



THE UNITED STATES INTERNATIONAL TRADE COMMISSION

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

Tuesday,  
 January 24, 2012

Main Hearing Room  
 U.S. International  
 Trade Commission  
 500 E Street, S.W.  
 Washington, D.C.

The hearing commenced, pursuant to notice, at  
 11:32 a.m., before the Commissioners of the United States  
 International Trade Commission, the Honorable DEANNA  
 TANNER OKUN, Chairman, presiding.

APPEARANCES:

On behalf of the International Trade Commission:

Commissioners:

DEANNA TANNER OKUN, CHAIRMAN  
 IRVING A. WILLIAMSON, VICE CHAIRMAN  
 DANIEL R. PEARSON, COMMISSIONER  
 SHARA L. ARANOFF, COMMISSIONER  
 DEAN A. PINKERT, COMMISSIONER  
 DAVID S. JOHANSON, COMMISSIONER

APPEARANCES: (Cont'd.)

Staff:

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AMY SHERMAN, INVESTIGATOR  
BRENDAN LYNCH, INTERNATIONAL TRADE ANALYST  
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ELIZABETH HAINES, SUPERVISORY INVESTIGATOR

In Support of the Continuation of Antidumping Duties:

On behalf of Florida Citrus Mutual (FCM), Citrus World,  
Inc. and Peace River Citrus Products, Inc.:

MICHAEL SPARKS, Executive Vice President and CEO,  
Florida Citrus Mutual  
VICTOR STORY, President, Story Groves Services,  
Inc., and President, Florida Citrus Mutual  
JOHN BARBEN, Vice President, Robert J. Barben,  
Inc.  
ROBERT BEHR, Vice President, Planning and  
Production, Citrus World, Inc.  
AMY WARLICK, Economist, Barnes, Richardson &  
Colburn

MATTHEW T. McGRATH, Esquire  
STEPHEN W. BROPHY, Esquire  
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Washington, D.C.

On behalf of Southern Gardens Corporation (Southern  
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DAN CASPER, Vice President, Procurement, Sales &  
Marketing, Southern Gardens

MATTHEW J. McCONKEY, Esquire  
JEFFERY C. LOWE, Esquire  
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Washington, D.C.

APPEARANCES: (Cont'd.)

In Opposition to the Continuation of Antidumping Duties:

On behalf of Fischer S.A. Comercio, Industria and  
Agricultura and Citrosuco North America, Inc.  
and

On behalf of Sucocitrico Cutrale Ltda., Cutrale Citrus  
Juices Inc., Louis Dreyfus Commodities Agroindustria,  
S.A. and Louis Dreyfus Citrus, Inc.:

NICK EMMANUAL, CEO and President, Citrosuco North  
America, Inc.

HUGH THOMPSON, President, Cutrale Citrus Juices,  
Inc.

RANDAL FREEMAN, Senior Vice President, Louis  
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ROBERT G. KALIK, Esquire  
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Washington, D.C.

On behalf of The Coca-Cola Company (TCCC):

JIM HARRISBERGER, Director, North American  
Procurement, TCCC

MATTHEW J. CLARK, Esquire  
NANCY A. NOONAN, Esquire  
Arent Fox LLP  
Washington, D.C.

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1 Chairman.

2           CHAIRMAN OKUN: The purpose of this  
3 five-year review investigation is to determine whether  
4 revocation of the antidumping duty orders covering  
5 certain orange juice from Brazil would be likely to  
6 lead to continuation or recurrence of material injury  
7 to an industry in the United States within a  
8 reasonably foreseeable time.

9           Schedules setting forth the presentation of  
10 this hearing, notices of investigation and transcript  
11 order forms are available at the public distribution  
12 table. All prepared testimony should be given to the  
13 Secretary. Please do not place testimony directly on  
14 the public distribution table.

15           All witnesses must be sworn in by the  
16 Secretary before presenting testimony. I understand  
17 that parties are aware of the time allocations. Any  
18 questions regarding the time allocations should be  
19 directed to the Secretary.

20           Speakers are reminded not to refer in their  
21 remarks or answers to questions to business  
22 proprietary information. Please speak clearly into  
23 the microphones and state your name for the record for  
24 the benefit of our court reporter. If you'll be  
25 submitting documents that contain information you wish

1 classified as business confidential, your requests  
2 should comply with Commission Rule 201.6.

