CHAIRMAN KOPLAN: Thank you.

21 Commissioner Lane?

22 COMMISSIONER LANE: Before I get to my
23 questions let's have the third component of
24 Commissioner Hillman's answer.

25 Mr. McGrath, you said there were three

1 different answers to that question.

2 MR. MCGRATH: Excuse me. Yes. The other
3 type of contract is a participation contract. I think
4 Mr. Story probably could best describe how that works.

5 MR. STORY: Yes. Another contract
6 arrangement that we've had a number of years
7 particularly during this period of time that we're
8 talking about now is where we put our fruit with a
9 processor, there's no floor. At the time of delivery
10 we're paid roughly 80 cents of the spot market for
11 that week of delivery.

12 That's definitely influenced by the futures
13 market, okay, that week of movement spot price. Then
14 we wait approximately -- it depends on the ride. It's
15 roughly a year for the processors. We have a group of
16 processors that are listed and there's five and we get
17 the average of the top three processors in Florida.

18 One would be Florida's Natural, one would be
19 Southern Gardens, one would be one of the Tropicana
20 pools. So it's roughly a year before we find out what
21 we've gotten for our fruit in the end.

22 COMMISSIONER LANE: Okay. Thank you.

23 Now, Dr. Behr, back to you. In response to
24 a question from Commissioner Pearson you indicated a
25 2004 divergence between futures and cash prices with

1 the cash markets being above the closing futures
2 prices.

3 Could you provide a schedule showing the
4 closing futures contract price for each month of 2003
5 through 2005 and the corresponding monthly spot cash
6 market price for the same months as the futures
7 contract closing date?

8 MR. BEHR: We'd be happy to.

9 COMMISSIONER LANE: Thank you.

10 Mr. McKenna, in your opening remarks you
11 talked about data based on pound, scale and some even
12 boxes of oranges. I want to make sure that I
13 understand your data relative to other data in this
14 case.

15 In your prepared statement you said that the
16 break even price for fruit is at least \$1 per pound.
17 Do you mean that literally per pound of fruit or are
18 you making some conversion for a juice equivalent in
19 that statement?

20 MR. MCKENNA: No. That would be per pound
21 solid which is the way we do trade juice and that is
22 what futures has quoted in the newspaper as a per
23 pound solid basis. So that would be a per pound solid
24 basis price.

25 COMMISSIONER LANE: That's per pound of the

1 juice itself?

2 MR. MCKENNA: It's the juice and the bricks.

3 COMMISSIONER LANE: Okay.

4 MR. MCGRATH: Per pound of juice solids that
5 are derived from the orange.

6 COMMISSIONER LANE: When you say that your
7 costs had gone up by 33 percent from 75 cents to \$1
8 over what period of time are you referring to, and
9 please tell me what factors are causing that magnitude
10 of increase?

11 MR. MCKENNA: Actually, I was actually
12 referring to the last time I was here which is about
13 12 months and we've had several things that have
14 impacted that. Number one the price of fuel.

15 All diesel products, ammonium nitrate is
16 made with natural gas, off chemicals have gone up, our
17 harvesting costs and labor costs have gone up as well
18 as the necessary cultural practices that we had to
19 undertake due to the storms and the hurricanes:
20 clean-up, reset, replant and everything. Also, we're
21 now facing new diseases, canker and draining, that
22 will increase our cost as well.

23 COMMISSIONER LANE: Mr. Chapman, in your
24 prepared statement you stated that Southern Gardens
25 produces both FCOJ and NFC. However, your production

1 in the past year has been predominantly NFC. Could
2 you tell me why you have shifted to predominantly NFC?

3 MR. CHAPMAN: Well, our customer
4 requirements -- we have certain contractual
5 obligations with our customers to provide a certain
6 amount of not from concentrate, and it's much easier
7 to substitute FCOJ. We will vary the amount of
8 Brazilian in our blend for our FCOJ customers based on
9 demand and supply, and so it's much easier for us to
10 get a larger supply from Brazil on the FCOJ side and
11 take the Florida product and put it in the not from
12 concentrate side.

13 COMMISSIONER LANE: Okay. In your prepared
14 statement you said that nearly all Florida oranges are
15 used to produce both types of juice. However, you go
16 on to say that extractor settings may be changed
17 between FCOJ and NFC depending upon the variety of
18 fruit being processed.

19 If the variety of oranges being processed
20 can be used for both FCOJ and NFC, explain why the
21 variety of oranges being processed affect or need to
22 be adjusted for the extractor settings.

23 MR. CHAPMAN: The early season Hamlin orange
24 which makes up 90 percent of the early season variety
25 orange is a little lower color, particularly in the

1 early season. It's a little weaker tasting orange
2 juice. I know that when you buy not from concentrate
3 there are times when you've said gee, maybe this
4 doesn't quite have the good high notes, the good
5 orangy flavor to it.

6 So in the early season we don't want to be
7 as aggressive with our extractor settings. Whether
8 we're producing for FCOJ or NFC we, Southern Gardens
9 prides itself on staying on the high quality end of
10 the business so we don't squeeze real aggressively.
11 But when you get into the Valencia orange which is a
12 little higher brix typically, the naturally occurring
13 sugar solids, you're in the middle of the season.
14 There are probably eight weeks in the middle of both
15 of those harvest seasons where you really have the
16 prime orange juice, so you can be a little more
17 aggressive with how you squeeze the fruit and
18 consequently get a little higher yield during those
19 periods of time.

20 COMMISSIONER LANE: Thank you.

21 Mr. Black, I wouldn't want you to have
22 traveled all this way and not get to answer questions
23 after your testimony, so I would like for you to tell
24 me if the Commission did find that NFC and FCOJ were
25 different products, do you believe that we could

1 evaluate growers on a stand-alone basis without regard
2 to whether their production went to one product or
3 another? Or do you have some suggestion for
4 considering the effects on growers based on their
5 production going into NFC and FCOJ as separate
6 products?

7 MR. BLACK: As a grower we have no idea when
8 we send a load of fruit to the processing plant
9 whether it will be processed into NFC or FCOJ, the
10 concentrate product. In fact one load could be split.
11 If that was the time of the shift when a change was
12 made at the plant. So there's a direct relationship
13 in the pricing. For the growers we just don't have
14 any idea because all the major plants are
15 participating in both markets.

16 The price of fruit that's used in the NFC is
17 directly tied to the world market for FCOJ.

18 COMMISSIONER LANE: Okay, thank you.

19 Mr. McGrath, I have a question for you. I
20 would like for you to address the inclusion of growers
21 in the domestic industry if the Commission were to
22 find separate like products. Specifically, can you
23 cite any Commission cases or statutory authority to
24 support the argument that growers can be included in
25 the domestic industry if the Commission determines

1 that NFC and FCOJ are not like products?

2 MR. McGRATH: Commissioner, we have pondered
3 that question trying to figure out exactly how one
4 might do it.

5 The biggest surprise I think to the industry
6 after the preliminary determination came out was that
7 the legal evaluation that the Commission goes through
8 to decide whether there are two like products and then
9 takes the second step after that and says because
10 there's two like products we can only include growers
11 under our legal standard if all of their product
12 substantially goes to one or the other, and it
13 doesn't, so therefore growers aren't part of the
14 industry.

15 I've spent a long time trying to explain to
16 these folks here how that could possibly happen and
17 apparently it can only happen in the world of 19 USC
18 1677 in this room, because outside of this room it's
19 not possible.

20 Growers make oranges to go into juice. I
21 think we've seen that 95 percent of their product goes
22 into juice. There are variations in the processing
23 portion of it, but we can't split the growers into
24 grower industries for separate like products. Their
25 product goes into both, and it varies quite a bit from

1 one year to the next.

2 The reason Mr. Chapman here is running
3 mostly NFC, and you'll see, it explains I think some
4 of the other data you're referring to as to why
5 there's divergences, why there's different trends
6 going on. If the availability of oranges is down in a
7 certain season, more of the oranges that are available
8 will end up going to the NFC side first if people can
9 get more and cheap FCOJ to meet their FCOJ requirement
10 from import sources during that particular season.

11 So you end up having these different levels
12 of production that could vary quite a bit from year to
13 year that are based on a lot of factors including
14 supply.

15 The answer is no. I don't see how you can
16 divide them up. It's one industry. It can only be
17 one industry.

18 COMMISSIONER LANE: Thank you, Mr. McGrath,
19 and thank you, Mr. Chairman, for indulging me.

20 CHAIRMAN KOPLAN: Certainly.

21 Commissioner Pearson?

22 COMMISSIONER PEARSON: Are sales of orange
23 juice in Europe or in Asia priced relative to New York
24 futures, or are they priced in some other way?

25 MR. BEHR: Outside of the United States

1 Brazil has almost a monopoly on sales to Europe and
2 the Far East. They probably account for 90-plus
3 percent of the product that's sold in those markets.

4 The fact that the industry is highly
5 concentrated, I would tend to argue that often those
6 markets don't seem to price in the same what I would
7 argue competitive way that we might see here in the
8 United States because of the market structure of those
9 particular markets.

10 COMMISSIONER PEARSON: Okay, but the people
11 who are actually involved in transactions of that
12 juice are at considerable risk of cash price
13 movements. Do they attempt to hedge against New York?

14 MR. BEHR: I can't speak for the Brazilians.
15 You'll have to ask them. They are the primary
16 suppliers to that market. We export a little bit to
17 the European market but don't use the FCOJ futures
18 market as a hedging or pricing vehicle for those
19 particular sales.

20 COMMISSIONER PEARSON: Mr. McGrath? You
21 look so interested.

22 MR. McGRATH: Well, it's an interesting
23 question. We're not the ones who have the answer to
24 that, but it's a reasonable question and I would
25 suggest you ask the Respondents.

1 COMMISSIONER PEARSON: I'll ask it this
2 afternoon, yes.

3 Are there periodic reports on the
4 development of the Brazilian orange juice crop? If
5 so, do those reports have an influence on the U.S.
6 futures market?

7 MR. McGRATH: I think a few people here do
8 follow that issue. Part of what goes on with the
9 reporting process is that USDA gathers information in
10 Brazil as to what the projected production levels
11 might be from year to year, and as Ms. Warlick has
12 indicated, we've been following it for several years.
13 One thing we can count on is that they will
14 underestimate what ends up actually happening.

15 The USDA will usually end up over-estimating
16 what the U.S. crop ends up being and many times in
17 recent years there have been storms that have caused
18 that.

19 But the projections of what the world supply
20 will be I think are among the factors that affect the
21 futures price. Maybe Amy can comment further.

22 MS. WARLICK: I believe you can see in a lot
23 of the commodities reports by some of the Wall Street
24 analysts that when they are gauging what's going to
25 happen with the FCOJ futures price they're looking at

1 both the USDA and the Brazilian crop announcements.
2 Brazil comes out in generally June and December. The
3 most recent one was actually the day that we filed our
4 pre-hearing brief.

5 COMMISSIONER PEARSON: In that case does
6 Brazilian orange juice actually have to enter the
7 United States to have an effect on the U.S. price? Or
8 does it affect the U.S. price simply because it's
9 being grown? Simply because it's there?

10 MS. WARLICK: It's my understanding that it
11 affects the price simply because it's there, and when
12 production rises it will have a depressive impact on
13 the futures market. Maybe not in a linear way because
14 there are other factors that are affecting this price,
15 but overall supply, Brazilian supplies, a huge percent
16 of the exports in the world, 80 to 90 percent. So
17 yes, it does affect the futures market even if it
18 doesn't come into the United States.

19 COMMISSIONER PEARSON: In that situation how
20 do we analyze this as an antidumping case? Of course
21 in an antidumping case we're looking at something that
22 comes across the border and presumably has a price
23 effect after it's done that. But here if we've got a
24 situation where the price effect is occurring, some of
25 it at least before the product enters the United

1 States just because it's growing, and then perhaps
2 some of it after it's come into the United States,
3 what do we make of that? This is different than a lot
4 of other cases we look at.

5 MR. McGRATH: Commissioner, I think you're
6 right in that there are different points along that
7 line where there will be some impact. I think that
8 the point we're making here is that not only are the
9 imports coming in after some price effects have
10 happened, but by coming in in volume they continue to
11 contribute to price effects, and by delivering in the
12 futures market where there's price discovery and so
13 many indices are pegged, it has an even further price
14 effect.

15 I don't think that the Commission is legally
16 bound to try to figure out how much of the price
17 effect is accounted for along the way. All you need
18 to do is examine whether dumped merchandise was sold
19 in the U.S. and sold at prices which cause material
20 injury. It doesn't have to be the sole cause of
21 material injury. You can find that a big forecast in
22 Brazil had an impact on prices as well.

23 But if the product does come in and if it is
24 sold in the United States at dumped prices, I think
25 what we're trying to say is it obviously has some

1 impact in the marketplace by being here in the United
2 States. It's not off in Brazil. We've done the
3 figures to show you what the import increase has been
4 and it has an impact.

5 It's not just in the futures market. There
6 are deliveries being made at low prices.

7 COMMISSIONER PEARSON: I think there were
8 other people who wanted to comment on that.

9 Mr. Chapman? No?

10 Dr. Behr?

11 MR. BEHR: I would just say what Matt said.
12 Clearly a Brazil crop report can have an impact on the
13 market but I think it would be wrong to say that
14 imports of Brazil into the United States that were
15 pushed into this market would not have an impact. I
16 think that's just not sound economic thought.

17 COMMISSIONER PEARSON: Yes, and I don't
18 think anyone has made that claim. I'm just trying to
19 understand what type of price effect occurs simply
20 because there might be a large or small crop in
21 Brazil, regardless of what --

22 MR. BEHR: No question. We've said in our
23 testimony, and I'm sure in the documents that you've
24 seen, Brazil is the largest producer in the world and
25 when their crop estimate is made known to the public

1 it will have an impact. But there will certainly be a
2 subsequent impact depending upon how much product is
3 brought into this market.

4 COMMISSIONER PEARSON: Is it correct then to
5 look at the global orange juice industry as being a
6 global industry rather than as just kind of a
7 collection of national industries? I'm just trying to
8 get a sense, to what extent do we have national
9 industries that are mostly separate but somewhat
10 joint, as compared to having a global industry that's
11 highly integrated with some national aspects?

12 MR. McGRATH: I think it's fair to say you
13 have a lot of both, as with many industries that you
14 look at these days. There are no more purely national
15 industries. There are many industries that are
16 partially global.

17 I've been here for a few of the steel cases
18 recently, and it's amazing how things have changed and
19 who's related to whom and who's owned by foreign
20 companies that used to be domestic.

21 So there are lots of global elements to this
22 and that's very important, I think, to your analysis,
23 the fact that we have an industry in the United States
24 which is partially wholly domestically owned without
25 relationships to any foreign producers. Then we have

1 portions of this industry which basically are
2 processors. Processors only, not growers, who are
3 owned by and related to global processors who process
4 juice elsewhere around the world.

5 These factors I think are very important in
6 the analysis in that a global processor, especially in
7 a highly, highly concentrated global industry like
8 this, is able to exert a monopsony type of influence
9 on prices for the fruit that goes into their product,
10 and apparently does so in Brazil. The way they can
11 have an impact doing the same thing in the United
12 States is through the fact that they can deliver
13 product here on a futures market that affects the
14 price they end up having to pay in the United States
15 for fruit for their United States plant.

16 That global element of this, while there
17 still is a national industry in place which is our
18 U.S. growers who exist in the United States who are
19 not owned by any Brazilian processors, is an influence
20 which needs to be evaluated in deciding in this unique
21 case is there injury caused by imports. It is global,
22 but it is also a national industry.

23 COMMISSIONER PEARSON: Your testimony has
24 indicated that deliveries of Brazilian orange juice on
25 the U.S. futures market occurred at a time when the

1 U.S. market was over-supplied. But in a situation in
2 which the global market is relatively integrated, it's
3 at least possible that the entire world market was
4 over-supplied and that delivering, bringing Brazilian
5 orange juice into the United States could have been
6 the highest value return that the Brazilians could
7 have gotten with that juice. Is that correct, or is
8 there something wrong with that reasoning?

9 MR. McGRATH: I think Dr. Behr testified,
10 and we can reexamine the numbers. The concern we had
11 was that there were alternatives at that time. In an
12 over-supplied world market there were higher priced
13 markets available for that Brazilian juice and they
14 chose not to pursue that. And there were alternatives
15 available in the futures market itself through rolling
16 contracts or not delivering the juice into the market.
17 They chose instead to put it into the market at that
18 very low price when there were alternatives available.

19 I think you've asked a very good question.
20 Why? Why would somebody do that?

21 The answer, we've talked about it, and the
22 answer Mr. McKenna gave was he deals with those folks
23 in delivering fruit to them. He knows what the impact
24 is going to be when the futures price drops. He's
25 going to be paid less for his fruit. He sees it on a

1 daily basis.

2 COMMISSIONER PEARSON: My time has expired.

3 Thank you, Mr. Chairman.

4 CHAIRMAN KOPLAN: Thank you.

5 Commissioner ARanoff?

6 COMMISSIONER ARANOFF: Thank you, Mr.

7 Chairman.

8 I'd like to return to just one last like
9 product question that I'm struggling with here, having
10 not been here in the preliminary determination so I
11 don't have a decision I've already made to fall back
12 on. That is, I'm really struggling with how to weigh
13 the issue of consumer perception in assessing the like
14 product factors.

15 I have an industry here in front of me today
16 which on a global basis has invested a great deal of
17 money in the NFC process and in marketing the NFC
18 product to consumers as being either better for them
19 or better tasting or somehow higher quality, and
20 either that was a really bad investment or you're
21 making more money on that to justify the investment.

22 On the other hand, I have you testifying
23 before me today that in point of fact everybody in the
24 industry sort of on the inside knows there's no real
25 quality difference, there's no real taste difference,

1 it just depends on whether a product is NFC or FCOJ.
2 Obviously there are variations depending on what
3 formula you use.

4 So my question to you is, in order to accept
5 your like product argument that there's one like
6 product here, I basically have to say okay, I'm not
7 putting that much weight on the consumer perception
8 that there is a difference here, but how can I devalue
9 that factor so much when you guys have invested so
10 many millions of dollars in creating that perception?

11 MR. McGRATH: Well I think there are a few
12 answers to that.

13 There has obviously been a great deal of
14 effort put into the promotion of the product. There's
15 also been, I think you'll hear this afternoon, there's
16 been a great deal of effort and expense put into
17 promoting the perception that Minute Maid
18 reconstituted juice is just as good as Tropicana NFC.

19 Dr. Behr has conducted numerous, I think you
20 do weekly taste panels with consumers who can't tell
21 the difference. But there's a perception if you were
22 to ask them without doing a blind taste test. So it
23 is a situation where there is a taste preference.

24 But all these products that you see before
25 you are competing directly with each other for the

1 same dollar. I don't think anybody in the industry is
2 going to say there's absolutely no difference between
3 these two products, they're completely flat-out
4 identical. Obviously the industry went to the effort
5 of developing a different variation on how they store
6 and transport the juice.

7 First and foremost, if you look at all four
8 of those cartons, the one thing common about all of
9 them is there's an orange on all of them. The
10 perception that everybody wants to present is that
11 this thing that's in this carton comes out of this
12 orange, this natural orange. They all want everyone
13 to think that same thing. So that's their first
14 perception.

15 Then they go for the freshness perception
16 that Tropicana will testify about later, and the
17 perception that it is a much fresher product.

18 But ultimately you have to also take a look,
19 what we're saying is you have to take a look at the
20 point where the rubber hits the road, where the
21 consumer buys the product. I can give you a tip if
22 you want it, at Rockville Giant you can get the
23 MinuteMaid or the Tropicana, either one, two for a
24 dollar this week with your bonus card. They're going
25 at exactly the same promotional price because they

1 compete with each other head to head.

2 I think that you have to take into account
3 that there is a lot of effort that goes into
4 promotional distinctions being made between them and
5 at the end of the day the consumer thinks they're
6 distinguishing when they're not.

7 I think there are some promotional studies,
8 maybe Bob can answer more on that.

9 MR. BEHR: Matt hit it pretty well on the
10 head. We have benefitted over the years with the
11 effort that Tropicana made in the early years to
12 create the idea that not from concentrate was close to
13 that fresh-squeezed taste. The concept of saying this
14 was not from concentrate perhaps created a negative
15 perception for that product which comes from
16 concentrate. So there is a great deal of consumer
17 perception that goes into the product.

18 I might add that last year MinuteMaid
19 premium orange juice actually did better in the
20 marketplace than either of the Tropicana product. I
21 think our sales may have been up comparable with the
22 MinuteMaid product in reconstituted orange juice sales
23 in the market last year, outsold NFC juice. It might
24 have been a pricing issue, but the reality is that
25 consumers do continue to buy reconstituted orange

1 juice, and as I said earlier, it amounts to about half
2 of the chilled juice sales.

3 So there is a perception there. We do make,
4 and I think you probably found this in the
5 questionnaires, there is because of the increased
6 demand for NFC the industry makes a little bit more
7 money on it. That's why we've invested as heavily as
8 we have over the course of the past 20 years.

9 COMMISSIONER ARANOFF: Thank you. I
10 appreciate those answers.

11 I want to turn to the issue of duty drawback
12 if I could.

13 Obviously the Respondents make the argument
14 that duty drawback makes export sales either possible
15 or more profitable than they otherwise would be. From
16 your perspective if it weren't for duty drawback would
17 you be in the exporting business and would you be
18 exporting more, less? How much does drawback matter?

19 MR. McGRATH: The numbers that we've been
20 able to see on this, I think every processor might
21 have something different to say, but the numbers we've
22 been able to see is that there's potentially, imports
23 are far more than what would be needed just to offset
24 drawback, but your question is really more would the
25 domestic industry export at all if they didn't have --

1 COMMISSIONER ARANOFF: That's correct.

2 MR. McGRATH: -- imports that they could
3 claim drawback against. That's going to vary, I
4 think, from processor to processor. But I know that
5 Mr. Behr does do some exporting. Maybe he can answer.

6 MR. BEHR: We don't import to export.
7 That's simply not the way we operate. Over the years
8 we have developed an export business to a large extent
9 in the Caribbean, but that business is not dependent
10 upon our ability to draw back.

11 Clearly, if we import to meet a supply
12 shortage in the United States the drawback dollars do
13 help improve the profitability of the export business
14 that we're doing, but we're simply not importing to
15 achieve an export program.

16 COMMISSIONER ARANOFF: As I read
17 Respondents' brief, they make the argument that if you
18 add the drawback value to the export price that it
19 makes an export sale that otherwise would not have
20 been profitable into a profitable sale. And I'll ask
21 the Respondents this question this afternoon.
22 Obviously, first you had to pay the duty before you
23 got it back and somehow they seemed to be crediting
24 the drawback to the export sale but the duty payment
25 to something else which as a matter of accounting

1 doesn't entirely make sense to me.

2 Do you have any thoughts on that? How do
3 you count the duty that you pay and the duty that you
4 get back?

5 MR. McGRATH: The drawback is paid to the
6 party that would qualify for receiving the drawback,
7 to make the claim. In some cases the importer might
8 also be the exporter. The importer of one product who
9 wants to do some blending and then exporting it, may
10 also be the exporter. In many cases drawback is just
11 claimed by doing very very minimal processing in the
12 United States with an imported product and then re-
13 exporting it. It's not necessarily the case that all
14 of this drawback benefit is going to come for the
15 exportation of some 100 percent domestic product
16 substituted for that 100 percent imported product.

17 So I think each exporter is going to have
18 their own reasons for how and why they claim drawback.
19 It's very difficult to generalize about that except to
20 say the domestic industry, the domestic processors may
21 look to the potential of getting drawback as one
22 reason to export, but they're not going to import
23 product so that they can say I need some imports here
24 so I can export some product. I think that's really
25 what our point is.

1 They'll look to their import duties that
2 they've paid if they're able to be the exporter as
3 well, and say to themselves, oh, I can make some money
4 by exporting this product because I have potential
5 credits built up on my import side.

6 COMMISSIONER ARANOFF: Okay, I appreciate
7 that answer and I see my yellow light so I'll have to
8 come back to my other question. Thank you.

9 CHAIRMAN KOPLAN: Thank you, Commissioners.
10 Let me save a little time on that last
11 question that I asked you on the first round, Mr.
12 McGrath, when I referred to Table 3-10 of the staff
13 report which covers certain orange juice, U.S.
14 producers' cost of sales by type for the most recent
15 fiscal year. That table was not bracketed in the
16 December 20th confidential version of our report but
17 is totally bracketed in the December 27th public
18 version. So you can respond to me post-hearing on
19 that if you choose.

20 MR. McGRATH: Yes, I think I understand what
21 some of the questions were about that, but we have to
22 take a look at our response. We had some differences
23 or some problems with how the raw material cost was
24 calculated there that we have to do in confidential.

25 CHAIRMAN KOPLAN: Right. I figured I'd get

1 a better response if you do the post-hearing and you
2 can get into the details. Thank you.

3 Following up on Commissioner Lane's request
4 when she referred to the growers. I note that unlike
5 previously, in this particular petition you included
6 not only frozen but not from concentrate as well which
7 is the basis for your request for the post-hearing
8 comments on the growers.

9 Let me just tie onto that and say in that
10 post-hearing submission when you're responding to
11 Commissioner Lane, if you could also assume
12 hypothetically that I find this time not from
13 concentrate and frozen to be separate like products,
14 please address separately the impact on domestic
15 processes of imports of both frozen and not from
16 concentrate in your post-hearing submission.

17 When you do that, if you could factor in,
18 you haven't actually seen these revised tables yet,
19 but they came out today and you'll have it, if you
20 could factor in the information in revised Tables 6-2
21 and 3 of our staff report. As I say, those tables
22 were revised as of today and I think you either have
23 them now or you'll be getting them.

24 MR. McGRATH: We will do that. I think we
25 did just get them but we haven't had a chance to look

1 at them yet.

2 CHAIRMAN KOPLAN: I'm sure of that.

3 Thank you, I appreciate that.

4 Let me stay with you if I could. I'm still
5 informing myself on the subject of defining like
6 product.

7 On page eight of your pre-hearing brief you
8 state, and I quote, "The most prominent physical
9 difference between bulk FCOJM and NFCOJ noted by the
10 dissenting opinion in the preliminary determination,
11 is the concentration level as measured by brix value."

12 You also state, and I quote, "This, however,
13 is not an enormous difference because the essential
14 physical characteristics, orange solids, and
15 overwhelmingly predominant end use, orange juice for
16 consumption in ready to drink form, remain the same.
17 The different concentration levels reflect only the
18 amount of water contained in the juice. To quality
19 for USDA Grade A Standard Juice, the brix value to
20 acid ratio for both has to be essentially identical."

21 But what about the differing FDA standards
22 of identity for the two products as listed on pages 1-
23 12 through 1-15 of the pre-hearing staff report?

24 In addition, what about the fact that washed
25 pulp solids in frozen are not permitted by USDA in not

1 from concentrate?

2 Could you respond to that?

3 MR. McGRATH: Mr. Chairman, we certainly
4 would respond to it in a more lengthy way in a post-
5 hearing brief, but --

6 CHAIRMAN KOPLAN: Would you rather do that?

7 MR. McGRATH: The one observation I would
8 make is that the standards of identity really don't
9 talk to differences in nutrients or content of the
10 juice. They talk to basically how you --

11 CHAIRMAN KOPLAN: Would you move your mike a
12 little closer?

13 MR. McGRATH: Oh. They talk to how you
14 identify the product for purposes of labeling it and
15 what you call the juice product. Whereas what we were
16 trying to make a point about here, and what we have
17 made the point on, is that the nutrients, the
18 contents, are the same for both.

19 The standards of identity simply identify a
20 different basis for putting labeling on the product.

21 CHAIRMAN KOPLAN: You can understand why I'm
22 asking the question, though.

23 MR. McGRATH: Yes. There are different
24 types of descriptions of products in the --

25 CHAIRMAN KOPLAN: Different standards by

1 FDA.

2 MR. McGRATH: But they're still both juice.

3 CHAIRMAN KOPLAN: I appreciate that.

4 MR. McGRATH: Any of those standards that
5 are there must be 100 percent orange juice coming
6 squeezed from an orange. Preserved juice isn't
7 included, I don't think, in the standards of identity,
8 and preserved juice in fact is included in this
9 investigation within the scope. It has been covered
10 by the investigation.

11 So the scope is somewhat broader than just
12 an individual standard of identity.

13 CHAIRMAN KOPLAN: Okay. If you want to
14 expand on that post-hearing --

15 MR. McGRATH: We'll be happy to do that,
16 yes.

17 CHAIRMAN KOPLAN: Thanks.

18 MR. McGRATH: Thank you.

19 CHAIRMAN KOPLAN: Let me stay with you and
20 include Dr. Behr in this next one.

21 On page eight of Tropicana's pre-hearing
22 brief they state, and I quote, "FCOJM is a thick,
23 brownish mass which is not suitable for human
24 consumption."

25 In Footnote 11 on the same page they add,

1 and I quote, "As Petitioners concede, NFC orange juice
2 may be further processed during packaging operations.
3 For example, by the addition of calcium or other
4 juices or flavors, but it is also capable of being
5 packaged for retail sale without further processing.
6 The Petitioner in this case refers to NFC as juice for
7 further transport or processing, conceding the NFC is
8 a consumer-ready product that only needs to be
9 transported to the end user."

10 How do you respond to that argument?

11 MR. BEHR: I think you've pretty well heard
12 from us over the course of this morning. We believe
13 that NFCOJ and FCOJM are like products. They're
14 indistinguishable in nutrient content. I think you'll
15 see from a finished product perspective, they're
16 indistinguishable both in color, flavor, in taste.
17 They do undergo a difference after the juice streams
18 enter. One goes into pasteurization and into the tank
19 farms for later shipment and packaging. The same is
20 true for FCOJ. The juice stream, Mr. Chapman
21 indicated, is pasteurized, concentrated and stored,
22 and then is shipped to customer for packaging and sale
23 at retail.

24 I find it difficult to believe that one
25 could separate the two orange juices into different

1 industries. They're basically made from the same
2 oranges, processed on the same lines, put in the same
3 packages, and they compete on the shelf right next to
4 one another.

5 CHAIRMAN KOPLAN: Thank you, Dr. Behr.

6 Ms. Warlick, is there something you wanted
7 to add?

8 MR. BEHR: Ms. Warlick pointed out to me
9 that NFC is also shipped in a frozen state. Mr.
10 Chapman mentioned that earlier. Often you see export
11 shipments. Although it is declining, it is shipped
12 frozen as well.

13 So the state in which both NFC and FCOJ are
14 shipped from a bulk perspective are similar in that
15 regard. But by and large most NFC is shipped in
16 single strength, and most FCOJ is shipped in
17 concentrated form where it's reconstituted for later
18 packaging.

19 CHAIRMAN KOPLAN: Thank you.

20 Mr. McGrath looks a bit different to me
21 right now. Is that Mr. Brophy or Mr. Stipanovic? Mr.
22 Brophy.

23 MR. BROPHY: Yes.

24 CHAIRMAN KOPLAN: Did you want to add
25 anything to that since you're standing in for Mr.

1 McGrath?

2 (Laughter).

3 CHAIRMAN KOPLAN: I've got a series of
4 questions for him, so I thought I'd let you cut your
5 teeth on this one.

6 MR. BROPHY: I think you're talking about a
7 difference of water. Water is taken out of the FCOJ,
8 it's left in the NFC, and one is pasteurized, one is
9 frozen for shipping purposes. I agree with everything
10 Mr. Behr said. We're talking about the same product.
11 It's orange juice.

12 CHAIRMAN KOPLAN: Okay, well let me stay
13 with you. If any of these you need to do post-
14 hearing, certainly you can.

15 MR. BROPHY: Thank you.

16 CHAIRMAN KOPLAN: This one is for the post-
17 hearing brief.

18 With regard to lost sales of revenues, for
19 purposes of the post-hearing brief, can you improve
20 upon the information contained in Table 5-3 at page 5-
21 16 of our pre-hearing report? It doesn't give me much
22 help here. So if you could provide any additional
23 lost sales and lost revenue allegations with accompany
24 documentation so that staff could follow up, that
25 would be appreciated.

1 MR. BROPHY: We will do so.

2 CHAIRMAN KOPLAN: Thank you.

3 Could you please address Mr. Kalik's threat
4 argument on page 16 or Citrosuco's pre-hearing brief
5 that, and I quote, "The storage and handling
6 constraints associated with shipping NFCOJ in an
7 aseptic environment will prevent significant volume
8 increases in the future."

9 Critosuco also states further down the page,
10 and I quote, "Absent massive investment in aseptic
11 storage and handling facilities both in Brazil and the
12 U.S., import volumes are limited more or less to
13 present levels. Levels that have no impact on the
14 domestic industry."

15 Your threat analysis beginning at page 67 of
16 your pre-hearing brief does not exactly address this.

17 I see Mr. McGrath is back.

18 Did you get all that, Mr. McGrath?

19 MR. McGRATH: I got the end of it, yes. We
20 will be happy to answer those questions.

21 The issue on growth of aseptic storage, I
22 think maybe Mr. Chapman has some comments on it.

23 Mr. Chapman?

24 CHAIRMAN KOPLAN: If my colleagues will
25 indulge me, as I've been trying to do, I'll take that

1 answer.

2 Mr. Chapman?

3 MR. CHAPMAN: Certainly, I think it's pretty
4 well documented that Citrosuco has two massive ships
5 that will ship, I don't know, eight, ten million
6 gallons of aseptically stored not from concentrate. I
7 think it's fairly well known in the industry that
8 probably one of those ships runs all the time between
9 Brazil and Europe and the other one is not fully
10 utilized. So I think they certainly have the
11 opportunity to dramatically expand the amount of not
12 from concentrate coming into the United States.

13 As far as the aseptic storage, building of
14 aseptic storage is expensive but the tremendous costs
15 associated with transporting it aseptically is also
16 extremely expensive. So when you have one aspect of
17 that already pretty much taken care of, it starts to
18 make a lot more sense I would think to build the ports
19 in Santos, Brazil and also other places in the United
20 States in order to facilitate that further trade of
21 not from concentrate.

22 So they're doing it and they're doing it
23 very well, very successfully, and it's happening right
24 now. They certainly would have the opportunity to
25 expand that dramatically if they wanted to.

1 CHAIRMAN KOPLAN: Thanks.

2 Mr. McGrath, for purposes of post-hearing if
3 you could look at the full text of the question which
4 goes to the issue of threat and --

5 MR. McGRATH: We'll be happy to do that.

6 CHAIRMAN KOPLAN: Whatever you can add to
7 that response, I would appreciate it.

8 MR. McGRATH: We do have a considerable
9 amount to add, yes. We will do that.

10 CHAIRMAN KOPLAN: Thank you.

11 Vice Chairman Okun?

12 VICE CHAIRMAN OKUN: Thank you, Mr.
13 Chairman.

14 For purposes of post-hearing, Mr. McGrath,
15 on like product, I consider it a close question as I
16 did during the preliminary, so I would appreciate
17 further briefing for post-hearing.

18 And if you could on that, I know you have
19 briefed it already, but when you're doing so if you
20 can focus on the wholesale end of it and then to the
21 extent that you're talking about growers perception
22 and retail perception, if you can then link that to
23 those and let me know whether you think in this
24 particular case those are more relevant and why, I
25 would like --

1 MR. McGRATH: You would like for us to
2 explain whether we think the grower perceptions and
3 the retail perceptions are more relevant than the
4 distinction between wholesale price and retail --

5 VICE CHAIRMAN OKUN: Well, or just looking
6 at wholesale. In other words, usually --

7 MR. McGRATH: In looking at the trend in
8 wholesale.

9 VICE CHAIRMAN OKUN: -- in my analysis I
10 haven't placed as much emphasis on the retail side and
11 we've talked a lot about it for a number of reasons,
12 and I would like your legal analysis of whether, with
13 regard to the specifics of this case, retail
14 perceptions, ultimate consumer perceptions are more
15 relevant than purchaser conceptions if they're
16 different. If you think they are. I don't know if
17 you do.

18 When I was reading the analysis originally,
19 both your brief and some of the other briefs including
20 from Respondents who are arguing for one like product,
21 there was a lot of jumping around between wholesale
22 and retail and I was having a hard time keeping track
23 of who was doing what and how much is being done by
24 purchasers. So I'd like some clarification on that if
25 I can.

1 MR. McGRATH: Yes, and I'm glad you asked
2 that because in preparing for the hearing and speaking
3 with our witnesses, and in just my work within the
4 industry here in the last 20 years, most people do
5 talk about them interchangeably. Because they view
6 what is the ultimate consumer looking for, that really
7 drives what's happening in between the tree and the
8 consumer. And there are a couple of different forms
9 of product.

10 But I really think that the Commission
11 should put its analysis in the position that it has in
12 the approach that it's taken in some other cases where
13 they're more of a continuum, or it's a combination of
14 a continuum type of a situation and a no clear
15 dividing, bright dividing line type of a situation
16 when it comes to like product here.

17 You have a piece of fruit coming off of a
18 tree and then it goes through a process where it
19 splits into two different forms but the ultimate goal
20 that the grower started with and that the consumer is
21 starting with at the other end of this line is juice
22 in one of these cartons here. Primarily.

23 VICE CHAIRMAN OKUN: I understand that.
24 Again, I know you have --

25 MR. McGRATH: So it's just a question of

1 what's happening in between.

2 VICE CHAIRMAN OKUN: -- previous Commission
3 cases, and continue to do that because I think it is
4 not clear from even what I've done as an individual
5 Commissioner and other Commissioners that a piece of
6 fruit means everything that comes out of it is the
7 same like product. So I think that can't be the
8 basis.

9 Again, at least for me it's still a close
10 question.

11 Then I do have questions for Mr. Roper with
12 regard to the issue of whether organic is separate,
13 but I'm going to come back either during this round,
14 or if my colleagues don't cover it I will come back to
15 you, Mr. Roper.

16 But I did want to turn to, because even if I
17 accept that it's one like product I think there are
18 still a number of issues that I haven't been able to
19 discuss with regard to causation and other issues.

20 So Mr. McGrath, I'm going to start with you.

21 You started in response to Commissioner
22 Pearson talking about the global nature of the
23 industry here and what that does or doesn't mean for
24 our analysis and how to take it into account. And
25 there were a couple of things you didn't touch on that

1 I would like you to do either here, and also in post-
2 hearing, which is if we look at the imports by what
3 is, well let me start with this.

4 Do you have any different view of which
5 producers should be excluded in the final as opposed
6 to in the prelim where I believe a majority of the
7 Commissioners took out Citrosuco only, excluded them
8 from the domestic industry. Your position, any others
9 should be excluded?

10 MR. McGRATH: We don't take any different
11 position with respect to what should be done in this
12 case. In the final we accept what the Commission
13 found in the preliminary.

14 VICE CHAIRMAN OKUN: Okay. So taking, since
15 that's where I came down on this question, comes down
16 that way, which is if I look at the information on the
17 record and look at what are U.S. producers, part of
18 the U.S. industry for purposes of this case, their
19 imports, and everyone here has recognized that imports
20 are important in the market, but if I look at those
21 numbers, and I will have the staff check what we have
22 done here on the back of an envelope.

23 But the processors account for 44.5 percent
24 of the FCOJM imports from Brazil, and 42 percent of
25 NFC imports of Brazil. That doesn't include those of

1 you, including on this table, who purchase imports
2 from Brazil from someone who imports otherwise. So
3 the number to me is fairly big.

4 My question for you is how should the
5 Commission analyze that in terms of the significance
6 first on volume? What does it mean when a large
7 percentage of imports are necessary in the market or
8 the domestic industry is importing them themselves, so
9 it's not the situation of just a foreign industry
10 sending in things?

11 MR. McGRATH: We have said from the start
12 that Brazilian volume is something that is an integral
13 part of the market and we expect it to be here. We're
14 not in a position of seeking some kind of trade relief
15 or remedy that bars importation. And we'll repeat it
16 again, we're looking at the pricing of that imported
17 product.

18 But as far as the volume that's imported
19 into the United States by the Brazilian owned
20 processors who are in the United States, they are
21 supplementing their supply. They are buying fruit
22 from the U.S. growers as well as importing product
23 that is manufactured by their parent companies in
24 Brazil, and ultimately their goal, certainly as a U.S.
25 processor, that unit is seeking to show a profit and

1 make money like any of the U.S. processors, but the
2 other added layer of analysis that we do as a Florida
3 industry is that those particular processors are
4 ultimately seeking global profit on a global basis as
5 a global company which includes their production and
6 sales from Brazil and their production activity in the
7 United States.

8 With that in mind they have no investments
9 in groves. Other processors do. Southern Gardens
10 does; Citrus World is a coop. Duda, the other
11 processor that's not here that's a Petitioner has
12 significant investment in groves, they own property in
13 Florida. So it's a very different profile of the
14 Florida based Florida industry and the Brazilian owned
15 portion of the Florida industry.