3 Mr. Secretary, are there any preliminary  
4 matters?

5 MR. BISHOP: No, Madam Chairman.

6 CHAIRMAN OKUN: Very well. Let us begin  
7 with our opening remarks.

8 MR. BISHOP: Opening remarks on behalf of  
9 those in support of continuation will be by Matthew T.  
10 McGrath, Barnes, Richardson & Colburn.

11 CHAIRMAN OKUN: Welcome, Mr. McGrath.

12 MR. McGRATH: Thank you. It's good to be  
13 here again, and I would be remiss I think on this  
14 solemn day to not acknowledge and offer condolences I  
15 think from all of us on the passing of Judge Luckern.  
16 He was a tremendous jurist and I think known to many  
17 of us here who practice at the ITC.

18 We are here again to talk about orange  
19 juice. I know some of you have talked before and some  
20 of you may be looking at it for the first time. I'm  
21 Matt McGrath of Barnes Richardson representing the  
22 Petitioners, and we believe revocation would result in  
23 occurrence of material injury or recurrence of  
24 material injury within a relatively brief period of  
25 time, and we ask the Commission to rule in the

1 affirmative.

2           When we were here six years ago, citrus  
3 growers and processors were faced with an  
4 extraordinary challenge. We had just been in the face  
5 of a freakish coincidence of multiple hurricanes  
6 crisscrossing the state, a recurrent canker  
7 infestation which resulted in the destruction of  
8 millions of trees and at the same time a precipitous  
9 price decline caused by dumping that resulted in  
10 losses for growers and processors alike.

11           There is no doubt that the discipline  
12 imposed by the dumping order allowed this industry,  
13 especially growers, to stabilize and recover from some  
14 of the problems they faced. Revocation of that order  
15 will revert the industry losses.

16           First, in addition to declining consumption  
17 worldwide, import volume remains significant. A  
18 temporary drop in volume recently after a low  
19 Brazilian crop does not establish a trend, but it is a  
20 convenient prop for Brazilian arguments that they  
21 don't care about the U.S. market anymore. They do.  
22 And as we also will discuss further, a recent merger  
23 between two of the four megaprocessors in Brazil will  
24 expand the volume of subject merchandise  
25 significantly.

1           Second, Brazilian producers have the  
2 resources and the government support to expand their  
3 volume of trade rapidly to the U.S. if the order is  
4 revoked. They continue to add storage capacity both  
5 here and abroad, including a new government financed  
6 stockpiling program, which is going to hurt the  
7 industry in the long run. There's little residual  
8 demand in the U.S. which will pull in imports, but  
9 there is residual supply and will be more residual  
10 supply in Brazil, which will push imports here. We'll  
11 talk about those data.

12           Third, juice pricing as reflected in the  
13 futures market still controls spot prices for fruit.  
14 This is where producers and growers are affected. It  
15 affects the basis levels in the seasonal fruit  
16 delivery contracts, and a price decline for imports  
17 will affect the market and will undercut growers'  
18 returns.

19           Fourth, this is important because growers'  
20 costs have increased tremendously, by as much as 100  
21 percent in the last five years for many growers. The  
22 challenge of HLB or greening, which many of you saw  
23 when you visited, is unique. Its treatment is costly.  
24 Canker is now a permanent resident in the grove, and  
25 that must be treated all the time. Fuel and

1 fertilizer costs have skyrocketed, and labor costs  
2 have not been constrained by the recession.

3           We will also address some of the issues that  
4 were raised by Respondents, including residual demand,  
5 which we don't think really exists to a great degree  
6 here, and the alleged growth in the export market for  
7 U.S. processors, which also doesn't exist.

8           Finally, let's not ignore the elephant in  
9 the room. The headlines have been filled with reports  
10 of findings of carbendazim in imported juice. It's a  
11 fungicide that's not permitted for use in the United  
12 States. That finding was self-reported by Minute Maid  
13 to the FDA. The FDA has consulted with EPA. They are  
14 testing both imports and domestic juice. They are  
15 testing finished product. I understand they're  
16 testing everything.

17           Regardless of the results and what the  
18 findings are and what the science is, this is a  
19 negative development for everyone in this room --  
20 growers, processors, importers, everyone. Consumer  
21 perceptions and their willingness to buy juice are not  
22 always guided by scientific precision or by tiny  
23 origin labels. Any negative impact on the orange  
24 juice market and on orange juice sales doesn't help  
25 any of us, even those that are 100 percent Florida

1 product.