16 VICE CHAIRMAN OKUN: And I do think that
17 adds some complexity to the analysis in terms of even
18 other agricultural cases where you have coops, where
19 in this case there is a distinction between those who
20 are coops who have growers and those who are just
21 processors but still part of the domestic industry.
22 That's the reason for my question in this particular
23 case, in trying to sort that out. Where you find
24 injury and causation, frankly,

25 But the other question in addition to volume

1 which I understand is with regard to impact, and
2 before you answer that, on impact I understand that
3 you have either, the public version of the revised
4 charts which are Tables 6-1, 6-2, 6-3, 6-15, and 7-6,
5 have been circulated, but I'm assuming you haven't had
6 a chance to look over them so I'm not going to ask
7 specific questions even though these are public
8 versions, except to say for post-hearing if you could
9 comment for me with regard to these revised numbers
10 which show even for the growers, where I've heard a
11 lot of talk about the losses from the growers, does
12 not show operating income loss throughout the period
13 of investigation overall. Understanding there are
14 certainly growers who have reported that.

15 So I want to understand that argument with
16 regard to impact.

17 Then on that, Mr. McGrath, if you could, I'm
18 just trying to understand yesterday what the changes
19 in the questionnaire responses that were received
20 yesterday, I'm just trying to understand. Did your
21 clients include by-product revenue in their responses?
22 I'm just trying to sort out why we have such different
23 numbers today than we had yesterday.

24 When I was briefing for this case I had one
25 set of charts; and now I have a different set of

1 charts with substantially revised numbers with regard
2 to --

3 MR. McGRATH: The changes in the results of
4 U.S. growers, I'm not sure, we'll have to look --

5 VICE CHAIRMAN OKUN: Again, I apologize
6 because I know you haven't seen it. But for post-
7 hearing if you could just go through it because again,
8 it's different for me as well, having sat through a
9 briefing yesterday looking at one set of numbers, but
10 understanding that they were going to change. If you
11 can just tell me whether your arguments change with
12 regard to impact or --

13 MR. McGRATH: I know the Brazilian-owned
14 processors did change their data to make adjustments
15 to take into account by-product sales revenue. I
16 think --

17 VICE CHAIRMAN OKUN: I'm just trying to make
18 sure for your clients, your clients already did that.
19 I mean in other words they're not going to have any --

20 MR. McGRATH: I'll ask Dr. Behr about it.
21 I'm not sure of each individual one. I think I did
22 check with them on it and I think it was accounted
23 for, but what I'm looking at here in these new tables
24 is, just for the first time, is figures on operating
25 income or loss. I don't know what the basis is for

1 the difference, frankly, if that's additional
2 questionnaire answers that have come in or what that
3 basis is.

4 We will definitely want to comment on that
5 and take a close look at it.

6 VICE CHAIRMAN OKUN: If you will, I think
7 the staff can probably better say than me, than the
8 changes that came in and why that changed
9 substantially, but I do think it was the difference in
10 the by-product revenue from those questionnaires that
11 we received. So I will look forward to your comments.

12 MR. McGRATH: I don't think it had to do
13 with the by-product revenue. That would have affected
14 the processor operation, financial --

15 VICE CHAIRMAN OKUN: Not on the growers, I'm
16 sorry. Gotcha.

17 MR. McGRATH: So I am at a loss really to
18 explain this difference.

19 I note that it's still showing even with the
20 profit that's showing, it's a declining profit and
21 it's a very low one for the most recent period. I
22 guess you do have a higher number of firms reporting I
23 think than you did in the previous one.

24 Our experience has been that the growers, I
25 think the growers that are here including the growers

1 represented by Citrus World, tend to be among the more
2 profitably operated, least debt constrained and
3 highest return in the industry and they're operating
4 at losses on the grower level. So we'll take a look
5 at what the impact is here. It could be one anomalous
6 grower. I'm not sure.

7 VICE CHAIRMAN OKUN: My red light's been on.
8 I appreciate the indulgence and I will look forward to
9 your answers post-hearing. Thank you.

10 CHAIRMAN KOPLAN: Thank you.

11 Commissioner Hillman?

12 COMMISSIONER HILLMAN: Thank you. Just a
13 couple I hope quicker followups.

14 Just to make sure I understand your
15 argument, Mr. McGrath, Vice Chairman Okun was asking
16 about this issue of given that it is the domestic
17 industry that is doing a significant amount of the
18 importing themselves. Is your argument, nonetheless,
19 that the volume of imports from Brazil, I understand
20 the price argument. The volume is causing material
21 injury?

22 Again, I'm trying to understand the
23 relationship between the fact that it's the domestic
24 industry here that's doing a significant amount of the
25 importing themselves.

1 MR. McGRATH: No. We are not saying that
2 the volume in and of itself causes the injury. We are
3 saying that the volume at the prices that have been
4 sold in this market over the last three years have
5 been the cause of injury.

6 The volume that has come in has increased,
7 but you'll note we're not resting everything on that
8 and the Respondents will say it's irrelevant, volume
9 is simply a function of supply. It goes up and down.
10 We're not resting our entire case on the fact that the
11 volume increased pretty significantly. What we're
12 saying is that the volume increased, it was at
13 significant levels for purposes of your analysis and
14 it was at prices which were extremely low to cause
15 injury.

16 COMMISSIONER HILLMAN: If we can turn for a
17 second so that I can understand a little bit more from
18 your perspective the Brazilian oranges and to some
19 degree this issue of blending.

20 Can anybody tell me, is the percentage of
21 Valencias grown in Brazil higher than it is in the
22 United States?

23 Mr. Chapman?

24 MR. CHAPMAN: Technically, no. The last
25 data I remember is that only about five percent of

1 Brazilian oranges are Valencia in Brazil, however they
2 grow Hera and Natal oranges which are oranges that
3 have Valencia-like qualities, higher color, that kind
4 of thing.

5 COMMISSIONER HILLMAN: Can you give me a
6 sense of the percentage of the Brazilian crop that is
7 of this Valencia higher color, higher sweetness,
8 whatever qualities?

9 MR. CHAPMAN: Over 90 percent.

10 COMMISSIONER HILLMAN: Okay. And are these
11 late season products in Brazil in the way that the
12 Valencias are late season in the United States? Or
13 are these oranges more full season products in Brazil?

14 MR. CHAPMAN: I guess the Respondents would
15 be able to answer all these questions better, but I go
16 to Brazil frequently so I guess I have some knowledge
17 of this. The Brazilian product is actually counter-
18 seasonal because it's in the Southern Hemisphere so
19 their growing season is to a great extent, ends up, I
20 think they're wrapping up around now so it's just much
21 different than ours.

22 COMMISSIONER HILLMAN: You responded to a
23 couple of the questions in terms of this blending on
24 it depends on the season and when the things are
25 picked.

1 Just so I understand it, do you make a juice
2 that is 100 percent from Hamlin or Parson Brown or
3 something other than Valencia? Or does everything you
4 make have some amount of Valencia or Valencia-like
5 juice blended into it?

6 MR. CHAPMAN: We process, I mean I always
7 say only God makes the juice. We process the oranges
8 and blend them in a way that, depending on what our
9 customer specifications are, we have varietal
10 contracts with some of our customers where they just
11 want the early season juice and so we might have a
12 contract set up with some of our customers so that
13 they take just the varietal, the early season, the
14 Hamlin type juice and then we'll have a contract for
15 maybe half of it being Hamlin and the other half being
16 Valencia or whatever they --

17 COMMISSIONER HILLMAN: But some juice is
18 produced without any of the Valencia or the darker
19 colored juice being blended in?

20 MR. CHAPMAN: Yes.

21 COMMISSIONER HILLMAN: Is that a high
22 percentage of the market or is that a --

23 MR. CHAPMAN: Is it a high percentage of
24 what we ship out of our facility? I would say it's
25 probably in the neighborhood of about one-third of

1 what we ship out.

2 You're talking about of the early season
3 products? Some of our customers do their own blending
4 at their own facility so they'll be getting product
5 from other suppliers and do the blending there. So
6 they might ask it to be blended or they might ask, and
7 it might change from today to tomorrow or next week,
8 but in general we know by our contract overall what
9 they're going to require.

10 COMMISSIONER HILLMAN: If we then shift to
11 the demand side of things. Obviously a lot of the
12 discussion in terms of both causation and everything
13 else is what was happening in terms of consumption in
14 the U.S. market and demand for product. A lot of you
15 have talked about everything from the Atkins Diet on
16 in terms of affecting demand.

17 On the other hand I will say in a number of
18 cases that we've heard recently there's been a lot of
19 talk that the Atkins fad is in fact fading and that
20 we're going back in the direction of eating, if you
21 will, a more balanced diet. Where do you see demand
22 going in the near term in the U.S. as well as in
23 Europe and the Asian markets? And do you see in
24 Europe or the Asian markets the same shift that we've
25 seen in the United States toward a higher percentage

1 of NFC as opposed to FCOJ?

2 Dr. Behr?

3 MR. BEHR: I'd be happy to answer that.

4 The Atkins diet and low carb diets certainly
5 have had an impact on orange juice consumption as
6 they've had on many high carbohydrate foodstuffs.
7 Clearly the biggest part of that impact came at the
8 height of the Atkins Diet craze.

9 As the popularity of the Atkins Diet has
10 waned, I think the impact on orange juice consumption
11 certainly has abated somewhat.

12 As we go forward, I still feel that you'll
13 still have more consciousness, I think the Atkins Diet
14 raised the consciousness of the American public
15 regarding the importance or the relevance of
16 carbohydrates in the diet.

17 So I think there will be some residual
18 effect, but clearly the big effect of the Atkins Diet
19 I think is now over with.

20 I think we've seen similar trends in Europe,
21 although I'm not as close to the European market and
22 markets in the Far East as I am the U.S., but I
23 understand there has been some impact there. Perhaps
24 more so in the UK than some of the other European
25 markets.

1 And I would expect the same thing, that as
2 the diet craze abates, its impact on foods with high
3 carbohydrate content will probably abate as well.

4 COMMISSIONER HILLMAN: And demand generally
5 in the U.S.?

6 MR. BEHR: Right now demand is pretty well
7 flat. Again, I think it's still, the residual effects
8 of the low carb diet are still present. we're not
9 declining consumption, but at the same time
10 consumption is not increasing either.

11 So I think we're, certainly from a
12 consumption perspective or a demand perspective, the
13 effects of the Atkins Diet is certainly less today
14 than it was several years ago.

15 COMMISSIONER HILLMAN: Ms. Warlick, did you
16 --

17 MR. CHAPMAN: Although --

18 COMMISSIONER HILLMAN: Go ahead, Mr.
19 Chapman.

20 MR. CHAPMAN: The average U.S. consumer
21 drinks about six gallons of orange juice per year, and
22 then when we saw the Atkins, and I'm speaking from my
23 experience on the Florida Citrus Commission when we
24 saw the impact of the Atkins, South Beach and some of
25 the other low carb diets, it dropped down to nearly

1 only five gallons. It's starting to come back, but
2 there's an awful lot of competition for various kinds
3 of juice and juice blends now that have displaced to
4 some extent I think orange juice as well. So as Bob
5 said, the demand seems to be sort of flat right now.

6 COMMISSIONER HILLMAN: Ms. Warlick?

7 MS. WARLICK: I wanted to explain some
8 background on consumption.

9 During the last decade when we saw the
10 dropping wholesale prices you'll know, and we wrote
11 about this in both of our briefs, I believe, that you
12 saw retail prices staying the same or rising. They
13 were not tracking wholesale prices. So there was a
14 growing discrepancy between the two.

15 It has just been until recently that we are
16 starting to see some lift now in retail prices. Now
17 it could be that that lift in retail prices is going
18 to have a depressing effect on consumer demand, the
19 volume that's demanded at the higher prices.

20 COMMISSIONER HILLMAN: So you're projecting
21 an actual decline in demand?

22 MS. WARLICK: Well, there are other forces,
23 too. There are these diet fads, but I think it would
24 probably even out or maybe decline instead of
25 increasing to the extent Respondents report based on a

1 diet.

2 COMMISSIONER HILLMAN: And Europe or Asia
3 demand?

4 MR. CHAPMAN: Europe the demand --

5 MS. WARLICK: I'm not the best one to
6 comment.

7 MR. CHAPMAN: Demand in Europe I think is up
8 from what I understand, but the Respondents I think
9 would be the best group to ask those questions.

10 COMMISSIONER HILLMAN: Okay. I appreciate
11 those answers. Thank you.

12 CHAIRMAN KOPLAN: Thank you, Commissioner.
13 Commissioner Lane?

14 COMMISSIONER LANE: As I understand Mr.
15 Roper's testimony, he is saying that organic orange
16 juice should be considered like product also with NFC
17 and FCOJ. The difference between organic and other
18 orange juice is what goes into growing the oranges.

19 So Mr. Black, do you grow oranges that can
20 be used for organic orange juice?

21 MR. BLACK: No, we don't. We made the
22 decision a number of years ago that we wanted to
23 remain competitive. We wanted to maximize the
24 production. And some of the changes that you have to
25 undergo to be certified organic result in less than

1 optimal production levels in my mind and the unit cost
2 increases from a grower's perspective. So we have
3 made the decision not to go organic.

4 COMMISSIONER LANE: Do you agree that
5 organic orange juice should be considered similar to
6 the type of juice that's produced from your oranges?

7 MR. BLACK: Yes. I think it's consumer
8 perception, absolutely. There's a growing market for
9 people that are more conscious about the organic
10 produced foods, but at the end of the day it's orange
11 juice.

12 COMMISSIONER LANE: Thank you.

13 Mr. McGrath, these questions may be for you.

14 What factors and specific evidence in the
15 record before us do you suggest the Commission should
16 use to determine the domestic industry is currently
17 suffering material injury and that injury is caused by
18 subject imports?

19 MR. McGRATH: I think the most pertinent
20 evidence is that which Ms. Warlick cited at the
21 beginning of her testimony. I can't give you the
22 citations and the pages, but the evidence showing a
23 decline in profitability of groves, of growers; the
24 evidence showing the declining profitability in losses
25 of processors; the evidence, and you do have some new

1 data here and we're going to have to go through that
2 but just from a quick look it seems as though the
3 trends still follow the same trends we were talking
4 about even though the absolute numbers are somewhat
5 different.

6 The measures of injury to U.S. growers of
7 oranges for processing showed a decline in ratio of
8 operating income to, or loss, to net sales. It showed
9 a completely continuing decline in capital
10 expenditures, and very similar indicators of injury
11 going on in the processor side, sectors as well.

12 There's really no doubt, and you won't hear
13 any objection to this from the Respondents here today
14 that the processor side of this industry has been in
15 bad financial shape for some time.

16 So the question then is what additional
17 information do we point to to say that imports have
18 been the cause? We're asking that you look at the
19 statutory criteria showing the increasing volume of
20 imports and the increasing percentage of imports as a
21 share of domestic production. We're asking that you
22 look at the declining price that imports were showing.
23 A lot of instances of under-selling in response to
24 your questionnaires, certainly with respect to FCOJM.
25 I think virtually or almost all instances that were

1 reported in all quarters were under-selling.

2 And we're asking that you look also at the
3 specific behavior that the Brazilian product has shown
4 in the futures market, given the fact that the
5 testimony has indicated and I think your report also
6 indicates that the futures market has a direct impact
7 on the pricing, both the pricing at the bulk level or
8 the prices that are paid to the growers.

9 Those are the main elements of information
10 in your staff report I think do support our
11 conclusion.

12 COMMISSIONER LANE: Okay, thank you.

13 Regarding critical circumstances, it is
14 argued that the Commission should look at a six month
15 period prior to the filing of the petition and a six
16 month period after the filing of the petition.

17 Do you believe that in this industry there
18 may be seasonal variations that make a comparison of
19 June through December deliveries with January through
20 July deliveries
21 improper?

22 If so, what alternative data should the
23 Commission look at for consideration of critical
24 circumstances?

25 MR. McGRATH: The first answer that comes to

1 mind I think and one of the important ones as Mr.
2 Chapman just pointed out is that their production is
3 counter-seasonal. I think looking at that January to
4 June volume, should be taking a look at it in a way
5 that's more to the advantage of the Respondents.

6 If it is showing an increase there it's
7 showing that there is an unusual increase that would
8 not be normal for the seasonal variations that you
9 would expect throughout the year.

10 We took a look at it and found that imports
11 had increased pretty dramatically in that period of
12 time leading up to the preliminary determination or
13 certainly in the six months after the petition was
14 filed, and it was in excess of what one would normally
15 see during that period of time.

16 There were some changes in supply for
17 various supply reasons. I'm sure you'll hear about
18 that this afternoon. But the main point is to take a
19 look at the period of time, we ask that you take a
20 look at that six month period and I think you'll see
21 that the increase is such given the elasticities of
22 this particular market, that even a small increase in
23 supply in that short period of time is enough to have
24 an adverse affect.

25 We've also testified, I think everybody here

1 this morning, that the price in response to the first
2 round of hurricanes in the fall of '04 did not respond
3 as much or as quickly as anyone had anticipated.
4 Certainly this additional imported product coming into
5 the market would contribute to that as well.

6 We think it's appropriate to take a look at
7 that period because for, as with most dumping cases,
8 that would be the period where there would be the
9 greatest concern about efforts to try to avoid the
10 impact of a dumping deposit requirement which
11 ultimately came into play in August of '05.

12 COMMISSIONER LANE: Thank you.

13 That's all the questions I have, Mr.
14 Chairman.

15 CHAIRMAN KOPLAN: Thank you, Commissioner.
16 Commissioner Pearson?

17 COMMISSIONER PEARSON: Ms. Warlick, would it
18 be possible to display Chart 14?

19 MS. WARLICK: Sure.

20 COMMISSIONER PEARSON: I look at this chart
21 and I see what appears to be a long term price
22 decline. What's caused that? Has there been some
23 structural change in the marketplace? Your data start
24 in '87, '88 and come through to the current year.

25 MS. WARLICK: When you're looking at '87-

1 '88, '88-'89, some of those years were the freeze
2 years. However when you look further back, if I took
3 this back another decade, prices are in the 125, 150
4 range.

5 During this time we had both U.S. and
6 Brazilian production growing, Brazilian being
7 significantly higher than ours. Some of it is
8 rational, some of it more recently is irrational. But
9 those would be the things I would point to first.

10 COMMISSIONER PEARSON: So if we look at
11 structural changes in the marketplace you would cite
12 primarily increased production in both Brazil and the
13 United States leading to a lower price level?

14 MS. WARLICK: Yes. Consumption has been
15 going up until I think '00, '01. Per capital may be
16 different but total consumption I don't think began to
17 level off until '01, '02, so I wouldn't think it's
18 that. There are other people who might want to chime
19 in here.

20 COMMISSIONER PEARSON: Other chimers?

21 MR. BEHR: As Amy said, certainly we
22 recognize that there have been some changes, there
23 have been significant plantings both in Florida and
24 Brazil in the wake of the freezes of the 1980s and
25 that led to increased production worldwide. We've

1 talked about some of the consumption issues that are
2 ongoing.

3 As we've suggested, there are many factors
4 that affect the price level here in the U.S. orange
5 juice market. Clearly these are important factors as
6 well. The supply of Brazilian orange juice in this
7 market also plays a role.

8 Obviously you can't see that on this chart,
9 it's not here, but that would be another factor that's
10 having an impact on the pricing in the market today.

11 COMMISSIONER PEARSON: I'm sorry, what was
12 that factor?

13 MR. BEHR: The availability of Brazilian
14 product --

15 COMMISSIONER PEARSON: Okay, gotcha.

16 MR. McGRATH: Could I also add,
17 Commissioner, that the one issue that doesn't show up
18 when you try to look at what's been the change in the
19 industry over the period of time, there's one issue
20 that has not changed over that period of time. We
21 know there's been growth both in Florida and Brazil,
22 but if you look at Brazil consumption, home
23 consumption hasn't gone anywhere. There's still no
24 home consumption. There's been a lot of talk about
25 how Florida needs to import, but very little attention

1 is being paid to how Brazil needs to export.

2 They're producing juice, they don't have a
3 domestic market, and they're not developing a domestic
4 market for it. It's going for export.

5 So over that period of time you're not going
6 to really see any change, although there's growth in
7 both marketplaces, both producing areas, there's no
8 growth in home consumption.

9 COMMISSIONER PEARSON: Has the rate of price
10 decline slowed during the last years that constitute
11 our period of investigation? Just eyeballing that
12 chart that would kind of be my take-away from it.

13 MS. WARLICK: In '04-'05 as the rate of
14 decline slows? Or --

15 COMMISSIONER PEARSON: During the POI
16 starting in 2001-'02, is that right?

17 MS. WARLICK: I would have to run some
18 statistics on it. I can't eyeball it in that way.

19 I believe there is a psychological barrier,
20 if you will, somewhere around 75 cents. Below which
21 it doesn't make sense to be in this business. I think
22 in the summer of '04 when it dropped below that, it
23 was taken very seriously. The pace at which it fell
24 was stunning.

25 So maybe you could eyeball it and say

1 between '01-'02, '02-'03 is a little slower than the
2 next year. Like I say, I can't look at it, there are
3 ups and downs. The general trend is definitely down.

4 COMMISSIONER PEARSON: I see that.

5 You had indicated in your testimony there
6 was not just a price decline during the summer of
7 2004, but an all-out price collapse.

8 Looking back earlier in the period, how
9 would you characterize what was going on as the price
10 was declining back in '89-'90, '91-'92? In the
11 context of those price declines what we saw in 2003-
12 '04 looks somewhat modest.

13 MS. WARLICK: And this is on an inflation
14 unadjusted basis. To really make a full-fledged
15 comparison you'd have to do it on an inflation basis
16 because we've got rising costs during this period and
17 so the prices are even lower than they would appear in
18 terms of how they're affecting your profit.

19 COMMISSIONER PEARSON: Right, but the price
20 decline measured in current dollars also is less than
21 at the beginning of the period. So the rate of
22 decline is even more modest in 2004 than it had been
23 back in those earlier periods. Is that correct?

24 MS. WARLICK: I don't think I can say that
25 without seeing it on an adjusted basis.

1 COMMISSIONER PEARSON: Okay.

2 Mr. McKenna?

3 MR. MCKENNA: I think as a grower what's
4 critical there in the '90 years, the price was coming
5 down from very high prices and remained at a
6 profitable level. But when you move into the POI the
7 prices are all borderline and go to a non-profitable
8 level.

9 That's the real key, not the dramatic number
10 of come down, but where it came down to.

11 COMMISSIONER PEARSON: Okay.

12 MR. McGRATH: It was also coming down after
13 a freeze in '89.

14 COMMISSIONER PEARSON: Okay. Well is there
15 any natural floor to this long-term price decline? Or
16 did we reach it in '03-'04 and are we now in somewhat
17 of an up-trend that might be sustained we would hope?

18 MR. BEHR: In all likelihood at least in
19 Florida the floor price, the price at which it costs
20 to deliver fruit to the processing plant plus
21 processing costs. So we pretty close got to that
22 level when in the summer of 2004 futures prices fell
23 into the mid 50s.

24 So there is a floor. The price can go to
25 zero and Brazil would have a similar type of economic

1 in terms of where a floor price would be.

2 COMMISSIONER PEARSON: Did you have
3 something to add, Ms. Warlick?

4 MS. WARLICK: Yes. I'd like to just make
5 one other comment to this, and Evan, if you could turn
6 to Chart 13.

7 The price drop in '03-'04 was the first one
8 in some time that actually brought bearing acreage
9 down by four percent in one year and the same four
10 percent in '04-'05.

11 So have we, did we reach our bottom?
12 Possibly so because it appears at that point that's
13 when you really see an exodus from the industry.

14 COMMISSIONER PEARSON: Are you certain of
15 causality? Was it the price decline that reduced
16 bearing acreage or was it some particularly lucrative
17 opportunities to convert land to other uses?

18 MS. WARLICK: We discuss in our pre-hearing
19 brief land values, and we believe Respondents have
20 made a far bigger issue about this. We've all heard
21 about increasing land values in Florida. However,
22 when you look at the percentage increases on land that
23 does not have citrus trees, it's quite large. When
24 you look at land that does have citrus trees it's I
25 think two percent.

1 Let me caveat that by saying I'd have to
2 look back in our brief. I don't want to misquote
3 that. That's important.

4 But it is not the value of the land that is
5 pulling our growers out of business, it is the fact
6 that they can't turn a profit on that land because of
7 the presence of citrus trees.

8 COMMISSIONER PEARSON: Any other comments on
9 this?

10 Because my light is changing I'll pass then.
11 I want to go back to Chart 14 but I'll do it on the
12 next round. Thanks.

13 CHAIRMAN KOPLAN: Thank you, Commissioner.
14 Commissioner Aranoff?

15 COMMISSIONER ARANOFF: Thank you.

16 Mr. McGrath, as I read what happened in the
17 preliminary investigation in this case, you were
18 relying at that point essentially on a price
19 depression argument and as prices have now gone up
20 some your current brief relies on basically a price
21 suppression argument which means, of course, that the
22 Commission has to find that greater price increases
23 would have occurred had it not been for something
24 having to do with the imports.

25 So my question to you is this. I think

1 about your price suppression theory and the first
2 thing that comes to mind is look, the Brazilian
3 industry has invested very heavily in extracting
4 capacity here in the United States and are members of
5 the domestic industry. We have these hurricanes and
6 you state that the expectation is that absent the
7 Brazilian imports U.S. price would have gone up a lot
8 more which would have made U.S. extractors much more
9 profitable than what we see in our data. A lot of
10 those U.S. processors are Brazilian owned.

11 What economic rationale would then drive
12 them to take away their own advantage that they could
13 have gotten from --

14 If that's the economic reality that absent
15 the imports at the prices they came in at, all of the
16 processors could have done a lot better. Why didn't
17 these same Brazilian producers act differently?

18 MR. McGRATH: We're suggesting that global
19 profitability of those global companies is the primary
20 driving force for their decisionmaking. Their local
21 decisionmakers will be concerned about the
22 availability of fruit and what they're going to have
23 to pay for fruit, but globally, the key is yes,
24 they've invested in Florida and they've invested in
25 extractor processing, but they're not really

1 interested in investing in groves in Florida. They
2 would rather leave that risk entirely to the local
3 growers which gives an indication, we think, of the
4 fact that they're not nearly as committed to an
5 investment in Florida.

6 They want to be in Florida so that they can
7 obtain local fruit for their production requirements
8 when the fruit is available and when it makes sense
9 for them, but globally, their global interest is to be
10 a profitable global concern and they are headquartered
11 in the lower cost country for production in Brazil,
12 where they don't sell anything in the home market.
13 They produce entirely for export.

14 There are reasons why on the short term any
15 processor, especially a Brazilian owned processor
16 who's trading on the futures market is going to want
17 to try to make sure that if fruit is commanding a
18 higher price that processor is going to want to make
19 sure that they can do whatever they can to see if they
20 can get a better price to obtain their fruit for their
21 domestic production in Florida, which is why Mr.
22 McKenna has run into this, and I think all the growers
23 have, they see that futures activity that lowers the
24 futures price translates into a lower price for the
25 fruit.

1 They have to assume when they're selling
2 their fruit to that very processor whose parent
3 company was doing the trading on the futures market
4 that caused the price to go down, they have to wonder
5 themselves what is your real global rationale here?
6 What is your overall picture?

7 Ultimately it's certainly not taking into
8 account whatever it's taking into account, whether
9 it's the profitability of their Florida operation or
10 their global processing profitability. The one thing
11 they clearly aren't trying to do is maximize the
12 profitability of their grower operations in any
13 particular country. They certainly don't have any in
14 the United States

15 COMMISSIONER ARANOFF: I take your point
16 there, but if their goal is global profit
17 maximization, I guess I'm not entirely clear on why
18 they'd invest in processing capacity in the U.S. if it
19 was always going to maximize their global profits to
20 basically not act in a way that's going to be profit
21 maximizing for the investment that they made here.
22 But if there's anything else you can add on that in
23 your post-hearing, that would be helpful.

24 MR. McGRATH: We will be glad to do so.

25 COMMISSIONER ARANOFF: Thank you.

1 Just to move on to one other question that I
2 don't think anyone has asked today, and that concerns
3 the role of non-subject imports in the U.S. market.

4 I think given the actions that Commerce just
5 took this week, the amount of non-subject Brazilian
6 imports that we're going to see in our data when it's
7 revised is going to go down. But there are non-
8 subject third country imports and we don't have that
9 much information about them on the record.

10 I understand that a number of those products
11 are coming in under duty preference programs. I'm
12 trying to figure out, are any of these producers
13 global players? Do they only send to the U.S.?
14 What's their capacity? What can you tell me about the
15 role of non-subject imports?

16 MR. McGRATH: Mostly, I think the biggest
17 third country suppliers are probably places like
18 Belize. Mexico is up and down. A few other countries
19 that are not part of the Brazilian ownership interest.
20 They are producers. Costa Rica is one of them as
21 well. So there have been CBI benefits that have come
22 into play, or there's NAFTA benefits.

23 Those products are of limited volume and
24 basically they only sell to the United States. We
25 have not seen them in the United States at extremely

1 low prices or in any kind of volume that would have
2 the sort of price impact that we've seen from Brazil.
3 That's why we don't really have that much concern
4 about what happens with those third country suppliers.

5 COMMISSIONER ARANOFF: Okay, I appreciate
6 that.

7 I'd just like to add, and this isn't really
8 a question but a request to you. Back in the first
9 round of questioning I was asking a bunch of questions
10 about blending that I'm still not entirely sure that I
11 understand what goes on in the market. So any
12 information --

13 Basically I'd say you've told me why people
14 don't need to blend to achieve certain characteristics
15 in their product, and that they don't need to blend in
16 order to take advantage of duty drawback. I know a
17 lot of reasons why people don't need to blend and yet
18 I know that blending is going on. So anything you can
19 add that would explain how widespread it is in the
20 industry and what the motivation is.

21 Is it to lower the cost of production of the
22 end use by bringing in some cheaper juice and blending
23 it? Anything you can add on that, I still don't feel
24 entirely satisfied that I understand the role of
25 blending in the market.

1 MR. MCKENNA: I think it's fair to say there
2 are mixed reasons, or blended reasons for blending.
3 There are various reasons. Some of them have to do
4 with color and product consistency and requirements of
5 customers. That's what Mr. Chapman talked about.

6 Some of it has to do with extending supply
7 in a short season. I think Dr. Behr talked about
8 that.

9 There's always been some blending going on
10 for numerous reasons and I think our point is that
11 imports are not required for this. When it comes to
12 the color and the viscosity and other quality issues,
13 it's more a matter of what is the quality of the
14 products that you have and there's nothing intrinsic
15 about Brazilian product that's needed for that.

16 When it comes to blending for purposes of
17 extending supply, that's really more a matter of
18 having additional supply from Brazil if you want
19 additional supply in a given year. So that blending
20 is a different matter.

21 COMMISSIONER ARANOFF: And I take your point
22 there, but I guess my confusion is here. You have an
23 industry here which can't supply all of domestic
24 demand. We see that fairly frequently. But what we
25 don't see is the situation where when imports are

1 brought in to fill a residual amount of demand,
2 they're mixed up with the domestic product before
3 they're marketed. Usually, you know, you just know
4 that 80 or 90 or whatever percent of domestic demand
5 is being served by a domestic product and the rest is
6 being served by imports.

7 But I'm not seeing 100 percent Brazilian
8 juice being sold as it is. It's all getting blended
9 up. There's got to be a reason for that and I'm not
10 sure what it is.

11 MR. MCKENNA: I think that the Florida
12 citrus growers over the years have created a market
13 for orange juice in North America, and it behooves
14 outside the country importers of orange juice to tie
15 themselves to Florida the best way they can because
16 it's a known fact that consumers believe orange juice
17 comes from Florida. So it's to the importer's
18 advantage to tie themselves to Florida any way they
19 can, is one reason why. I would say there's no 100
20 percent off-shore juice available.

21 COMMISSIONER ARANOFF: Okay. I appreciate
22 that answer.

23 I see my time is up. Thank you.

24 CHAIRMAN KOPLAN: Thank you, Commissioner.

25 Mr. McGrath, I note on page 50 of your

1 pre-hearing brief you state, and I quote, "Based on
2 our review of U.S. landed duty paid import unit values
3 and our knowledge of NFCOJ import pricing, we believe
4 that one or more U.S. importers have not recorded
5 their prices for product number 2 on FOB U.S. point of
6 shipment basis as requested in the questionnaire."

7 What is the basis for that allegation and
8 which importers are you referring to?

9 MS. WARLICK: This question makes me
10 nervous, only because I'm not sure what -- I don't
11 want to release any kind of APO on this. Can we
12 discuss this in our post-hearing brief?

13 CHAIRMAN KOPLAN: Absolutely.

14 MS. WARLICK: Thank you.

15 CHAIRMAN KOPLAN: I would appreciate that.
16 All right. Thank you.

17 But you don't have that information in the
18 brief now, that's why I'd like to get it post-hearing.

19 MR. MCGRATH: Excuse me. Could you clarify?
20 This is the bottom of page 50?

21 CHAIRMAN KOPLAN: I believe it's on the
22 bottom of page 50. Right. It starts out, "Based on
23 our review of U.S. landed duty paid import unit
24 values."

25 MR. MCGRATH: The version I have here shows

1 that a lot of this is confidential, that's why we're
2 confused, or at least it's bracketed. I think we'll
3 have to take a look at that and answer it in
4 post-hearing brief.

5 CHAIRMAN KOPLAN: All right.

6 MS. WARLICK: If you could just re-state the
7 question, just for the transcript, so we make sure we
8 understand exactly what you're asking and what you
9 need?

10 CHAIRMAN KOPLAN: Sure. The quote
11 is, "Based on our review of U.S. landed duty paid
12 import unit values and our knowledge of NFCOJ import
13 pricing, we believe that one or more U.S. importers
14 have not recorded their prices for product number 2 on
15 FOB U.S. point of shipment basis as requested in the
16 questionnaire."

17 MS. WARLICK: We will address that in our
18 post-hearing brief.

19 MR. MCGRATH: I see what you're talking
20 about now. I was reading the paragraph below.

21 The information to answer that I think we
22 need to do in the confidential --

23 CHAIRMAN KOPLAN: Post-hearing?

24 MR. MCGRATH: Right.

25 CHAIRMAN KOPLAN: All right. Thank you.

1 This is for Dr. Behr and Mr. McGrath. On
2 page 43 of your pre-hearing brief, you state, "By the
3 2000-2001 season, total U.S. orange juice consumption
4 had also begun to fall and it has fallen by an annual
5 average of 2 percent since then. One explanation for
6 the decline in demand is the rise of low carbohydrate
7 diets among Americans. However, another important
8 factor is the fact that, despite falling wholesale
9 prices, retail orange juice prices have been rising
10 over the past decade as retail outlets have become
11 more concentrated and amassed more purchasing power."

12 But according to data in the staff report at
13 tables C-1 and 2, while demand has declined for frozen
14 concentrated orange juice for further manufacturing,
15 that is not the case with respect to not from
16 concentrate. Moreover, not from concentrate is a
17 higher priced product. How should I factor that into
18 my like product analysis?

19 MS. WARLICK: This is A.C. Nielson data?

20 CHAIRMAN KOPLAN: Excuse me?

21 MS. WARLICK: You're talking about A.C.
22 Nielson data here at retail level?

23 CHAIRMAN KOPLAN: Yes.

24 MS. WARLICK: Okay. All right. And so you
25 were saying that one rising and one is falling?

1 CHAIRMAN KOPLAN: Right. And that not from
2 concentrate is a higher priced product.

3 MR. MCGRATH: Part of the answer to that
4 question is going to be that NFC has been rising from
5 a level -- it was starting at a lower level. Over the
6 period of time that we're looking at, it was not -- it
7 has been growing in its sales because of heavy
8 promotion, but the results of -- what we're talking
9 about here, I think, is all of certain orange juice,
10 FCOJ and NFC, and we're looking at the larger demand
11 for orange juice that has declined slightly because of
12 diet changes.

13 As I said earlier, there are going to be
14 some changes, some variations between what goes on in
15 NFC versus FCOJ simply because there's been promotion
16 that has affected the demand for that product that
17 creates perceptions among consumers so that you will
18 see some sales and some product movement back and
19 forth. We're trying to get a handle on what the total
20 amount of consumption and demand is for orange juice.

21 There's been movement because of a change in
22 demand for that particular form and that may be the
23 reason for the changes that you're talking about, but
24 we'll be happy to take a closer look and address that
25 in the post-hearing.

1 CHAIRMAN KOPLAN: Thank you.

2 Ms. Warlick, have you had an opportunity to
3 look at Exhibit 3 of Respondent's brief, the
4 submission by Roger Brinner, who will be testifying
5 this afternoon, the economic model?

6 MS. WARLICK: Let me just get that.

7 MR. MCGRATH: Yes, we have looked at that.

8 CHAIRMAN KOPLAN: You have looked at it?

9 MR. MCGRATH: Yes.

10 CHAIRMAN KOPLAN: It's entitled "The Effect
11 of Brazilian Imports on Certain Domestic Orange Juice"
12 and it was included on December 20th.

13 MS. WARLICK: I have Dr. Brinner's analysis.
14 You want me to look at page 3 of that?

15 CHAIRMAN KOPLAN: No, no, no. I said it's
16 Exhibit 3 to their brief.

17 MS. WARLICK: Oh, okay. Yes. Yes.

18 CHAIRMAN KOPLAN: And I wondered if you had
19 reviewed that exhibit.

20 MS. WARLICK: I have.

21 CHAIRMAN KOPLAN: You have. Do you have any
22 comments on it?

23 MS. WARLICK: Yes, I do.

24 CHAIRMAN KOPLAN: Okay.

25 MR. MCGRATH: Where to start? I think --

1 CHAIRMAN KOPLAN: Well, I can start and ask
2 you a couple of quick questions, if I could.

3 MR. MCGRATH: Sure.

4 CHAIRMAN KOPLAN: First of all, it does not
5 appear to me that he conducted and/or reported
6 stationarity tests and stationarity properties on his
7 model data series.

8 Do you have any comments on that?

9 MS. WARLICK: Dr. Spreen has also reviewed
10 the study and I may need to have him help on this one.

11 CHAIRMAN KOPLAN: Certainly.

12 MR. MCGRATH: Maybe if Dr. Spreen could --

13 CHAIRMAN KOPLAN: Do you want to start with
14 him?

15 MR. MCGRATH: -- could start with a response
16 to this.

17 CHAIRMAN KOPLAN: All right.

18 Where are you, Doctor?

19 MR. SPREEN: We're talking bout Dr. Brinner?

20 CHAIRMAN KOPLAN: Yes.

21 MR. SPREEN: And which tests are you talking
22 about?

23 CHAIRMAN KOPLAN: The first question I had,
24 if you've had an opportunity to look at the
25 submission, is it does not appear to me that he

1 conducted and/or reported stationarity tests and
2 stationarity properties on his modelled data series
3 and I wondered if you would comment on whether you
4 think that's appropriate or whether it wasn't.

5 MR. SPREEN: Are you asking about when he
6 calculates a partial coalition coefficient?

7 CHAIRMAN KOPLAN: Yes.

8 MR. SPREEN: It would have been nice if he
9 would have deflated the data, yes.

10 CHAIRMAN KOPLAN: Okay. All right.

11 Anything else you want to add to that? Why,
12 for example?

13 MR. SPREEN: Well, I mean --

14 CHAIRMAN KOPLAN: Other than "It would have
15 been nice."

16 MR. SPREEN: You know, looking at the
17 nominal data, you know, it appears it could possibly
18 be stationary, so I would not necessarily have thought
19 of that. Deflating the data, on the other hand, might
20 have provided some information.

21 CHAIRMAN KOPLAN: Okay. Let me stay with
22 you or with this and ask you this: it does not appear
23 that he tested for seasonal influences and therefore
24 seasonal variables, for example, wouldn't be included
25 in his regressions or other equations, particularly

1 his orange juice consumption and inventory equations.

2 Am I reading that right? Did he not do
3 that?

4 MR. SPREEN: And we're talking about
5 Dr. Brinner's study, we're not talking about
6 Dr. Carter's?

7 CHAIRMAN KOPLAN: We're talking about
8 Dr. Brinner's exhibit.

9 MR. SPREEN: Okay. I don't think I can
10 comment on that this time, sir.

11 CHAIRMAN KOPLAN: Could you do it
12 post-hearing?

13 MR. SPREEN: Yes.

14 MR. MCGRATH: We'll be happy to do that.

15 CHAIRMAN KOPLAN: Okay.

16 MR. MCGRATH: We'll answer as many specific
17 questions as you can, both Dr. Spreen and Ms. Warlick
18 have read that report.

19 CHAIRMAN KOPLAN: Well, you can start with
20 those two. I might have another one for him this
21 afternoon.

22 MR. MCGRATH: Okay.

23 CHAIRMAN KOPLAN: I would appreciate it.

24 MS. WARLICK: I have -- well, I'll just
25 leave it with one general comment right now about the

1 study and you can look at the graph that he puts --
2 the overview graph on the first page of his study
3 where he's running a correlation of Brazilian imports
4 and FCOJ futures and he's got them mislabeled on these
5 lines, you could probably understand that. However,
6 he shows a positive correlation of plus .12, which is
7 very weak indeed and our argument is that you cannot
8 find a correlation here.