2           It's a factor which will lead to the reduced  
3 consumption in a market that has already seen a 30  
4 percent decline in demand in the last six years. The  
5 Commission must consider consumption in evaluating  
6 relative import volume, and these recent developments  
7 point towards increased subject imports relative to  
8 domestic consumption.

9           So in conclusion, in this counterfactual  
10 analysis, as you're requested to do by the SAA, the  
11 likely volume, the likely price effect and the impact  
12 of imports would be injurious in a reasonably  
13 foreseeable period if this order were revoked. Thank  
14 you very much.

15           CHAIRMAN OKUN: Thank you.

16           MR. BISHOP: Opening remarks on behalf of  
17 those in opposition to continuation will be by  
18 Christopher Dunn, Curtis Mallet-Prevost Colt & Mosle.

19           CHAIRMAN OKUN: Good morning and welcome.

20           MR. DUNN: Good morning, Madam Chairman,  
21 members of the Commission. I'm Christopher Dunn, a  
22 member of the firm of Curtis Mallet-Prevost Colt &  
23 Mosle, speaking on behalf of the Respondents, who  
24 represent the largest domestic processors and  
25 producers of orange juice in the United States, as

1 well as importers of certain orange juice from Brazil.

2           The domestic industry before you now is a  
3 far different one from the industry the Commission  
4 investigated back in 2005. Above all, this industry  
5 is substantially more profitable than it was six years  
6 ago. The Commission's record shows earnings levels  
7 that are three and five times what they were in the  
8 original investigation, and these high earnings are  
9 seen for both FCOJ and not-from-concentrate orange  
10 juice and for both processors and growers. This is no  
11 longer a domestic industry that is vulnerable to  
12 competition to imports.

13           Now, the domestic industry would have you  
14 believe that the reason that the industry is more  
15 profitable and revitalized is because of the  
16 antidumping duty order. That's just wrong. The  
17 reason the Florida industry is more profitable is that  
18 the crops it produces are substantially smaller than  
19 those the Commission examined in the investigation.

20           While the Florida crops that the Commission  
21 saw in 2003 and 2004 were 242 million boxes, today  
22 they are now less than 150 million boxes, a decline of  
23 about 40 percent. The domestic industry is smaller  
24 not because of imports, but because of hurricanes and  
25 citrus diseases, and these small crops are projected

1 to persist and even to decline over the next five to  
2 10 years. The smaller crop levels mean that prices  
3 for both fruit and juice are at record highs. At  
4 these smaller crop levels, the domestic industry is  
5 highly profitable and will continue to be so.

6           It's clear that the antidumping duty order  
7 had nothing to do with the smaller crop levels and the  
8 highly profitable domestic industry. Domestic  
9 production has not increased to replace subject  
10 imports. While subject imports have dropped since the  
11 order, the domestic industry's market share is the  
12 same as it was six years ago.

13           If imports were displacing domestic  
14 production, one would expect domestic market share to  
15 rise when imports became restricted. It did not.  
16 This is because subject imports do not determine the  
17 domestic industry's market share. That market share  
18 is driven entirely by the size of the domestic orange  
19 crop, which is insufficient to meet domestic demand.

20           Since there's a shortfall between domestic  
21 production and domestic demand, prices have risen.  
22 Meanwhile, the unfulfilled domestic demand has had to  
23 be met by someone. It's been met by imports. But in  
24 this case subject imports have merely been replaced by  
25 nonsubject imports. The order has had absolutely no

1 impact on the amount of juice produced domestically or  
2 on the total amount of juice that is imported.

3           In the previous case some Commissioners felt  
4 that imports of juice had caused price suppression in  
5 the domestic market, but that too has changed. You  
6 will hear today that unlike the situation in the  
7 original investigation the vast majority of oranges  
8 that are purchased and the vast majority of juice that  
9 is sold in the U.S. market is now sold pursuant to  
10 long-term contracts. Hence, the high prices and  
11 profits that domestic processors and growers enjoy  
12 today are locked in for years to come. They're not  
13 likely to be affected by subject imports.

14           Now, Petitioners have resorted to a great  
15 deal of slight of hand to argue that there's a  
16 considerable amount of juice in Brazil that will come  
17 to the U.S. if the order is revoked. The record  
18 before the Commission demonstrates that that is  
19 absolutely wrong. Brazilian production capacity is  
20 flat or declining, and there are only seven to nine  
21 weeks of inventory in Brazil, less than half of the  
22 inventories that exist in the United States, and those  
23 are low. These inventories are needed for the  
24 Brazilians to assure supply to customers in Europe and  
25 Asia, customers that account for some 90 percent of

1 Brazil's exports.

2           Brazilian producers have neither the ability  
3 nor the incentive to ship their meager inventories to  
4 the U.S. if this order is revoked. In short, there's  
5 no reason to believe that if the Commission were to  
6 revoke the order on orange juice that there would be  
7 any material injury to the United States industry. It  
8 is time for this nonsensical order to end.

9           CHAIRMAN OKUN: Thank you.

10           MR. BISHOP: Would the first panel, those in  
11 support of continuation of the antidumping duty  
12 orders, please come forward and be seated?

13           Madam Chairman, all witnesses have been  
14 sworn.

15           (Witnesses sworn.)

16           CHAIRMAN OKUN: Mr. McGrath, it looks like  
17 your panel is seated and ready to go.

18           MR. McGRATH: Thank you. I think we are.  
19 Again, Madam Chairman, members of the Commission, Matt  
20 McGrath representing the Petitioners. I don't need to  
21 do a lot of introductory statement here. I just think  
22 I should though, because of the listing, deliver the  
23 lineup card.

24           Even though it's still Super Bowl season in  
25 the northeast, it's three weeks away in Florida until

1 pitchers and catchers report, and I'm excited about  
2 that. So this is our lineup card. Mike Sparks will  
3 start. He'll be discussing greening and the industry  
4 in general. Vic Story will follow. He is a grower  
5 and the President of Florida Citrus Mutual.

6 Dan Casper will follow. He's with Southern  
7 Gardens, both a grower and a processor, followed by  
8 Bob Behr with Citrus World. Amy Warlick, our  
9 economist, to my right will then be talking about a  
10 lot of data issues, and our closer is John Barben  
11 seated behind me, I believe, also a family grower, a  
12 fourth generation family grower in Florida.

13 So I'll just start the ball rolling with  
14 Mike, and each of us will continue on in turn. Thank  
15 you.

16 MR. SPARKS: Good morning. Madam Chairman  
17 and members of the Commission, my name is Michael  
18 Sparks, and I'm the Executive Vice President of  
19 Florida Citrus Mutual, the state's largest citrus  
20 trade association representing approximately 8,000  
21 Florida citrus growers.

22 Many Florida citrus growers are small. They  
23 farm 100 acres or less, but a few are as large as  
24 20,000 acres. Over the years, Florida citrus has  
25 weathered the challenges created by Mother Nature --

1 freezes, hurricanes and invasive pests and diseases.  
2 However, nothing has equaled the challenge we  
3 currently face in Florida, as well as Texas and  
4 California. That's citrus greening.

5           Huanglongbing or HLB or citrus greening.  
6 It's the most destructive citrus disease on the  
7 planet. It's spread by an Asian citrus psyllid, a  
8 small insect which was first reported in Florida in  
9 1998. HLB attacks the tree and can kill it in less  
10 than two years. It was confirmed in 2005 south of  
11 Lake Okeechobee and quickly spread through the rest of  
12 the state. Today, HLB has been confirmed in all 32  
13 commercial citrus producing counties in Florida, and  
14 it's also present in varying degrees in Brazil, Mexico  
15 and Asia.

16           Primary research from the United States  
17 Department of Agriculture, as well as the University  
18 of Florida, has uncovered ways to slow down -- slow  
19 down -- the spread of HLB in our groves, but so far  
20 there is no cure. Researchers have recommended  
21 increased grove scouting to find the disease. That's  
22 only the first step.

23           If the grove has a low level of infection  
24 research strongly suggests tree removal. This must be  
25 coupled with aggressive managing of the psyllid

1 through coordinated sprays by neighboring growers.  
2 And there is a real concern about the psyllids'  
3 ability to become resistant to pesticides. Any  
4 replacement of infected trees must be with clean  
5 stock. That is expensive.

6           In addition to tree removal, many Florida  
7 citrus growers are giving trees additional nutrients  
8 to put off the symptoms of HLB, but this is a  
9 short-term solution to a long-term problem. Life with  
10 HLB is expensive. A full-blown psyllid management  
11 program, coupled with tree removal, can add up to 50  
12 percent of the current production cost, reaching a  
13 total of \$1,500 per acre. Nutritional treatments can  
14 add another \$500 per acre, depending on what inputs  
15 are utilized.