9 This is not a linear type of relationship.
10 This is a multi-linear type of relationship and a
11 complicated one and he is basing a lot of this on, I
12 believe, data that is not decisive results.

13 CHAIRMAN KOPLAN: Okay.

14 MR. SPREEN: Mr. Koplan?

15 CHAIRMAN KOPLAN: Yes?

16 MR. SPREEN: Are we commenting on the demand
17 for domestic orange juice that shows up here on page
18 19 in terms of the seasonality factors?

19 CHAIRMAN KOPLAN: Yes, I believe that's
20 right.

21 MR. SPREEN: Well, he's used annual data in
22 that particular estimation, as you'll note. It's a
23 data period from '89 to '05 with 16 observations, so
24 by using annual data you wouldn't expect seasonal
25 adjustments to take place, right?

1 CHAIRMAN KOPLAN: Yes.

2 MR. SPREEN: And what was your other
3 question with regard to that?

4 CHAIRMAN KOPLAN: Well, let's see. Are we
5 talking about the seasonal question or the stationary
6 test question?

7 I'm so glad I started this with you.

8 MR. SPREEN: Well, again, with a relatively
9 short time period and annual data, stationary would
10 not typically be a problem.

11 CHAIRMAN KOPLAN: Okay.

12 MR. SPREEN: I believe in Dr. Carter's
13 analysis he's using monthly data, so he has many
14 more observations, even though I think he uses a
15 similar sample interval. So, for one thing, the
16 stationary --

17 CHAIRMAN KOPLAN: But Dr. Carter's is a
18 separate analysis.

19 MR. SPREEN: Yes.

20 CHAIRMAN KOPLAN: I'm talking about
21 Brinner's analysis.

22 MR. SPREEN: Well, but they're sort of going
23 after the same thing and I would not have expected --
24 I'm not going to criticize this study on the basis of
25 a lack of a stationarity test.

1 CHAIRMAN KOPLAN: Okay. All right. Thank
2 you for that.

3 I see my red light has come on.

4 It's a good time to turn to you, Vice
5 Chairman Okun.

6 VICE CHAIRMAN OKUN: Had I known you were
7 starting down that path four and a half hours into
8 this, I would have asked you to send the orange juice
9 up so that we could have a little break.

10 I'm going to go to organic. Do we have
11 any organic orange juice up here? I don't see any.
12 Yes?

13 MR. MCGRATH: Yes, we do. It's Organic
14 Valley, they one that's second from your left.

15 VICE CHAIRMAN OKUN: All right.

16 Well, Mr. Roper, I appreciate you being
17 here.

18 As the parties are aware, Montecitrus has
19 raised an issue about organic juice being a separate
20 like product.

21 I know that you have provided information in
22 the brief, Mr. McGrath, but I did have, since we have
23 a producer here, I did have some other questions.

24 One, because while parties have cited to the
25 red raspberries case for the commission's analysis of

1 whether organic was a separate like product,
2 I participated in that case and it, to me, wasn't a
3 really big issue.

4 The other thing that I remember about it and
5 have always thought it would come up again is that the
6 actual standards, the USDA standards, had not been
7 passed regarding organic products.

8 So I don't know, Mr. McGrath, whether you
9 want to comment on whether you think that makes a
10 difference or not.

11 There were, I think at that point, state
12 standards but not national standards. Do you think
13 that makes a difference in our analysis in looking for
14 bright lines?

15 MR. MCGRATH: Well, I think the argument
16 that they're not the same product and the argument
17 that there is a bright line really does rely -- as far
18 as the argument that Montecitrus is making, it relies
19 on there being separate standards that have to be met
20 which require that the growing process be done in a
21 different way.

22 We are clearly talking about the same trees
23 and the same fruit and there's nothing different about
24 that, it's just that it is not produced using certain
25 chemicals and certain inputs.

1 I think the raspberry case is relevant
2 because there were any standards at all then. The
3 fact there was an argument that organic is a different
4 like product which serves a different market and then
5 you have to take a look at all the different six
6 elements of comparison between them makes it relevant
7 here.

8 I think you've faced other situations where
9 you've looked at different products that were made in
10 a different way but making exactly the same product.
11 I can't remember exactly -- I know you've had organic
12 issues come up after the fact a few times, after a
13 case was finished, but I couldn't think of another one
14 in advance.

15 I think that the fact that there were not
16 U.S. standards at the time does not make a difference
17 in whether or not the reasoning would apply here.

18 CHAIRMAN KOPLAN: Okay. Well, Mr. Roper,
19 let me turn back to you in hopes that you can help me
20 understand a little bit more about the industry here
21 and one is, which I don't think we have on the record,
22 if you can give information on the size of the
23 domestic organic juice market.

24 MR. ROPER: The size of the domestic organic
25 juice market is growing. It's been relatively small

1 because it's never really been isolated prior to this
2 and marketed as a separate item on a national basis.
3 Regionally, it was marketed as a local consumer
4 product that the local farmer grew and it was
5 basically consumed by people within a close
6 relationship to the farm.

7 Through the last few years, just like the
8 marketing effort with Tropicana with the NFC product,
9 there's been national brands that have come out that
10 have started to market organics, not only in juice,
11 but in all kinds of different products, milk, cheeses,
12 et cetera, and that's caused the product to go from a
13 local neighborhood market basis to a national
14 distribution market and it's basically allowed us to
15 take the product to more consumers.

16 VICE CHAIRMAN OKUN: And for the product
17 that you grow that's organic, you are marketing
18 nationwide, then?

19 MR. ROPER: Yes. Organic Valley is a
20 nationwide product. Yes.

21 VICE CHAIRMAN OKUN: And in terms of your
22 distribution channels?

23 MR. ROPER: It goes to the same grocery
24 stores and through the same warehouses.

25 VICE CHAIRMAN OKUN: And they're just

1 purchasing -- when they ask for a purchase, they'll
2 say we want this much organic and this much of your
3 non-organic juice? That's how a purchaser would --

4 MR. ROPER: Well, it depends on who is doing
5 the selling of the product. Organic Valley is an
6 organic cooperative. Similar to our farmer
7 cooperative, it's a farmer-owned cooperative and we've
8 got farmers that are producing milk, they've got
9 farmers that are producing eggs, they're producing
10 juice, poultry. There's a whole gamut of different
11 products that Organic Valley sells and markets them
12 across the country.

13 VICE CHAIRMAN OKUN: Now, you said on yours,
14 you grow both the non-organic oranges and organic
15 oranges.

16 MR. ROPER: Correct.

17 VICE CHAIRMAN OKUN: And for the other
18 growers in the co-op, would that be similar, everyone
19 is growing both?

20 MR. ROPER: As far as in our cooperative?

21 VICE CHAIRMAN OKUN: Yes. And then if you
22 know more broadly. Again, I'm trying to understand if
23 you're an organic grower who is going to grow organic
24 eggs and whatever, everything is going to organic
25 because then you don't have any of these mixing

1 issues, or are they like you, you put, I guess, some
2 acreage aside for organic which is treated
3 differently? I mean, help me just understand that.

4 MR. ROPER: It depends. I mean, if you're
5 talking within the scope of citrus, most citrus
6 produces will produce both organic and non-organic.
7 There are some that do strictly organic and then
8 there's others like me that do a combination of both.
9 As far as the other commodities that Organic Valley
10 sells, I'd have a hard time answer that because I'm a
11 citrus guy.

12 VICE CHAIRMAN OKUN: When you're saying
13 citrus, a lot of them do it that way, I guess I'm just
14 trying to understand that because it's not -- I mean,
15 to me, just thinking about it, I'm thinking, well, you
16 have to do a lot of different things, but you're
17 saying in citrus you don't find it that difficult to
18 meet the standards of organic and also from a cost
19 basis or anything else to also then grow non-organic.

20 MR. ROPER: Well, what's really interesting
21 is we really don't do anything different on our
22 conventional as our spray program or our other
23 programs. I live in the Orlando area and our growers
24 are down in Fort Myers and Arcadia area, Fort Myers is
25 in between Arcadia and Holopaw, which are away from my

1 offices down in the southwestern part of the state for
2 Arcadia and about an hour and ten minutes southeast of
3 Orlando for Holopaw.

4 As far as the production practices that we
5 do, we use the same program on our conventional and
6 our organic. The only difference is we can't use a
7 herbicide. We can't kill the weeds with a manmade
8 herbicide. That's one of the major differences
9 between it and the other one is that we don't use
10 ammonium nitrate in the organics, which is a
11 manufactured fertilizer. We use an organic
12 fertilizer. But when we're growing our conventional
13 fruit, we'll spend the first couple of years growing a
14 tree up from a regular reset tree, which is a little
15 bitty tree, up to the first three or four years, we'll
16 grow it as a conventional tree and use herbicides
17 because if we don't, grass grows 12 months out of the
18 year in Florida and you've got to keep the grasses
19 down so we use herbicides during those 12 months and
20 then once the tree has gained an appropriate size --
21 but we'll still use an organic fertilizer and organic
22 spray program. Really the only difference between
23 what we're doing and the conventional growing for that
24 tree for the first few years and the transition to
25 organics is we quit using the herbicides. Then it

1 takes a three-year process until it gets certified as
2 organic. But as far as the growing, we use more hand
3 labor in organics primarily because, same thing, we
4 can't use the herbicides.

5 VICE CHAIRMAN OKUN: Okay. And then in
6 terms of the type of juice that's made, in your brief,
7 you had noted that -- I thought I read it to say that
8 organic is used in both NFC and in reconstituted? Is
9 that accurate?

10 MR. ROPER: Yes. Organic is used in both
11 NFC and reconstituted. We were a processor for many
12 years. My father bought a plant over in Brooksville
13 and we could never compete on the concentrate basis
14 because of the Brazilians. We did produce concentrate
15 for many years, we sold both conventional and organic
16 concentrate, and we just couldn't get enough orders in
17 organic concentrate to keep that going for us.

18 VICE CHAIRMAN OKUN: Okay. That's funny,
19 I think why would someone want -- I mean, I'm sold on
20 the consumer side that somehow the reconstituted is
21 bad and I can't believe you'd actually want an
22 organic, too. Those don't seem to go together.
23 Anyway, I now see that it's all marketing. The trees
24 are the same.

25 MR. ROPER: Well, it's marketing and cost of

1 transportation.

2 VICE CHAIRMAN OKUN: Okay. I think that
3 I covered most -- interchangeability, again, just to
4 be clear, your argument on interchangeability is that
5 organic could be used for non-organic, but not the
6 reverse. One-way interchangeability.

7 MR. ROPER: That is correct. Unless
8 somebody is fraudulently doing it. Yes.

9 VICE CHAIRMAN OKUN: Okay. Because you have
10 to be certified. Okay. All right.

11 My yellow light is coming on. I appreciate
12 that. I find it very interesting and I think maybe
13 it's this area, but there's certainly a big push on
14 the organic side. If I go to my grocer, they're
15 certainly separated. I find it an interesting
16 argument.

17 Thank you, Mr. Chairman.

18 CHAIRMAN KOPLAN: Thank you.

19 Commissioner Hillman?

20 COMMISSIONER HILLMAN: Thank you. I have
21 just a couple of quick follow-ups on this organic
22 issue.

23 Do the trees physically have to be separated
24 from each other? If so, by how much? You described
25 these different growing areas that you have.

1 MR. ROPER: Well, the different growing
2 areas are primarily for us for freeze protection and
3 other nature natural disaster protection. Of course,
4 last year, that proved us wrong because we got hit
5 with Charlie in Arcadia and then we got hit with
6 Francis and Jean in Holopaw, so we didn't escape
7 anything during the year of the hurricanes.
8 Fortunately, this last year with Wilma, we were on the
9 northern edge of it and we really didn't get a lot of
10 substantial damage this year from the hurricanes,
11 although the previous season we did.

12 As far as physical separation, once you do
13 your conversion process, there's 50 feet required
14 between an organic block and a non-organic block.

15 COMMISSIONER HILLMAN: Okay. And then
16 similarly, the picking and harvesting, washing,
17 et cetera, any differences? Do you have to keep the
18 organic oranges separate from the non-organics?

19 MR. ROPER: Yes. We make sure there's no
20 commingling of the product, but we use the same
21 harvesting crews to harvest the organic as we do the
22 non-organic. It's processed on the same processing
23 equipment. There's a cleaning stage that would take
24 place prior to the processing of organic compared to
25 running conventional from one batch to the next, you

1 just bring the fruit in.

2 COMMISSIONER HILLMAN: Okay. All right. No
3 further questions on that.

4 One last question getting back to this
5 relationship between the growers' prices versus the
6 prices of the concentrate.

7 Mr. McKenna, I was just curious. If I look
8 at the data, we've seen this big shift to NFC as
9 opposed to FCOJ and yet you testified that your price,
10 what you get for your oranges, is very much tied to
11 the futures price which is an FCOJ futures price.

12 I'm just trying to make sure I understand
13 why if the market has gone so heavily into NFC and NFC
14 is a higher price and a more profitable product, why
15 are you as growers comfortable with your prices for
16 what you get for your oranges being tied to the FCOJ
17 futures market which doesn't necessarily take into
18 account the prices for the NFC?

19 MR. MCKENNA: I don't think we're
20 comfortable with it.

21 COMMISSIONER HILLMAN: Okay.

22 MR. MCKENNA: We are price takers as
23 agricultural producers, so we would like to be able to
24 participate more in the value of NFC and, in fact,
25 some co-ops and everything are able to do that, but as

1 a cash seller basically we're price takers who take
2 the best price available at the time.

3 Now, it could be argued that during Valencia
4 season that we get actually a premium above the
5 futures market for the Valencia orange because of the
6 NFC market, okay? But there still is a base mark.
7 Everybody knows what the futures price is, so it's a
8 huge factor in determining the value of our oranges.
9 You're exactly right, the NFC is where the market is
10 moving.

11 This is a little bit different to your
12 question, but if I could just give the panel a brief
13 history on orange juice. Larry Black's grandfather
14 and Vic Story's father, when they first began selling
15 orange juice to processors, it was not from
16 concentrate because there was no concentrate. It was
17 canned, single strength juice. That's what they sold,
18 orange juice, just like you see right up there.

19 The development of concentrate came during
20 World War II. So then that's the only reason we have
21 a NFC, the words NFC, is because we have concentrate.
22 It's still orange juice, it's just a matter of a
23 different technology as we move through. We started
24 off with not from concentrate juice, we went to
25 concentrate, now we're back to not from concentrate.

1 It's still the same product, the same oranges and the
2 same everything.

3 We would like to get a premium for our
4 oranges in Florida that go into the not from
5 concentrate, but the futures market determines hugely
6 the market.

7 COMMISSIONER HILLMAN: Okay. I just was
8 curious why everybody lives with it. It strikes me
9 that, yes, fine, when everything was concentrate and
10 that's the only futures market that there is, I can
11 understand it, but given that we're now seeing the
12 production levels of not from concentrate exceeding
13 those for FCOJ to continue to be tied to what is again
14 now a slight minority of the total production and to
15 let all of your prices be determined by something that
16 is not the majority of the way in which the product is
17 sold and priced, just seemed a little odd to me.

18 MR. MCKENNA: Well, it's certainly odd to us
19 and I think that's probably why Mr. Roper went into
20 the organic business.

21 COMMISSIONER HILLMAN: All right.

22 MR. BLACK: Commissioner Hillman, let me
23 comment a few seconds here.

24 As we discussed earlier, the bulk prices for
25 FCOJ and NFC are highly correlated with the FCOJ

1 futures market and one of the reasons the growers say
2 that their fruit is tied to the market is that the
3 futures market is the most visible market that there
4 is for orange juice. There isn't an NFC futures
5 market, there isn't an active bulk market for NFC and
6 there's really not an active cash market for FCOJ, if
7 you will, so growers and processors alike use the FCOJ
8 futures market because you can look in the Wall Street
9 Journal and see what the price is on any given day.

10 COMMISSIONER HILLMAN: I understand there's
11 no alternative out there readily available.
12 I understand that. It just still seems to me a little
13 bit odd when we've seen this shift to NFC becoming the
14 majority product that the prices are still tied to
15 what has now become the minority product.

16 MR. BLACK: In part, I think it reflects the
17 like kind nature of the products. Again, they compete
18 with one another at retail, they compete with one
19 another at wholesale, and the fact that there is this
20 competition for juices gives the high degree of
21 correlation that we see in the data. And, again,
22 I think that because it is a visible market, it is
23 what we all look to.

24 COMMISSIONER HILLMAN: I appreciate those
25 responses. Thank you very much.

1 MR. ROPER: May I add something, please?

2 COMMISSIONER HILLMAN: Sure.

3 MR. ROPER: We don't own the processing
4 plants. We're not the ones buying the fruit, so it's
5 what's offered.

6 COMMISSIONER HILLMAN: Mr. Story, did you
7 want to add something?

8 MR. STORY: Yes, I would. I deliver about a
9 third of my fruit on participation type contracts,
10 I deliver about a third on the cash market, and
11 I deliver about a third to a co-op, Citrus World.

12 One of the reasons I joined that co-op was
13 because they did have a value added product and that's
14 the only way a grower like me can take advantage of
15 that value added product.

16 COMMISSIONER HILLMAN: I appreciate that
17 response. Thank you very much.

18 CHAIRMAN KOPLAN: Thank you, Commissioner.
19 Commissioner Lane?

20 COMMISSIONER LANE: I just have one more
21 question and I'm not sure who best could answer this,
22 but maybe Dr. Behr, maybe Mr. Chapman.

23 The bulk of the marketing dollars, is it
24 geared toward getting people to drink Florida orange
25 juice of any kind or are more dollars spend toward

1 getting us to drink not from concentrate?

2 MR. MCGRATH: Let me just clarify. First of
3 all, the marketing dollars, there are, I guess, a
4 couple of categories that we're talking about here.
5 Part of it is marketing dollars spent by private label
6 producers and part of it a tremendous amount of
7 marketing dollars spent by the growers through the
8 Florida Department of Citrus, the Florida Citrus
9 Commission, to market juice.

10 Of those dollars, I forget what the annual
11 budget is -- \$80 million -- is spent to market juice
12 without reference to form, whether it's NFC or
13 reconstituted juice.

14 COMMISSIONER LANE: And that would probably
15 cover organic also, if it comes from Florida?

16 MR. CHAPMAN: Any kind of orange juice. Any
17 kind of Florida orange juice is what's advertised by
18 the Florida Department of Citrus, Anita Bryant and now
19 we're doing the healthy, pure and simple ads.

20 MR. MCGRATH: That's the money spent by the
21 growers. Obviously, growers are the ones with the
22 interest in this, that's where they've decided to put
23 their money for many, many years now, is in the
24 marketing of juice as juice.

25 A lot of money is obviously spent by the

1 brand labels such as Tropicana to promote not from
2 concentrate specifically and so their focus is going
3 to be on buy this orange juice, it's the closest thing
4 to the fresh juice, it comes from the grove. Their
5 money will be spent very, very largely on NFC.

6 A lot of money will be spent by Minute Maid
7 attempting to market their product as being just as
8 good or better than product that's not from
9 concentrate.

10 So you have different categories of
11 marketing expenses that come into play here and from
12 the standpoint of the industry that's represented
13 here, certainly the grower processor industry here
14 looks at what money it spends through its promotional
15 dollars that go through the state to try to promote
16 the sale of Florida juice without any distinction.
17 The others have their product to promote.

18 COMMISSIONER LANE: Okay. Thank you.

19 That's all the questions I have.

20 CHAIRMAN KOPLAN: Thank you.

21 Commissioner Pearson?

22 COMMISSIONER PEARSON: I continue to try to
23 get my arms around what's going on in the market
24 broadly and we've got chart 14 up.

25 I'm trying to understand chart 14 in the

1 context of another table I have that was helpfully
2 provided by staff yesterday and my colleagues would
3 have it, it's called Staff Table No. 2. I don't think
4 that the parties have it, but it's nothing
5 extraordinary. What it is is just a supply-demand
6 table going back to the 1989-1990 season and coming
7 forward to 2004-2005 and it shows beginning stocks,
8 production, imports, exports, that sort of thing.

9 MS. WARLICK: For the United States?

10 COMMISSIONER PEARSON: Pardon?

11 MS. WARLICK: For the United States
12 exclusively?

13 COMMISSIONER PEARSON: This is for the
14 United States. Yes.

15 MS. WARLICK: Okay.

16 COMMISSIONER PEARSON: Okay. And so I look
17 at what has changed over time in this chart and it
18 goes back only to '89-'90, so it doesn't catch the
19 very start of chart 14, but we have seen an increase
20 in U.S. production of between 800 million and
21 350 million gallons, it depends on which you use as
22 the last year because, of course, the crop in
23 2004-2005 was much smaller than in 2003-2004, but
24 there's been a significant growth in domestic
25 production.

1 I assume there's also a growth in Brazilian
2 production, I don't know those numbers, but that would
3 very likely also be measured in hundreds of millions
4 of gallons, single strength equivalent.

5 Over this same time period from '89-'90 to
6 the present, we have seen imports, this is total
7 imports now, so not just subject imports, but imports
8 have fallen by between 140 and 270 million gallons,
9 depending on which year you look at give the
10 variation. And so I'm wrestling with this. We've got
11 imports generally coming down, we've got the price
12 trend coming down.

13 Is this empirical evidence that the increase
14 in Brazilian and U.S. production has had a bigger
15 effect on U.S. price than have the imports that
16 crossed the border?

17 Getting back to this earlier question, is it
18 the fact that oranges are grown in Brazil that affects
19 price or the fact that juice crosses the border that
20 affects price?

21 MS. WARLICK: I would say both.

22 COMMISSIONER PEARSON: Okay. But here we
23 see a negative correlation between imports over time
24 and price and a positive correlation between
25 production -- I'm sorry, a negative relationship also

1 between production increase and price.

2 MS. WARLICK: Well, the presence of
3 Brazilian juice being produce implies that it could
4 come in. It's available. And it affects our export
5 markets, so it is price depressive, even though the
6 volumes are not necessarily growing by huge amounts.
7 It depresses future prices.

8 COMMISSIONER PEARSON: In the case of this
9 time period, imports actually declining.

10 MS. WARLICK: It depends on the period you
11 choose. Yes, I guess you could say generally there is
12 maybe an overall small decline, but I don't think that
13 when you're just taking imports and prices you're
14 going to have a direct relationship.

15 COMMISSIONER PEARSON: No, of course not.

16 MR. MCKENNA: Could I maybe say something?

17 COMMISSIONER PEARSON: Please.

18 MR. MCKENNA: The one part of the equation
19 that I think you're not putting into it is U.S.
20 inventories and as U.S. supplies -- there's only so
21 many tanks to keep this stuff in. U.S. production, if
22 we have a big production year, and a smaller amount of
23 Brazilian imports come in, it still can have the same
24 detrimental impact on the price, even though it's a
25 smaller amount than the previous year, because the

1 inventories are to a point where the following year,
2 when we have a decrease in Florida production, the
3 growers receive no more money, although we're growing
4 less fruit, we receive no more money because of
5 previous imports that have to get worked off out of
6 the system because of the high inventories. So it's
7 not a one-year cause and effect type situation.

8 COMMISSIONER PEARSON: Well, I'm glad that
9 you raised inventories because that was getting to my
10 next question. Is there such a thing as a normal
11 level of carryover inventory for the U.S. orange juice
12 market?

13 MS. WARLICK: It depends on what time of
14 year.

15 COMMISSIONER PEARSON: Let's look at the end
16 of the crop year.

17 MS. WARLICK: Yes, October 1st. We've said
18 you really need to have 12 weeks to get you to
19 January. They prefer a comfort level of somewhere
20 between 16 and 20.

21 COMMISSIONER PEARSON: Just for
22 clarification, what is the end of the crop year?

23 MS. WARLICK: September, end of September.

24 COMMISSIONER PEARSON: Oh, it's September?
25 A September 30 crop year?

1 MS. WARLICK: Yes. So October 1st is the
2 very beginning.

3 COMMISSIONER PEARSON: So 12 weeks, that's
4 going to equate to some level of gallons and the
5 marketplace would just need that many gallons to keep
6 the system lubricated, make sure no customer runs
7 short or anybody has problems with delivery?

8 MS. WARLICK: It's basically the current
9 movement of juice divided by 52.

10 COMMISSIONER PEARSON: Okay. Have the
11 minimum level of carryover required risen over time as
12 the marketplace has shifted more and more to not from
13 concentrate juice?

14 The reason for asking is that when the
15 market was predominately concentrate, then only one
16 product needed to be inventoried, it's all one like
17 product, but now we've got a different form of that
18 product that also has to be inventoried, so is the
19 total quantity required to be held in inventory thus
20 larger?

21 MS. WARLICK: The quantity required in
22 inventory, like I say, is a function of the supply for
23 that year. When I talk about supply, I mean the
24 supply of FCOJ and NFC, but I'm not sure I'm getting
25 at your question.

1 COMMISSIONER PEARSON: Dr. Behr?

2 MR. BEHR: Let me try to get at it.

3 Commissioner Pearson, generally speaking,
4 the NFC carryover inventory is a little bit more
5 stable, generally processors don't put up more NFC
6 than they need to get to new crop.

7 Generally speaking, the concentrate
8 inventory tends to be more highly variable and is
9 dependent upon how much Brazilian product is in the
10 market, how much we produce, all the factors that
11 we've talked about.

12 I'm not sure that the emergence of NFC as
13 another product necessarily creates additional needs
14 for FCOJ and that's really what we saw over the period
15 of investigation, a rising inventory of FCOJ.

16 COMMISSIONER PEARSON: Ms. Warlick?

17 MS. WARLICK: I have just one thing to add
18 to what we were discussing when you first started
19 asking questions, looking at this chart.

20 The crop that we had in Florida in '03-'04,
21 I believe it was the fifth largest crop. It was a big
22 crop; it wasn't the biggest. So being that it was
23 only the fifth largest crop, if you're thinking that
24 the futures price is correlated only with that, well,
25 then why weren't futures prices as low back during

1 those huge crops or the record crop as they were in
2 September of '04?

3 There's something more going on in this
4 market.

5 COMMISSIONER PEARSON: You're the economist.

6 MS. WARLICK: Food for thought.

7 MR. BEHR: Commissioner Pearson, if I might
8 add, the idea that there is a positive correlation
9 between imports and pricing has certainly got to be
10 spurious because it leads you to the conclusion that
11 you could increase imports from where we are and see
12 rising prices and why wouldn't the Brazilians do that?

13 I'm not sure that we can from the data just
14 make the conclusion that just because there may be a
15 trend as you see here between imports and pricing that
16 there is a positive relationship between the amount of
17 imports and the pricing that we see in this market.

18 COMMISSIONER PEARSON: But wouldn't it lead
19 us more to a conclusion that there is a positive
20 relationship between imports and prices because
21 imports tend to rise at times when there is strong
22 demand in the U.S. market which relates to a small
23 U.S. crop?

24 MR. BEHR: There are many factors that are
25 affecting the price for orange juice in the market and

1 I don't believe that one could look at that trend and
2 conclude that the volume of Brazilian orange juice in
3 this market either has no impact on price or has a
4 positive impact on price. I have a hard time
5 believing that.

6 COMMISSIONER PEARSON: For the record,
7 Dr. Behr, I wouldn't make an argument that imports
8 have a positive effect on price.

9 I would more look at it that the possibility
10 would be that when there is particularly strong demand
11 in the United States that that would be a time when
12 larger imports would be drawn in. Any import might
13 more likely have a negative effect on price, I accept
14 that.

15 MR. MCGRATH: And, Commissioner Pearson,
16 just to go back again to that, we're looking at just
17 movement of imports up and down and looking at
18 movement of prices up and down and not taking into
19 account levels of inventory. Imports and prices have
20 gone up and down and have been following somewhat
21 parallel trends for years in this industry. What
22 really broke the back was inventories that were being
23 held, both of domestic product and Brazilian product
24 in the United States, built to such levels that you
25 see the futures price going down below the cost of

1 production. It finally reached a point where we had
2 to take some action against product that was dumped,
3 which has now been found to be dumped.

4 COMMISSIONER PEARSON: I apologize, I see
5 the light has gone red. It's been hiding behind the
6 reporter.

7 CHAIRMAN KOPLAN: No, it's not hiding.

8 COMMISSIONER PEARSON: Not from you, no.

9 CHAIRMAN KOPLAN: Thank you.
10 Commissioner Aranoff.

11 COMMISSIONER ARANOFF: I have no further
12 questions, Mr. Chairman.

13 CHAIRMAN KOPLAN: I'm going to take your
14 lead.

15 I have no further questions.

16 Vice Chairman Okun?

17 Is there another round?

18 COMMISSIONER PEARSON: Mr. Chairman?

19 Unfortunately, I had too much orange juice this
20 morning and it gave me the strength to carry on.

21 CHAIRMAN KOPLAN: Is that yes, there is
22 another round?

23 Yes. There is another round.

24 COMMISSIONER PEARSON: If I may?

25 CHAIRMAN KOPLAN: Certainly.

1 COMMISSIONER PEARSON: I will try to be
2 brief.

3 CHAIRMAN KOPLAN: I yield my time.

4 MR. MCGRATH: I'm sure it was Florida's
5 natural.

6 COMMISSIONER PEARSON: This was a home
7 reconstituted product, which is cost-effective and I
8 think tastes quite good.

9 MR. MCGRATH: It's all orange juice. It's
10 the same thing.

11 COMMISSIONER PEARSON: That's right.

12 We're talking about inventories as if
13 they're an unalloyed bad thing, okay? Once we get
14 beyond the 12 weeks that are needed here. But I'm
15 curious, are there circumstances in which people can
16 make money off of inventories if the futures market is
17 offering a carrying charge?

18 Aren't there circumstances under which a
19 large inventory could be a moneymaker?

20 Dr. Behr?

21 MR. BEHR: Certainly if there is a carry in
22 the market of sufficient magnitude an entity could put
23 product into inventory and carry it, basically meaning
24 that the price today is cheaper than the price
25 tomorrow by enough to make the carrying of product

1 profitable, but that whole discussion we just went
2 through has no bearing on the impact of that inventory
3 or that import on the absolute level of price and
4 that's what we're here to talk about.

5 If too much imports are brought into the
6 market, too much inventory is built into the market,
7 yes, you can have a carry and an entity can make money
8 carrying product using the futures market, but the
9 down side of that is that it may, and in this case
10 did, depress prices below what we believe we can make
11 money at and we believe that product from Brazil was
12 brought in during that period of time at less than
13 fair market value, less than cost of production, and
14 that's what we're all here about.

15 COMMISSIONER PEARSON: Okay. I regret that
16 I had to be out of town the last five days, which is
17 why I'm not so terribly well prepared for this
18 hearing, but I haven't gone through all of the record.

19 Do we have any information on the record
20 regarding inventories held in other countries and
21 would there be a reasonable presumption in inventories
22 in other countries also could have some effect on the
23 U.S. price?

24 MR. BEHR: I'd like to comment on that and
25 maybe Amy would like to as well. Generally speaking,

1 and I think this point is one that we've not expressed
2 to the commissioners just as yet, but the data in the
3 United States is far more transparent than any data
4 you'll find anywhere in the world, which makes it
5 difficult for us to make statements regarding
6 inventory elsewhere.

7 We do get inventory information from the
8 USDA regarding the inventories held in Brazil, but
9 those inventories are as good as those that are
10 providing that. They're estimates and I don't want to
11 pass judgment on them, but they're just not as
12 transparent as what you might find here, so it's
13 really difficult for us to comment on really much
14 beyond what's reported by the USDA.

15 COMMISSIONER PEARSON: Mr. McGrath?

16 MR. MCGRATH: The staff report indicates
17 that there was only one provider of inventories in
18 third countries. I think there is information in
19 the report with respect to the inventories held in
20 Brazil, it's all APO, so there is information on the
21 record.

22 COMMISSIONER PEARSON: Okay. Thank you.

23 In some commodity markets, a relevant
24 measure of the relationship between consumption and
25 prices is to look at the stocks to use ratio and

1 compare that to price. This would be carryovers
2 divided by apparent consumption.

3 Have you done that type of analysis to see
4 whether there is a relationship between stocks to use
5 and price, Dr. Behr?

6 MR. BEHR: The weeks on hand is an analogous
7 measure to the stocks to use and, yes, there is a
8 relationship between the amount of inventory on hand
9 the price that we would see in a market and it would
10 have the expected kind of price relationship.

11 I think there are a number of published
12 works by Dr. Spreen and others at the Department of
13 Citrus that get to that point.

14 COMMISSIONER PEARSON: And are there also
15 analyses that would look at that issue on a global
16 basis, global stocks to use?

17 MR. BEHR: I believe that Dr. Spreen has
18 done some work on the world demand for orange juice
19 and has published work in that regard, yes.

20 COMMISSIONER PEARSON: Okay. Well, anything
21 that could be provided for the post-hearing would be
22 appreciated.

23 MR. MCGRATH: We'll be happy to do that.
24 I think we need to take a look -- there are actually
25 not studies on that, but portions of analysis that are

1 in some studies that Dr. Spreen has worked on or that
2 his staff has worked on and we'll be happy to make
3 sure that you have it.

4 I think probably some of this is on the
5 record; we just have to point out where.

6 COMMISSIONER PEARSON: And, like I say,
7 I just wasn't around to do some of the work that
8 I should have done. Incidentally, don't blame the
9 staff for these questions, I'm writing them myself, I
10 think my last one.

11 Did Commerce calculate dumping margins on
12 the basis of home market price or relative to cost of
13 production?

14 MR. MCGRATH: They calculated the dumping
15 margin for two of the processors that they looked at
16 based on home market prices of juice and compared the
17 home market prices to cost of production. In some
18 cases, the overall calculation, like with many of
19 them, was based partially on price to price
20 comparisons, partially on constructed value.

21 I haven't seen the calculations for the
22 final that was released yesterday, that hasn't been
23 brought out yet, but it's a mix of both.

24 There was a question, to the extent it's
25 relevant here, as to whether or not preserved orange

1 juice, which is really not a product that is sold much
2 here, but which is sold in Brazil, whether that was an
3 appropriate product for comparison and that's
4 ultimately what was used. So the sales of the product
5 here were compared with product in the home market of
6 some small amounts of orange juice but others,
7 preserved orange juice, which has preservative added
8 to it. That was considered. Here, it's required to
9 be treated under our standards of identity, it's
10 orange juice with preservative added.

11 COMMISSIONER PEARSON: Well, the reason for
12 asking about cost of production, whether that was part
13 of the computation, is that from the record we can see
14 that U.S. producers at times have sold below their
15 cost of production, which is why we've got some red in
16 here. Just from an analytical standpoint, do we need
17 to consider that the price the U.S. growers have
18 received is a dumped price? Are they dumping in their
19 own market?

20 If we apply that measure the Brazilian
21 producers, do we need to look at it in the same way
22 for the U.S. producers? If so, how does that affect
23 our analysis?

24 MR. MCGRATH: Our view is that your analysis
25 is simply to take a look at whether the product sold

1 at less than fair value or sold in the United States
2 by a foreign exporter at prices below their cost of
3 production is related in some fashion to injury so
4 that you can reach the conclusion that there is a
5 casual relationship between the material injury and
6 that product that's dumped.

7 The fact that a domestic producer might also
8 be selling into a domestic U.S. market at less than
9 their cost of production I think is a relevant factor.
10 It's a very serious direct indication of material
11 injury to the domestic industry. If the prices are so
12 low that dumped merchandise in the market is there and
13 they are forced to sell their product at less than
14 their cost of production, I think that's a strong
15 indication of material injury and causation.

16 COMMISSIONER PEARSON: The reason that I'm
17 troubled by it is that the United States is the
18 world's largest agricultural exporter and when prices
19 are low for various commodities, the United States
20 exports a lot of product at less than the cost of
21 production and so I'm a little bit concerned about how
22 we look at this issue when we assess the imports from
23 another major agricultural producing country which is
24 at times of over supply very likely to be selling
25 orange juice in different places in the world at less

1 than its cost of production just the way the United
2 States would with wheat or soy beans under similar
3 circumstances.

4 MR. MCGRATH: That's a legitimate
5 observation and I think that in many cases the foreign
6 industries have used the antidumping laws under the
7 WTO dumping code to bring dumping suits against U.S.
8 exporters. It's a policy question.

9 Our law is very clear that if there is
10 dumping in the United States and it causes material
11 injury --

12 COMMISSIONER PEARSON: Okay. Well, in this
13 case, I would be somewhat more comfortable if the
14 margins were based just on the comparison to home
15 market.

16 CHAIRMAN KOPLAN: I know it's hidden, but
17 the red light has come on.

18 COMMISSIONER PEARSON: I'll be quiet,
19 Mr. Chairman. I appreciate everyone's forbearance.

20 Let's go have some lunch.

21 CHAIRMAN KOPLAN: Well, we can't do that
22 yet.

23 Ms. Mazur, I'm sure after all this, the
24 staff must have some questions for this panel before
25 we release them.

1 MS. MAZUR: Indeed we do, Mr. Chairman.
2 Mr. Fetzer has at least one or two
3 questions.

4 MR. FETZER: Or only two. Jim Fetzer,
5 Office of Economics.

6 Ms. Warlick, you testified earlier that the
7 depressive impact of dumped imports is difficult to
8 illustrate versus correlation and that there possibly
9 could be a non-linear relationship and I think you've
10 alluded to it a few times.

11 I'm just wondering have you found evidence
12 of a non-linear relationship? If so, what form?

13 Is it quadratic or is it a lag type of
14 thing? And if it's detailed, you can submit it in
15 post-hearing.

16 MS. WARLICK: There was a study done,
17 I believe, in 2004 --

18 CHAIRMAN KOPLAN: You have to stay with your
19 microphone.

20 MS. WARLICK: I'm sorry. By economists out
21 of Stern Business School at New York University and it
22 found exactly what I'm talking about. They ran many
23 different types of linear regressions and found that
24 they were not predictive and they concluded that the
25 price relationship is multi-linear. I can provide

1 that study to you.

2 MR. FETZER: I would appreciate that.

3 Thanks.

4 Staff has no further questions.

5 CHAIRMAN KOPLAN: Thank you.

6 Does counsel have any questions for this
7 panel before we release them?

8 MR. DUNN: No, Mr. Chairman. We're as
9 hungry as you.

10 CHAIRMAN KOPLAN: All right. I didn't catch
11 the last part of that?

12 MR. DUNN: I said we're as hungry as you
13 are.

14 CHAIRMAN KOPLAN: Okay. I was too weak to
15 hear your response.

16 With that, we will break for 30 minutes for
17 lunch and I'll give you all an equal time for dinner.

18 You need to take into account the fact that
19 this room is not watched over during the lunch break,
20 so do not leave anything that's business proprietary
21 behind.

22 See you back in 30 minutes.

23 (Whereupon, at 2:33 p.m., the hearing in the
24 above-entitled matter was recessed, to reconvene at
25 3:03 p.m.)

1 staff.

2 MR. MCGRATH: Whatever additional lost sales
3 information we have.

4 CHAIRMAN KOPLAN: Okay. Thank you.

5 Go ahead, Mr. Dunn.

6 MR. DUNN: Good afternoon, Mr. Chairman and
7 members of the commission.

8 We have a number of witnesses this afternoon
9 appearing on behalf of Florida processors of juice and
10 consumers as well as importers and exporters. I'm
11 going to introduce them all quickly and then they'll
12 just go one after the other without introduction, to
13 save time.

14 First, you'll be hearing from Randy Freeman,
15 Senior Vice President of Louis Dreyfus Citrus; then
16 you will be hearing from Sean Frielich, Senior Vice
17 President of Innovation and Quality for Vitality Food
18 Service; then Colin Carter, Professor in the
19 Department of Agricultural and Resource Economics at
20 the University of California Davis; and Roger Brinner,
21 Senior Economist at the Parthenon Group.

22 After that, I believe Dan Casper of the
23 Coca-Cola Corporation will testify and then Jim
24 Zellner of Tropicana.

25 Then there will be some other presentations.

1 Let me begin with Mr. Freeman.

2 MR. FREEMAN: Good afternoon. My name is
3 Randy Freeman of Louis Dreyfus Citrus. I've been in
4 the citrus industry since 1988. I am the chairman of
5 the Board of Citrus Advisors of the New York Board of
6 Trade, which is the governing body of the futures
7 market. I am a member of the New York Board of Trade
8 and I'm on the board of governors of the New York
9 Board of Trade.

10 This is the third time I'm appearing before
11 this commission, having been here once in the
12 preliminary conference and once in the sunset review
13 of the old order. In my earlier testimony, I pointed
14 out that the state of the domestic orange juice
15 industry had very little to do with imports from
16 Brazil, except to the extent that imports from Brazil
17 are necessary to blend with domestic juice and to
18 maintain a steady market.

19 I also pointed out that with the hurricanes
20 of 2004 we would need more Brazilian juice than we had
21 been importing in order to maintain the market for
22 domestic juice.