16           Simply implementing an aggressive psyllid  
17 control program can cost anywhere from \$14 to \$50 an  
18 acre, and some growers are spraying a minimum of two  
19 times a year, in the spring and the fall, but many  
20 growers are spraying up to 12 times a year at  
21 significant cost. Psyllid control treatments must be  
22 in full compliance with local, state, federal rules  
23 governing agricultural chemical applications.

24           In addition to the cost of clean,  
25 replacement trees have gone up materially from prior

1 years. There is a heavily regulated program by the  
2 State of Florida to ensure disease-free resets.  
3 Nurseries must be screened, plants potted, security  
4 steps taken and results in new trees can now cost \$9  
5 or \$10, up from \$5 just four years ago.

6 Research institutions in Florida and  
7 California have made HLB research a high priority, and  
8 the USDA has placed additional emphasis on  
9 understanding the psyllids and the disease. Currently  
10 there are more than 100 research projects underway.  
11 It is truly our Manhattan Project.

12 The Florida citrus industry has generated  
13 additional funding by redirecting our self-assessed  
14 marketing dollars for HLB research. Not surprisingly,  
15 less advertising means less demand, but we know if we  
16 cannot beat HLB there will not be a crop to market.  
17 Growers have financed more than \$50 million in  
18 research during the past five years. That is in  
19 addition to some generous private donations. We have  
20 shared the benefits of that research with citrus  
21 producers around the world, including those in Brazil.

22 Florida citrus is still a significant  
23 economic engine. Florida citrus' annual impact totals  
24 \$9 billion and creates 76,000 jobs. Nonetheless, the  
25 increased production cost associated with the disease

1 management and decreased acreage weigh heavily on our  
2 growers. In fact, the University of Florida has  
3 calculated that HLB has already cost the industry  
4 \$3.6 billion in economic activity during the past five  
5 years and has cost the industry 6,600 jobs.

6 Even faced with the threat of HLB, the  
7 growers have replanted 13 million trees in the past  
8 five years, which is a testament to the growers'  
9 perseverance, as well as the faith in current  
10 research.

11 During this fragile era in the history of  
12 the great Florida citrus industry, it is critically  
13 important that Brazil does not return to the  
14 marketplace with unfairly low-priced juice,  
15 undercutting the profits needed to finance the  
16 research effort. The existing dumping order must  
17 remain in place to maintain discipline in the  
18 marketplace.

19 MR. McGRATH: Vic?

20 MR. STORY: Good morning. My name is Victor  
21 Story. I'm from Lake Wales, Florida. I'm a grower.  
22 I'm currently the President of Florida Citrus Mutual.  
23 We own approximately 1,800 acres of citrus oranges in  
24 Florida and manage another 3,00 acres for others. I  
25 was honored to testify before this Commission in 2006,

1 and I'm here today to urge you to continue the  
2 antidumping order.

3           I told you a little bit about my family  
4 business before, but it bears repeating because it is  
5 typical of many growers in our industry. My mother  
6 and father began our company by saving money from  
7 their service during World War II, and they bought 80  
8 acres of land near Frostproof, Florida. My dad worked  
9 multiple jobs to care for that young grove and provide  
10 money to do that. All our family worked out there in  
11 the grove, and my dad pooled funds from other jobs  
12 that he had.

13           After leaving college and service in the  
14 military, I came back to help grow that business to  
15 approximately 2,700 acres of orange groves. My son,  
16 Kyle, today is the Executive Vice President of our  
17 business, and my other son, Matt, is our Production  
18 Manager.

19           We confronted and overcame serious setbacks  
20 in the '80s, losing about 500 acres of our trees to  
21 freeze damage. This resulted in heavy debt leverage  
22 throughout the 1990s for renovation costs, but we  
23 slowly came back with smaller acreage and with  
24 additional groves for which we provide contract  
25 services. But during the 2002-2003 season, the OJ

1 prices dropped so low that we were unable to renew our  
2 operating loans with our local banks, which had  
3 changed from value laden loans on a collateral basis  
4 to a cashflow basis.

5           We were forced to sell off another 500 acres  
6 of our groves that were leveraged in order to  
7 eliminate our debt. For three years the banks refused  
8 to grant continuing lines of credit because of low  
9 current and projected cashflows. The import pricing  
10 and low priced future deliveries were elements  
11 contributing to these low projections.

12           The antidumping order put in place in 2006  
13 was critical to our recovery. Prices increased, and  
14 we were able to invest in grove treatment and  
15 replanting. Lenders have resumed granting lines of  
16 credit now that the cashflow is less likely to be  
17 undercut by import prices.

18           One exception was late in the 2008 Valencia  
19 season when prices dropped to as low as 80 cents a  
20 pound -- that's below our cost of production --  
21 eliminating our profit for the year. One factor which  
22 worsened that price drop was the influx of cheap  
23 Brazilian FCOJ from Citrovia, the one major producer  
24 not covered by the antidumping order.

25           After that happened we moved some of our

1 fruit toward seasonal contract pricing with a floor  
2 price plus a rise and also a ceiling price. This rise  
3 is determined by average spot prices for the season.  
4 That did not eliminate the potential damage of cheaper  
5 juice, but helped us smooth out the impact, manage our  
6 rapidly increasing cost and recognize the market  
7 restrictions at the higher end for the processors.

8           We don't seek unlimited shortage premiums,  
9 but we can't survive unlimited price cuts. As I said,  
10 our costs have almost doubled in the past five years  
11 since the order was put in place. We have incurred  
12 successive increases in greening treatment, expanding  
13 from four to eight sprays per year. Nursery trees  
14 have doubled in cost as that industry moved indoors to  
15 counter the infestations of canker and HLB.

16           Production costs have increased 3 to 5  
17 percent per year -- labor costs, excuse me, 3 to 5  
18 percent per year -- and harvest labor has increased 10  
19 to 15 percent over the last six years. Our overall  
20 harvest costs have risen by about 20 percent. Many of  
21 our growers have moved to H-2A programs to assure  
22 immigration law compliance, and that alone has  
23 increased their cost by up to 40 percent in the last  
24 five years.

25           Basically our costs are now between \$1.20 to

1 \$1.30 pound solid, depending on our crop, assuming no  
2 freeze damage, and our yield is higher -- much higher  
3 -- than the state average. That's almost twice the  
4 cost we paid five years ago. In addition, we have  
5 already cut back our operation by selling off our  
6 least productive, higher cost groves before the  
7 antidumping petition was filed.

8           For growers with lower yields and more  
9 severe greening damage, the cost of production is much  
10 higher. We have reduced the number of acres in  
11 production across the State of Florida in the last  
12 five years, while Brazil has continued to produce on  
13 approximately the same number of acres as five years  
14 ago. They are, relative to Florida, a much larger  
15 industry than they were five years ago.

16           It's no secret that U.S. consumption of  
17 juice has declined steadily over the last five years.  
18 If imports return to the market at prices below cost,  
19 it doesn't just hurt our immediate profits. The most  
20 severe impact is that it affects growers' decisions  
21 about greening and canker treatment. Some growers  
22 will forego the expensive treatments if prices  
23 decline, affecting surrounding groves.

24           One bad year now has a more serious impact  
25 than it did in the '80s and '90s. The bottom line for

1 us is there is no room for increased imports without  
2 control of an antidumping order. Without it, we would  
3 not have had a chance of recovery in 2007-2009, and if  
4 it's removed we're only one low price year away from a  
5 return to red ink and a setback in the long-term  
6 battle against citrus diseases that damage both  
7 Florida and Brazil. We ask -- respectfully ask --  
8 that the Commission leave this order in place. Thank  
9 you.

10 MR. CASPER: Good morning, Madam Chairman  
11 and members of the Commission. My name is Dan Casper.  
12 I'm Vice President, Procurement --

13 CHAIRMAN OKUN: I'm not sure if you're close  
14 enough to your mic, Mr. Casper.

15 MR. CASPER: That's not usually a problem  
16 with me, but --

17 CHAIRMAN OKUN: That sounds better.

18 MR. CASPER: My name is Dan Casper. I'm  
19 Vice President, Procurement, Sales & Marketing, for  
20 Southern Gardens Citrus Processing Corporation. I've  
21 held this position since 2008, and my responsibilities  
22 include fruit procurement, risk management, purchasing  
23 and oversight on the sales and marketing of our  
24 products.