23 At the risk of repeating myself, I must say
24 that the points I made in the past remain true and
25 imports from Brazil are even more necessary than they

1 were the last time I was here.

2 I appear here today speaking on behalf of my
3 company, Louis Dreyfus, and two other companies,
4 Fishcher and Cutrale. All three companies are both
5 domestic producers of Florida orange juice crushed
6 from Florida oranges and producers and importers of
7 Brazilian juice.

8 It should be almost unnecessary to say that
9 we would not be importing juice from Brazil if doing
10 so would injure our U.S. production.

11 We do not import juice to destroy our
12 domestic production base in which we have
13 invested millions of dollars. We import juice because
14 it's necessary to assist our U.S. production in
15 meeting the needs of our U.S. customers.

16 First, let me say why imports from Brazil
17 are necessary.

18 The market for orange juice in this country
19 requires certain flavor, color and viscosity and we
20 need that uniform characteristic throughout the year.
21 U.S. oranges are not produced throughout the year and
22 for half the time that they are being harvested they
23 do not have the necessary color or viscosity that the
24 market requires. To be commercially usable,
25 therefore, they have to be blended with Brazilian

1 juice.

2 Over 93 percent of Brazilian juice is of
3 sufficient color and viscosity to improve the
4 characteristics of U.S. juice so that after blending
5 it can be packaged and sold in the retail marketplace.
6 Brazilian juice does not replace U.S. juice, it
7 actually permits more U.S. juice to be sold than
8 otherwise would be the case.

9 Second, by importing Brazilian and other
10 countries' juice, U.S. producers can maintain
11 sufficient inventories to ensure product availability
12 when U.S. production is low. This allows us to
13 stabilize the supply and permits our customers to sell
14 a uniform product at steady prices so they can compete
15 in the market with other beverages.

16 Without the supplementary supply from
17 Brazil, U.S. juice would lose shelf space to other
18 products as it did before the Brazilian supplementary
19 supply existed.

20 The manic swings in the market that result
21 from huge variations in U.S. production can be seen
22 just over the period of investigation in this case.
23 In 2004, just before this case was filed, U.S.
24 producers had come off two of the largest crops on
25 record, producing in 2003 108 percent of U.S.

1 consumption. As a result of these large crops, prices
2 were depressed. Three consecutive hurricanes hit
3 Florida, prices recovered even before this case was
4 filed.

5 Moreover, as I predicted when I was here
6 before you last, we rapidly moved into a period of
7 serious shortage of juice. The situation now is
8 virtually the opposite of July 2004. Prices are now
9 over \$1.30 per pound solid and the market is desperate
10 for juice.

11 The lack of available Florida oranges has
12 hurt the financial performance of U.S. processors. As
13 those commissioners who visited U.S. processing plants
14 in Florida could see, we simply do not have enough
15 U.S. oranges to keep the U.S. plants operating at the
16 levels we need to make a profit. But this is not the
17 fault of imports. It's caused by greatly reduced
18 Florida crops.

19 There are also reasons why the commission
20 must view the financial data on the performance of the
21 domestic industry with a great degree of skepticism.
22 Because of the skewed configuration of the scope of
23 this case, the Petitioners have managed to exclude
24 from their financial data, as well as our financial
25 data, any sales of orange juice in retail packaged

1 form. Many producers, including all three
2 Petitioners, sell a significant amount of their juice
3 in retail packages.

4 I estimate that less than 10 percent of
5 NFCOJ and less than 50 percent of FCOJM is ever sold
6 in bulk form at the retail package and, as an
7 extractor-processor who also packages, I can tell you
8 that that's where the profits are.

9 If we had been able to report sales of FCOJM
10 packaged in retail juice cartons, our year-to-date
11 profits in 2005 would have been \$6 million higher than
12 we reported. By excluding retail sales from the
13 investigation, Petitioners have managed to make their
14 financial performance look much worse than it is.

15 My guess is that Petitioners have played
16 games with the growers as well. Only a tiny portion
17 of growers actually responded to the commission's
18 questionnaire. Having read the public version of the
19 staff's report, I have reason to believe the
20 Petitioners have deliberately chosen to provide
21 information for those growers who are doing poorly and
22 have kept out the most profitable growers. Given the
23 high prices being paid to growers both on long-term
24 Florida contracts and in this year's spot market,
25 their financial performance is in fact much better

1 than the commission's data appear to show.

2 So with higher prices, strategic inventories
3 needing replenishment and increased needs for
4 Brazilian juice, why is this case still going on?

5 Here, I return to a point that I made before
6 this commission last February. This case is not about
7 imports from Brazil versus domestic production. It is
8 about one Petitioner, the United States Sugar
9 Company's citrus subsidiary, Southern Gardens, very
10 cleverly jerry rigging the case to exclude its
11 Brazilian FCOJ connection from the case while hoping
12 to make other Brazilian source subject to antidumping
13 duty.

14 Let's look at what has transpired since the
15 last time I was here.

16 The old order was sunsetted away and
17 Citrovita ceased to have an antidumping duty rate of
18 16 percent.

19 Petitioners' counsel wrote the Department of
20 Commerce asking nicely that the scope be, in his
21 phrase, clarified to include other Brazilian
22 producers.

23 The DOC wrote back explaining they couldn't
24 do that, as I testified to last February, but the DOC
25 opened the door by suggesting that Petitioners submit

1 an amended petition.

2 I interpreted this as the DOC saying, no,
3 you can't come in the front the door, but the back
4 door is unlocked and all you need to do is ask for the
5 key to the gate to get in the back yard, then we'll
6 let you in.

7 Strangely, Petitioners never filed the
8 amendment to the original petition.

9 Why?

10 Although Petitioners' counsel drafted the
11 necessary document, Southern Gardens refused to sign
12 off on it. Southern Gardens vetoed any further
13 attempt to bring its source, Citrovia, into the case.

14 An attempt by one of the other Petitioners
15 to get Southern Gardens to change their mind failed
16 and there the matter rests.

17 Why, you might ask.

18 Because, surprise, Citrovia has suddenly
19 been able to increase production and ship product to
20 the USA and Southern Gardens benefits at the expense
21 of the rest of the domestic industry in Florida.

22 I refer you to the testimony in the sunset
23 review from the old case on the matter of Citrovia's
24 ability to ship to the United States. Since that
25 time, my information is that in the six months ended

1 December 2005 Citrovia's market share of total
2 shipments to North America exceeds 30 percent. This
3 translates into a share of the U.S. market of between
4 40 and 50 percent since the shipment data includes
5 product going to Canada. This is from zero in the
6 previous period.

7 If the commission were to find injury in
8 this case, it will not help U.S. producers one whit.
9 The same amount of Brazilian juice is going to come in
10 primarily through Petitioners Southern Gardens and
11 Citrovia as non-subject merchandise.

12 When I testified as to this possibility in
13 February of last year, I warned about how an abuse of
14 the system was about to occur and suggested that the
15 best way to stop it was to put an immediate halt to
16 the instant proceeding. The cleverness of the
17 Petitioners made that an impossibility at that stage
18 in these proceedings. However, that is no longer the
19 case. Now that the full record is before you, the
20 right thing is to find that no injury or threat of
21 injury exists by cause of imports from Brazil.

22 I thank you for your attention.

23 MR. DUNN: Mr. Frielich.

24 MR. FRIELICH: Good afternoon. My name is
25 Sean Frielich and I am Senior Vice President of

1 Innovation and Quality for Vitality Food Service.

2 Vitality Food Service has been in the food
3 service beverage business for about 80 years. We
4 manufacture and sell various types of beverages and
5 design beverage dispensing equipment used to serve
6 these products. We are the second largest
7 non-carbonated food service beverage supplier in the
8 world. If you have ever eaten at a Bob Evans, an IHOP
9 or a local diner, you've probably enjoyed our
10 products.

11 I am a major purchaser of FCOJ, both from
12 Florida and from Brazil. We utilize this juice to
13 manufacture products sold through food service venues
14 and predominately dispenses through equipment designed
15 to reconstitute the product on demand.

16 It is estimated that as much as 40 percent
17 of juice consumption occurs away from the home and the
18 products we produce satisfy this market segment. That
19 experience allows me to help the commission understand
20 the role that each source plays in the market.

21 Why do I purchase Brazilian juice?

22 For two primary reasons. One, to improve
23 the quality of Floridan juice and, second, to maintain
24 a stable supply of juice through the processing
25 season.

1 I absolutely need Brazilian juice for
2 blending with domestic juice. I can never get enough
3 volume of juice that meets our quality specifications
4 from Florida alone. Brazilian juice improves the
5 viscosity, the brix acid ratio, and the color of
6 Floridan juice.

7 In food service applications, the viscosity
8 of the product is critical for proper reconstitution
9 via the dispenser. Brazilian juice has a lower
10 viscosity than juice produced from oranges grown in
11 Florida. This is believed to be due to a variety of
12 reasons, including the soil condition, climate
13 condition, et cetera.

14 The ability to reconstitute the product via
15 a dispenser and deliver a high quality beverage with
16 uniform consistency is critical in our business.

17 The majority of the juice produced in
18 Florida would not meet the requirements for this type
19 of application and hence Brazilian juice is required
20 for our purposes.

21 Additional, the brix acid ratio -- this is a
22 technical term that refers to the relationship of
23 sweetness to the tartness of the juice -- of the
24 Florida crop over the last five years has been very
25 high. High ratio yields a finished product that can

1 be described as insipid, bland and watery. The ratio,
2 that is the brix acid ratio, of the Brazilian juices
3 has been lower and, as such, needed to blend to ensure
4 consistent quality and eliminate huge quality peaks
5 and valleys throughout the year.

6 In recent years, the industry has petitioned
7 the Florida Department of Citrus to provide relief for
8 the minimum acidity, hence raise the allowable brix
9 acid ratio, in order to allow the use of the Florida
10 crop.

11 We also have to blend Brazilian with
12 domestic juice because U.S. consumers prefer brightly
13 colored juices and we cannot get enough Florida juice
14 with the color we need.

15 Let me explain. The higher the color of the
16 juice, that is, more orange to yellow, the more
17 desirable the juice is considered. This is supported
18 by the USDA grading of orange juice. Juices with
19 higher color can receive up to 40 score points. The
20 Brazilian crop is made up of greater quantities of
21 orange varieties, yielding higher color and hence
22 higher USDA color scores.

23 Our customers demand a product that is
24 better than just USDA minimum Grade A. The Florida
25 crop must be blended, juice manufactured from early

1 and mid season varieties of orange must be blended
2 with late season varieties, to meet a minimum USDA
3 grade score. That means that producing products that
4 are greater than the minimum of Grade A USA score is
5 impossible without the brighter colored orange
6 varieties used in the manufacture of Brazilian orange
7 concentrate.

8 It is important to reiterate that the need
9 for Brazilian juice is required to ensure consistent
10 quality, especially in dispensed applications where
11 juices are served through food service. Quality
12 fluctuations and/or dispensibility issues due to
13 inconsistent quality can erode share to other
14 competing products.

15 In addition to needing Brazilian juice for
16 blending purposes, we purchase Brazilian juice to fill
17 in shortfalls of domestic production. These
18 shortfalls occur between crop years and when there are
19 weather events that drastically reduce the size of the
20 Florida crop, as is now the case.

21 It is imperative that a consistent high
22 quality product be manufactured year in and year out
23 to keep consumers satisfied. Only by having raw
24 material from two large and separate growing regions
25 can you reduce the risk of limiting raw material

1 availability.

2 Additionally, Brazilian FCOJ plays a
3 stabilizing role in the market. Imports from Brazil
4 increase when domestic supply drops and decrease when
5 domestic supply increases. In fact, this is the
6 reason that the Brazilian orange juice industry was
7 created by U.S. companies in the 1960s and '70s, to
8 provide a stable source of supply that would allow us
9 to smooth out the sharp rises and falls in Florida
10 production and hence increase consumption.

11 Stable prices are important because orange
12 juice is a product that competes with other drinks for
13 a share of the consumer's stomach. As such, sudden
14 changes in price or in availability cause consumers to
15 move to other products. These include soft drinks,
16 other juice drinks, water, tea and coffee.

17 Consumers have a vast choice of beverages
18 that can replace orange juice as a product choice.
19 This includes sports drinks, energy drinks,
20 nutraceuticals and specialty beverages. With this
21 level of product choices available, large swings in
22 cost to the consumer can swing consumer preference to
23 an alternate product. Once those consumers are lost,
24 it can take many years to win them back, if you win
25 them back at all.

1 Currently, Florida orange production has
2 been down sharply for two years and inventories are at
3 very low levels. As a result of these reduced
4 supplies, prices are at the highest point they've been
5 in years and these conditions are likely to persist
6 for some time to come.

7 Given this situation, it makes no sense to
8 restrict imports of juice from Brazil. In fact, we
9 need Brazilian juice now more than ever. If we do not
10 keep the volume of orange juice stable, we are likely
11 to lose customers and lose demand. This hurts the
12 entire industry.

13 In the current situation we face, we need
14 more not less imported orange juice to permit us to
15 preserve the market for OJ for the future, maintain
16 U.S. jobs and protect the significant investment
17 Vitality Food Service has made in its business.

18 Thank you.

19 MR. DUNN: We turn now to the presentation
20 by the economist, Professor Carter.

21 MR. CARTER: Good afternoon. My name is
22 Colin Carter and I'm a professor of agricultural
23 economics at the University of California-Davis.
24 I have been asked to measure how domestic orange juice
25 prices respond to imports from Brazil, controlling for

1 other factors in the market such as the domestic crop
2 size inventories and consumption of orange juice.

3 One of the facts associated with the POI is
4 that annual imports from Brazil were positively
5 related to domestic prices. I would like to show you
6 this relationship.

7 In this slide, the height of the orange bar
8 shows total imports from Brazil for the first year of
9 the POI, about 110 million gallons. The average price
10 in '01-'02 was 107 cents per pound, shown as the blue
11 dot just above the orange bar.

12 As we move through the POI, we find that
13 when annual imports more than doubled, going to crop
14 year '02-'03, prices actually rose. You can see that
15 the height of the orange bar goes up and the blue dot
16 also rises.

17 Under the Petitioners' theory and
18 methodology, when imports more than doubled in
19 '02-'03, price should have fallen, but instead it went
20 up.

21 Moving to the next crop year, imports
22 declined and if we follow the blue dot, we see that
23 price also declined, a trend counter to Petitioners'
24 theory.

25 In the final year of the POI, imports rose

1 once again and so did price. Over the four years, the
2 correlation coefficient between Brazilian imports and
3 price was plus 0.81, which means that imports and
4 prices and strongly moved in tandem fashion.

5 A picture is worth a thousand words and this
6 figure tells us two things: first, the Petitioners'
7 theory simply does not explain what actually happened
8 during the period; second, obviously, something else
9 was at work during the POI.

10 But let's be clear: the fact that price
11 rises when imports rise and falls when imports fall is
12 not a puzzle. This positive price volume relationship
13 has a very straightforward explanation. Other factors
14 are driving price in this market.

15 My task was to control for these other
16 factors and to statistically isolate the impact of
17 Brazilian imports on the U.S. price. I did so by
18 focusing on the trade price flexibility, which is the
19 percentage change in the domestic price divided by the
20 percentage change in import volume. This is a
21 commonly used economic concept that speaks precisely
22 to the question before you today, namely, how do
23 imports affect price.

24 For most agricultural commodities like
25 orange juice, the trade price flexibility can differ

1 widely from the domestic flexibility. The main reason
2 is that the imported commodity is meeting a residual
3 demand, supplementing gaps in the domestic market.

4 I have seen this characteristic in many
5 different commodity markets, so the domestic demand
6 elasticity that the Petitioners talk about is too
7 broad. They are referring to total demand for orange
8 juice; instead, the issue here today revolves around
9 the import demand.

10 Perhaps an analogy will help illustrate this
11 point. If we were trying to understand changing
12 housing prices in Florida, would we focus on the
13 demand for housing across the entire country or would
14 we focus on the demand for housing in Florida?

15 The answer is obvious. Common sense says
16 that if we are studying imports of orange juice, let's
17 focus on the demand for imports, not the total U.S.
18 demand for orange juice.

19 I measured the price volume relationship
20 shown at point A in this figure. Alternatively the
21 Petitioners are talking about the price volume
22 relationship at point B on the domestic demand curve.
23 The key message here is that the elasticity at point A
24 is not equal to the elasticity at point B, so why is
25 this distinction important?

1 Well, the pre-hearing staff report indicated
2 that the price elasticity of domestic demand is
3 inelastic. That may be, but it does not mean that the
4 import demand is inelastic. To the contrary, the
5 import demand is highly elastic, largely because
6 imports satisfy a residual gap in the market between
7 domestic supply and demand.

8 Now I want to explain how we measure the
9 trade elasticity. The key point is that we have
10 looked at what actually happened during the period
11 with all the crucial factors in the market. We used a
12 traditional and mainstream approach to modelling
13 orange juice and we provide original econometric
14 evidence on the pricing of orange juice.

15 We found that any fluctuation in imports
16 from Brazil has a very small impact on the domestic
17 price of FCOJ. Monthly data show that the trade price
18 flexibility equals minus .008, which means that a
19 100 percent change in imports would move the FCOJ
20 futures price by less than 1 percent. Compared to
21 imports, supply shocks, domestic sales and inventories
22 play a much more important role in terms of explaining
23 orange juice prices over the period.

24 I can show you the essential results with
25 the following few slides.

1 Let's start with a graph of price variation
2 over the POI. We are trying to explain fluctuations
3 in a series and this graph shows the econometric model
4 and does a pretty good job of explaining price
5 variability. The solid orange line is the price
6 deviation from the mean prior to the POI. The line
7 with the dots is the model's estimate of the price
8 deviation.

9 Now we will add the factors except for
10 imports explaining the price variation. Each factor
11 has a different color.

12 Finally, we bring in the effect of imports.
13 The impact of imports is shown by the additional dark
14 blue bars.

15 I hope you can see that imports did not
16 matter very much over the POI, given the other factors
17 at play.

18 Petitioners argue that prices would have
19 been much higher over the 2004-'05 season if there had
20 been no change in imports, but this assertion has no
21 supporting evidence.

22 If we held imports at their level in
23 '01-'02, that is, no increase from 110 million
24 gallons, how much higher would the '04-'05 average
25 price have been?

1 Our regression model tells us that it would
2 have been a very small increase, less than 1 percent.

3 This economic model has looked at the past,
4 but we can also look forward. As an agricultural
5 economist, I have studied futures markets for the past
6 30 years and I have a recent textbook on futures
7 markets. I would like to point out this afternoon
8 that the current futures price for FCOJ is even higher
9 than when we did our regression study for this
10 hearing. The nearby has been trading in the 125 to
11 130 cent range. In fact, the futures market is
12 forecasting prices in that price range out to
13 September 2006, reflecting the economic fundamentals
14 of tight supply.

15 A vivid illustration of the near term-short
16 term supply of orange juice is given by the January
17 futures price, trading at a 5 to 6 cent per pound
18 premium to March futures this week. This is an
19 abnormal situation. The sharp price inversion in the
20 market is telling us that there is not enough supply
21 in the market right now. This suggests that prices
22 are more than likely to remain high. In fact, we know
23 that any sign of frost this winter will drive the
24 price even higher.

25 I would venture to say there is probably

1 more upside price potential in this market than
2 downside.

3 Thank you.

4 MR. DUNN: Dr. Brinner?

5 MR. BRINNER: My name is Roger Brinner.

6 I have been a leader of economic research at respected
7 academic, government and private institutions for over
8 30 years. These institutions include the Federal
9 Reserve, the White Council of Economic Advisors, the
10 largest economics consulting firm, Harvard and MIT.

11 You have just heard from Professor Carter.
12 Now by providing a comprehensive set of analyses,
13 I will fit Brazilian imports into the full dynamics of
14 consumer markets, orange production and processing,
15 inventories, exports and imports.

16 I conclude that any problems faced by the
17 Florida orange juice industry cannot be shown to be
18 materially linked to Brazilian imports.

19 Let me start with consumer demand. The
20 Atkins diet and other low carbohydrate diets had a
21 very significant adverse impact on orange juice demand
22 from 2000 to 2004.

23 If you look at the next slide, you see that
24 Atkins popularity, fortunately for the orange juice
25 market, has now plummeted and my report demonstrates

1 and quantifies the strong impact of this retreat.

2 Exports are also a key market factor. This
3 slide shows the critical role of '02-'03 and '03-'04,
4 exports equal approximately 50 percent of imports.
5 However, in the '01-'02 crop year, U.S. supplies were
6 required in Europe, leading to exceptional exports.
7 In '04-'05, hurricane damage and a short crop required
8 exceptional imports.

9 Brazilian imports play a fundamentally
10 complementary role to exports in that imported product
11 is needed in order for the domestic market to meet
12 both the price and quality requirements of the export
13 market.

14 Petitioners have tried to downplay this
15 relationship, but the actual pattern of imports and
16 exports conclusively demonstrates the logical and
17 important relationship.

18 The most important supply factors in this
19 market are weather driven cycles in the domestic
20 orange crop. Overall, the orange crop was 6 percent
21 lower during the POI compared the prior six-year
22 period. Note the sharp difference between '03-'04
23 when the crop was higher than average and '04-'05 when
24 the crop dropped entirely due to hurricanes.

25 Imports don't matter for growers. Grower

1 revenue is fundamentally the acres of fruit bearing
2 trees multiplied by the yield per acre, multiplied by
3 the price of oranges. Simple arithmetic.

4 My report presents very detailed economic
5 and statistical analyses demonstrating that Brazilian
6 imports hurt none of these three elements during the
7 POI. Factors impacting the fruit bearing acres
8 primarily include severe weather, alternative Florida
9 real estate use and the futures price of orange juice.

10 Rising real estate prices, a benefit to
11 growers, encouraged the removal of 8 percent of the
12 2000 acreage by 2005.

13 In this industry, all the oranges that are
14 grown are then processed, so weather dominates volumes
15 for the processors. Given this strong relationship, it
16 is not surprising that processing was down 8 percent
17 during the POI compared to the prior six-year period,
18 entirely due to the lower crop.

19 Now, processor income is essentially that
20 volume multiplied not by the price level, but by the
21 margin or spread between orange juice prices and
22 orange prices. The margins on the volumes reflect
23 their business judgments regarding contract prices for
24 oranges in anticipation of future prices for juice.
25 Failing to understand the Atkins craze or anticipate

1 the strong '03-'04 crop, processors appear to have
2 contracted for oranges at too high of a price. These
3 factors, not imports, explain any past income problem.

4 Let's turn to inventories, another
5 significant supply-demand factor, but imports once
6 again played no role. Over the POI, inventories were
7 steadily and let me emphasize intentionally built,
8 extending long-term trends. Industry participants
9 acknowledged the need to create substantially greater
10 storage capacity during the past decade to protect
11 American consumers from shortages.

12 As always, inventories were built most
13 aggressively in response to higher than normal crops
14 and lower than normal demand in 2003-'04 in
15 anticipation of a price rebound to come. In other
16 words, inventory management is a profit-driven
17 response to market needs and prices.

18 During the final year of the POI, the build
19 up reversed in response to the orange crop shortage.
20 Brazilian imports did not create any inventory
21 overhang as Petitioners have argued, basically
22 asserting beliefs and anecdotes rather than presenting
23 evidence and analyses.

24 Intuitively, with Brazilian imports going up
25 only when there is some domestic shortage, Brazilian

1 imports would be expected to have only a small impact
2 on inventories. Moreover, these imports are being
3 used to support exports and to help make early Florida
4 harvests meet Florida requirements. Supporting these
5 intuitions, my report carefully tested and quantified
6 the roles of various factors explaining inventory
7 levels.

8 As you see, other factors -- crop size,
9 consumer demand and prices -- completely explain the
10 inventory levels and imports play no material role.
11 Indeed, as you can see, when tested, inventory growth
12 is negatively and insignificantly correlated with
13 imports after accounting for the other forces.

14 Overall, imports have been lower during the
15 period. I know that the commission often compares the
16 beginning and end of a period of time. Let me suggest
17 in this case a better way to understand imports is to
18 look at relevant behavior before and during the POI.
19 Average annual imports from Brazil were 8 percent
20 lower during the POI as compared to the prior six-year
21 period.

22 My report details the exact contribution of
23 the crop size, export market and normal seasonal
24 fluctuations to imports. The POI import behavior
25 mirrored pre-POI behavior. Imports responded to

1 market requirements.

2 Beyond the level of imports, the commission
3 should also understand the nature of those imports.
4 Brazilian orange juice imports are complements rather
5 than substitutes. Based on my study of this market,
6 the complementary attributes are due to three primary
7 factors:

8 First, Florida crops are usually vulnerable
9 to freezes, hurricanes and disease. The orange juice
10 industry, growers, processors and retailers, must have
11 a reliable source of supply to satisfy the American
12 consumer with year in, year out quality, availability
13 and price. Brazilian imports play this role.

14 Second, color standards for the U.S. market
15 require a blending of Brazilian orange juice to raise
16 the color of domestic juice to market acceptable
17 levels. In other words, Brazilian orange juice raises
18 the market value of the domestic orange juice, the
19 very definition of a complementary good.

20 Finally, Brazilian imports are necessary to
21 meet the price requirements of the export market.
22 U.S. FCOJ futures prices are typically above European
23 prices thus only exports qualifying for the U.S. duty
24 rebates can be sold profitably to Europe.

25 Reflecting these sentiments, Professor

1 Spreen recently proclaimed in the case of orange
2 juice, the U.S. must import from Brazil. His whole
3 report echoes many of the thoughts that I have just
4 shared with you.

5 For these three reasons, the commission
6 should understand that the positive correlation
7 between FCOJ futures prices and Brazilian import
8 levels is not an accidental correlation but rather a
9 strong indication that Brazilian imports support the
10 health of the American orange juice industry
11 responding to market needs. Petitioners have tried to
12 dismiss these dynamics, but Petitioners cannot explain
13 these simple behaviors.

14 Pricing. This brings me to pricing trends
15 during the period. The '03-'04 price weakness was
16 entirely due to a strong U.S. crop, compounded by a
17 peak in the Atkins low carb diet craze that suppressed
18 consumption. Average imports from Brazil were lower
19 during the period of weakness and the econometric
20 evidence already discussed by Professor Carter
21 demonstrates this provided a modest positive relative
22 support to price levels.

23 In addition, U.S. demand was hurt by the
24 failure of retailers to pass through wholesale price
25 reductions to the American consumer. Such retail

1 price reductions would have bolstered both demand
2 volume and then to lesser extent U.S. processor prices
3 above normal retail prices led to consumers paying
4 about 9 percent more for orange juice compared to what
5 would have been charged at retail with the markup
6 prior to the POI.

7 My report shows that had retail prices moved
8 in line with wholesale prices then wholesale prices,
9 the key issue for the commission in this case, could
10 have been higher. These decisions by retailers have
11 nothing to do with Brazilian imports. Retailers are
12 making their own business decisions to maximize their
13 profits by selling lower volumes at higher retail or
14 wholesale markups.

15 Processors additionally faced a problem of
16 wholesale orange juice prices falling short of their
17 expectations. Long-term contracts are an important
18 model in this market. Contract prices are offered by
19 processors and accepted by growers based on their
20 expectations for future market conditions. As they
21 entered the POI, their past experience would have led
22 them to expect long-term contract prices at a level
23 above that which could ultimately be supported by the
24 market plagued by Atkins and a very strong crop.

25 Pricing is now increasing in reaction to

1 back to back short domestic crops and the reversal of
2 the Atkins craze. This will bolster processor margins
3 on the older contracts and the price recovery will
4 help growers on new contracts without harming
5 processors who now know the current conditions.

6 In conclusion, the problems faces by orange
7 growers and orange juice processors during the period
8 of investigation were a function of declining consumer
9 demand and weather driven production interruptions.
10 In order to smooth out the needs of the retail orange
11 juice industry, imports were brought in from Brazil as
12 a logical buffer.

13 Today, the industry is expected by the
14 Florida Department of Citrus to enjoy very strong
15 revenues in crop year '05-'06 and the FCOJ commodity
16 futures market predicts continued price strength for
17 many months.

18 Thank you.

19 MR. DUNN: Mr. Casper.

20 MR. CASPER: Good afternoon. My name is Dan
21 Casper. I'm Strategic Global Procurement Manager,
22 Citrus, for The Coca-Cola Company.

23 CHAIRMAN KOPLAN: Could you move your
24 microphone a bit closer, please?

25 MR. CASPER: Sure.

1 I've managed the procurement process to
2 support Coca-Cola's global orange juice business for
3 the past nine years. My primary responsibility is to
4 maintain continuity of supply to support the
5 production and marketing of the Minute Maid brands of
6 orange juice. Prior to Coke, I spent 11 years with
7 Cargill, the last nine as the senior economist for its
8 North American orange juice business unit.

9 Today, I will speak to two points. I will
10 provide you with a background into strategic sourcing
11 for the Minute Maid Company and our view of the
12 product at issue in this case, namely, that there is
13 one like product.

14 I will explain the role of Brazilian imports
15 and why imposing antidumping duties on certain orange
16 juice from Brazil will make a difficult situation for
17 orange juice producers like Minute Maid even more so.

18 Minute Maid is the largest or second largest
19 purchaser of Florida round oranges and the juice from
20 those oranges, making us one of the largest customers
21 of Florida growers you heard from this morning.

22 While Florida growers and processors meet
23 the majority of our needs and will continue to do so,
24 the supply of orange juice from Brazil is a critical
25 component of our sourcing.

1 We need Brazilian supply to ensure that we
2 meet our production targets and maintain the
3 consistent taste and quality of our leading product,
4 Minute Maid Pure Premium.

5 Our task at the Minute Maid Company is to
6 make sure that customers and consumers receive a
7 steady supply of pure premium juice with a consistent
8 taste and quality throughout the year, year after
9 year. Florida oranges alone do not allow us to meet
10 that objective.

11 The Florida supply of oranges and, by
12 extension, the concentrate and NFC made from them, is
13 impacted by the vagaries of weather: freezes,
14 hurricanes, too much rain, too little rain, disease
15 and increasingly urbanization.

16 As an aside, when growers come together
17 today, the topic for conversation generally begins
18 with the latest real estate deals.

19 In order to avoid a situation where a
20 shortfall of Florida oranges means that we cannot meet
21 our production targets because we can't turn Brazilian
22 supply on and off, we have formulated our
23 reconstituted product using the characteristics of
24 Florida and Brazilian oranges. Look at the label on a
25 Minute Maid product and you will see that it contains

1 both U.S. and Brazilian concentrate.

2 The actual amount of product from Brazil
3 varies from season to season, based on the amount of
4 orange juice we were able to obtain from Florida. I
5 remember when in the '80s Florida experienced a series
6 of devastating freezes. A severe reduction in the
7 Florida production base was offset by an increase in
8 the supply out of Brazil. The timing could not have
9 been better. However, once Florida production
10 recovered, imports from Brazil became residual in
11 nature as Europe and Asia became the primary markets.

12 If not for Brazilian product to meet the
13 shortfall in Florida oranges, the size and scope of
14 the U.S. orange industry would be very different than
15 that before you today.

16 In the last two seasons, Florida has
17 experienced devastating natural disasters that have
18 severely restricted the supply of Florida oranges.
19 Where Florida growers three and four years ago were
20 producing over 220 million boxes, today they can
21 produce no more than 170 million, perhaps less.

22 This is not an import phenomenon. It's the
23 result of serial hurricanes, disease and urbanization
24 that have taken thousands of acres out of production
25 and damaged the groves that remain. That's the

1 continuity of supply story. That's why we need
2 Brazilian juice and that's why antidumping duties
3 would harm our business.

4 Now I'll speak briefly to the subject of
5 like product and our view that there is one like
6 product in this case. We purchase oranges from
7 Florida suppliers and orange juice from U.S. suppliers
8 and from importers. Concentrate and NFC are simply
9 two forms of the same thing: bulk orange juice.
10 That's how I buy them and that's how we use them and
11 that's how they should be treated by the commission,
12 as a single like product.

13 I say this not only as a purchaser of orange
14 juice but also because this is how our three
15 constituents, growers, customers and consumers,
16 perceive orange juice. We don't contract with growers
17 for concentrate oranges or NFC oranges. There are no
18 such things. We buy fruit and, depending on the
19 season, demand, inventories and other factors, we set
20 and regularly revise production schedules between
21 concentrate and NFC.

22 We pay a single price to a grower with
23 regard for whether the oranges are used wholly or
24 partially for concentrate or NFC. It should be noted
25 that over the past four seasons, the majority of the

1 Florida oranges we purchased had downside price
2 protection as a part of the purchase agreement.

3 The grower provides the oranges and then we
4 direct the processor to turn the oranges into
5 concentrate or NFC, often at the very same production
6 plant, using the same extractors, quality labs,
7 workers and packaging lines. From the perspective of
8 our customer, the retailer, the end product is ready-
9 to-drink orange juice. The retailer's market both
10 ready to drink juice made from NFC and from
11 concentrate on the same physical shelf space, side by
12 side.

13 The retailer does not charge a price premium
14 across the board for NFC over concentrate juices. The
15 retail shelves show concentrate products such as
16 single strength reconstituted Minute Maid orange juice
17 priced higher than single strength orange juice from
18 NFC for private labels, and even the national brand:
19 Florida's Natural. Even from a consumer perspective,
20 there is one like product: orange juice. The consumer
21 views the different forms of orange juice as
22 alternative versions of the same thing: a 100-percent
23 fruit juice that is made from oranges.

24 Even when you consider the channels of
25 distribution, price- and shelf-life factors that the

1 Commission considered in its preliminary
2 determination, there is one like product. First, on
3 distribution, the oranges we received are processed
4 into both forms of orange juice at the same location.
5 The retail package products go onto the same truck.
6 We ship them to the same retailer who then places them
7 next to each other in its refrigerator section of the
8 grocery store.

9 Second, the Commission should be aware that
10 the spread between the price of bulk NFC and
11 concentrate is a function of storage costs for NFC.
12 During the production season, the cost to produce NFC
13 and concentrate are almost identical and, therefore,
14 so are the prices.

15 Finally, because NFC has to be stored during
16 the out-of-season period, there is no practical shelf-
17 life difference between bulk NFC and concentrate.
18 Once orange juice is packaged for retail sale, there
19 is no shelf-life difference between juice from
20 concentrate or juice from NFC. Therefore, whether you
21 consider orange juice from a grower, customer or
22 consumer perspective, or whether you consider factors
23 such as channels of distribution, price or shelf life,
24 concentrate and NFC are a single-like product.

25 Imports of certain orange juice have not

1 materially injured or threatened material injury to
2 the industry producing the single domestic-like
3 product. Rather, imposing anti-dumping duties would
4 add costs to an imported product that is a critical
5 portion of our supply chain in an environment in which
6 retail prices show little or no elasticity.

7 Thank you.

8 MR. DUNN: Mr. Zellner?

9 MR. ZELLNER: Good afternoon, my name is Jim
10 Zellner. I am Director of Food Procurement at
11 Tropicana in Bradenton, Florida. Tropicana is the
12 largest purchaser and processor of oranges in the
13 United States.

14 Prior to coming to Tropicana, I was an
15 economist and later vice president of retail sales for
16 a leading private label processor and packager of
17 orange juice products. I am here today to make two
18 points to the Commission: First, Tropicana opposes the
19 petition to impose any dumping duties on imports of
20 Brazilian orange juice. Regardless of whether the
21 Commission determines that there are two like products
22 or only one, we believe that the end result should be
23 the same. Domestic processors and growers are not
24 materially injured by imported orange juice from
25 Brazil. Imports serve a complementary purpose, not a

1 harmful one.

2 While we may not agree with the preceding
3 witness regarding a like-product definition, we are in
4 complete agreement that the Commission should reach a
5 negative determination.

6 My second objective today is to help refine
7 the Commission's view of the sharp dividing lines
8 between the two orange juice products targeted by the
9 anti-dumping petition: frozen concentrated orange
10 juice from manufacturing and not-from-concentrate
11 orange juice. The differences between these two
12 products are so pronounced and so well-established
13 within the citrus industry, that they clearly qualify
14 as separate like products under the Commission's legal
15 test and must be analyzed as such.

16 I would also state that my experience in
17 retail orange juice sales reinforces to me that the
18 retail trade perceives the consumer-goods versions of
19 these products to be very different. While Tropicana
20 believes that there is no evidence of injury to the
21 domestic industry from any Brazilian imports, this
22 conclusion is especially compelling when NFC is
23 examined as a separate like product.

24 NFC and FCOJ are both made from the juice of
25 fresh oranges. That, however, is where the similarity

1 ends. These two products are not interchangeable. I
2 would suggest that the Commission ask everyone who
3 testifies here today to answer the following questions
4 in their post-hearing submission: One, if you ordered
5 FCOJ, would you accept a delivery of NFC in its stead?
6 Two, if you ordered NFC, would you accept a delivery
7 of FCOJ in its stead?

8 I would think that the answers would be
9 instructive. These products are physically different.
10 They move in different channels of distribution and
11 they are sold to different customers at different
12 levels of trade, and sell for different prices on a
13 pound-sized basis with NFC juice commanding a
14 significant premium over FCOJ.

15 At the retail level, the consumer-goods
16 version of these products, the A. C. Nielsen
17 statistics published by the Florida Department of
18 Citrus over the past 52 weeks show that NFC sold for
19 \$5.30 per single-strength gallon at retail;
20 reconstituted orange juice made from FCOJ sold at
21 \$3.78 per gallon, a difference of 40 percent.

22 Commissioners and staff have visited
23 processing facilities in Florida and have had the
24 opportunity to observe FCOJ production and storage as
25 well as NFC production and storage. The processes are

1 very different. The difference begins with the
2 selection of fruit used in the products. Not all
3 processes are the same, but generally fruit is not
4 fruit. Not all varieties of fruit are utilized in
5 NFC. Most NFC processors do not utilize navel
6 oranges, amber sweet oranges or Parson Brown oranges
7 in their NFC product.

8 Furthermore, the process differs from the
9 very beginning. While the same type of extraction
10 equipment may be used to remove juice from FCOJ
11 oranges and NFC oranges, the machine settings and even
12 the strainer tubes and cups, are usually set up
13 differently on processing lines that make NFC than on
14 those lines utilized for FCOJ.

15 Commissioners and staff saw that once
16 extracted from oranges, juice destined for use in NFC
17 went through an entirely different plant within the
18 plant than juice from oranges destined for FCOJ. The
19 NFC plant includes pasteurizers and aseptic fillers
20 and storage tanks filled with single-strength juice.

21 The FCOJ plant is one that includes high-
22 temperature vacuum devices called evaporators.
23 Indeed, the first stage of evaporation does pasteurize
24 the juice. But if you were to take the juice at the
25 end of that stage, it would be of a consistency very

1 close to tomato soup or tomato sauce, not NFC orange
2 juice. It would be approximately 20 bricks. It would
3 be pasteurized; it will have gone through a kill step.

4 But in no way could you use the first stage of an
5 evaporator to pasteurize juice and use that juice as
6 NFC. That is a very different process.

7 Virtually all NFC is consumed as a single-
8 strength juice. While FCOJ can be used as a starting
9 point for a reconstituted single-strength juice
10 beverage, it is also suitable for other uses. For
11 instance, there is an ingredient in the production of
12 soft-drink concentrates, jams and jellies and other
13 foods. FCOJ must be substantially processed to make a
14 single-strength reconstituted orange juice product.
15 This process involves: the blending of numerous
16 concentrates to achieve a desired taste, the additions
17 of oils and essences to restore natural flavors lost
18 during evaporation, dilution of the FCOJ with water
19 not taken from the fresh fruit, pasteurization and
20 other processing packaging steps.

21 NFC juice is marketed as a premium not-from-
22 concentrate product and is often packaged under a
23 different brand name than a reconstituted product sold
24 by the same firm. NFC juice from Brazil represents a
25 very small part of the overall United States market

1 for orange juice on a pounds-solid basis. It does not
2 displace United States juice in this market. Rather,
3 it is typically blended with domestic NFC to achieve
4 the desired taste characteristics in finished-juice
5 products that are packed for the consumer.

6 Furthermore, NFC imports from Brazil reduce
7 the need for more expensive aseptic storage since the
8 processing season in Brazil is counter to the Florida
9 season. Tropicana uses Brazilian imports as a second
10 source to cover short falls in availability of the
11 domestic product. In short, NFC supports rather than
12 harms the United States processors. By increasing
13 their overall sales of single-strength NFC juice and
14 increasing the quality of that juice, it does not
15 displace domestic oranges.

16 Brazilian NFC is not imported for reasons of
17 price competition with the domestic product. Rather
18 it is a response to short falls in domestic production
19 of oranges caused by hurricanes, citrus canker and
20 other causes totally unrelated to imports. Nor do
21 imports of Brazilian NFC represent a threat of future
22 injury to the United States NFC producers. Brazilian-
23 production capacity for NFC is constrained by
24 pasteurization, storage, and by shipping. Since NFC,
25 as a practical matter, cannot be converted to

1 concentrate, it goes without saying that Brazilian NFC
2 imports do not threaten United States producers of
3 FCOJ.

4 CHAIRMAN KOPLAN: I think you're doing
5 better than we did.

6 MR. DUNN: And we didn't even get on the
7 start --

8 CHAIRMAN KOPLAN: Maybe I spoke too soon.

9 MR. SCABBIA: Good afternoon. My name is
10 Eduardo Scabbia. I am the President and Managing
11 Director of Votorantim International North America,
12 Inc. ("Vina"). Vina is a trading company that imports
13 and distributes Brazilian commodities into the United
14 States, including FCOJ. I have been with the company
15 for 16 years now and all the time involved with the
16 FJOC business.

17 VINA imports, during the periodic
18 investigation, where basically the subject FCOJ that
19 we bought from another Brazilian processor called:
20 Montecitrus. I am here today to talk about the
21 Petitioners' critical circumstantial allegations and
22 why the Commission should not find critical
23 circumstances for Vina's imports. It has already been
24 mentioned here that Vina has a partnership with a
25 major U. S. processor in Florida to supply FCOJ to one

1 of the largest U. S. retailers. Nearly all of the
2 FCOJ that Vina imports into the U. S. is sold to that
3 U. S. processor, and it is blended with domestic FCOJ
4 and eventually supplied to the retailer.

5 When the U. S. orange crops are large and
6 our imports from Brazil decrease, the opposite happens
7 actually when the U. S. crops are small. So, in other
8 words, our imports are driven by our partners' FCOJ
9 availability.

10 The 2004-05 marketing year was a
11 particularly difficult year for Florida because of the
12 damage caused by the hurricanes. As a result, we had
13 to import product from Montecitrus to maintain our
14 ultimate customer supplied. If we had not imported
15 additional volumes, Vina, and our partners in Florida,
16 would have defaulted on a pre-existing supply
17 agreement with our ultimate customer.

18 So, Vina did not make any additional imports
19 to bill even authorities in anticipation of an anti-
20 dumping order. We honestly don't see how these
21 imports harm, or can harm, or may harm producers in
22 the U. S., or even affect the effectiveness of an
23 anti-dumping order. The imports we had were just here
24 to meet a short-term demand that was related to an
25 agreement we had with the ultimate customer.

1 This is basically what I have to say.

2 Thanks again.

3 CHAIRMAN KOPLAN: Thank you.

4 MR. Le COMPTE: Hi, my name is Peter Le
5 Compte. I am the Sourcing Manager for the Small Plant
6 Foods Division of General Mills. I have been in the
7 organic foods industry since 1982, working at organic
8 farms --

9 CHAIRMAN KOPLAN: Excuse me, I see the green
10 light here and now yellow. Okay, you just crossed the
11 intersection.

12 MR. Le COMPTE: Should I start over? I have
13 been in the organic foods industry since 1982, working
14 on organic farms and for organic distributors and
15 manufacturers. I am a past president of the Colorado
16 Organic Producers Association and I also served as
17 secretary of the National Organic Farmers
18 Association's Council.

19 The Small Plant Foods Division of General
20 Mills is a leading manufacturer and distributor of a
21 wide range of organic products, including organic
22 frozen concentrated orange juice, or FCOJ. One of the
23 key ingredients that I purchase is bulk FCOJ that we
24 remanufacture into retail frozen concentrated organic
25 orange juice and sell under the Cascadian Farms brand.

1 General Mills is, to my knowledge, the only supplier
2 of frozen retail organic orange juice concentrate in
3 the United States. I purchase of all of my supply
4 from foreign suppliers for one simple reason: I know
5 of no bulk organic FCOJ manufacturer in the United
6 States.

7 I understand that part of the ITC's task in
8 this investigation is to determine whether organic and
9 conventional orange juices are essentially the same
10 product. I can tell you that, without question, the
11 products are very different. Given the limited amount
12 of time for my testimony today, I want to highlight
13 just a few differences. First, I cannot purchase
14 conventional bulk FCOJ. I sell organic FCOJ. The
15 production of organic orange juice is defined and
16 regulated by the U.S.D.A.'s National Organic Program.
17 These regulations clearly define organic products as
18 distinct from conventional products.

19 With FCOJ, the differences start with the
20 oranges, the production of which counts for the
21 majority of the cost of organic orange juice. Organic
22 oranges are produced and managed in entirely separate
23 orange groves using distinctly different methods
24 regulated by the National Organic Program. It is
25 difficult for farmers to convert from conventional to

1 organic orange production because of: the three-year
2 transition period, the higher input in labor costs,
3 and the knowledge necessary to acquire to successfully
4 farm organically.

5 Another important difference is: corporate
6 segmentation. General Mills's structure provides a
7 case in point. We regard organic products, including
8 organic orange juice, as distinct products. We manage
9 operations, sourcing, marketing and sales of organic
10 products as a distinct and separate businesses.
11 General Mills also sells organic products, including
12 orange juice, under organic brands within a corporate
13 division dedicated to organic products.

14 The retail sale and distribution of organic
15 orange juice also differs from conventional products.
16 Organic foods are largely sold in the natural foods'
17 channel. Mainstream supermarkets generally do not
18 sell our orange juice. Even stores that sell both
19 conventional and organic orange juice perceive the
20 products as different and have, in many cases, set up
21 stores-within-a-store concept where organic-only foods
22 are sold. Organic orange juice rarely competes for
23 shelf space with conventional orange juice. My
24 product tends to compete head on with other organic
25 juices.

1 This leads to another key distinction:
2 Conventional and organic orange juices are not
3 interchangeable. Obviously, under U.S. law, I cannot
4 sell conventional orange juice under an organic label.
5 While the reverse could theoretically happen, the
6 cost of production and the price premium for organic
7 juice are too high for this to occur. In my 22 years
8 in the organic industry, I have not seen organic
9 orange juice enter the conventional market.

10 The recent hurricane experience also seems
11 to bear this out. Despite clearly published shortages
12 for U.S.-produced FCOJ, no new customers have
13 approached the Small Plant Foods Division of General
14 Mills to supply organic FCOJ in order to make up for
15 shortages in the U.S. conventional FCOJ supply.

16 Because the products are not
17 interchangeable, organic and conventional prices are
18 completely unrelated. The price of organic FCOJ is
19 not based on the price of conventional FCOJ or FCOJ
20 futures. My prices depend on a completely different
21 supply- and demand structure in the organic orange
22 juice market that is unrelated to the conventional
23 orange juice market.

24 In closing, I would just say this regarding
25 injury: To my knowledge, all of the imports of organic

1 orange juice entering the United States from Brazil
2 are FCOJ and not NFC. Moreover, Brazilian imports of
3 bulk organic FCOJ serve a niche market that U. S.
4 processors have abandoned. Meanwhile, the U. S.
5 organic NFC market and industry is thriving, with
6 demand growing dramatically.

7 I would be happy to answer any questions
8 that you might have.

9 CHAIRMAN KOPLAN: Thank you. We will begin
10 the questioning with Commissioner Lane.

11 If I am correct, Madame Secretary, all the
12 time has expired. Is that right?

13 MS. ABBOTT: Yes, Mr. Chairman.

14 CHAIRMAN KOPLAN: Commissioner Lane?

15 COMMISSIONER LANE: Thank you and welcome
16 to, I guess, the evening panel.

17 Mr. Freeman, I would like to start with you
18 and this is basically because of your experience with
19 the New York Board of Trade. You heard this morning's
20 discussions about the futures market. I would like
21 your response to the charges that Brazilian orange
22 juice was irrationally delivered into the U. S.
23 futures market in mid-2004 when there were other
24 physical delivery options that would have made more
25 economic sense.

1 MR. FREEMAN: My response is that it
2 represents a facile and uneducated understanding of
3 how futures markets works. The delivery of a contract
4 that was sold for future delivery into the futures
5 market is no different really than were I to contract
6 with you to deliver some orange juice in the private
7 market six months from now, or a year from now, and
8 then when it came time to deliver it to you, if you
9 didn't pay me enough money to reschedule the contract
10 or to cancel the contract, I would make you take
11 delivery and pay me for the merchandise, as simple as
12 that.

13 MR. DUNN: Commissioner Lane, if the
14 charges, if you meant to call them charges, were
15 levelled at Cutrale -- and one of the reasons that we
16 had sworn in over I guess you would call it the lunch
17 break, an additional witness, is that that person is
18 Paul Burkthardt, who is the General Manage of Cutrale
19 Citrus Products, Inc. in the United States, who made
20 those deliveries into the futures market.

21 So, if that would help you, we would have
22 him respond to that question.

23 COMMISSIONER LANE: Yes, and he will have to
24 keep it really simple because I am afraid that I might
25 be one of these people that Mr. Freeman talked about:

1 the uneducated person who doesn't really understand
2 what is being said.

3 MR. BURKTHARDT: I can handle simple.

4 COMMISSIONER LANE: Thank you.

5 MR. BURKTHARDT: Just to answer that
6 question: The comment earlier today was that there
7 were alternative options that we could have taken as
8 opposed to delivering to the futures market. We view
9 the futures market as a customer, a very good
10 customer. They pay for the product within five days.
11 If they don't take the product from the tank farm,
12 they pay a very healthy storage fee. When they do
13 eventually take the product, they pay for the labor
14 that loads those tankers.

15 My alternative could have been to sell that
16 product to a more conventional customer, who would be
17 much more demanding on me, probably would not have
18 paid me the same price. We estimate that when you
19 deliver to the futures market on a routine basis, it
20 is about another 450 points or 4.5 cents that is
21 collected on top of the settlement price that is
22 determined by the Board of Trade.

23 That 4.5 cents is a combination of handling
24 fees and storage fees. And even if they leave part in
25 the tank farm for one day into the month, they pay

1 storage for the entire month. We don't have that kind
2 of luxury with more conventional customers. They have
3 all the good intentions of taking the product on a
4 timely basis. When they don't, we cannot go back and
5 charge them storage. When they eventually come in and
6 take the product, we pay all the labor costs.

7 So, we view delivering to the exchange as
8 delivering to a customer. I hope that was simple
9 enough.

10 MR. CARTER: Commissioner Lane, may I jump
11 in and --

12 COMMISSIONER LANE: Yes, yes.

13 MR. CARTER: I heard this morning Mr. Behr
14 refer to six-to-seven-million gallons delivery. The
15 implication was that this is somewhat unusual or
16 abnormal. I think it's helpful to put it into
17 perspective with other futures markets.

18 If we accept his figure of six-to-seven-
19 million gallons, that is roughly 500 contracts
20 delivered typically in that period. The peak-open
21 interest was likely 20,000 contracts. So, typically,
22 when an economist looks at a futures market, when you
23 look at deliveries, you might look at deliveries
24 relative to the peak-open interest.

25 So, if we look at 500 contracts versus

1 20,000, that is a tiny fraction, two-and-half percent.
2 There is nothing unusual about that. In other
3 markets, you will see deliveries with a much higher
4 percentage. It varies from year to year, depending on
5 relative prices and market conditions. So,
6 personally, I see nothing unusual with a small number
7 of deliveries.

8 MR. FREEMAN: May I add one last point?

9 COMMISSIONER LANE: Yes.

10 MR. FREEMAN: A very simple one: In the
11 rough period, I went back and checked my computer
12 records because I do keep track of deliveries in the
13 futures market. The largest deliverer in the futures'
14 contract that expired September 2003 through November
15 2004 was Peace River Citrus Products with 4,330
16 contracts. Cutrale was second with 2,000 contracts.

17 Cutrale processes in Florida about 30
18 million boxes. Peace River processes in Florida about
19 9 million boxes. So, Cutrale prices produce three-
20 and-a-half times the number of pounds sold of oranges
21 than Peace River does, and Peace River delivered twice
22 as many contracts during the period than Cutrale did.

23 Peace River, like other contracts, and Paul
24 is right, the New York Board of Trade is as good a
25 customer as you will find. It has the highest credit

1 rating of any customer in the industry.

2 COMMISSIONER LANE: Okay, thank you.

3 Just a minute. This is to Mr. Carter. It
4 is a follow-up to what you said before. Would you
5 look at deliveries relative to peak-open interest, or
6 open interest at time of closing?

7 MR. CARTER: Commissioner Lane, the standard
8 in the economist's profession would be to look at
9 peak-open interest. However, you could argue with
10 that and choose a different denominator. But if you
11 have an interest, obviously it starts with nothing and
12 it rises to some peak and ends back at zero. So, I
13 think choosing the peaks, rather than open interest at
14 the beginning of the month, gives you a better
15 indication because that it is the potential.

16 If the open interest is 20,000 contracts,
17 that is the potential. If there is a 100-percent
18 delivery, it could be 20,000 contracts.

19 COMMISSIONER LANE: I have been reminded
20 that I am supposed to remind you all to say your name
21 before you answer my questions. Sorry.

22 CHAIRMAN KOPLAN: My fault. I should have
23 done that before we started.

24 COMMISSIONER LANE: Okay, this is another
25 question because you are going to have to keep

1 answering these questions until I finally maybe
2 understand.

3 The Petitioners used the 2004 down time in
4 the futures' price to support an argument that
5 Brazilian producers are outdriving the market. How do
6 you respond to the Petitioners' argument that subject
7 producers are contributing to futures' prices that are
8 lower than they should be given other market factors,
9 Mr. Freeman?

10 MR. FREEMAN: Oh, but that I had the power
11 to do all the things that they hinted that I did, I
12 would be a wealthy man.

13 My company has been for a number of years
14 one of the largest participants in the futures market.
15 The market is bigger than any one, two or three
16 companies. If someone is pushing prices lower than
17 they should be, someone else will step in and stop
18 them. If someone is trying to take prices higher --

19 COMMISSIONER LANE: Okay. Let me ask this
20 question: Would you be willing to sell into the
21 futures market at a price that is less than your cost
22 of production?

23 MR. FREEMAN: If that was the best
24 alternative that I had at the time. Unfortunately,
25 with an agricultural commodity, in the short and

1 medium term, costs and value have nothing to do with
2 each other. If delivering them to the Board was the
3 best alternative that I had at the time,
4 unfortunately, yes.

5 COMMISSIONER LANE: So, in 2004, the period
6 that we were talking about, that was your best
7 alternative for your product, to sell into the futures
8 market at less than the cost of production?

9 MR. FREEMAN: Not to sell necessarily, but
10 deliver.

11 COMMISSIONER LANE: Deliver, I'm sorry.

12 MR. FREEMAN: There is an enormous
13 difference there between selling and delivering. When
14 you deliver, you are doing only that. You are
15 delivering a contract which you might have sold a year
16 prior.

17 Right now, there are somewhere in the
18 neighborhood of 2,000 contracts open for delivery in
19 November 2006, in January 2007. Those contracts were
20 sold between \$1.25 and \$1.32. I know it because I
21 sold some of them.

22 If, when that time comes, the market is \$.50
23 and I deliver them, I sold those contracts for \$1.30.
24 I delivered at a time when the market is low, but the
25 date of sale and the date of delivery do not have

1 anything to do with each other.

2 COMMISSIONER LANE: Okay, thank you.

3 Thank you, Mr. Chairman.

4 CHAIRMAN KOPLAN: Thank you, Commissioner.

5 Commissioner Pearson?

6 COMMISSIONER PEARSON: Welcome to the
7 afternoon panel. I salute your patience and
8 resilience. In order that I can avoid getting voted
9 the least popular Commissioner, I believe that I will
10 try to be a little shorter this afternoon than I was
11 this morning. It's terrible to get voted off the
12 island.

13 How many U. S. ports have facilities that
14 efficiently can handle bulk imports of frozen
15 concentrated orange juice from manufacturers and
16 whatever we call the other product: not-from-
17 concentrate orange juice?

18 MR. FREEMAN: Efficiently, none. The Port
19 of Wilmington, Delaware, the Port of New York, and the
20 Port of Manatee in Tampa, Florida, and the Port in a
21 stretch of Cape Canavarel and one -- where do you --

22 COMMISSIONER PEARSON: I think we need to
23 clarify this response.

24 MR. EMMANUEL: Well, for bulk concentrate?

25 MR. FREEMAN: The manual at Citrus --

1 MR. EMMANUEL: For bulk concentrate, there
2 are basically two ports that have storage facilities
3 to handle that. One is in Delaware; and then two
4 facilities in New Jersey, in Newark, New Jersey, and
5 then also a smaller one in Tampa, Florida. The other
6 ones that were mentioned were off-loading facilities
7 that don't have bulk storage capabilities.

8 There is one only port, to my knowledge,
9 that can handle aseptic FNC discharge in the U. S. and
10 that is Cutrale's terminal in Newark, New Jersey.

11 COMMISSIONER PEARSON: Okay. And the
12 limited number of locations that can handle the
13 imports relatively effectively, are some or all of
14 them locations that are, what's the term, regular-for-
15 delivery under the Board of Trade? Is that the right
16 term?

17 MR. FREEMAN: Yes, and yes.

18 COMMISSIONER PEARSON: Okay, so people who
19 have product in storage at those ports, they can
20 deliver very easily. It is just making the decision
21 to go ahead and declare delivery. Is that correct?

22 MR. FREEMAN: Yes, if they have short
23 futures' position.

24 COMMISSIONER PEARSON: Right, okay. But the
25 point that I am trying to get at is that it is not

1 some big expense in taking a product from one location
2 to another in order to deliver it? It is there. It
3 is already -- well, let me not get ahead of myself.

4 Mr. Burkthardt, does Cutrale own or control
5 the storage space that was talked about earlier I
6 think in New Jersey?

7 MR. BURFKTHARDT: Yes, they do.

8 COMMISSIONER PEARSON: Okay. When is the
9 decision made to deliver juice on the market? Is it
10 while the product is still in Brazil, while it is on
11 the water, after it is in the tank in the United
12 States?

13 MR. BURFKTHARDT: It is driven by really
14 market conditions and whether or not you have a
15 sufficient shelf position. With the deliveries that
16 were mentioned earlier, the positions were put on
17 approximately 12 months prior when the market was
18 trading in the \$1.10 price level.

19 Over the course of seven or eight months,
20 the futures market declined for a host of reasons, and
21 then the decision was made that we can either try and
22 sell this part that was sitting in the tank farm
23 continually; we could sell it to the Board; or we
24 could again continue to roll, which we had done from
25 the outset.

1 COMMISSIONER PEARSON: Now, I imagine there
2 are some logistical considerations when you are
3 bringing a vessel from Brazil to the United States.
4 Is there some minimum quantity of orange juice that
5 might be on the vessel?

6 MR. BURKTHARDT: We try to optimize the
7 vessel. I mean to be as efficient as we can, we
8 typically will bring up pool vessels on time.
9 Routinely, we are bringing a vessel in every 33 to 40
10 days from Brazil.

11 COMMISSIONER PEARSON: And tonnage would be?

12 MR. BURKTHARDT: We have a 20,000-metric-ton
13 tank farm. The ships are bringing up typically
14 anywhere from 8,000 to 12,000 tons at a time.

15 COMMISSIONER PEARSON: Okay. What I
16 probably should have asked is in single strength
17 equivalence because that is what we have mostly been
18 using. How much are we talking about when you bring
19 up the tonnage?

20 MR. BURKTHARDT: Let me do this correctly.,
21 It is about 200,000 gallons per tank, times 20 tanks,
22 is 4 million. Is that correct?

23 MR. FREEMAN: You need a calculator for
24 that.

25 MR. BURKTHARDT: But it is 20,000 metric

1 tons. There are 200,000 gallon tanks and we have 20
2 of those.

3 COMMISSIONER PEARSON: Okay, so that would
4 be about 4 million single-strength gallons. The staff
5 is doing the numbers and we will let you know.

6 MR. FREEMAN: That's 4 million seven-to-one
7 gallons. So you multiply --

8 COMMISSIONER PEARSON: Twenty-eight million
9 single-strength gallons.

10 MR. FREEMAN: Yes, correct.

11 COMMISSIONER PEARSON: Okay. And if I
12 understand correctly, Mr. Burkthardt, that Cutrale has
13 a regular program of moving a vessel back and forth
14 slightly more than once a month?

15 MR. BURKTHARDT: Once a month, correct.

16 COMMISSIONER PEARSON: I guess I can ask
17 about Cutrale's intent in the market. Is it your
18 intent to sell all of that product to commercial
19 customers?

20 MR. BURKTHARDT: Yes,

21 COMMISSIONER PEARSON: And futures'
22 delivery, is that also part of the plan, or is that
23 kind of a fall back.

24 MR. BURKTHARDT: It is kind of a fall back.
25 It is an alternative. For the most part, we are one

1 of the largest suppliers to the North American trade.
2 We have a list of over 30 customers that we continue
3 to supply. So, everything we do, in terms of
4 delivering to the Board, is an alternative for us.

5 COMMISSIONER PEARSON: Can you give me some
6 idea of the amount invested in tank storage in the
7 United States and the vessels? I am interested in how
8 much Cutrale has invested to move efficiently orange
9 juice from Brazil to the United States? If it is
10 proprietary, don't go there. Answer in the post
11 hearing. I am just trying to --

12 MR. BURKTHARDT: Yes, I think it would be
13 better to do that. It is quite large. I would just
14 suffice it to say that it is quite large.

15 COMMISSIONER PEARSON: Mr. Dunn?

16 MR. DUNN: I didn't push the mike.

17 COMMISSIONER PEARSON: Okay. The reason for
18 asking Mr. Burkthardt is to try to get some sense of
19 the costs that Cutrale might bear if a decision was
20 just made not to use that equipment for some period of
21 time. I assume there would be a fixed cost that would
22 not go away if you stopped?

23 MR. BURKTHARDT: Yes, absolutely.

24 COMMISSIONER PEARSON: Okay. Let me shift
25 gears so that I could ask a question of Dr. Carter.

1 Have you also a text that is going to replace
2 Huronamus, or would replace the successor to
3 Huronamous?

4 MR. CARTER: I think you should check it out
5 on Amazon.com.

6 COMMISSIONER PEARSON: Maybe I should. Has
7 much changed in futures? Would I do well to go back
8 and review?

9 MR. CARTER: Yes and no. As you know, there
10 are a lot of contracts that don't have delivery; and,
11 of course, they go through the financial futures, but
12 the basics remain the same. Huronamous is still a
13 good book. In fact, I used it when I was a student.

14 COMMISSIONER PEARSON: Okay, good. You have
15 done something with your knowledge. I have just gone
16 and created confusion.

17 Mr. Casper, let me ask you a question. Do I
18 understand correctly that you are an analyst, or at
19 one time were an analyst of orange juice markets?

20 MR. CASPER: Yes, I was the senior
21 economist, home staff, with Cargill in their huge
22 business, you know.

23 COMMISSIONER PEARSON: Did you work with any
24 other commodities in addition to orange juice?

25 MR. CASPER: When I first started with

1 Cargill, I was actually working for the sugar traders
2 for two years and then juice for the last twenty.

3 COMMISSIONER PEARSON: Okay. Well, a lot of
4 my understanding of commodity markets comes from
5 grains and oil seeds, particularly soybeans.

6 This morning, you saw me stumble around this
7 question of: What is the relationship between the crop
8 of orange juice in Brazil and the U.S. price? I am
9 looking at that through a filter of soybeans, and with
10 soybeans, it is very easy for a change in the
11 Brazilian crop to have a significant effect on the
12 futures' price on the Chicago Board of Trade without
13 moving a single ton of soybeans or soybean products
14 into the United States.

15 Is the situation similar for orange juice,
16 or would you argue that it is different?

17 MR. CARTER: I think that the market does
18 take into account a number of factors. And, of
19 course, the Brazilian crop would be one of those
20 factors that is heavily weighed.

21 COMMISSIONER PEARSON: I am sorry.

22 MR. CARTER: The Brazilian crop is one of
23 those factors that would be heavily weighed in the
24 perception of the market.

25 COMMISSIONER PEARSON: Okay. In your

1 experience, is the change in the size of the Brazilian
2 crop likely to affect the market even if -- would that
3 affect the U. S. market price more than an entry into
4 the United States of an imported product?

5 MR. CARTER: It has been nine years since I
6 have been an economist, so that --

7 COMMISSIONER PEARSON: It's 25 for me.

8 MR. BRINNER: This is Roger Brinner. I
9 would just suggest that if you look at Dr. Carter's
10 model as analysis, it shows a vast preponderance of
11 the price behavior explained by the factors that he
12 has identified.

13 If you have a string of unexplained
14 instances of work, you might want to check those
15 against something that is happening elsewhere. But
16 the success of the model suggests that the factors
17 such as crop sizes really are not large relative to
18 the factors that have already been identified.

19 COMMISSIONER PEARSON: Okay, thank you.

20 Mr. Chairman, my time has expired.

21 CHAIRMAN KOPLAN: Thank you.

22 Commissioner Aranoff?

23 COMMISSIONER ARANOFF: Thank you very much.
24 I want to thank the parties for your perseverance and
25 you will have to persevere a bit more because it

1 doesn't look like we are wrapping up soon.

2 Let me start by asking: Mr. Dunn, in your
3 brief, you make an argument that blending Brazilian
4 juice is necessary to meet country-of-origin labelling
5 requirements for domestic processors. I didn't really
6 understand that argument in your brief. Is there one
7 of your witnesses who could guide me through that?

8 MR. DUNN: Yes, Commissioner Aranoff, Mr.
9 Freeman here is an expert on that issue. He can
10 discuss it.

11 MR. FREEMAN: When Chris calls me an expert,
12 you really have to take the word apart. An expert is
13 a has-been and a spurt is a drip under pressure.

14 The country-of-origin labeling laws on juice
15 were foisted on the industry a number of years ago.
16 Essentially it says that at retail, you have to have
17 the country of origin on the label, or the country of
18 origin that represents 75 percent of your foreign
19 component.

20 So, if you have nothing on the label, the
21 only thing you can have is domestic juice. If you
22 have Brazil on the label, you can have domestic juice
23 at one percent or 99 percent, or anywhere in between.

24 And the origins, now you can have 25 percent
25 non-declared origins in your blend. So one of the

1 funny dynamics is when there is a lot of cheap product
2 from Mexico around, or a lot of cheap product from
3 Costa Rica and Belize, that is on nobody's label
4 really because almost all of the labels say nothing
5 but Port of Brazil. You get a big demand for
6 Brazilian to blend in the cheap Mexican or Costa Rican
7 because you can have 25 percent of your imported
8 component not be on your country-of-origin labeling.
9 But you have to label it if it is foreign and you have
10 to have it in if it's foreign, but you only have to
11 label for the country of origin that represents 75
12 percent of the imported component.

13 COMMISSIONER ARANOFF: I think I follow what
14 you're saying, but, I guess, why don't we see 100-
15 percent Brazilian juice sold at retail in the U.S.?
16 That would be easy to label.

17 MR. FREEMAN: Because in the main, it's too
18 high a quality, and it is used to absorb the low-color
19 Hamlin juice that Florida makes. There's been a whole
20 lot of assertions around without quantification about
21 blending and whatnot that go on here. Yes, you can
22 use 100-percent Florida juice to make the viscosity
23 for a food service business. You've got to make it
24 90-percent Valencia. You can't do it with Hamlins
25 because Hamlins have a viscosity that won't flow.

1 The reason there isn't 100-percent Brazilian
2 juice on the market is because it costs too much.

3 COMMISSIONER ARANOFF: I went to Europe and
4 bought one of those shelf-stable boxes of juice, which
5 is how they sell it there, that would be 100-percent
6 Brazilian.

7 MR. FREEMAN: Probably. There would be a
8 high probability it would be.

9 COMMISSIONER ARANOFF: They just pay enough
10 to make that worthwhile.

11 MR. FREEMAN: No, no. When you start making
12 orange juice, the worst way to drink it is the old
13 way, in a tin can, shelf stable. When I grew up in
14 Rupert, Idaho, that's all you had for a while.

15 Now, when you go forward from there, the
16 next best stage is frozen concentrate and recon. The
17 next best stage is fresh juice, just squeezed. What
18 the Europeans do to make it shelf stable and last is
19 heat treat it, and if you heat treat it that bad, it
20 tastes terrible. It's not a question of cost then.

21 MR. LECOMPTE: Excuse me. Commissioner
22 Aranoff?

23 COMMISSIONER ARANOFF: Sure. Could you give
24 your name?

25 MR. LECOMPTE: This is Peter LeCompte from

1 General Mills.

2 COMMISSIONER ARANOFF: Thanks.

3 MR. LECOMPTE: I would add that, just by way
4 of your comment, the Cascadian Farm organic juice is
5 labeled as a product of Brazil. It's entirely a
6 product of Brazil.

7 COMMISSIONER ARANOFF: That's sold in the
8 freezer case. Right?

9 MR. LECOMPTE: Correct.

10 COMMISSIONER ARANOFF: Okay. I appreciate
11 that.

12 I think, Mr. Freeman, you were sort of
13 leading right into my next question. I listened to
14 the Petitioners this morning, and they told me, well,
15 yeah, people sometimes blend juice, but they don't
16 have to do that, or they don't have to blend domestic
17 and Brazilian. They just do depending on what they
18 have got lying around at the time, and you're telling
19 me a different version of the story.

20 But what I don't think we have on the
21 record, and I don't know whether you're in a position
22 to supply -- either side, in fact, if you can supply
23 it in your post-hearing, I really would like to see
24 some quantification amongst the juice that's sold,
25 either wholesale or retail, how much of it is blended

1 domestic and Brazilian approximately, what percentages
2 or range of percentages of blends are out there in the
3 market just to get a sense of really how widespread
4 this practice is and give us a better grip on why it
5 happens the way it happens. Petitioners would tell us
6 it's sort of serendipitous, and you're telling us it's
7 for a very specific purpose, and you both have honest-
8 looking faces.

9 MR. FRIELICH: Commissioner Aranoff, I could
10 comment on that, and I might be able to shed some
11 light on the subject.

12 COMMISSIONER ARANOFF: Okay. I appreciate
13 that, and can you give your name for the record?

14 MR. FRIELICH: Yes. My name is Sean
15 Frielich. There is more to it than just blending of
16 Brazilian juice and U.S. juice. It's specific quality
17 attributes that make up that juice, so there is some
18 very poor juice that's manufactured in the U.S. very
19 early in the season, and that juice, if you tasted it,
20 would not be very drinkable. As the season progresses
21 and that fruit matures, it develops quality attributes
22 that are considered favorable.

23 Now, the varieties that are grown in Brazil
24 have a tendency to have more of the favorable quality
25 attributes that one would look for in producing a

1 finished product for the marketplace.

2 I describe it as a Rubik's cube. It's just
3 not color that wins the customer. It's not just the
4 blending of early fruit and late fruit to make
5 equality because if you have poor-tasting early fruit,
6 and you blend it with poor-tasting late fruit, all of
7 the analytical factors will seem as though they make a
8 good product, but when you tasted it, you would not
9 like it.

10 The European palate -- you asked the
11 question about the Brazilian being used in Europe --
12 is very different than the domestic, the U.S., palate
13 as far as quality attributes desired in a juice. So
14 when you look at the quality attributes that are
15 desired, there is a small amount of the Florida crop
16 that is capable of filling that quality niche, and
17 there is a larger component of the Brazilian crop that
18 is satisfactory for filling that quality niche, and
19 blending is done to ensure that throughout the year
20 when you taste the product, it tastes the same as it
21 did last week, last month, last year, and that's the
22 reason that blending is done.

23 Could the U.S. product stand by itself? In
24 some limited cases, sure. The peak of maturity, with
25 processing parameters tweaked in just right, and that

1 juice will stand by itself in both retail and food
2 service applications, but there is a very limited
3 volume capable of standing by itself. You need that
4 Brazilian component because you can blend out that
5 part of the crop that will not stand by itself, and,
6 again, it's more than just color. There is color.
7 There is flavor. There's defects. There is Brix acid
8 ratio. There are a lot of attributes associated with
9 what makes juice that your customer is going to
10 purchase from you.

11 MR. FREEMAN: One other thing that's
12 important to remember in this regard.

13 COMMISSIONER ARANOFF: Sure.

14 MR. FREEMAN: Brazil creams its crop to
15 supply the U.S. market and sells all of the other
16 stuff elsewhere. So what Brazil ships here is the
17 best of the Brazilian crop.

18 What Sean is talking about is a bell curve.
19 Right at the middle of the bell curve, Florida juice
20 is absolutely perfect. Before the peak of the bell
21 curve, it's too immature. After the peak, it's
22 insipid.

23 Brazil has the same problem. It's got a
24 bigger bell curve, and we only ship the stuff that is
25 right in the middle of the bell curve to Florida to

1 blend up Florida's other two sides of it.

2 MR. DUNN: Commissioner Aranoff, just so you
3 know why it's taking so long to answer this question,
4 we've been trying for six months to find out what is
5 the quantity that is necessary to be blended, and the
6 answer is there is no set quantity. It depends on the
7 conditions. It depends on how much is coming in from
8 the U.S., what the crop is like, what the size of the
9 crop is like, what the nature of the juice is that's
10 coming in at a given time, you know, during a given
11 crop, a given part of the crop. All of our clients
12 would like to know what the amount is.

13 I don't think we know. The fact is nobody
14 knows what the amount is that has to be blended. What
15 we do know, what you know from the Commission's staff
16 report, is how much is blended. You know how much
17 Brazilian solids were actually used for blending.
18 It's in your report. Now, how much of that? I think
19 you can assume that that was in there because it had
20 to be.

21 COMMISSIONER ARANOFF: Well, maybe we could
22 assume that. We could also assume that it was there
23 because it lowered the overall cost of production,
24 which might be an alternative interpretation.

25 If there is anything you can offer in your

1 post-hearing, and I don't want to belabor it because
2 my time is up, to support the statement Mr. Freeman
3 just made that it's this highest-quality bit of
4 Brazilian juice that's coming in. I'm not sure that's
5 something I've seen on the record yet. Thank you. My
6 time is more than up.

7 CHAIRMAN KOPLAN: Thank you, and I thank the
8 panel for their testimony thus far.

9 Let me start, Mr. Kalik, if I could, with
10 you. On page 7 of your prehearing brief, you state
11 that very few orange juice processing plants produce
12 both products in reference to both NFCOJ and FCOJM.
13 To substantiate your claim, you cite to the conference
14 transcript at pages 151 and 152, but I couldn't find
15 any reference to any such information in those pages
16 of the transcript.

17 Furthermore, this appears to be contrary to
18 data that's found in Table 3-9 at page 3-13 of our
19 staff report. That table is entitled "Certain Orange
20 Juice, U.S. Producers, Other Products Produced on
21 Equipment Using the Same Production and Related
22 Workers Employed To Produce Certain Orange Juice and
23 Shares of Certain Orange Juice Production on the Same
24 Equipment and Using the Same Workers, 2004-2005."

25 The contents of that table are business

1 proprietary, so I can't get into the specifics, but
2 that's accessible to you.

3 In addition, all three of the OJ processing
4 facilities that we visited in Florida a month ago
5 appeared to produce both products, including the plant
6 owned by your client. So you've got me a little bit
7 confused, and I would like you to respond.

8 MR. KALIK: I'll respond to the general
9 question, and then I'll get back to you on the quote,
10 which I don't have the transcript in front of me,
11 unfortunately.

12 I think the point that we've been making
13 throughout the case in terms of the two-different-
14 like-product issue is that --

15 CHAIRMAN KOPLAN: I went beyond the two
16 pages. I couldn't find it anywhere.

17 MR. KALIK: Okay.

18 CHAIRMAN KOPLAN: Okay?

19 MR. KALIK: Yes.

20 CHAIRMAN KOPLAN: Go ahead.

21 MR. KALIK: I'm going to read the whole
22 transcript when I get back, right after the hearing,
23 too.

24 The critical factor that we've been focused
25 on is the ability or the additional equipment that's

1 required in order to process not-from-concentrated
2 orange juice. What we've been saying from the
3 beginning of this case is that if you are a facility
4 that is prepared or built to process frozen
5 concentrated orange juice, you do not have the
6 equipment or capability to process not-from-
7 concentrated orange juice. You don't have the
8 pasteurization equipment. You don't have the storage
9 facilities, et cetera. You certainly have the
10 extractors. You certainly have the fruit, of course.

11 The point we were trying to make in the
12 brief was it's one thing to set out to produce frozen
13 concentrated orange juice, but there is a fundamental
14 additional investment in producing NFC, which
15 Commissioner Lane and Chairman Koplan saw in our own
16 facility where we had built a separate plant for that
17 purpose. There is no question that the major NFC
18 producers who have testified here today produce both
19 products, and they have indicated that, and we would
20 not dispute that. In terms of a volumetric basis,
21 that's probably an overwhelming majority of the
22 production, but there are processing plants, including
23 Mr. Freeman's, if I'm not incorrect, that only
24 purchase FCOJ, do not produce NFC.

25 CHAIRMAN KOPLAN: I hear what you're saying.

1 I would like you to take a look at the table I
2 referred to because although I can't get into
3 identifying the companies or the numbers, et cetera,
4 but that information wasn't made up by us; it was
5 compiled from data submitted in response to our
6 questionnaires. So if you would look at that and
7 respond further for me in the post-hearing, I would
8 appreciate it.

9 MR. KALIK: I would be happy to do that.

10 CHAIRMAN KOPLAN: Thanks.

11 Mr. Clark and Mr. Casper, I notice that
12 you're requesting today in the prehearing brief that
13 the Commission find one like product in this
14 investigation coextensive with the scope. That's on
15 page 2 of the brief.

16 This is in direct opposition to other
17 Respondents on your panel, in particular, Citrosuco.
18 How do you respond to Mr. Kalik's arguments on like
19 product, especially the different production steps and
20 storage costs for NFCOJ and FCOJM after extraction, as
21 well as the significant price premium and rising
22 demand for NFCOJ in the domestic market? I don't
23 think you get into this aspect of it in your brief,
24 Mr. Clark.

25 MR. CLARK: Mr. Casper will elaborate

1 because he is the expert for the record. Matt Clark
2 of Arent, Fox.

3 CHAIRMAN KOPLAN: Okay. Mr. Casper?

4 MR. CLARK: Well, I will offer a few
5 comments, and then Mr. Casper will elaborate.

6 You heard in Mr. Casper's testimony with
7 respect to the assertion that there is a price
8 premium. He made the comment that if you are in the
9 processing season, and when we talk about in the
10 processing season, we're talking about the period,
11 November through June, at that point in time, the
12 difference, if any, the alleged premium between NFC
13 and FCOJ, is perhaps a few pennies.

14 The point in the year when you begin to see
15 a spread in that price is in the off season, that is,
16 the point in time where you do not have harvesting
17 activities and where NFC is going into production
18 coming out of inventory, not out of extraction. At
19 that point in the season, because of storage costs,
20 you will see an increase in the price of the NFC
21 product going into processors.

22 The second point: The proposition -- we've
23 heard it several times already -- that there are
24 significantly different machinery and equipment
25 requirements for NFC product; we don't view that is

1 being accurate. It is a bit overstated, in our view.
2 If we are again talking about in season, any plant can
3 process oranges into NFC and go straight into
4 packaging. In fact, that's our understanding
5 typically of what happens in season. Out of season,
6 when you need to store product, you do need aseptic
7 storage or, as you heard earlier today, a small volume
8 of storage in the form of frozen drums or frozen
9 blocks.

10 But if we think about the production process
11 as a continuous one without storage, going from fruit
12 straight to the package, straight through the
13 production line, we understand that any plant can do
14 that. The distinction comes when you have the
15 necessity as part of your longer production to store
16 aseptically. Aseptic storage would be a different
17 inventory component than you would have for FCOJ. I
18 think Mr. Casper can probably elaborate on that.

19 CHAIRMAN KOPLAN: Mr. Casper?

20 MR. CASPER: I think you've done an
21 excellent job of explaining what I was stumbling
22 around with earlier. The true cost premium for NFC is
23 all around the storage aspect of it. You're storing
24 seven times the volume, and you're moving seven times
25 the volume, and it must be handled in an aseptic

1 environment. That's the cost difference.

2 CHAIRMAN KOPLAN: What I'm trying to
3 understand is if the consumers perceive two products
4 to be the same, they are not going to pay a higher
5 price for one over the other even if one of the two
6 products costs more to purchase. The data in our
7 prehearing staff report -- I'm looking at Table 1-4,
8 which happens to be business proprietary, but the
9 header on it is "Certain Orange Juice," and it shows
10 average unit values by type and source, crop years
11 2001-2 to 2004-5, and that shows a significant price
12 premium for NFCOJ over FCOJ then.

13 So I'm trying to understand what accounts
14 for the willingness of consumers to pay significantly
15 more for NFCOJ.

16 MR. CASPER: Well, I think the answer to
17 that, as Dr. Behr alluded to this morning, I think our
18 friends at Tropicana have done an excellent job of
19 marketing a different form of orange juice, and that's
20 allowed them to charge a higher price, but it also has
21 a higher cost structure that leads into that product.

22 CHAIRMAN KOPLAN: So you're in accord with
23 what he said this morning.

24 MR. CASPER: In regards that it's marketing
25 driven, yes.

1 CHAIRMAN KOPLAN: Thank you.

2 MR. CLARK: Can I elaborate on one other
3 element of this, something you also saw in our
4 prehearing brief? You have to look very carefully at
5 the impact of not just branding but also the range of
6 products. We made the observation in the prehearing
7 brief, and we have evidence to this effect, that if
8 you look at the national brands, and you look at our
9 Minute Maid product, and you look at Tropicana, and
10 you had testimony to that effect this morning, at
11 retail there is no price difference, and you will find
12 the Minute Maid Pure Premium, which is the
13 reconstituted product, selling for a significant
14 premium above other national brands such as Florida's
15 Natural, which is an NFC product.

16 So I think it would be fair to say that if
17 you look at retail consumer, what the retail consumer
18 pays, they pay a lot for the brand that they know, and
19 that's called "brand loyalty," not a difference in
20 like product.

21 CHAIRMAN KOPLAN: Thank you. I appreciate
22 both of your responses to my question. I see my red
23 light is about to come on. I'll turn to Vice Chairman
24 Okun.

25 VICE CHAIRMAN OKUN: Thank you, Mr.

1 Chairman, and let me join my colleagues in welcoming
2 this panel here this afternoon, and, in particular,
3 Mr. Freeman, I guess it's a hometown welcome. I grew
4 up in Paul, Idaho, which, as you know, is downwind
5 from the sugar beet factory, from Rupert, Idaho, which
6 you mentioned is your hometown, so small world,
7 especially for Idaho.

8 Maybe I could start with a broader question,
9 and, Mr. Dunn, I'm going to put it to you and probably
10 Dr. Brinner or Dr. Carter may want to comment on it as
11 well, and that is when we were talking to the panel
12 this morning about the issue of how the domestic
13 industry is structured where you have a high degree of
14 ownership, producers who are Brazilian interests, who
15 are part of the domestic industry, and then you have
16 growers, we talked about what the interest was of the
17 Brazilians.

18 Why would they want to lower prices in the
19 market if they are maximizing their own profits? The
20 response by one of the witnesses was that the rational
21 response for them is a global profit maker, and,
22 therefore, they are not really concerned with what the
23 grower is going to make, and, in fact, it's good for
24 them to have low prices from the growers.

25 I wanted you to comment on that and, if you

1 can, talk about the position of the growers vis-a-vis
2 the processors with regard to this particular market.

3 MR. DUNN: Are you asking whether we think
4 the growers should be in or out?

5 VICE CHAIRMAN OKUN: It's a legal point.
6 I'm sure you do want to make that, and you should,
7 although I would also like, assume for the purpose of
8 this, even though this wasn't where I was in the
9 prelim., assume one like product, and the growers are
10 in. How do we evaluate this type of industry with
11 regard to impact, with regard to volume, with regard
12 to the statutory factors? I do want you separately to
13 do the grower provision, but you can do that post-
14 hearing.

15 MR. DUNN: It is very difficult because of
16 this case, at least according to Petitioners, having
17 both growers and processors in, Their interests are,
18 to some extent, divergent in the sense that the
19 growers, in the short run, benefit much more from high
20 prices for fruit than the processors do because the
21 processors can't raise their prices because they bump
22 up against alternative products when the prices of
23 domestic fruit get too high. At the same time, when
24 the crop is low, the processors don't have enough to
25 process, and, therefore, they have more difficulty

1 covering their fixed costs.

2 So a grower who has fruit in a low crop year
3 does extremely well, whereas a processor in a low crop
4 year doesn't do very well. But it's a trade-off, and
5 where that trade-off is varies from company to company
6 what their cost point is and so forth, the trade-off
7 between the price of the fruit and the volume of the
8 fruit that's coming in for the processor, and each one
9 has a different mix point.

10 In terms of the companies, and these
11 companies have, Mr. Freeman said today, millions of
12 dollars -- it is hundreds of millions of dollars --
13 invested in facilities in the United States that
14 depend on the Florida crop. Now, if that Florida crop
15 isn't enough for them to meet their demands, their
16 customer demands, and Mr. Freeman testified back in
17 January that he was short several million boxes on his
18 customer commitments, when they are short, then the
19 Brazilian stuff has to come in to make up the
20 shortfall.

21 When you have a full crop, but you're
22 processing all you can, they are not going to bring in
23 Brazilian juice to lower the price. It doesn't make
24 any sense to them. They lose money by doing that.

25 MR. BRINNER: This is Roger Brinner. I

1 think it's important to keep in mind that the
2 processor is a middle man who makes profits based on
3 the spread, not the level of prices. Let's imagine
4 that, which has been suggested implicitly, that it's
5 good for a processor to have low entry prices for
6 oranges, thinking you can buy it more cheaply. Well,
7 you're the middle man. That phenomenon would be
8 obvious to the Wal-Marts of the world or the
9 retailers. So the amount they would offer the
10 processor for the juice would be suppressed because
11 they know it's a competitive industry of processors,
12 and they can press the juice price down, the price
13 they are willing to pay, until it gets to a spread
14 relative to the orange price that's, you know,
15 sustainable.

16 So there really isn't an advantage to the
17 processor to have a low level or a high level of on-
18 tree orange prices. The processor is going to process
19 every orange that's grown in Florida -- that's the
20 volume -- and it's the spread that matters, not the
21 level of prices. Okay?

22 VICE CHAIRMAN OKUN: I think one of the
23 responses to that probably, and I think Petitioners
24 did raise this, which is the wholesale versus retail
25 spread not just in orange juice but in other commodity

1 crops, you know, it's the growers who continue to see
2 lower prices. So there is more divergence than you
3 would think could be possible in a market where there
4 is a fair amount of price discovery.

5 MR. BRINNER: The difference that you really
6 note in the orange juice market over the last decade
7 is not a changing spread for the processor except for
8 these long-term-contract issues; it's the changing
9 spread between the retailer sale to the consumer and
10 what the retailer pays to the processor. That's
11 what's widened.

12 VICE CHAIRMAN OKUN: Mr. Dunn, I just want
13 to be clear because I think this is not what you
14 argued in your brief, but at this time of the day I
15 start forgetting what the different briefs said, in
16 your view, is it outcome determinative whether we
17 include the growers or not in our analysis?

18 MR. DUNN: No, I don't believe it is. I
19 have to say, it's kind of curious. You may have
20 mentioned this, or one of the commissioners mentioned
21 this this morning, that it's kind of interesting that
22 the Petitioners want the growers to be in, and yet the
23 growers are doing better than the processors. The
24 growers are doing quite well. Their income is up.

25 It was very interesting to me today, the

1 famous Chart 14 that the Petitioners presented this
2 morning cut off the price of oranges with the '04-'05
3 crop, and they cut it off at \$4 a box. The predicted
4 price for the '05-'06 crop is \$5.04 a crop. That's
5 the highest price since 1992, and that's according to
6 the USDA. So those prices are going up.

7 VICE CHAIRMAN OKUN: I assume, in your post-
8 hearing analysis, you and other counsel will be sure
9 to make note of the pendency issue and how much weight
10 the Commission should place on the information on the
11 price increases that have occurred after the filing of
12 the petition, so I would encourage you to do that as
13 well.

14 Let me turn back, if I could, to Mr. Casper
15 and Mr. Zellner. Now I'm going to go back to the like
16 product questions a little bit. I just wanted to
17 understand, Mr. Casper, when you were talking about
18 your purchasing and how you make a purchase, one of
19 the things I heard the Petitioners' panel talk about
20 this morning for those processors was when a customer
21 calls, and they give them a particular blend or
22 principal specifications, I should say, and they are
23 producing for that, and from what you testified to,
24 when you're asking a processor for particular
25 specifications, do you ever specify the Brazilian

1 versus the U.S., or do you always know -- I guess for
2 packing you know if you have Brazilian blend in your
3 juice.

4 MR. CASPER: Yes. We will always know the
5 origin because of the country-of-origin labeling
6 requirements.

7 VICE CHAIRMAN OKUN: And will you specify,
8 though, in getting to your specs, would you specify we
9 want Brazilian oranges to get to those specs?

10 MR. CASPER: In purchasing, we will define
11 whether it can be Florida origin or Brazilian origin,
12 yes.

13 CHAIRMAN KOPLAN: Okay. Is that dependent
14 on the bell curve here that we were talking about
15 earlier?

16 MR. CASPER: Yes.

17 VICE CHAIRMAN OKUN: So your specs would be
18 different at a different time of the year.

19 MR. CASPER: The needs will be different for
20 different times of the year, depending on what the
21 Florida crops gives us in the way of ratio-flavored
22 color. You will try to purchase in solids from
23 another geographic region, whether it's Brazil or
24 Costa Rica of whatever, to fill those gaps because
25 what we're shooting for in the finished product is

1 consistency.

2 VICE CHAIRMAN OKUN: Okay. Mr. Zellner, for
3 Tropicana, my red light has come on, so if you can do
4 a brief answer, maybe I'll come back to you.

5 MR. ZELLNER: We use a very small amount of
6 Brazilian NFC, and we use it as an augmentation to the
7 Florida juice that we process. We also use it in a
8 part of the year where it's in season for Brazil,
9 which means that we don't have to have quite as much
10 storage and as much juice in storage when we close our
11 plant down in June. So we use it as a safety stock
12 item, and then in a case like this year and last year
13 with the hurricanes, we've used it to fill in a gap
14 when juice from Florida is just not available.

15 VICE CHAIRMAN OKUN: Okay. I think I'm
16 going to have some follow-up questions on that, but my
17 time has expired. Thank you, Mr. Chairman.

18 CHAIRMAN KOPLAN: Thank you.

19 Commissioner Hillman?

20 COMMISSIONER HILLMAN: Thank you. I, too,
21 would join my colleagues in welcoming you here now at
22 nearly 5 o'clock in the evening. We very much
23 appreciate your patience and all of the time and
24 attention that you have spent leading up to this.

25 I guess, if I could follow up just a little

1 bit with you as well, Mr. Zellner, on this issue of
2 the Brazilian juice. We heard testimony this morning
3 that you can make perfectly acceptable Grade A juice
4 using no Brazilian oranges, using entirely Florida
5 oranges and not even Valencias. I guess I wanted to
6 get some understanding from your perspective, as well
7 as you, Mr. Casper, on whether you think that's the
8 case. Specifically, I want to try to understand, is
9 the Brazilian juice a good substitute for Valencia
10 juice from Florida? If there were plenty of Valencia
11 juice from Florida, would there still be a need to
12 bring in Brazilian juice for blending?

13 MR. ZELLNER: If that question is to me, I
14 can answer it with respect to NFC, but FCOJ is an
15 entirely different product, and we don't --

16 COMMISSIONER HILLMAN: Just for NFC.

17 MR. ZELLNER: -- buy very much of that.

18 For NFC, we do not use Brazilian juice to
19 make color. We use it as a second source of supply.
20 It is a product that we do blend. We want to maintain
21 a relatively stable blend throughout the year with
22 respect to color and flavor and ratio, so the small
23 amount of Brazilian NFC that we bring in during the
24 fall is blended with Florida juice with that goal in
25 mind.

1 We have an objective of never being below a
2 minimum percentage Florida Valencia in our blend.
3 It's a quality objective, and it's one that we've been
4 able to succeed with for the last five or six years
5 since we built additional storage capacity. So in
6 order to do that, we've found that by bringing in some
7 Brazilian juice, which is a Valencia-type juice, that
8 we can achieve that more easily.

9 COMMISSIONER HILLMAN: Okay. All right.
10 But theoretically, if you had year-round supply of
11 Florida Valencia, you would not necessarily need
12 Brazilian, or it still adds something different.
13 That's what I'm trying to understand. Does the
14 Brazilian still add something different than the
15 Florida Valencia, or is it purely a second source of
16 supply, a seasonal-timing issue?

17 MR. ZELLNER: For NFC, for us, it's a
18 seasonal-timing issue. It doesn't add anything
19 different. It's not to say that it's identical to
20 Florida Valencia. It's similar, but typically it will
21 not have quite as high a Brix acid ratio, although our
22 specifications are such that our suppliers do center
23 cut their crop to try to give us a high ratio relative
24 to what's generally available in Brazil.

25 COMMISSIONER HILLMAN: All right. I

1 appreciate that answer.

2 Mr. Casper, on the FCOJ side?

3 MR. CASPER: I think you had a two-part
4 question there. The first was whether we could make
5 our product solely based on Florida solids on a
6 continuous basis, and I think there are points in time
7 where we certainly can. There are seasons that we
8 could do that, but there are many instances when we
9 can't because of the attributes of the Florida crop
10 and also the volumes of the Florida crop that are
11 available to us.

12 Since our primary goal or objective of the
13 procurement group is continuity of supply, we can't
14 take the risk of not having solids available. So we
15 build our product around Florida as well as Brazilian
16 so that we know that if the need arises, we can step
17 from one geographic region to the other and still hit
18 a consistent profile on our product.

19 COMMISSIONER HILLMAN: Okay.

20 MR. FRIELICH: Commissioner Hillman, I just
21 want to add one comment. I want the Commission to
22 understand that the requirements for USDA Grade A are
23 different for reconstituted or not-from-concentrate
24 juice as they are for frozen concentrate. Frozen
25 concentrated juice, based on USDA scoring, requires

1 more Valencia, more brighter-color juice, to make a
2 Grade A than NFC or reconstituted juice. That's
3 important.

4 COMMISSIONER HILLMAN: I appreciate that,
5 and we have the various standards in our staff report.
6 As somebody that's not in this business, it's a little
7 hard for me to understand how much more Valencia it
8 requires. I can read the standards. It's not
9 entirely clear to me what would be your sense, as a
10 percentage, how much more Valencia do you need in FCOJ
11 to achieve that same standard.

12 MR. FRIELICH: I wish it was a black-and-
13 white number. That would be like asking a wine
14 connoisseur how much of a particular variety do you
15 need to make a flavor, and the reason why is because
16 the color of the Valencias, both grown in Brazil and
17 in Florida, will vary season to season.

18 So let's assume everything is averaged.
19 It's between 10 and 15 percent more needed for
20 concentrate than it is for the single strain.

21 COMMISSIONER HILLMAN: Okay. That's
22 extremely helpful. Thank you. I'm reading the
23 standard numbers, but they weren't translating for me,
24 and I appreciate that.

25 Mr. Burkhardt, if I can come back to the

1 issue on the futures and/or perhaps -- I'm not sure
2 whether you, Mr. Freeman, were also commenting on this
3 or Mr. Carter -- I was trying to understand this issue
4 of whether something, in fact, unusual happened in
5 terms of the amount of juice that was required to be
6 specifically performed, actually delivered and sold
7 recently because I had thought. And I thought I heard
8 in this morning's testimony, that at some point
9 recently it was more on the order of 50 to 20 percent,
10 not the 2.5 percent number that you all were throwing
11 out here this afternoon, but that at some point 30 to
12 40 million pounds, 15 to 20 percent of the market,
13 was, in fact, delivered specific performance and that
14 that really was unusual.

15 Partly, I would like comments on if, in
16 fact, it was 15 to 20 percent, is that a high
17 percentage for this futures market? And then,
18 secondly, do you have a sense of whether that, in
19 fact, happened? Did we hit a 15 to 20 percent of the
20 contracts being specifically performed in recent time?

21 MR. FREEMAN: We never got anywhere near 15
22 to 20 percent of the contracts. Well, it's a question
23 of where you measure it. We had 100 percent of the
24 remaining open interests delivered after the last
25 trading day. By definition, it has to be.

1 January went off the board today at noon.
2 There are 500 contracts left. A week ago, there were
3 3,000 contracts left. There will be 500 deliveries
4 out of January today. As a percentage of the people
5 of open interests come, Dr. Carter's numbers are
6 absolutely right, and I think it's probably best that
7 we document some of this in post-hearing --

8 COMMISSIONER HILLMAN: Because certainly
9 what I heard this morning, and this is what I'm
10 wanting to make sure I understand, is that something
11 different happened in this last year, year and a half,
12 and what was different was that there was this
13 significant increase in the percentage or the volume,
14 however, you want to measure it, of contracts that
15 were specifically performed, delivered product and
16 that that had a different effect in terms of, if you
17 will, exacerbating the effect of the Brazilian product
18 on the futures prices. That was sort of what I heard
19 this morning.

20 Part of this is a factual question, to me,
21 of whether we can put some data on the record that
22 would help us understand whether there has been a
23 significant change in how the futures market has
24 performed in terms of the number of contracts that are
25 paid in money as opposed to how many of them are put

1 down for delivery.

2 MR. FREEMAN: In factual events, there have
3 been two deliveries in the past 12 or 13 years that
4 have been significant in terms of wow. One of them
5 was January 1993, which was the first one that I ever
6 stocked in a big way, and I will never forget. It's a
7 long story, and I won't bore you with the details, but
8 we'll put it in the post-hearing brief.

9 The second was November of 2003 when Peace
10 River Citrus Products, which was originally a
11 petitioner in this case, dropped 1,731 contracts on
12 the November expiring contract just before the season.

13 Those are the two big deliveries that were
14 made. The other big event in the market for the last
15 five years was November '96 when a big player tried to
16 squeeze the November contract and took a big premium.

17 But what Cutrale did in that period was
18 absolutely out of the ordinary and smaller than what
19 the Floridians had been doing for years.

20 COMMISSIONER HILLMAN: Mr. Burkhardt, since
21 you are the one where this all started, I wanted to at
22 least let you get a word in edgewise here. How would
23 you describe this?

24 MR. BURKHARDT: I don't think it was
25 anything significant other than the fact of what

1 company made the delivery.

2 I mentioned before about the -- Cutrale has
3 been bringing frozen-concentrated orange juice there
4 for 20 years, and this was probably the first time in
5 that 20-year period that Cutrale made a delivery to
6 the futures market. It was 645 contracts out of
7 probably a peak open interest in that month in excess
8 of 20,000.

9 COMMISSIONER HILLMAN: So it was unusual in
10 the sense that you actually did it.

11 MR. BURKHARDT: Exactly.

12 COMMISSIONER HILLMAN: But it wasn't the
13 volume. That's what I'm trying to understand, is
14 whether something has changed in terms of the volume,
15 and I'm hearing you all tell me that that's not really
16 what's happened.

17 MR. DUNN: We will put specifics in the
18 post-hearing submission to put that in context. I
19 feel quite comfortable that this is a strawman that
20 Petitioners have created. There is nothing unusual
21 about this particular delivery.

22 I just want to correct for the record in
23 case Mr. Freeman is quoted out of context by
24 Petitioners, he meant to say there was nothing out of
25 the ordinary in that.

1 COMMISSIONER HILLMAN: Okay. I appreciate
2 those responses. Thank you.

3 CHAIRMAN KOPLAN: Commissioner Lane?

4 COMMISSIONER LANE: I was listening to that
5 remark, and I thought maybe I heard it wrong. Thank
6 you for correcting it, Mr. Dunn.

7 Mr. Freeman, in responding to Commissioner
8 Aranoff, you indicated that the cream of the crop from
9 Brazil is used for shipping to the U.S. market. If
10 the Brazilian juice is the cream of the crop and is a
11 necessary additive for the poor, early or late Florida
12 crop, what explains the consistent lower price of the
13 Brazilian imports? As a premium and necessary
14 product, shouldn't we expect to see a higher-priced
15 product?

16 MR. FREEMAN: I question the numbers. If
17 you're looking at the numbers that were presented by
18 the economist for the Petitioners earlier today where
19 she made great note of how prices that were low,
20 according to Customs data, of Brazilian juice were
21 going down, might I remind you that all of the juice,
22 substantially all of the juice, that moves from Brazil
23 to the United States moves from one related company to
24 another related company, so you have a transfer price
25 issue.

1 One of the things that my lawyers and my
2 accountants and my auditors tell me is that I have to
3 be very, very careful about some section of the IRS
4 code that says, "Thou shalt not send profits outside
5 of the United States; thou shalt bring profits into
6 the United States." So the incentive to comply with
7 those laws is to buy the product into the United
8 States for as cheap a price as anything.

9 What's important is not the price at which
10 my related company in Brazil sells it to me. What's
11 important is the price that I sell it to the first
12 unrelated customer.

13 Now, in my case, I didn't sell any Brazilian
14 to an unrelated customer in bulk, wholesale form
15 during the period. I put it in a retail package the
16 old-fashioned way and sold it retail because I made a
17 lot more money doing that. The point about packaging
18 is one that I'm livid about.

19 As to the alleged underselling, I question
20 the data. I suspect that you might have invoice
21 periods mixed up with sale periods just because you
22 sell something at one point and then deliver it at a
23 later point, you invoice it at the later date. What's
24 important is what is the price on any given day for
25 any given quality, and on any given day if you canvass

1 the market, you will find that the highest price is
2 commanded by 15-to-17 ratio Florida Valencia.

3 The next highest price is commanded by 14-
4 to-18 Brazilian, and the next highest price is a blend
5 of the two that makes a 94 score, and then way down
6 from that is Hamlin juice, which is a 92 to 93 score.
7 The Hamlin juice that's 92 to 93 score is 60 percent
8 of the Florida crop.

9 To answer your question, I question the
10 validity of the numbers.

11 COMMISSIONER LANE: And so are you going to
12 offer in post-hearing what you think the number should
13 be.

14 MR. DUNN: We'll give it a shot.

15 COMMISSIONER LANE: Okay, thank you.

16 Mr. Frielich, in your testimony you were
17 talking about juice from dispensers and I just want to
18 make sure that I understand the product.

19 Are we still talking about orange juice or
20 are we talking about a fruit drink that's not all pure
21 orange juice?

22 MR. FRIELICH: We're talking about 100
23 percent pure orange juice that is dispensed from a
24 dispenser for food service applications.

25 COMMISSIONER LANE: Okay, I just wanted to

1 make sure.

2 Mr. Zellner, and anybody else that wants to
3 answer this. Do you all, when you make your product
4 or do your processing and get your product ready for
5 your customers, do you have a formula that always
6 requires Brazilian orange juice?

7 MR. ZELLNER: No.

8 COMMISSIONER LANE: I'm sorry. Who was
9 that?

10 MR. ZELLNER: Jim Zellner.

11 COMMISSIONER LANE: So you do not have a
12 formula that requires Brazilian orange juice?

13 MR. ZELLNER: Let me clarify that. We do
14 have one package that has the word Brazil on it, and
15 as such since we use Brazilian in that product which
16 is our calcium added product, we do retain some
17 Brazilian to use in that product year round. So I
18 misspoke the first time. We have one product that
19 requires it because we have it on the label.

20 COMMISSIONER LANE: Okay. Mr. Freeman?

21 MR. FREEMAN: I don't make NFC, and we only
22 use concentrate. I have a couple of bulk customers, a
23 couple of wholesale bulk customers who buy all Florida
24 from me. I will occasionally sell all Florida
25 varietal, early mid, but that's usually discounted.

1 But in the main all of my customer base, 80 percent of
2 what we ship, 90 percent of what we ship, has Brazil
3 on the label.

4 COMMISSIONER LANE: But that might not be
5 the question that I asked.

6 Do you have a formula that requires you to
7 put Brazilian juice in that product, or based upon
8 circumstances because of what you have, do you then
9 add Brazilian product?

10 MR. FREEMAN: We have a formula, if it's got
11 Brazil on the label it's a product that has a formula
12 that requires Brazil to go into it.

13 COMMISSIONER LANE: Okay.

14 MR. CASPER: Commissioner Lane?

15 COMMISSIONER LANE: Yes.

16 MR. CASPER: This is Dan Casper.

17 We have the same situation. Our
18 reconstituted product, I believe all of our packages
19 have product of USA and Brazil on them, therefore they
20 all must contain at least some portion of product from
21 Brazil.

22 MR. FRIELICH: Ms. Lane, I actually have
23 products that are manufactured, formulated, and must
24 have a specific quantity of Brazilian concentrate to
25 meet my quality specification. Not because I have

1 Brazil on the label, but because that type of
2 concentrate allows me to produce a higher quality
3 product.

4 COMMISSIONER LANE: Do you want to identify
5 yourself to the court reporter?

6 MR. FRIELICH: Sean Frielich.

7 COMMISSIONER LANE: Thank you.

8 Mr. Dunn and Mr. Kalik. What factors and
9 specific evidence in the record before us should the
10 Commission use to determine that the domestic industry
11 is not currently suffering material injury? Or if they
12 are currently suffering injury that such injury cannot
13 be attributed to subject imports?

14 MR. DUNN: Mr. Kalik will put that in the
15 most graphic form possible in his closing statement,
16 Commissioner Lane. But basically in a nutshell it is
17 prices are up and the crops size in the U.S. is down.
18 Income to the growers is up. At the same time imports
19 are up. Whatever the condition of the domestic
20 industry is or is not, imports didn't have anything to
21 do with it.

22 COMMISSIONER LANE: I noticed you were
23 talking about the growers, that their income was up.
24 Are you also including the processors?

25 MR. DUNN: The processors of FCOJ your data

1 show that their income is not up. They don't have as
2 much through-put. A Florida processor, including all
3 of our three companies, can only process Florida
4 oranges. There are no imported oranges. So they can
5 only process Florida oranges. When they're not the
6 Florida oranges, they can't process enough to capture
7 a lot of their fixed costs. That's a problem.

8 But that has nothing to do with the amount
9 of imports. That has to do with how much Florida crop
10 there is. And there is also this issue that Mr.
11 Freeman alluded to before which is that's FCOJM, not
12 sold in retail packages, sold in bulk. There's a very
13 different, if you had the data which you
14 understandably I think haven't asked for, on
15 profitability of the companies, you would see a very
16 different picture if you had their retail sales.

17 MR. KALIK: If I might just jump in for one
18 other point which we discussed on the plant tour as
19 well as our briefs, is energy costs. The energy cost
20 for processing which was discussed this morning as
21 well in a slightly different manner have, as we all
22 know, gone through the roof. And the profitability or
23 the challenges for a processor to have or be
24 profitable with the tremendous reduction in fruit
25 available and the energy cost is a huge challenge.

1 In the case of Citrusuco, as you saw at our
2 plant, we like to fill between early mid season and
3 Valencia with processing grapefruit, not from
4 concentrate and concentrated juice. That's a
5 critical, critical element to our own profitability at
6 the Lake Wales plant. And as has been discussed,
7 there is virtually no grapefruit for us to process
8 this year and there was virtually none last year as
9 well, which really cuts into the profitability of the
10 processing plant as well.

11 COMMISSIONER LANE: Okay, thank you.

12 Thank you, Mr. Chairman.

13 CHAIRMAN KOPLAN: Thank you.

14 Commissioner Pearson?

15 COMMISSIONER PEARSON: We've had quite a bit
16 of discussion about blending of Brazilian juice with
17 U.S. juices. What I want to understand is, if there
18 were no imports would we still have blending of one
19 grade of U.S. juice with another grade of U.S. juice
20 to meet customer specifications?

21 For instance, I have the impression that
22 these early harvest Hamlins, that the juice from those
23 isn't worth too much by itself. Is it always the
24 practice that there would be some other U.S. juice
25 blended with that?

1 MR. FREEMAN: If there were absolutely no
2 imports it would depend on how quickly and how
3 successfully the domestic citrus industry could change
4 the taste patterns of the American public as to
5 whether or not they could even sell the stuff.

6 The most extreme example is California Navel
7 which after about 72 hours via natural process becomes
8 close to undrinkable, that you can blend in at eight
9 to ten percent. It has to do with the variety of the
10 orange.

11 The answer is, in my opinion, that a portion
12 of the crop would become unsellable and it would just
13 sit in storage until people got tired of storing it
14 and it went away.

15 COMMISSIONER PEARSON: So are there some
16 U.S. producers that manufacture orange juice only from
17 U.S. oranges and don't touch the imported product at
18 all?

19 MR. FREEMAN: Sunkist in California does
20 very little of it. There are a couple of tiny
21 specialty niche processors who I don't think fell
22 under the purview, I'm not sure if they fell under the
23 purview, who are doing unpasteurized juice sort of
24 stuff, but I don't believe any of the major extractor
25 processors in the business try to run a business

1 without using Brazilian juice.

2 COMMISSIONER PEARSON: Okay. Oh, Dr.
3 Brenner, did you have something to add?

4 MR. BRENNER: I'm sorry. A
5 conceptualization that might be useful is that there
6 still would be a demand curve for juice in the United
7 States. That demand curve would just be shifted to
8 the left, meaning that at any given quantity you'd
9 have to charge a lower price to make it acceptable for
10 a different taste. So that's just a way of describing
11 that the price for American juice would be lower if it
12 couldn't be blended to achieve the taste and quality
13 standards that Mr. Freeman was talking about.

14 COMMISSIONER PEARSON: Mr. Freeman, you
15 earlier spoke about a bell curve that would reflect
16 characteristics of the juice and indicated that from
17 the middle of the bell curve you have quite good
18 quality stuff.

19 In that context, is there some U.S. juice
20 that is produced where the loads are coming in from
21 orchards, they get squeezed, they get pasteurized, and
22 go right out as not from concentrate without blending
23 with any other type of juice?

24 MR. FREEMAN: I can't speak as to not from
25 concentrate, but I can confirm that --

1 Tristan Chapman this morning from Southern
2 Gardens made the point that there is a peak ideal
3 maturity point for each orange. If you pick it during
4 that period, it's at its best. If you pick it early
5 it's raw; if you pick it late it's insipid. You have
6 to pick some early and pick some late because you
7 don't build a church to handle the Easter crowd.
8 There's not enough capacity to run the crop in two
9 weeks. It takes six months.

10 So you've got all this juice that you picked
11 too early and all this juice that you picked too late
12 domestically. Then it's a question of what do you do
13 with it.

14 The answer is you blend it off with that
15 which is in the middle which is good; and that which
16 is excess you hunt for some place that you can pick
17 the cream of the crop to bring here to blend it off.
18 The places are that you can do it, Brazil, Brazil and
19 Brazil.

20 COMMISSIONER PEARSON: So I would be correct
21 to understand this industry is one that just plain
22 requires blending in order to meet uniformity that a
23 consumer would desire. Is that a correct assumption?

24 MR. FRIELICH: That is a fair statement.

25 COMMISSIONER PEARSON: Switching gears, the

1 Petitioners had a Chart 14 that I spoke about. It
2 showed a price decline that had begun in the late '80s
3 and continuing into the period of investigation.

4 What do you see as the reasons for that long
5 term price decline?

6 MR. BRENNER: Roger Brenner.

7 I think that in my testimony I showed that
8 the most fundamental causes for the decline were the
9 demand side, you had the Atkins craze and the trend-
10 like decline, the substitution away from orange juice
11 that the Petitioner also mentioned.

12 So you not only have a long term decay
13 problem, but you have an episode of the '90s that
14 really was very disruptive. So that's demand, and if
15 you looked at the slides that Mr. Carter provided you
16 saw that light blue bar that kept getting bigger and
17 bigger. That was the demand side problem for the
18 price of orange juice.

19 Then if you compound it with crop surprises
20 on the positive side, that exacerbated it. So it was
21 the interaction of those two that created the weakest
22 market conditions. That exhibit of Professor Carter's
23 really does show you in a month by month what were the
24 contributing factors to that decline.

25 In addition you may have noted there was

1 another factor that was called prior month price, or
2 month lag price.

3 COMMISSIONER PEARSON: Actually I missed
4 that nuance, but go on.

5 MR. BRENNER: Well, the way to interpret
6 that is for example if you saw the blue bar in prior
7 months being a big important factor, that established
8 the prior month which then fed over into later months.

9 So any factor that you saw identified
10 specifically, it then carries forward the weight
11 that's just shown by that prior month lag price
12 effect.

13 COMMISSIONER PEARSON: Mr. Kalik?

14 MR. KALIK: Commissioner Pearson, if I may.
15 Just to bring a little historical background to this,
16 unfortunately for me and Mr. McGrath we've been doing
17 this before this Commission since 1982 so we can bring
18 a little bit of historical background to this.

19 The early '80s, mid '80s and then late '80s
20 had a series of devastating freezes, '83-'85 which
21 eliminated 50 percent of the trees in Florida, and
22 then another freeze in 1989. So what you're starting
23 with is a very very high number that you're seeing
24 slowly come down as trees are replanted in Florida.
25 They take five years, six years to start to produce

1 fruit, maturity a little bit later than that. And
2 what you would see is the price coming down. I think
3 you would see a full relationship with the number of
4 trees that are planted and bearing fruit during that
5 period in the early '90s and beyond.

6 MR. DUNN: There's one other point about
7 that chart. That chart shows prices, it doesn't show
8 imports. As Dr. Brenner showed in his chart, imports
9 during the period of investigation are lower than they
10 were previously, before the period of investigation.

11 So again, we see a situation where prices
12 drop, imports drop. Prices go up, imports go up.

13 So to say well, these prices are due to
14 imports strikes me as pretty far-fetched.

15 COMMISSIONER PEARSON: There's been
16 testimony from this panel that the price expectations
17 looking forward are different than what we've seen
18 looking back.

19 For purposes of our analysis looking at the
20 period of investigation, would we do well to ignore
21 the previous price declines?

22 Or if we can call it a long term price
23 decline, has it now reversed such that we would expect
24 something different in the future?

25 MR. BRENNER: I have no evidence that two

1 percent substitution away to other soft drinks and so
2 forth or bottled water has abated. There's very
3 strong evidence that I showed you that the reversal of
4 the Atkins craze caused orange juice demand on a, I
5 think it was July to June basis, to be nine percent
6 higher. Atkins was so powerful that just that
7 reversal overwhelmed the other negative factors in
8 that 12 month period.

9 So that's establishing a new higher level
10 from which the market supply and demand will operate
11 because you don't have this temporary aberration in
12 the market that hurt the market so badly.

13 MR. DUNN: Again, Commissioner Pearson, to
14 return to a point I made earlier about Chart 14. They
15 cut it off with the '04-'05 crop with prices at \$4 a
16 box. Current prediction for the '05-'06 crop is \$5.04
17 a box which would be higher than many many years, as I
18 said, since '92.

19 COMMISSIONER PEARSON: Dr. Carter, did you
20 have anything to add to this discussion, or are you
21 willing to let it rest?

22 MR. CARTER: I might just add one point.

23 If you look at the futures price, the last
24 graph I had up, that price as well is at a level that
25 we haven't seen for a number of years, probably ten

1 years ago.

2 COMMISSIONER PEARSON: Mr. Freeman, before
3 my time expires?

4 MR. FREEMAN: I was going to agree with Dr.
5 Carter. the futures prices are higher than they've
6 been since 1996, and for the first time since 1996 we
7 actually saw an inverted market in the Jan-March
8 spread that Dr. Carter referred to which is saying
9 bring it to me, I need it, I'm hunting for it. And
10 the market's legitimately tight.

11 There's a demand to replenish inventories
12 because we don't want to have what happened to
13 grapefruit juice happen to orange juice. The most
14 valuable asset that this industry has is shelf space
15 and distribution to the grocery stores, and if you
16 lose it you don't get it back. I know that.

17 We used to have the number one brand in the
18 entire Pacific Northwest, I grew up drinking it, it
19 was called Whole Sun. We lost the distribution. We
20 will never, ever get it back. That's the challenge
21 that this industry has.

22 COMMISSIONER PEARSON: Thank you.

23 Mr. Chairman, once again my time has
24 expired.

25 CHAIRMAN KOPLAN: Commissioner Aranoff?

1 COMMISSIONER ARANOFF: Thank you, Mr.
2 Chairman.

3 We've gone sort of every which way around
4 the blending question. It occurs to me that I have
5 one more question. I don't know if it's really a
6 blending question, but I want to throw out and
7 probably should have also thrown out to the
8 Petitioners this morning, so I invite them to add any
9 information they'd like in their post-hearing brief.

10 One of the things I'm trying to figure out
11 is at what level in the process these blending
12 operations happen. It seems it's usually at the level
13 of the extractor/processor, but some of the processors
14 this morning indicated that they sometimes provide
15 single orange types of juice to their further
16 downstream customers who mix it up themselves, so
17 maybe it's at two levels.

18 My first question is just to get a handle on
19 how much of the blending goes on at the processor
20 level and how much of it is their customers.

21 The second question, which I think is
22 related, we've talked as though there were really only
23 two things out there once you get to retail, the NFC
24 and the reconstituted. But in fact everybody's got
25 all these varieties. The low acid, the pulp, the no

1 pulp, the added vitamins.

2 At what stage in the process does that
3 happen, and how does that affect the specifications
4 for the products that are delivered?

5 MR. FREEMAN: Let me respond to the first
6 part of that first one.

7 The blending takes place, first of all it's
8 wrong to just say extractor/processors because we're
9 not extractor/processors only. We're
10 extractor/processor/packages in the most case. For
11 the majority of extractor/processor/packagers that
12 blending takes place just as you're putting it into
13 the package. Whether that package is recon or whether
14 that package is FCOJ, the old fashioned way, which is
15 the form that we also neglected because it was
16 specifically excluded from the scope.

17 So by and large it is by the packager, prior
18 to the packager where it's done.

19 The question about selling varietals, those
20 are usually sales to another packager, another
21 extractor/packager. For example, people will sell
22 product to other extractors who are net buyers of bulk
23 concentrate. There are only I think two, maybe three
24 processor/extractors in the entire state of Florida
25 who also don't package. Everybody packages. All

1 three of the Petitioners package. One of the
2 Petitioners probably has net negative sales of bulk
3 FCOJM and bulk NFC. They're net buyers of it because
4 they sell in packaged goods form more than they
5 manufacture.

6 COMMISSIONER ARANOFF: Okay, thank you for
7 those answers.

8 Commissioner Pearson was going back and
9 forth with you a while ago about, again on the issue
10 of blending and whether it was ever possible to sell a
11 product that didn't blend in Brazilian juice. I
12 thought that's exactly what Florida's Natural was
13 doing. I thought that was the whole point behind
14 their brand, that it was 100 percent Florida juice all
15 the time, sold nationally, year-round. Am I incorrect
16 in that assumption?

17 MR. FREEMAN: That is an NFC product on
18 which I can't comment.

19 I believe that Florida's Natural has a
20 number of concentrate based products, all of which
21 have Brazil and Mexico on their label.

22 COMMISSIONER ARANOFF: So the answer I was
23 hearing you give really applied to FCOJ products.
24 Okay, I appreciate that clarification.

25 Let me change the subject entirely and talk

1 about drawback.

2 I raised this question this morning with the
3 Petitioners and I think the answer I heard was we
4 don't make our decision on whether or not to export
5 based on drawback. But I know that in your brief, Mr.
6 Dunn, you do go into an extensive discussion of it.
7 Have you got a drawback expert here or somebody who's
8 exporting under the program who can explain how it
9 fits into their motivations?

10 MR. DUNN: Let me turn first to my good
11 friend Mr. Freeman, with whom you're all familiar.

12 MR. FREEMAN: The world market for orange
13 juice is one which is arguably C&F, cost and freight,
14 shipped to a country. Which means it's on the other
15 side of duty of whichever country it's going into.

16 The duty in the United States, the standard
17 duty, works out to 30 cents a pound solid. Which is
18 to say that when you look at the futures prices in New
19 York those prices reflect a duty paid price that is
20 somewhere between five and 29 cents a pound solid
21 above what it would be if there were zero duty.

22 So the world market is somewhere between,
23 realistically, 15 and 30 cents on any given day under
24 the U.S. price. That's where the world market usually
25 is in terms of cash.

1 I do not believe that any concentrate export
2 activity exists without drawback. That's one point.

3 The second point, one of the things that I
4 know for a fact my company does and we are a not
5 insignificant exporter, is we import high color
6 Brazilian Valencia type juice into the United States
7 and export a lower color, lower quality back out. We
8 could not do that without the benefit of drawback.

9 Nick?

10 MR. EMMANUEL: We're a not insignificant
11 exporter --

12 MR. FREEMAN: He's bigger than I am.

13 MR. EMMANUEL: One thing to remember is that
14 drawback credits have a life of three years. So as
15 you look at your business of bringing product into the
16 U.S. and exporting product out of the U.S. you have
17 the benefit of market swings as it relates to the
18 overall supply/demand situation, and also year on year
19 differences in quality in the crops in Florida versus
20 the crops in Brazil.

21 But what happens is, as Mr. Freeman
22 described, generally we serve our domestic customers,
23 our U.S. customers with product from Brazil that they
24 buy because of the various attributes that have been
25 talked about all day long by the Respondents.

1 And subsequent to that as we move forward,
2 we export the lower color, lower quality product that
3 ends up primarily in Europe to be blended with, many
4 many times, higher color, higher quality Brazilian
5 that we ship direct from Brazil.

6 So it's an ongoing, sustainable, market-
7 driven phenomenon that's based primarily on the
8 different attributes of the U.S. crop versus the
9 Brazilian crop.

10 MR. THOMPSON: Hugh Thompson with Cutrale.
11 I'd like to make a couple of comments about that.

12 When Cutrale bought his plants ten years
13 ago, we came into this market, one of the reasons we
14 bought those plants was to be an exporter. Cutrale
15 saw ten years ago that he was going to need product
16 throughout the world and he wanted a second source of
17 supply which was Florida.

18 We also over this ten year period have
19 developed a substantial export market which by the way
20 over the last several years has been much more
21 profitable than our domestic business. So it's
22 something that we do not want to lose.

23 COMMISSIONER ARANOFF: So as I understand
24 it, U.S. product serves in your export markets the way
25 that you tell us the Brazilian product does here.

1 it's a second source of supply, it gets mixed in where
2 you need it, it's there if for some reason there's a
3 shortage of your primary source of supply, and that's
4 why there's an export market.

5 MR. THOMPSON: That's correct. In I believe
6 it was 2001 or 2002, 2001, Brazil was short of
7 product. Florida actually had excess product in the
8 market and we were able to, all of us I believe, all
9 of us sitting at this table, were able to export
10 Floridian product and by doing that increased the
11 value to the grower.

12 COMMISSIONER ARANOFF: But if there's a
13 shortage in the foreign market so you're shipping U.S.
14 product over there, you're presumably getting a good
15 price that makes it worth your while to export
16 regardless of the drawback.

17 MR. FREEMAN: Here's the economics. If the
18 world market is 70 cents, what you do is you go out
19 and you pay 85 cents for domestic juice and you sell
20 it for 70 cents because you just made 15. The
21 drawback is a crucial part of the equation.

22 COMMISSIONER ARANOFF: I don't want to
23 belabor it because my time's up and I've been kind of
24 going way past the light today. But you only get the
25 drawback because you already paid the duty on

1 something else which you're just not accounting
2 against the gain that you just told me; you're
3 accounting it against some other column.

4 It should come to zero. You paid the duty,
5 you got the duty back.

6 MR. EMMANUEL: For sure you pay the duty
7 when you import the product, but again those are
8 independent market decisions. You have customers that
9 are willing to pay the price and buy Brazilian product
10 and pay duty, and then when in a separate situation in
11 different market conditions it's appropriate to export
12 product, you always, without fail, need drawback to
13 compete in a world market.

14 COMMISSIONER ARANOFF: Okay, thanks.

15 MR. THOMPSON: Florida is not the world
16 price. Brazil is the world price. The only way to be
17 competitive is to use the D.

18 COMMISSIONER ARANOFF: I appreciate those
19 answers, and thank you for your indulgence, Mr.
20 Chairman.

21 CHAIRMAN KOPLAN: No, actually, I wanted to
22 hear the answer to that myself.

23 Let me come back to Mr. Kalik and Mr.
24 Casper. I asked a similar question this morning as to
25 what I'm going to ask right now.

1 On page 14 of your pre-hearing brief you
2 state that for orange juice "The impediment to
3 interchangeability between FCOJM and NFC is the FDA
4 labeling requirements. These labeling requirements do
5 not allow FCOJM to be substituted for NFC in the
6 manufacturing of pasteurized orange juice without
7 indicating such information on the label as a labeling
8 matter. Not because of any physical limitation or
9 production characteristics." That's the quote out of
10 your brief.

11 Shouldn't I view FDA labeling requirements
12 as a factor for me to consider when analyzing whether
13 these are separate like products? If not, why not?

14 MR. CLARK: I think the easiest way to
15 answer that is to make an allusion to a question that
16 came up earlier today and was in the context of the
17 organic product. Ther was a reference to the
18 Raspberry case. In that case it was pointed out that
19 even though there was an argument that organic
20 raspberries were a different like product the
21 standards, and here we have an identity standard that
22 was the development of a physical standard, was not
23 final, had not been promulgated. But it was noted in
24 that decision that even if it had been promulgated,
25 and this takes you back to your decision in the Pasta

1 case, the standards there for organic don't dictate
2 the like product outcome. You need to look at the
3 totality of your factors.

4 So unless the standard is informing exactly
5 what the production process will be, the standard
6 doesn't tell you very much.

7 So here we have a situation where the
8 standard of identity as you saw those cartons today,
9 tell you that you have to have a blended product in
10 the case of MinuteMaid pure premium product. We have
11 to meet that identity standard. But the production
12 process of raw materials going in, you heard the
13 description from the domestic industry today. We
14 start with oranges. The oranges come through the
15 extraction process, they go through a production
16 process that yields juice at the end. There are
17 variations during the stream of the production
18 process, but when we talk about the identity
19 standards, that is merely meeting the labeling
20 requirement that we have for our product. It does not
21 speak to, we think, the totality of the like product
22 analysis that you engage in.

23 CHAIRMAN KOPLAN: Thank you.

24 Mr. Casper, did you want to add anything to
25 Mr. Clark's response?

1 MR. CASPER: I don't have anything to add
2 other than it all comes back to the orange itself,
3 basically. The rest of it is involved with the label,
4 branding, but it all comes back to the orange itself.

5 CHAIRMAN KOPLAN: Thank you.

6 MS. NOONAN: Mr. Chairman, may I add
7 something?

8 CHAIRMAN KOPLAN: Yes, you may.

9 MS. NOONAN: Nancy Noonan from Arent fox.
10 I would like to add that just because FCOJ
11 can't be used in an NFC product there is at least the
12 one-way interchangeability where NFC can be used in
13 the FCOJ product. The Commission has looked at one-
14 way interchangeability in previous cases and has found
15 one like product when there is at least a one-way
16 interchangeability.

17 CHAIRMAN KOPLAN: I realize that. Thank
18 you.

19 Mr. LeCompte. On pages 11 and 12 of
20 Petitioner's pre-hearing brief they state that
21 "Organic juice is made from organic oranges which must
22 be grown pursuant to USDA national organic standard,
23 is what it says, for agricultural production and
24 handling. This standard provides general guidelines
25 for organic certification and includes a list of

1 allowed and prohibited substances. However, it does
2 not change the type of orange used to produce organic
3 juice. They're still round oranges, for example
4 Valencia's early and mids. The only difference being
5 that the organic round oranges may not use certain
6 inputs such as pesticides, particular fertilizers, et
7 cetera.

8 "Moreover all round oranges, conventional or
9 organic, could potentially be grown pursuant to the
10 same national organic standards.

11 "Bulk organic juice is packed and stored in
12 a similar manner and into similar containers and form
13 as conventional juice. There are also no measurable
14 differences in terms of shelf life. The end use of
15 organic juice is likewise the same as conventional
16 juice. It is used to produce orange juice at the
17 retail level."

18 That's the end of their quote. How do you
19 respond to that?

20 MR. LeCOMPTE: I think there are a couple of
21 was I can respond to it. One would be the USDA
22 guidelines do, while they are general in some respects
23 they're also very specific in other respects. One of
24 the key differences that we see in organic products
25 would be the absence of inputs. While it's not

1 something you put on a nutritional label, it is a
2 fundamental character of what we have defined as
3 organic in the regulations and in the marketing of
4 organic product.

5 I would say that all oranges are round, but
6 from the production of organic oranges, because of the
7 restrictions on the use of materials, the absence of
8 synthetic inputs and the handling and audit trail
9 requirements, they clearly segregate and define
10 organic products. They do retain their identity as a
11 separate product.

12 CHAIRMAN KOPLAN: Thank you.

13 Mr. Layton, assume that I agree that organic
14 orange juice should be a separate like product, how am
15 I to assess the impact of orange juice imports on the
16 domestic organic industry without financial data and
17 other data?

18 MR. LAYTON: We'll address this in our post-
19 hearing brief, but my recollection from the record is
20 that you do have limited questionnaire responses put
21 on the record very late that indicate that the organic
22 orange juice industry in the United States is doing
23 quite well, phenomenal performance in fact. I think
24 we try to highlight that in our --

25 Because it came in so late we didn't have a

1 chance to discuss it in our pre-hearing submission, so
2 we'll do so in our post-hearing.

3 CHAIRMAN KOPLAN: Are you saying you're
4 going to be able to submit such data for us?

5 MR. LAYTON: We'll submit whatever is on the
6 record. Some of this was put in just a few days ago
7 before the hearing.

8 CHAIRMAN KOPLAN: Okay.

9 Mr. LeCompte, Petitioners state on page 18
10 of their pre-hearing brief that the processing
11 procedures and equipment used to produce organic
12 orange juice are essentially the same as for
13 conventional juice. Organic juice undergoes the same
14 basic processing steps as conventional juice.

15 How do you response to that? Is that true?

16 MR. LeCOMPTE: There are a number of
17 similarities. First, I think when we look at the
18 manufacturing of organic orange juice we still have to
19 start with the field production of organic oranges.

20 CHAIRMAN KOPLAN: Are the similarities that
21 I just listed, are they accurate?

22 MR. LeCOMPTE: To some extent.

23 One of the things that are really important
24 in understanding about the processing of organic
25 oranges or any organic products in general are that,

1 particularly in overlapping facilities the rules of
2 segregation through organic certification require
3 cleanouts, different uses of materials in the plant,
4 different types of pest control than might otherwise
5 be used, and practices in the changes and cleanout of
6 trucks and plants and storage facilities, in some
7 respects could create essentially a separate like
8 facility due to the segregation and cleanout
9 requirements.

10 MR. LAYTON: Mr. Chairman, this is Duane
11 Layton again.

12 This morning I believe Mr. McGrath indicated
13 that on the subject of the organic orange juice
14 industry in the United States, that while it uses the
15 same trees as the conventional orange juice industry
16 in the United States, that's just patently not true as
17 I think Mr. Roper himself pointed out a few minutes
18 later when he was noting that the trees were in fact
19 not only different trees, separate trees, but they had
20 to be kept I think it's 50 feet apart.

21 I would also add that while we did not go
22 into any length in the discussion in our pre-hearing
23 submission on behalf of Montecitrius, distinguishing
24 the Red Raspberries case. To be quite honest with
25 you, that was a little on the intentional side,

1 waiting to see what the Petitioners were going to say,
2 and we will intend in our post-hearing submission to
3 rebut the statements that have been made regarding the
4 relevance of red raspberries.

5 We think it's completely distinguishable.
6 The facts are distinguishable, not the least of which
7 is that we now have a federal law and point on this
8 subject.

9 CHAIRMAN KOPLAN: Let me ask you this, Mr.
10 LeCompte. On page 11 of your brief you say "According
11 to the organic certification directories, there are
12 six certified organic juice processors in Florida, all
13 of which produce organic NFCOJ."

14 As I thought I learned this morning, U.S.
15 organic juice processors also process non-organic
16 juice on the same equipment.

17 My question is do you?

18 MR. LeCOMPTE: When we reconstitute our
19 organic orange juice we do it in the same way as I
20 referred to in an overlapping facility of a complete
21 cleanout and a very specific set of rules that are
22 governed by the organic certification regulations.
23 But yes, we do use an overlapping facility.

24 CHAIRMAN KOPLAN: Thank you for that.

25 I see my red light's come on.

1 Before I turn to the Vice Chairman let me
2 just say that it's my understanding Mr. Zellner has a
3 flight at 7:15 and needs to leave at 6:00. So if any
4 Commissioner or anyone has a question of Mr. Zellner,
5 we have about seven minutes here.

6 If not, I would excuse him.

7 Do you have a question?

8 Free the hostage. All right, Mr. Zellner,
9 I'm going to give you an extra seven minutes to get
10 out the door.

11 Madame Vice Chairman?

12 VICE CHAIRMAN OKUN: Thank you. Maybe just
13 a couple of things to follow up on the organic issue.

14 I want to just make sure I understood from
15 you, Mr. LeCompte, the testimony from Mr. Roper this
16 morning, do you compete with Mr. Roper? In other
17 words the organic juice he had up here was Organic
18 Valley, NFC. You only do reconstituted, is that
19 accurate?

20 MR. LeCOMPTE: Correct.

21 VICE CHAIRMAN OKUN: In terms of the rest of
22 the U.S. industry, do you think it's more on the NFC
23 side or the reconstituted side of the FCM?

24 MR. LeCOMPTE: I would say that our product
25 could compete some with the Organic Valley type labels

1 or other really even other organic juices found in
2 other shelf stable environments.

3 As the only retail product of our kind, most
4 of where our markets are we're the only product like
5 it. So you'd have to extend that competitive view to
6 a head-on with other categories in the store which
7 would be refrigerated juice or other bottled shelf-
8 stable juice.

9 VICE CHAIRMAN OKUN: And your testimony may
10 have included this, but in terms of price premium of
11 organic NFC versus organic FC, I'm going to lose track
12 of these at the end of the day here. The cause of
13 FCOJ, price premium for NFC in organic as well or not?

14 MR. LeCOMPTE: I think there's a significant
15 price premium to both our reconstituted product and to
16 the Organic Valley NFC product. I couldn't define to
17 you how much more on sourcing and not in sales, so I'm
18 not as familiar with the shelf pricing differences and
19 the price per pound solid translation.

20 VICE CHAIRMAN OKUN: With regard to the
21 issue of inventory and making sure I understand how
22 you view inventory levels versus what we heard from
23 the petitioning companies, because what I think I read
24 or what I heard this morning was, from the petitioning
25 companies' perspective, 16 to 20 weeks in inventory

1 would be considered normal for the industry. If you
2 get above that, they have a problem. That puts
3 pressure on prices.

4 I think what I read in at least one of the
5 briefs today from Respondent companies was you need
6 six months' inventory to cover supply, and I wanted to
7 get some more information on that and how you regard
8 that, especially in relation to prices in the U.S.
9 market. Mr. Freeman, if you can talk to that.

10 MR. DUNN: I think the honorable
11 representative from Rupert, Idaho, would be happy to
12 speak to that.

13 MR. FREEMAN: I said earlier that the most
14 important asset that any of us in this industry has is
15 our shelf space and distribution in the grocery
16 stores. There was an incident in 1988 when there was
17 a crop failure that drove prices sharply higher,
18 especially for fruit, which sort of alarmed a number
19 of people in the industry and incentivated [sic] them
20 to take steps to cover and ensure that they did not
21 have that happen to them again. Essentially, in one
22 form or another, they increased their inventory levels
23 to protect the franchise that their brands have.

24 The real issue, I think, is whether or not
25 the change in inventories is a function of imports of

1 orange juice, not just from Brazil but imports in
2 general. There is no question that inventory
3 fluctuations have an impact on price. They do. The
4 question is whether or not the inventory fluctuations
5 are caused by domestic variations in supply or import
6 variations. I would put to you that the import
7 component of inventory change over the period of
8 investigation -- I can go back as far as '93, and
9 before that I can't comment, but for that period, the
10 inventory change from one year to another is entirely
11 domestic. The delta is entirely domestic inventory
12 change.

13 The foreign component, as a percentage of
14 it, is more or less constant because the blending
15 requirements dictate that you have that, so the change
16 in inventory is entirely a function of what's going on
17 in the domestic production land. It's not a function
18 of the imports.

19 VICE CHAIRMAN OKUN: Okay. I appreciate
20 those comments. Does anyone else care to comment on
21 inventory?

22 (No response.)

23 VICE CHAIRMAN OKUN: What about in terms of
24 the timing? The 16 to 20 weeks -- would you agree
25 that that's kind of the number of or not?

1 MR. BRINNER: Roger Brinner. If you look at
2 the exhibit where I show the factors that have
3 affected inventories, what I point out is that the
4 optimal inventory level rises through time as consumer
5 demand rises. I point out that the optimal inventory
6 rises when the price is temporarily depressed, and
7 profit-maximizing people say, "I know it's coming
8 back. I'll hold it now rather than sell it into a
9 weak market." The optimal inventory goes up when
10 interest rates are low. It goes down when interest
11 rates are high.

12 So all of these kinds of very intuitive
13 factors actually explain all of the inventory behavior
14 that we've seen in the past more than a decade, and
15 there is no room for this exceptional role for
16 imports. I think there is this mistaken impression
17 that has tried to be left that inventories are just
18 this residual, this accident that happens, and if more
19 imports arrive, then, oh, gee, they must be added to
20 inventories.

21 There is nothing accidental about the
22 inventories. You've got profit-maximizing people in
23 this room on both sides of the panel, and they are
24 behaving according to those drivers that I identified.
25 They are not being motivated by the level of imports.

1 VICE CHAIRMAN OKUN: Okay. I appreciate
2 those answers. I will go back again and look at your
3 chart, and if there is anything else, Mr. Freeman,
4 that you want to put on the record or others with
5 regard to during the period of investigation if there
6 is anything you would point us to in looking at how
7 those inventories behaved.

8 MR. FREEMAN: One of the other things that's
9 important to realize about inventories is that the
10 first real crisis that I can remember in the orange
11 juice business was January of 1993, which was the
12 first time that orange juice futures went to 65 cents,
13 and they did so because there was not enough storage
14 capacity to handle the concentrate crop that was
15 coming in. There just wasn't enough storage capacity.

16 I wasn't the chairman then, but I was on the
17 board of directors of Citrus Associates, and we, as an
18 emergency action, doubled the tariff rate for storage
19 stocks that are certified for delivery, and it went
20 from 55 cents a hundred to \$1.10 a hundred, which
21 immediately induced an enormous amount of tanks,
22 storage to be built in Florida, so that we now have a
23 surplus of storage capacity for concentrate FCOJ in
24 the State of Florida and have had for a couple of
25 years. That surplus induces people who own that

1 storage capacity, including yours truly, to carry
2 inventory whenever you can possibly justify it by
3 having the board at anything that approaches full
4 carry. There are warehousemen who hunt for inventory
5 and hunt for reasons to hold it.

6 VICE CHAIRMAN OKUN: I appreciate that.
7 Yes, Mr. Thompson?

8 MR. THOMPSON: If you look at the inventory
9 data, the week supply, which I have a copy of in Tom
10 Springs' presentation, back in '98 and '99, NFC was
11 running at, like, 8.6 weeks, but NFC since then, in
12 '03-'04, has gone up to 16 and a half weeks. But FCOJ
13 was running around 23 weeks. So a big part of the
14 increase has obviously come from NFC. So from an FCOJ
15 standpoint and in an NFC standpoint, we cannot afford
16 to be short of inventories.

17 VICE CHAIRMAN OKUN: Mr. Freeman, just one
18 thing, and this might be for post-hearing, but I did
19 want to make sure I understood, in your testimony when
20 you were talking about the potential of the nonsubject
21 Citrovia imports into the U.S. market, you said in
22 there, "My information is that in the six months ended
23 December 2005, Citrovia's share of total shipments to
24 North America exceeds 30 percent. This translates
25 into a share of the U.S. market of between 40 and 50

1 percent since the shipment data indicates product
2 going to Canada."

3 If you can provide the data you're looking
4 at -- I don't think we have it in our staff report. I
5 thought it did not reflect any Citrovia imports, but
6 I may be wrong. Perhaps you can just provide your
7 data source.

8 MR. FREEMAN: I believe that the cutoff date
9 that was reported to the Commission preceded the date
10 that Citrovia started shipping heavily to the U.S.
11 market. The period I'm talking about started July 1,
12 2005, and ended December 31, 2005. It's the most
13 recent six months.

14 VICE CHAIRMAN OKUN: Whatever data you have
15 because, again, may be the cutoff. I thought it
16 should, even with those dates, would have reflected
17 some, but just so I can understand which data you used
18 for that. I would appreciate that.

19 MR. GREENWALD: Commissioner Okun, John
20 Greenwald from Wilmer Hale. We're counsel to
21 Citrovia, and I was hoping that this issue would not
22 be raised. There is an appetite for conspiracy
23 theories, which we had heard in the sunset review. We
24 will provide you the specific data that you're looking
25 for, and I think you'll find that the allegations

1 about what Citrovia has and has not done are grossly
2 overstated.

3 VICE CHAIRMAN OKUN: I'll look forward to
4 all of that information. Thank you.

5 CHAIRMAN KOPLAN: Thank you.

6 Commissioner Hillman?

7 COMMISSIONER HILLMAN: Thank you. I share
8 the vice chairman's needing some clarification on this
9 issue. Just so I understand it, Mr. Freeman, your
10 testimony is you're not suggesting that there were
11 Citrovia imports into the U.S. market until after
12 June 30, 2005. Is that correct?

13 MR. FREEMAN: I'm suggesting that
14 Citrovia's shipments of Citrovia-produced, exported
15 product to the U.S. market did not commence until
16 after their antidumping rate went from 16 percent to
17 zero percent as a result of the sunset review
18 eliminating the old order.

19 COMMISSIONER HILLMAN: Okay. I guess what
20 I'm struggling with is you're basically saying it went
21 from zero to 40 to 50 percent market share in the
22 space of six months.

23 MR. FREEMAN: Yes, of the U.S. imports.

24 COMMISSIONER HILLMAN: Of the U.S. imports.
25 Share of the U.S. market. I was really having trouble

1 with the numbers.

2 MR. FREEMAN: I apologize. Share of
3 Brazilian shipments.

4 COMMISSIONER HILLMAN: Okay. So you're
5 saying that Citrovida went from zero percent of
6 Brazilian imports to between 40 to 50 percent of
7 Brazilian imports in that six-month period.

8 MR. FREEMAN: What I'm saying is that in
9 Brazil there is the equivalent -- I don't know if
10 you're familiar with the PIERS data --

11 COMMISSIONER HILLMAN: Yes.

12 MR. FREEMAN: There is a similar service in
13 Brazil where you can get shipments by exporter, and
14 the shipments-by-exporter shipments of frozen
15 concentrated orange juice from Brazil to North
16 America, which includes Canada, show that Citrovida
17 had a 30-percent share of that in the six months ended
18 December 31, 2005, and that is from zero in the prior
19 period because Citrovida had a 16-percent dumping
20 margin up until that date.

21 COMMISSIONER HILLMAN: I understand, Mr.
22 Greenwald, this is the exact data that you're talking
23 about that you'll also be addressing in your post-
24 hearing brief as well.

25 MR. GREENWALD: We will provide you accurate

1 data.

2 COMMISSIONER HILLMAN: Like I said, when I
3 read the 40 to 50 percent market share number, that
4 was what was causing me some serious pause.

5 If I can go more broadly generally to the
6 issue of causation because I'm trying to understand
7 fundamentally what the arguments are that you're
8 making. As I read the testimony of Dr. Brinner, I
9 heard the argument very clearly that your take is that
10 any change in inventories was not in any way connected
11 to imports. Zero is the number that you're ascribing
12 in terms of -- you're equally saying that price
13 weakness was not related to imports.

14 So I'm now struggling on the volume side,
15 Mr. Dunn. I'm just trying to make sure that I
16 understand it. Is your argument that the increase in
17 Brazilian imports had no impact or an insignificant
18 impact? Where do you see on the volume side of, in
19 essence, an injury analysis the role of Brazilian
20 imports?

21 MR. DUNN: The way we characterize it in our
22 brief is what the Commission normally considers the
23 volume impact is how much are imports displacing U.S.
24 production. That impact is zero because U.S.
25 production is based on how many oranges are grown in

1 the U.S., which has nothing to do with imports and
2 everything to do with weather. Imports come in when
3 they respond to the volume of U.S. production, which
4 is determined -- as someone said, "Only God can make a
5 tree." That's what determines the amount of juice.
6 It's the weather; it's not imports. So imports come
7 in --

8 COMMISSIONER HILLMAN: If I step back and
9 look at the data, you have seen, without a doubt, this
10 very significant increase in the total volume of
11 Brazilian imports. I've heard the testimony very
12 clearly that a lot of that is coming in for blending
13 purposes. Presumably, everybody has not all of a
14 sudden massively shifted their blends to meet
15 Brazilian product. There hasn't been a sea change in
16 the volume of Brazilian product you need to achieve
17 the same blend.

18 So whatever amount of Brazilian product came
19 in in order to meet blending needs; maybe it's
20 increased some, but --

21 MR. DUNN: There are three reasons that you
22 import juice. One is to blend, one is for exporting,
23 and one is to replace shortfalls in the domestic
24 supply. There has been a huge shortfall in domestic
25 supply.

1 COMMISSIONER HILLMAN: That brings me to the
2 price issue. If that's the case -- that's what I'm
3 trying to square up -- I'm with you on the blending,
4 but I would not suggest that anything I've heard today
5 suggests that blending is what has caused the big
6 increase. I understand that there is an amount of
7 Brazilian juice that has got to come in for blending.
8 I don't see how that has changed to the degree that
9 we've seen imports really grow over this POI.

10 Exports; we've talked about this duty-
11 drawback issue. We'll assess that. It's this last
12 issue of needing it as a secondary source of supply
13 due to this shortfall in Florida.

14 Here is where I'm having the trouble because
15 the Brazilian product, particularly on the FCOJ side,
16 is still significantly underselling the U.S. product
17 if we look at the price comparisons that the
18 Commission has. So if, in fact, it is a demand pull
19 coming into the U.S. market because of the shortfall,
20 I'm having trouble understanding why it needs to so
21 consistently undersell the U.S. market. That's what
22 I'm trying to understand.

23 I heard Dr. Brinner saying prices are not
24 related to it, and yet, again, I'm hearing or seeing
25 that a lot of what has come in in terms of increased

1 volume is demand pulled into the U.S. market,
2 according to your market, because the Florida crop is
3 low, and yet it's still underselling by big margins.

4 MR. DUNN: But do you see the underselling
5 increase as imports increase? Imports are not
6 responding. I'm going to assume, and Mr. Freeman has
7 already talked about the fact that those pricing data,
8 in our belief, are rather suspect, but let's leave
9 that aside. Let's assume that that is. Do you see a
10 huge increase in the volume of underselling to
11 accompany the increase in imports? And the answer is,
12 no, you don't. Brazilian juice is not coming in
13 because it's cheaper; it's coming in because it's
14 needed.

15 COMMISSIONER HILLMAN: All right. I hear
16 you, but On the other hand, you know, if it is so
17 needed, again, it sort of does beg the question of why
18 is it continually undersold, and at least on the
19 pricing data that we have on the FCOJ side, you have
20 not seen a significant increase in the prices in the
21 data that we have. Again, you're not seeing this
22 increased demand pull, if you will, either bump up the
23 prices or reduce the underselling. Mr. Durling?

24 MR. DURLING: We can go into more detail in
25 the post-hearing brief because it is proprietary

1 information, but the way to understand the point that
2 Mr. Freeman was raising is look at the data the
3 Commission has collected on what the purchasers are
4 paying for different sources of orange juice. This
5 isn't like many products where we have lots of
6 different variations. FCOJ is a pretty basic, simple
7 product.

8 If you look at the data you've collected
9 from the purchasers, the purchasers gave you data on
10 how much they pay for Brazil, how much they pay for
11 domestic, how much they pay for nonsubject imports, so
12 that's the one place where you can actually line up
13 all of the three different sources of competing supply
14 and look at what the purchasers are paying for their
15 different inputs, and I think if you look at that
16 data, it will go a long way toward answering your
17 question.

18 COMMISSIONER HILLMAN: Okay. And how do we
19 square that with, again, this general notion of these
20 linkages between the Brazilian producers and the
21 extractor-processor-packagers here in the United
22 States where there are these relationships? I've
23 heard this issue that Mr. Freeman raised earlier on
24 the tax aspect of where the profits go.

25 I understand the analysis you're asking for,

1 but it's not so clear to me that you can do it in this
2 instance where so much of this are, if you will,
3 intra-company transfers. That's not quite what they
4 are, but every purchaser is not an arm's length buyer
5 of the product.

6 MR. DURLING: No, but with all due respect,
7 Commissioner Hillman, the best data you have on arm's
8 length prices is the processor-to-purchaser
9 transaction. In other words, the traditional data you
10 collect, the traditional pricing data; that's the
11 affiliated party transaction. When a Brazilian
12 company ships to its own sister company in the United
13 States, that's a related-party transaction which has
14 issues with the pricing because of the tax
15 requirements.

16 When it's the processor to the purchaser,
17 that's not the affiliation. That's the unaffiliated,
18 unrelated party transaction that we submit actually
19 gives you better information on the relative sort of
20 pricing in the market. That's the unrelated-party
21 transaction, not the traditional pricing data.

22 COMMISSIONER HILLMAN: Mr. Freeman?

23 MR. FREEMAN: I would also like to point out
24 that the data we presented where we had what are
25 called -- I forget what it is -- internal transfers or

1 something like that where we have this Brazilian juice
2 that disappeared every quarter. The reason it
3 disappeared is because we put it into frozen
4 concentrated orange juice the old-fashioned way. We
5 have a 70-percent market share of the private-label
6 FCOJ market in the United States, and it has a high
7 Brazilian component. We put it in there. The price
8 that was transferred in that was the bulk wholesale
9 price at the time. That ain't the price that I sold
10 the juice at.

11 My results for the nine months ending
12 September 30 would have been six million bucks better
13 because the money was in the packaging. But by
14 excluding that from the data, you've skewed the
15 numbers, and I think that sort of stuff is part of the
16 data you're underselling.

17 COMMISSIONER HILLMAN: I hear you. I will
18 say, I am not sure that the product you're talking
19 about is as significant a part of the whole rest of
20 the market. I understand it's a significant product
21 for you. It is not clear to me from the data that we
22 have on the record that the product you're talking
23 about constitutes a significant enough portion of the
24 overall market to have had that much of a skew on the
25 pricing data. But if there is anything further,

1 again, on this general issue on the appropriate price
2 comparisons that you would want to add -- I appreciate
3 the point you've made, Mr. Durling -- in the post-
4 hearing briefs, I would be happy to take a look at it,
5 and with that, my time has expired. Thank you, Mr.
6 Chairman.

7 CHAIRMAN KOPLAN: Thank you.

8 Commissioner Lane?

9 COMMISSIONER LANE: Mr. Chairman,
10 I'm going to yield my 10 minutes to Commissioner
11 Pearson.

12 CHAIRMAN KOPLAN: Well, that gives you 20.

13 COMMISSIONER PEARSON: Well, thank you.
14 Will that be enough, Commissioner Lane? I really
15 don't intend to take it all, at least I'm going to try
16 not to.

17 Okay. There has been a lot of discussion
18 about inventories. Let me go quickly back to what we
19 had seen on Chart 14 of the Petitioners that I had
20 provided in the discussion with them.

21 CHAIRMAN KOPLAN: I hate to interrupt you,
22 if I could just for one second? I understand that Dr.
23 Brinner needs to leave at 6:30 to catch a flight and
24 so I wanted to make him available to you and to
25 anybody else, at this point, if there is a question

1 for Dr. Brinner before he leaves. Did you have one?

2 COMMISSIONER PEARSON: I have no specific
3 question for Dr. Brinner.

4 CHAIRMAN KOPLAN: Do any of my colleagues
5 have questions for Dr. Brinner before I let him go?

6 (No response.)

7 CHAIRMAN KOPLAN: No. Ms. Mazur?

8 MS. MAZUR: No, Mr. Chairman.

9 CHAIRMAN KOPLAN: Okay. Well, actually, I
10 do.

11 COMMISSIONER PEARSON: Please go ahead, Mr.
12 Chairman.

13 CHAIRMAN KOPLAN: Thank you. It's very
14 brief. If Brazilian imports are complementary to
15 domestic product, why aren't the prices more similar,
16 especially for FCOJM?

17 MR. BRINNER: I think that the answers that
18 Mr. Freeman has provided earlier would be the best
19 explanation I can give you, that perhaps you challenge
20 the data to a certain extent, to say, well, if
21 something doesn't make any logical sense, then it's
22 probably a data difference. The other thing that I
23 would --

24 CHAIRMAN KOPLAN: That's your best answer?

25 MR. BRINNER: No. I've got a second answer

1 that I think also may be useful, and that is let's say
2 that the U.S. needs -- just by a metaphor, the U.S.
3 needs 100 pairs of shoes, right. And in the U.S., we
4 can produce 180. But, unfortunately, 60 percent of
5 those are left shoes, that's 118, and 40 percent are
6 right shoes, it's only 72. We've got a 46 excess of
7 left over right. Now, you will find somebody in the
8 U.S., who can produce shoes that are totally U.S.
9 made. In fact, they can sell 72 pairs of shoes that
10 they could label totally U.S. made.

11 Now, how much of the other 46 left shoe is
12 worth? Well, they're worth nothing unless you can
13 find another country in the world that has right shoes
14 that are available. If those right shoes are
15 available, then the left shoes are worth just as much
16 as the right shoes in the rest of the world and you
17 won't find a price difference. If the right shoes
18 weren't available, then you would see a price
19 difference for the American left shoes. But, because
20 you have this other complementary good, it balances
21 things out, that you see both left and right shoes at
22 the same price in the world, because you've got a nice
23 marriage. So, that metaphor might help a little bit.
24 That's my best shot.

25 CHAIRMAN KOPLAN: It doesn't do a lot for

1 me, because to be honest with you, I grew up in the
2 shoe industry.

3 MR. BRINNER: Okay.

4 CHAIRMAN KOPLAN: So, you were doing better
5 with your first --

6 MR. BRINNER: All right.

7 CHAIRMAN KOPLAN: -- response. With that, I
8 will excuse you.

9 MR. BRINNER: Okay.

10 (Witness excused.)

11 CHAIRMAN KOPLAN: Sorry for that,
12 Commissioner Pearson.

13 COMMISSIONER PEARSON: No, I found it quite
14 entertaining.

15 MR. DURLING: Excuse me, Commissioner
16 Koplan? If I could just one small point -- this is
17 Jim Durling -- before Dr. Brinner leaves. I just
18 wanted to make sure that there wasn't a desire to pose
19 to the author of the Brinner study your question about
20 whether the data accounted for non-stationarity trends
21 and seasonality adjustments, because I noticed you had
22 posed that question about Dr. Brinner's report to
23 someone, who may not have had the time to really
24 digest it. And I guess the short answer is that, yes,
25 he did, because Dr. Brinner actually worked with the

1 results from Professor Carter. And I know that it's
2 6:30, we don't want to get into the details, but I
3 assure you if the staff economists look at Dr.
4 Carter's report, there is extensive discussion of the
5 non-stationarity properties of the data and the
6 seasonality adjustments and all of the other technical
7 adjustments that the Commission staff has raised in
8 prior cases. Indeed, we specifically did this
9 economic analysis in light of issues that have been
10 raised by Commission staff in prior cases. So, we
11 urge the Commission and the staff to look at that.

12 So, if you don't have any follow-up on that,
13 then I think we are finished with Dr. Brinner.

14 CHAIRMAN KOPLAN: Well, let me see if I
15 understand what you just did. You answered for Dr.
16 Brinner, because I was going to let him go, and,
17 basically, you're telling me there's nothing left.
18 But, if I want to ask him anything else, I can. Is
19 that it?

20 MR. DURLING: No.

21 CHAIRMAN KOPLAN: I'm just wanted to make
22 sure --

23 CHAIRMAN KOPLAN: I'm just trying to
24 understand what you did.

25 MR. DURLING: I just wanted to make sure the

1 record was complete.

2 CHAIRMAN KOPLAN: Well, I wasn't sure if you
3 ran over me with a train just then.

4 (Laughter.)

5 MR. DURLING: Just trying to keep the record
6 complete.

7 CHAIRMAN KOPLAN: I appreciate all of your
8 help. You're again excused, Dr. Brinner.

9 MR. DUNN: If you'd like that answer, in
10 terms of left shoes and right shoes, I think Dr.
11 Brinner can give you that.

12 CHAIRMAN KOPLAN: Well, I don't believe -- I
13 understand Mr. Casper needs to leave in about seven or
14 eight minutes to catch a flight. I'll repeat the
15 offer to my colleagues and to staff. Anybody have
16 anything else for Mr. Casper?

17 (No response.)

18 CHAIRMAN KOPLAN: Commissioner Lane says she
19 needs to leave, too.

20 (Laughter.)

21 CHAIRMAN KOPLAN: You're not excused.

22 MR. DUNN: We could arrange a flight,
23 Commissioner Lane.

24 CHAIRMAN KOPLAN: You live 10 minutes away.
25 I understand nobody has anything for Mr. Casper. This

1 is falling apart, you do realize that. Mr. Casper,
2 you're excused.

3 (Witness excused.)

4 CHAIRMAN KOPLAN: Commissioner Pearson, are
5 you ready? You can proceed.

6 COMMISSIONER PEARSON: There's really no
7 excuse for me, but I'll try. Going back to
8 inventories quickly, over the roughly 15-year period
9 that was reflected in Petitioner's Chart 14, according
10 to the information that staff had provided to me,
11 we've seen inventories in the United States increase
12 by a factor of kind of between two and four, depending
13 on exactly from which year you measure. What is it
14 that's caused inventories to rise over time? Is there
15 some structural change in the U.S. industry that
16 requires inventories to be higher now? Is it this
17 addition of storage capacity that has made it
18 profitable to store more? What can you tell me?

19 MR. FREEMAN: First of all, even though you
20 have more per capita consumption, you have population
21 growth. So, you have more orange juice over time
22 being sold. That's number one. And more orange juice
23 over time requires higher absolute levels of
24 inventories.

25 COMMISSIONER PEARSON: Okay.

1 MR. FREEMAN: That's number two. The third
2 point is the comparison levels. In 1979-80, long
3 before I knew what an orange tree was, Florida
4 produced 207 million boxes. In 1983-84, or 1984-85,
5 Florida produced 107 million boxes. It was cut in
6 half. In 1993, Florida produced 154 million boxes or
7 thereabouts and didn't have enough capacity to store
8 it. And then recently, Florida produced -- the USDA
9 said 252 million boxes. It came in at 242 in 2004-05.
10 You had an enormous absolute increase in Florida's
11 production. That's number one.

12 In the earlier period, you didn't lose that
13 much consumption, because in the earlier period, you
14 were bringing Brazilian in straight off the boat and
15 your -- you know, earlier, Commissioner Hillman, I
16 think, asked about have you had a C change in the
17 blends. Well, the answer is, you've had close to a C
18 change in the blends, because you've increased the
19 amount of Brazilian that goes into the blend as a
20 function of availability. So, previously, the
21 industry was running -- the earlier period you're
22 comparing it to truly hand to mouth, straight off the
23 boat into consumption, and, now, that off the boat
24 into consumption has been replaced by domestic
25 production, which appears up in inventory. That's the

1 second reason.

2 And the third reason is, I want to -- the
3 third reason is an enormous increase in warehouseman
4 activity, who create a demand for storage. You know,
5 the warehousing doesn't want to let his cargo go
6 anymore than the Andersons want to let beans out of
7 the lakes. And then the fourth reason is to protect -
8 - what I call strategic inventory is to protect the
9 franchises.

10 MR. KALIK: Commissioner Pearson?

11 COMMISSIONER PEARSON: Mr. Kalik.

12 MR. KALIK: Just focusing on the short-term
13 period here, as you heard this morning in testimony
14 and you've heard from the economists this afternoon, I
15 think it was 2002-2003, 2001-2002, two of the largest
16 crops in history. At the same time, the largest
17 decrease in consumption due to the Atkins diet, some
18 17 percent decrease in consumption. Per capita
19 consumption decreased almost a gallon. So, you have a
20 confluence of two events in a short-term period:
21 massive over production and huge reduction in
22 consumption that leads to a question, what am I going
23 to do with all the juice. I'm going to store it, put
24 it into inventory.

25 Well, what happens with that inventory?

1 Three hurricanes occur all at once, reduce the crop
2 estimates from about 210 million, down to 143 million;
3 in the last season, now down, after Wilma, to 162
4 million. All that inventory that is sitting there
5 suddenly has been draining down slowly. Result,
6 prices are coming back up. So, in a short-term
7 period, you had a confluence of two massive events.
8 Huge over production, huge reduction in consumption
9 leads to a huge amount of inventory.

10 COMMISSIONER PEARSON: Okay. But, am I
11 correct to understand that it's the view of this panel
12 that U.S. inventories are entirely at a rational level
13 based on risk management of profit maximizing company
14 in a relatively open economy? Or Petitioners are
15 basically saying there are things going on to build
16 inventories artificially, to suppress prices, I think.
17 I just want to make sure that you have a different
18 view and a rationale for that view.

19 MR. FREEMAN: Can you repeat that? I think
20 that inventories are where they are because of the way
21 the marketplace works. It's just the way the market
22 works. As Bob has pointed out, we had two monster
23 crops coming out of Florida back to back. At the same
24 time, the Atkins southeast diet came and knocked us
25 across the head. But, there have been similar draw

1 downs in inventory in the past that are -- they're
2 self-adjusting. I mean, right now, one of my big
3 concerns is, my inventory levels and how I'm going to
4 increase them back up to levels where I can sleep at
5 night.

6 MR. DUNN: Commissioner Pearson, the
7 inventory levels right now are at 18.9 weeks,
8 according to USDA data. That's a shortfall of juice.

9 COMMISSIONER PEARSON: Okay. So, you would
10 just take a different view than the Petitioners,
11 which, as I understood it, inventories had increased
12 during the period of investigation, because of
13 aggressive selling by Brazilians of juice into the
14 United States for which there may or may not have
15 really been --

16 MR. FREEMAN: I'll make the point again, the
17 Brazilian -- if you take the inventory levels from
18 year to year, you take the change in the inventory
19 levels over any year period with a crop year, the
20 change in the inventory levels, up or down, is
21 entirely a function of the domestic activity. The
22 import is constant during the period. The only
23 exception to that might be Mexico, which goes -- you
24 know, which really flies up and down and off the
25 chart. But, in terms of Brazil, it's sort of a

1 constant number, because the Brazil product, by and
2 large, goes straight through the system. Right now,
3 it's inventories of all Florida juice that I'm pulling
4 down. These are inventories of all Florida juice that
5 I bought in the late summer of 2004, when the market
6 was -- they only started because the fall in the
7 market was 70 cents.

8 MR. DUNN: Commissioner Pearson, just
9 looking at -- I believe this is Mr. Spreen data, that
10 we have -- I don't have it -- I have it from 1993 to
11 2003-2004. If you start at 1997 and run through 2001
12 -- sorry, 1990, you see it roughly at about 26 weeks.
13 That's what it was from 1997 -- sorry, 1997 through
14 2001, roughly 26 weeks -- actually through 2002,
15 roughly 26 weeks. That's six months.

16 You get a big bump up in 2002-2003 and in
17 2003-2004; no doubt about it, huge Florida crops.
18 After that, you see this draw down to where we are
19 now, at 18.9 weeks. So, it's, to my mind, very
20 misleading in this sense to say, okay, let me take
21 this year, which I've conveniently chosen as being a
22 low year, and this year, which I've conveniently
23 chosen as being a high year and stop there and I see a
24 big gain in inventory. You have to look at the larger
25 picture.

1 COMMISSIONER PEARSON: Okay. Dr. Carter,
2 another inventory question. I have to confess that
3 your ability to explain your modeling results exceeded
4 my ability to absorb it within the time that was
5 available. Do inventories held outside the United
6 States has an influence on the price in the United
7 States?

8 MR. CARTER: I did not attempt to measure
9 that question. In my modeling, I have U.S.
10 inventories only. But, I would expect that
11 inventories outside would impact the New York market.
12 But, it's not something that I had measured.

13 COMMISSIONER PEARSON: Okay. Anyone else
14 know an answer to that?

15 MR. FREEMAN: The only observation I would
16 add is that unlike soybeans, the rest of the world
17 doesn't price orange juice off New York. When you ask
18 for a price of soybeans, CNF Japan or FOB Brazario-
19 Argentina, someone will say, plus or minus this many
20 cents to Chicago. When you ask for a price for orange
21 juice, they don't say plus or minus this many cents to
22 New York. They say, so many U.S. dollars per metric
23 ton, as opposed to cents per pound solid, SCA Europe
24 or FOB. It's quoted in a different unit without
25 absolutely no reference to the board. So, to a great

1 degree, the rest of the world is insulated from the
2 board and, likewise, I don't think the board reacts to
3 inventories or Brazilian crops the way it reacts to
4 Florida and domestic environments.

5 COMMISSIONER PEARSON: Okay. Thank you,
6 very much. Mr. Chairman, I do have one more question
7 and I'll hold it for the next round, unless you want
8 me to get it out of the way.

9 CHAIRMAN KOPLAN: Oh, go ahead, get out of
10 the way and I won't give you another round.

11 COMMISSIONER PEARSON: This is another
12 question relating to inventories and it's one that --
13 I realize I didn't understand it while we were going
14 through this hearing. And so, let me put it out
15 there, both to the Petitioners and Respondents,
16 because there's got to be a way to understand it. I
17 note that --

18 CHAIRMAN KOPLAN: Can I just interrupt for
19 one second? I just got another note.

20 COMMISSIONER PEARSON: Okay.

21 CHAIRMAN KOPLAN: Now, I understand Mr.
22 Frielich needs to leave, so does anybody have a
23 question for Mr. Frielich?

24 (No response.)

25 CHAIRMAN KOPLAN: No. MR. Frielich, you're

1 excused.

2 (Witness excused.)

3 CHAIRMAN KOPLAN: Go ahead, Commissioner.

4 I'm sorry about that.

5 COMMISSIONER PEARSON: Okay. We have an
6 industry that's carrying substantial inventories and
7 those inventories are reflected in the analysis that
8 we have, the financial data, okay. We have change in
9 year to year average unit values, some of which are
10 substantial, looking at more than a 10 cent per pound
11 change from year to year within the period of
12 investigation. How is that change in inventory value
13 reflected in our financials? You know, because you
14 figure out 500 million pounds of inventory at 10 cent
15 a pound change, you're looking at a \$50 million
16 potential swing, if it's marked to market. Is it
17 being marked to market? How is it flowing through to
18 the financials? I just don't understand that. You
19 may not either, but let's deal with it in the post-
20 hearing, in that case.

21 MR. DUNN: Okay. Commissioner Pearson, we
22 will do that. But, there is in the -- if you're
23 talking about the financial data in the staff report
24 of the extract or processors, there is a marked to
25 market adjustment in there, which -- do you remember

1 which line it's reflected in, Randy? It is reflected
2 in one of the lines on the financial statements. It
3 says, include marked to market adjustment in that and
4 that's where it is.

5 MR. FREEMAN: I suspect, but can't confirm,
6 that there are also some LOCM issues floating around
7 in that. Some of the inventory holders, to the extent
8 they're still holding inventory, have an LOC, lower of
9 cost to market valuation, and, therefore, have no
10 marked to market line to produce and, therefore, have
11 unrealized inventory gains in their balance sheet that
12 will not hit the income sheet -- income stream until
13 they're liquidated, which means that until the
14 liquidation begins, which has happened after the
15 period that you're accumulating data for in the main,
16 only then will the -- I mean, the market went up 30
17 cents a pound, 40 cents a pound, and the trade wasn't
18 that short futures, which would offset it. So, I
19 think those are sitting on the balance sheets of
20 companies that have a lower of cost to market
21 inventory valuation and, therefore, they just will
22 show up at a later date when the inventory is
23 liquidated.

24 COMMISSIONER PEARSON: Okay. Well, thank
25 you, very much for that at least partial explanation.

1 And let me invite both Petitioners and Respondents to
2 provide whatever clarification you can in the post-
3 hearing. I'm sure that Mr. Asinsio and Mr. Gee of our
4 staff would be pleased to visit with you about that.
5 Thank you, very much. And Mr. Chairman, I have no
6 further questions.

7 CHAIRMAN KOPLAN: I accept that. Thanks.
8 Commissioner Aranoff?

9 COMMISSIONER ARANOFF: Thanks, Mr. Chairman.
10 Well, I would just like to say that good evening to
11 the few survivors, who've remained with us. And
12 having dispatched my husband to go home and make the
13 kids do the homework, this is like a night on the town
14 for me now.

15 (Laughter.)

16 COMMISSIONER ARANOFF: So, I have no
17 incentive to get home until that homework is done and
18 the kids are in bed.

19 (Laughter.)

20 MR. DUNN: We're very pleased you're having
21 so much fun.

22 MR. FREEMAN: Can we order out for pizza and
23 turn it into a party?

24 COMMISSIONER ARANOFF: I'm for that. In any
25 event, I do have what I think are only two more

1 questions. One, because nobody has asked about it and
2 I feel bad about that, is to ask a question about
3 Brazilian production capacity. There is some dispute
4 with the Petitioners claiming that our staff report
5 undercounts Brazilian capacity. And obviously in the
6 last week, some capacity that used to be non-subject
7 is now shifted into the subject column. And I know
8 you're basic argument is that it really doesn't matter
9 how much orange juice they can make in Brazil, because
10 it has this limited role in the market. I guess my
11 question to you is, have we undercounted? If capacity
12 in Brazil was growing, and there certainly reports of
13 that, where is the demand growing? Where is it going?
14 How do we know that it's not aimed at this market?

15 MR. DUNN: I'm a little bit baffled. I
16 don't think the -- if the numbers show -- we haven't
17 paid any attention to the capacity numbers, to be
18 hones, or much attention, because it's how much fruit
19 you have. But, if there is -- if the data show
20 increase in capacity, it doesn't make any sense. It's
21 somebody's -- it's an error, because what has happened
22 is that -- hold on a second. Let me think now. I'm
23 thinking about this. It's the question whether you're
24 talking again about subject or non-subject, okay.
25 Some producers, who are subject, recently purchased

1 capacity from Cargill, which would be subject, except
2 it doesn't produce anymore. So, that would show up as
3 an increase in capacity, because Cargill never
4 reported. But, is there a real increase in capacity
5 in Brazil? No.

6 COMMISSIONER ARANOFF: You're referring to
7 processing capacity?

8 MR. DUNN: Right.

9 COMMISSIONER ARANOFF: Okay. Because I
10 think some of what we have shows that there are more
11 trees --

12 MR. DUNN: Okay.

13 COMMISSIONER ARANOFF: -- that are coming
14 into production.

15 MR. DUNN: All right. If you look at -- the
16 Petitioners said, they looked at the USDA data. We
17 looked at -- first of all, in terms of trees, we
18 looked at the Sao Paulo data, because the subject
19 producers are located in Sao Paulo. Non-subject
20 producers, there are a number of non-subject
21 producers, not all -- I mean, there are some non-
22 subject producers, such as Citrovita, which is also in
23 Sao Paulo. But, there are other -- there's a lot of
24 non-subject producers outside of the state of Sao
25 Paulo. Subject producers are in Sao Paulo and the Sao

1 Paulo data show that their trees have declined.

2 Now, what the Petitioners showed was USDA
3 data. Now, the USDA data showed, if you looked at
4 them, they showed the trees in all Brazil; again, not
5 just subject producers, but all Brazil. And you see
6 data of 210, 210, 210 and then it shoots up in the
7 last year to 211 million trees. That is one-half of
8 one percent.

9 COMMISSIONER ARANOFF: Okay. Then why don't
10 I just proceed to my last question, even though I
11 don't want this to end. And this is a question that I
12 asked the Petitioners and I think Commissioner Hillman
13 was getting at some of this, too. You all were
14 talking about the prices and Petitioners' theory, at
15 this point in the case, is a price suppression theory,
16 that given the hurricanes and their effect on the
17 crop, that prices ought to be higher than they are and
18 would be higher than they are but for the increase in
19 Brazilian product. There's two somewhat separate
20 world use here where they're saying, you know what, if
21 that extra supply hadn't come into the market, which,
22 in your view, was to make up a shortfall, prices would
23 have skyrocketed because of the shortage and the
24 domestic industry would have been way better off.
25 What's wrong with that theory of the case?

1 MR. FREEMAN: It's too bad Dr. Brinner had
2 to leave, because that's one of the things that he
3 addressed. And the answer to it is what are the
4 dynamics that have gone on, on the demand side. You
5 know, prices are the function of the interaction of
6 demand and supply. And on the demand side over the
7 period, I made reference to it for the Sunset case,
8 there's a whole generation of people out there that
9 drink Diet Coke for breakfast. And --

10 MR. DUNN: My son is one of them.

11 MR. FREEMAN: -- we've seen -- and the human
12 body can only drink so many liquids a day, so many
13 gallons a day. And we have seen over both the longer-
14 term period and then the immediate shorter-term period
15 all sorts of competing beverages, the most insidious
16 one being something that they're calling Orange Juice
17 Lite, which, if you go to the grocery store, looks
18 exactly like orange juice, same carton and everything
19 else, but it says half the carbohydrates. But what it
20 is, is it's half orange juice, half water, and
21 Splenda, and half the carbohydrates of orange juice.
22 But, it displaces gallon for gallon real orange juice
23 when you sell it. So, the world view that had it been
24 different is ignoring the change in the beverage
25 sector over a long period of time.

1 MR. DUNN: Let me just add one thing on
2 that. What Randy is really saying is you can't -- at
3 some point, the growers of the Petitioners here would
4 have you say, well, essentially, you know, if it
5 weren't for these Brazilian -- these darn foreign
6 imports, we would be able to charge out the wazoo for
7 our juice and people would pay whatever we demand for
8 it. They won't, because exactly what Randy is saying,
9 you start bumping up. There's only so much that the
10 retailers can charge for their juice and, therefore,
11 there's only so much that the processors can charge
12 the packagers, who can charge the retailers for that
13 juice.

14 I'm old enough to remember, I was just a
15 tyke, in 1962, when they -- or 1964, sorry, when they
16 had the huge freeze in Florida. And I could remember
17 hearing on the radio about how the price of orange
18 juice had gone through the roof. And what happened
19 was people stopped drinking orange juice. They
20 started drinking coffee and the market disappeared.
21 And that's why the Brazilian industry exists, is that
22 American producers said, we need a more stable source
23 of supply to keep our customers. Even the
24 Petitioners, in this case, have admitted that as you
25 raise the price, you will get a decline in demand.

1 And there's USDA data that show that the price
2 increases that have occurred in the last year are
3 starting to effect demand. So, that's the real
4 problem. You can't simply raise the price.

5 COMMISSIONER ARANOFF: Well, I take your
6 point that at a certain point, you raise the price so
7 high, that demand falls off. And I guess the question
8 is, in your view, can Petitioners get a price
9 suppression case from saying somewhere between that
10 point where you've raised it so high that you lose
11 demand and the amount of imports that came in, if it
12 had been maybe 10 percent less imports, 20 percent, 50
13 percent fewer imports to make up that gap, they would
14 have gotten a price increase without a falloff in
15 demand and they would have been better off. Do they
16 have a theory of the case there?

17 MR. FREEMAN: I refer you to Dr. Carter's
18 analysis, which I believe showed that the price impact
19 of changes in volume of imports, which is what you're
20 talking about, was 100 percent delta -- 100 percent
21 change in the volume of imports creates a one percent
22 change in the value of price. And that's, you know --
23 that's not very much at all.

24 COMMISSIONER ARANOFF: Well, I appreciate
25 all of your indulgence. I invite Petitioners to

1 respond to this in their post-hearing, if they'd like
2 to. And regretfully, Mr. Chairman, my time is up.

3 CHAIRMAN KOPLAN: Well, I'm going to do you
4 a favor. I'm going to ask some more questions just to
5 keep it going for you. Mr. Greenwald, you've had it
6 awfully easy this afternoon and I just can't let you
7 go without asking you something. I note that you have
8 bracketed information in your pre-hearing brief
9 related to trends of imports from Brazil. I'm
10 referring specifically to page two, where in the first
11 full paragraph, you have four brackets; page four,
12 where you have three brackets in the first paragraph;
13 and page six, the first line, you have a bracket. I'm
14 trying to understand on what basis you put those
15 brackets in, because aggregate import statistics are
16 in the public record discussing whether imports
17 increased or decreased during the period that I'm
18 looking at is certainly in the public realm. So, I
19 don't understand the basis for those particular
20 brackets. Can you help me out?

21 MR. GREENWALD: Yes.

22 CHAIRMAN KOPLAN: I know you're a very
23 experienced bracketer.

24 MR. GREENWALD: No, not a terribly accurate
25 one. When we did the brief, we did not have or we had

1 just got a copy of the public version. And given the
2 sensitivities, my instructions -- I hope this is right
3 -- the staff -- other lawyers working on it were out.
4 We tried to do it early. And the instructions were to
5 be extra cautious. So, it is quite probable that we
6 have over bracketed.

7 CHAIRMAN KOPLAN: Okay. But, I thought you
8 filed your brief a week before you got the public
9 version for the staff report.

10 MR. GREENWALD: Ms. Fischer, I think, can
11 answer far better than I.

12 CHAIRMAN KOPLAN: Well, if you think you
13 might have over bracketed, I can accept that as your
14 answer.

15 MS. FISCHER: This is Lynn Fischer. I
16 believe the answer is that there was an abundance of
17 caution in the bracketing. I was actually out of the
18 office that week and Tammy Horne was working with John
19 on this. I think there was maybe bracketing in an
20 abundance of caution. Working with the proprietary
21 version of the staff report, brackets were put in that
22 once the public version became available, and it only
23 did, at least based on the e-mails I saw, it became
24 available on the 28th or very late on the 27th, and this
25 brief was due on the 29th, that perhaps brackets that

1 were in should have been taken out. But, in preparing
2 our final version of the brief, we pay a lot more
3 attention to putting in brackets that are missing than
4 we do to taking out brackets that might be too
5 cautious.

6 CHAIRMAN KOPLAN: Thank you for that. I
7 have one more. Mr. Kalik, with respect to the issue
8 of like product, on pages nine and 10 of the
9 Petitioners' pre-hearing brief, they note that "the
10 dissenting opinion in the preliminary investigation
11 noted that FCOJM can have different end uses than
12 NFCOJ, such as a beverage-based in fruit drinks and as
13 an ingredient in fruit preparations. However, the
14 specific end use for which FCOJM is developed is
15 single-strength orange juice sold at retail. It's
16 concentrated form was developed as a method of storage
17 and transportation rather as a means to facilitate its
18 use in other non-juice products. As a practical
19 matter, the overwhelming majority of FCOJM is
20 ultimately sold as orange juice at retail." How do
21 you respond to that?

22 MR. KALIK: I don't disagree with that. It
23 doesn't mean that NFC and FCOJ are the same like
24 product. But, clearly, the majority of the product,
25 the overwhelming majority of the product does end up

1 in the marketplace as FCOJ 42 degree breaks in cans,
2 as reconstituted juice, et cetera.

3 CHAIRMAN KOPLAN: Thank you. I appreciate
4 that. I have nothing further. Vice Chairman Okun?

5 VICE CHAIRMAN OKUN: Thank you. Well, I've
6 also successfully sent my husband home to do homework,
7 so, you know -- if we didn't have a hearing on
8 Thursday and a vote on Friday, I'd stay here with
9 Commissioner Aranoff. But, as it were, I'll try to
10 finish up quickly.

11 One, just Mr. Durling, I want to go back
12 just briefly on the pricing question and the exchange
13 you had with Commissioner Hillman. I was listening to
14 that and I'm thinking, well, you know, we certainly
15 always are trying to get unrelated purchasers, and
16 that is the right information, but I'm always
17 reluctant to part from our pricing data and I'm trying
18 to understand if what you're saying is our pricing
19 data does not reflect what we asked it to reflect when
20 we collected it. Is that the criticism of our pricing
21 data?

22 MR. DURLING: It's hard to respond in public
23 about the data of specific companies. So, we can
24 address that in the post-hearing.

25 VICE CHAIRMAN OKUN: Okay.

1 MR. DURLING: But what I can say in public
2 is that if you look at your traditional pricing data,
3 what you will see is underselling, but that doesn't
4 change dramatically over time. And so, if you are
5 looking at underselling gaps and trying to correlate
6 underselling gaps with changes in relative prices or
7 changes in relative market share, you won't find the
8 kind of correlation. In other words, in the
9 traditional case, you have underselling and you have
10 underselling that is increasing over time. And with
11 increasing underselling, subject imports are buying
12 market share. You don't see that kind of correlation,
13 if you're looking at the traditional data. Then I'm
14 saying, but you have other data and you have other
15 data that helps you answer some really important
16 questions; for example, what is the changing role of
17 non-subject imports in this market. And so, you need
18 to look at both. My argument --

19 VICE CHAIRMAN OKUN: With respect to the
20 other data, in terms of unrelated purchasers in this
21 market, where there are a lot of connections, and were
22 you have grower, processor, extractor, is that
23 universe very big? I mean, I guess a couple are
24 probably sitting here on this panel, who would be
25 considered are unrelated purchasers. But, is the

1 universe that big that that is better data to look at
2 the pricing?

3 MR. DURLING: Of purchasers?

4 VICE CHAIRMAN OKUN: Of purchasers.

5 MR. DURLING: The number of purchasers
6 relative to the number of processors, actually I'd
7 rather defer to the industry experts on that question.
8 Certainly, we can come back to it in the post-hearing,
9 but if any of the industry representatives want to
10 speak to that question now. The simple question is
11 just look at the number of questionnaire data
12 responses you have. I believe that information is
13 available and my recollection was that there were more
14 purchaser questionnaire responses than processor
15 questionnaire responses. So, you just have a larger
16 database.

17 VICE CHAIRMAN OKUN: Yes. Mr. Kalik?

18 MR. KALIK: Citrosuco may be able to purge
19 this problem for you and our own questionnaire
20 responses, because the real issue in the related party
21 question is who is the importer of record. Is it the
22 related company or is it the customer? In most cases,
23 in the case of Citrosuco, Citrosuco is the importer of
24 record and it's an inter-company transfer price. But,
25 we have had and we have had a fair amount of sales

1 directly to our customer, where they were, in that
2 particular case, were the importer of record. So, we
3 provided purchaser information. We've also provided
4 importer information, where we're showing transfer
5 pricing to ourselves and, also, where we're showing
6 the actual price to the ultimate customer of ours,
7 which would be -- that would be the more reflective
8 price of what the import sale price is.

9 VICE CHAIRMAN OKUN: Okay. Well, I will
10 look at that, but I'll also look for your post hearing
11 on that. And Mr. Kalik, you reminded me, counsel, if
12 you've not already commented, if you could comment on
13 the related party question and whether appropriate
14 circumstances exist to exclude one or more of the U.S.
15 producers. And then, also, Mr. Dunn and Mr. McGrath,
16 if I failed to do so in my question earlier, if you
17 will brief on the issue of the inclusion of the
18 growers, both on a one like produce and two like
19 product, I would appreciate that, as well.

20 And then I'm doing what I really hate to do
21 this lone into a hearing, which is to turn to a
22 modeling question for Dr. Carter. But, I'm only going
23 to ask one. And it's the one that was raised by
24 Petitioners' economists, Ms. Warlick this morning, and
25 that had to do with the assumption in your model, Dr.

1 Carter, that imports accounted for a relatively small
2 percent of total supply of FCOJM in the U.S. market.
3 And it's that assumption that justifies the
4 categorization of demand for imports is elastic, while
5 the demand for U.S. product is inelastic. And, again,
6 as she was going through that, and I'm looking through
7 the share of Brazilian imports of market share in the
8 U.S., I thought she raised a good point on, you know,
9 can you really do that in a model and come out with an
10 accurate answer on the influence of imports on prices.

11 MR. CARTER: There are different parts to my
12 report. I think she was referring to the conceptual
13 argument, that there's a difference between domestic
14 demand elasticity and import demand elasticity and the
15 assumptions made in the conceptual part are not
16 critical to the empirical part. But, let me address
17 the conceptual part first. And I believe she was
18 referring to a statement in my report that said
19 something about a relatively small share.

20 And the basic answer is, you can have an
21 inelastic domestic demand, whatever it is, 0.5, minus
22 0.5, and if the market share is around 15 percent or
23 even 20 percent, that will still give you a rather
24 highly elastic import demand. So, it depends what we
25 call relatively small. A 15 percent, 20 percent

1 market share will turn an inelastic domestic demand
2 into a very high elastic import demand. So, that's
3 hopefully an answer to that part.

4 When I turn to the empirical model, I didn't
5 make any such consumption. I let the data speak. I
6 tried to measure the impact of imports on the New York
7 futures price controlling for other factors in the
8 market using monthly data and found that, in fact, the
9 import demand elasticity was quite high, was very
10 high. And that's not surprising to me, given what
11 economic theory says it ought to be.

12 VICE CHAIRMAN OKUN: Okay. I appreciate
13 those comments. Staff may have more technical follow-
14 ups, but I was interested in the response on how that
15 was -- how the import market share figure related to
16 your analysis. And with that, I think, Mr. Chairman,
17 I have no further questions.

18 CHAIRMAN KOPLAN: Thank you. Commissioner
19 Hillman?

20 COMMISSIONER HILLMAN: I hope just a couple
21 of quick follow-ups, given the lateness of the our.
22 One of the issues that was discussed in the opinion
23 that those of us that made a decision that there were
24 two like products at the stage of the preliminary was
25 the degree of overlap in the channels of distribution

1 between NFC and FCOJ. And the argument was made, and
2 I can even read it from the opinion, which is, "the
3 record indicates that both FCOJ and NFC are
4 predominantly sold to bulk reconstituters,
5 remanufacturers, and packers, who, in turn, sell to
6 the retail market." Petitioners and Respondents,
7 however, disagree on the degree to which the
8 purchasers overlap. And I discussed this a little bit
9 this morning with the Petitioners. Petitioners
10 maintain that the two, the FCOJ and the NFC, are
11 purchased by the same firms, whereas at the time
12 Respondents were stating that NFCOJ is not sold to
13 reconstituters, because it doesn't need to be
14 reconstituted. And I'm trying to understand from your
15 perspective, again, whether there is a complete
16 overlap, mostly overlap, or a lack of overlap in the
17 purchasers of NFC versus FCOJ, given that one of them
18 must be sold to a reconstituter and the other one does
19 not need to be reconstituted. Is there an overlap in
20 the purchasers or not and how much? Mr. Emmanuel?

21 MR. EMMANUEL: Yes. Once you've accounted
22 for Tropicana, Forder's Natural, and Coca Cola
23 Company, the remaining market left, as far as NFC is
24 concerned, even the Petitioners admitted, was
25 relatively small. There is virtually no overlap in

1 terms of purchasers that buy both FCOJ to be
2 reconstituted and buy NFC to be packaged. Kroger,
3 that was mentioned this morning, is one of the
4 exceptions. But, almost all other purchasers that
5 purchase FCOJ for reconstituted do not have a viable
6 market or a viable market share to the point of even
7 participating in the NFC market. There is really only
8 one exception and that's JoHanna Foods, who is really
9 a large co-packer in the Northeast. So --

10 COMMISSIONER HILLMAN: Would anybody else
11 have any additional or different comments on that
12 issue?

13 MR. CLARK: Commissioner Hillman,
14 unfortunately, Dan Casper had to leave. This is Matt
15 Clark, so I can only repeat from his testimony earlier
16 today. But, Dan's testimony was to the effect that
17 Minute Maid, that is the Coca Cola Company, is a
18 purchaser of fresh fruit that is converted into both
19 NFC and FCOJM. It, also, purchases domestically not
20 from concentrate juice from domestic suppliers and we
21 purchase frozen concentrated orange juice from
22 domestic sources. So, the Minute Maid Company does
23 purchase fruit, not from concentrate juice, and frozen
24 concentrated orange juice. And we'll -- of course,
25 Dan's not here; I don't go beyond his testimony. We

1 will elaborate in the post-hearing brief.

2 COMMISSIONER HILLMAN: Okay. Mr. Kalik?

3 MR. KALIK: Just to clarify one point from
4 Mr. Emmanuel. A large number of the non-Florida
5 reconstituters are dairies that purchase products on a
6 tanker basis package, just as they package milk, et
7 cetera. They do not have the aseptic equipment. Talk
8 about storage on NFC, the huge cost of maintaining the
9 product in an aseptic environment, the science of
10 maintaining the product in an aseptic environment, and
11 packaging in an aseptic environment is a critical
12 factor for NFC and most of those dairies, which
13 Citrosuco sells to, and others on this panel sell to,
14 do not have the ability to package that NFC and do not
15 purchase that NFC.

16 COMMISSIONER HILLMAN: Okay. I appreciate
17 those answers. Thank you. I guess just more of a
18 comment on this issue of price, because, again, as I
19 hear -- I think I hear the case the same way
20 Commissioner Aranoff is, which is what their
21 fundamentally arguing is a price suppression case.
22 And we've talked a little bit about this issue of
23 pricing and I understand, Mr. Durling, the points that
24 you're making. I will tell you, I share Commissioner
25 Aranoff's loathing of moving away from our traditional

1 pricing analysis, absent a really compelling reason to
2 do it. We, obviously, asked in the questionnaires
3 that people give us arms-length transactions. So, I
4 am not -- again, unless you tell me differently, I'm
5 not assuming that our data is, in that sense, flawed.
6 I'm assuming that people reported the data to us as it
7 was asked for.

8 If that's different from what you think
9 happened, that, we ought to know. But, I guess, my
10 other concern, in terms of you asking us to look at
11 purchaser data, again, at least Mr. Freeman's
12 testimony was an awful lot of the purchasers are also
13 packagers. So, it's not entirely clear to me, again,
14 that you can move away from this issue of, if you
15 will, intra-company transfers or levels of trade
16 problems, even if you were to go to the purchaser
17 data.

18 So, I'm only suggesting that if there is
19 comments that you want to make in the post-hearing on
20 exactly how we should evaluate this issue of price
21 effects. I've heard Dr. Carter's testimony on it. I
22 understand it. But, again, I am looking at a record,
23 in which you do see, I agree, it's not changing, but
24 pretty consistent underselling, which is not clear to
25 me as entirely consistent with the notion that there's

1 a big demand pull of product coming into the market.
2 So, I would invite any comment in the post-hearing
3 briefs on exactly how it is that you think we should
4 evaluate this issue of whether a price suppression
5 case is seen in this data.

6 MR. DURLING: We will certainly elaborate in
7 the post-hearing, Commissioner Hillman. But the
8 simple short answer now is, under Petitioners' theory,
9 you would not expect to see ups and downs in the
10 imports. Under their theory, you should see a
11 constant increase in the imports. And so, at whatever
12 the price level and whatever the level of
13 underselling, you're not seeing the volume changes
14 that would be consistent with their theory. Because
15 under their theory, under the point you're making,
16 which is imports are cheaper, so they're being pulled
17 into the market, well, if imports are cheaper and if
18 the underselling data shows that they're always
19 cheaper, then why aren't they always being pulled into
20 the market and why are they going down --

21 COMMISSIONER HILLMAN: Well, again --

22 MR. DURLING: -- during the period, at this
23 time?

24 COMMISSIONER HILLMAN: -- my understanding
25 was imports are coming in (a) because they need to be

1 blended, but that that amount is reasonably constant;
2 but (b) they're coming in because there's a shortage
3 in the Florida crop. So, again, to me, that's where
4 the demand pull is. And to the extent that there is
5 this big pull into the market, that's where I'm
6 struggling with. So, why is it still underpriced, I
7 mean, under the U.S. market? If there is this big
8 need, there's a shortage and you need to pull in a
9 significantly larger volume in the recent year than
10 you have in previous years, again, this issue of why
11 the prices remain below the prices in the U.S. That's
12 the issue that I'm wanting you to --

13 MR. DURLING: Okay.

14 COMMISSIONER HILLMAN: -- help me
15 understand.

16 MR. DURLING: Okay.

17 COMMISSIONER HILLMAN: And with that, I have
18 no further questions, but many thanks for all the
19 answers that you've given tonight.

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

22 COMMISSIONER LANE: I just have one question
23 and I think it's for Mr. Freeman or Mr. Dunn. I'm not
24 sure. One of you stated, in responding to an earlier
25 question, that retailers could only charge so much.

1 However, isn't it true that retailers never drop their
2 price, as wholesale prices went down? So, it would
3 not necessarily follow that increased wholesale prices
4 would effect retail prices up and drive down demand.
5 Would you care to respond to that, Mr. Freeman?

6 MR. FREEMAN: There are two sort of
7 responses to that. One of them is that it isn't so
8 much what the list price is. It's what the off price
9 is. I forget the statistics. Dr. Behr would know
10 them very, very well. But, the percentage of orange
11 juice that is sold at retail on what is called
12 promotion is enormous. I make a habit of hitting the
13 grocery stores pretty much every week to see who is
14 doing what. And invariably in Connecticut, you'll see
15 one grocery store that has one of them cheap that week
16 and it's almost out of stock, while the others are
17 sitting there languishing. And you go to the next
18 store, same dynamic, different brand. And then you go
19 back and forth. So what happens is not so much the
20 list price, as the amount of promotional activity that
21 is given and that is what I think Chris Dunn was
22 talking about when they're saying reduce the price.
23 Well, you're just reducing the net price. That sort
24 of stuff, that promotional activity, is brand driven;
25 i.e., those promotional dollars and those discounts

1 come back to and are paid by the brand, who is doing
2 it. And in higher-priced environments, those
3 promotional dollars stop flowing.

4 So, they leave the list price again, sort of
5 like a car dealer. GM says to its dealer, we're going
6 to sell the Chevy for 3,000 bucks and that's the list
7 price and it just sits there. And then GM says, we're
8 going to give you zero financing and 500 bucks back
9 and they start flying off the lot. Well, that's the
10 same dynamic that's going on in orange juice. And
11 what's happened is and what's happening is when you
12 get prices up is that the brands, or the GM, stops
13 giving the rebates, stops giving the zero financing,
14 and the consumer reacts to that, because the consumer
15 is used to buying it on sale at 99 cents a half gallon
16 and when it's \$1.99 a half gallon week after week
17 after week, they stop buying it. It's not a
18 straightforward just a price thing. It has to do with
19 promotional activity.

20 COMMISSIONER LANE: Okay. Thank you.
21 That's all the questions I have.

22 CHAIRMAN KOPLAN: Thank you. Commissioner
23 Pearson, I'm not going to you to that pledge. Do you
24 have other questions?

25 COMMISSIONER PEARSON: Mr. Chairman, I think

1 I better stay stopped while I'm ahead, but let me just
2 express my sincere appreciation to the panel for all
3 the effort.

4 CHAIRMAN KOPLAN: Okay. Are there any other
5 questions from the dais?

6 (No questions from the dais.)

7 CHAIRMAN KOPLAN: Ms. Mazur?

8 MS. MAZUR: Mr. Chairman, staff has no
9 questions.

10 CHAIRMAN KOPLAN: All right. Well, it's my
11 understanding that the only time left is five minutes
12 for closing for you, Mr. McGrath, and five minutes for
13 Mr. Kalik, with no time left for rebuttal or other
14 questions. So, I would excuse this panel and we could
15 go to closing remarks.

16 MR. DUNN: Thank you, very much, Mr.
17 Chairman.

18 CHAIRMAN KOPLAN: Thank you, very much, for
19 your time and patience today. I appreciate those of
20 you, who are still here, for having stayed this late.

21 (Witnesses excused.)

22 CHAIRMAN KOPLAN: Are you gentlemen waiving
23 your closing remarks?

24 (Pause.)

25 MR. MCGRATH: I seem to have lost my

1 economist and her charts. So, along with I think --
2 some of our witnesses are still here. Shall I
3 proceed? Okay, thank you.

4 CHAIRMAN KOPLAN: Please. I had that in
5 mind --

6 MR. MCGRATH: I will try to get through this
7 quickly --

8 CHAIRMAN KOPLAN: -- unless you want to
9 waive.

10 MR. MCGRATH: Thank you all for being here
11 and staying here for so long. And I was just thinking
12 of making arrangements about my homework
13 responsibilities, as well.

14 First, I want to thank the staff. Once
15 again, they've done a tremendous job of putting
16 together, pulling together a lot of data, oftentimes
17 from folks, who are very distracted with a lot of
18 other day-to-day business. It's difficult to get at
19 this entire industry. There are so many of them, so
20 many growers, so many processors, purchasers, and the
21 ITC staff folks have done a tremendous job of pulling
22 a lot of information together and revising and keeping
23 it up to date. So, we want to thank them for that
24 work.

25 The one thing that we did not hear very much

1 disagreement about here earlier today from Respondents
2 was whether or not there are indicia present of injury
3 to the industry. Until the very end of their
4 discussion, they talked about a recent report that
5 makes projections of tremendous performance,
6 supposedly the highest price per box of oranges in a
7 long time. I would just review for the record some of
8 the elements that I started out with this morning,
9 when we began our discussion of structural steel
10 beams.

11 During this period of investigation, imports
12 increased from eight percent to more than 25 percent
13 of domestic production. We have not charged that that
14 volume, in and of itself, has caused injury. We do
15 admit that the presence of imports in this market is a
16 condition of the marketplace. Our concern and the
17 only reason we brought this case was because of the
18 very low pricing that the industry was experiencing at
19 the time those imports were increasing.

20 Inventories of domestic and imported juice,
21 once again, increased to an all time high of 28 weeks
22 and even after the hurricanes in 2004 had still
23 increased by 21 percent over the period. With respect
24 to inventories, I would just guide you to Table 7-8,
25 to look at just the size of Brazilian inventories that

1 remained in the United States market during this
2 period of time, and this is just for the companies
3 that were able to report that information. When you
4 look at it, you'll see that one out of every five
5 pounds of product that was being imported in the most
6 recent year was going into inventory. The presence of
7 inventories in the marketplace, growing inventories of
8 both Florida and Brazilian juice, is what caused the
9 greatest concern and what we feel directly led to a
10 decline in prices.

11 Mr. Freeman said -- well, Mr. Freeman said
12 many, many, many interesting things and we agree with
13 very many of them. But on this particular issue, on
14 inventories, he said that there's no question that
15 inventories have an impact on price. We believe that
16 that is the case. At the time that there was a large
17 supply in the market and inventories were building,
18 we, also, had what was a first time delivery --
19 commencement of deliveries of volumes into the futures
20 market by Catrale at extremely low prices and there
21 was a very interesting discussion here today of what
22 that meant, what does the futures market mean. And a
23 lot of expert opinion being offered about the fact
24 that it was only a market of last resort; but on the
25 other hand, they're a very good customer; but on the

1 other hand, there's so little volume that goes there.
2 The fact is that, as Mr. Freeman said, he would sell
3 into the futures market at below the cost of
4 production, if that was what his alternative was. If
5 there was another alternative, he would have done
6 something else. I think the testimony from Catrale
7 was very similar. The deliveries into the futures
8 market were done because there was no other option for
9 dealing with that volume that was in the market. So,
10 inventory in the market is important.

11 Profits to growers declined considerably
12 during this period.

13 The other thing you didn't hear this
14 afternoon was very much discussion at all about the
15 plight of the growers. The growers are the ones, who
16 are not earning returns sufficient to recover from
17 past damages. When you look, again, at our Chart 14,
18 to see the decline in pricing over the long time and
19 you see that that price drops below what our witnesses
20 testified was necessary to recovery their cost of
21 production at the current time period. Then, you'll
22 see what the fate of this industry really is. The
23 people, who testified here this afternoon, are experts
24 in juice, but they are not growers and the fate of the
25 growers is certainly not their main concern.

1 In conclusion, I would say that our theories
2 are not simply that there's price suppression, that
3 there should have been no impact on pricing or there
4 should have been nothing to stop the price from
5 shooting through the roof whenever there's a shortage.
6 Dr. Brinner's own table had showed that there is a gap
7 between wholesale and retail pricing that has opened
8 up over the years, but it has -- it means that there's
9 a sufficient boom there, so that growers could also
10 recover cost, if the price to the grower was
11 sufficient.

12 We urge you to find that there is injury to
13 the domestic industry consisting of both NFC, FCOJ,
14 growers and processors, organic and non-organic.
15 Thank you.

16 CHAIRMAN KOPLAN: Thank you. Mr. Kalik?

17 MR. KALIK: Thank you, Mr. Chairman. Just
18 to close the loop, I had already arranged for my wife
19 to pick the kids up from basketball practice, figuring
20 we'd go this late tonight. I do want to thank the
21 Commission for their very, very intense look and
22 concern with this case. The time that was spent
23 coming down to the plants by both the staff and
24 members of the Commission was very gratifying for all
25 of the Respondents in the case and the staff work. I

1 want to thank the staff, also, for all their hard work
2 in a very, very difficult case, as those of us, who
3 have been living it now.

4 I'm going to do this very quickly. I have
5 one slide, if we can get it up and running. I'll be
6 Dr. Brinner for the moment. Very simply, put it very
7 simply, in the markets where imports have increased by
8 120 million gallons, a large percentage of which are
9 non-subject Brazilian imports. Right now, today, we
10 have the highest prices in 10 years. Yesterday, the
11 FCOJ futures market closed at \$1.33. If you recall in
12 the earlier testimony, it was down to 54 cents.
13 Orange price per box is at the highest level in more
14 than 10 years. Inventory levels have dropped by more
15 than twice the amount of the import increase.

16 To paraphrase an old commercial for those of
17 us, who are old enough, where is the beef? Under the
18 circumstances, there's just no basis for concluding
19 imports are either causing injury or threatening
20 injury. Thank you, very much.

21 CHAIRMAN KOPLAN: Thank you. Thank you to
22 all those, who participated today, again. Post-
23 hearing briefs, statements responsive to questions,
24 and requests of the Commission and corrections to the
25 transcript must be filed by January 17, 2006; closing

1 of the record and final release of data to parties by
2 February 2, 2006; and final comments are due February
3 6, 2006. And with that, this hearing is concluded.

4 (Whereupon, at 7:20 p.m., the hearing in the
5 above-entitled matter was concluded.)

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CERTIFICATION OF TRANSCRIPTION

TITLE: Certain Orange Juice from Brazil
INVESTIGATION NO.: 731-TA-1089 (Final)
HEARING DATE: January 10, 2006
LOCATION: Washington, D.C.
NATURE OF HEARING: Hearing

I hereby certify that the foregoing/attached transcript is a true, correct and complete record of the above-referenced proceeding(s) of the U.S. International Trade Commission.

DATE: January 10, 2006

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Washington, D.C. 20005

I hereby certify that I am not the Court Reporter and that I have proofread the above-referenced transcript of the proceeding(s) of the U.S. International Trade Commission, against the aforementioned Court Reporter's notes and recordings, for accuracy in transcription in the spelling, hyphenation, punctuation and speaker-identification, and did not make any changes of a substantive nature. The foregoing/attached transcript is a true, correct and complete transcription of the proceeding(s).

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I hereby certify that I reported the above-referenced proceeding(s) of the U.S. International Trade Commission and caused to be prepared from my tapes and notes of the proceedings a true, correct and complete verbatim recording of the proceeding(s).

SIGNED: Christina Chesley
Signature of Court Reporter