25 Previously I was Strategic Global

1 Procurement Manager of Citrus for the Coca-Cola  
2 Company, where I was primarily responsible for  
3 maintaining the continuity of supply to support the  
4 production and marketing of the Minute Maid brands of  
5 orange juice. In fact, I testified before the  
6 Commission during the original investigation while in  
7 my position with Coke.

8           At that time, besides arguing in favor of a  
9 single like product, I emphasized the Brazilian  
10 product was necessary in the U.S. market, and the  
11 dumping duties would harm Coke's ability to source  
12 orange juice from several suppliers. Prior to Coke, I  
13 had spent 11 years with Cargill, the last nine as a  
14 Senior Economist for the North American Orange Juice  
15 Business Unit.

16           Today, I first wish to address the relative  
17 increase in U.S. exports of certain orange juice  
18 particularly during the market year 2010-2011. It is  
19 interesting to note that the source of these increased  
20 exports was actually the Brazilian processors  
21 themselves.

22           The Brazilian Respondents stressed in their  
23 brief that U.S. exports increased significantly in  
24 market year 2010-2011 compared to the remainder of the  
25 period of review. They cited this increase in exports

1 to argue that the condition of the U.S. industry is  
2 now substantially improved when compared to the  
3 original investigation.

4           In the first place, however, the 2010-2011  
5 increase in U.S. exports was an anomaly. Second, the  
6 source of these increased exports was actually  
7 Brazilian owned processors, not Southern Gardens or  
8 other domestic producers that support continuing of  
9 the antidumping order. I trust the parties'  
10 confidential data, which I lack, will confirm the  
11 exact source of these exports.

12           Southern Gardens exports very little orange  
13 juice, and I know from discussing this issue with  
14 other domestically owned producers that they export  
15 relatively little as well. Moreover, peers' data  
16 confirms that the source of these increased exports  
17 was Brazilian processors in the United States.

18           Brazil experienced an unusually low orange  
19 yield in 2009-2010 due to the drought and other  
20 adverse climatic conditions. This caused a temporary  
21 decrease in the processors' Brazilian inventories.  
22 The Brazilians, therefore, drew down their U.S.  
23 inventories in 2010-2011 to meet demand in Europe.

24           The Brazilians also qualified for duty  
25 drawback on their U.S. exports of imported products.

1 By contrast, domestic producers import relatively  
2 little and so do not qualify for duty drawback. The  
3 Brazilians are also able to utilize their extensive  
4 bulk transport systems in the United States to move  
5 large export volumes.

6           It is thus incorrect for the Brazilians to  
7 argue as they did in their brief that the increase in  
8 U.S. exports in 2010-2011 shows an improvement in the  
9 condition of the U.S. industry. Moreover, we do not  
10 expect this level of exports to be repeated. Brazil  
11 had a record orange crop in the most recent season  
12 from which to meet necessary European demand, which is  
13 actually declining. We expect the U.S. export levels  
14 to decline to historical levels seen in other years of  
15 the period of review.

16           Next, you heard earlier about the impact of  
17 HLB and canker on Florida's orange groves generally  
18 and the ongoing efforts to turn the tide against these  
19 devastating diseases. HLB in particular has been  
20 especially damaging in South Florida where Southern  
21 Gardens is located. Respondents have suggested that  
22 as a result of these diseases Florida growers may no  
23 longer be able to meet demand and that the order  
24 should be revoked to ensure stable and consistent  
25 supply.

1           However, like the rest of the U.S. industry,  
2 Southern Gardens is taking significant measures to  
3 address these diseases. Revoking the order will  
4 almost certainly prevent these efforts from  
5 continuing.

6           Southern Gardens is a vertically integrated  
7 company. We own and manage our own groves. Located  
8 near Lake Okeechobee in South Florida, Southern  
9 Gardens ranks in the top 10 of the state's largest  
10 citrus growers. We are an industry leader in advanced  
11 agricultural techniques and environmentally friendly  
12 farming methods.

13           From 1986 to 1994, Southern Gardens planted  
14 a half a million trees each year on former cattle  
15 pastures to create our groves. As advertised on our  
16 website, Southern Gardens' 2.5 million trees have been  
17 the foundation of our business. We were growers well  
18 before we entered processing. Today we process all of  
19 our own oranges, which account for a small, but  
20 significant percentage of the orange juice that we  
21 produce.

22           Southern Gardens was also the first  
23 commercial orange grove in Florida where HLB was  
24 identified. All of Southern Gardens' orange groves  
25 are now infected with HLB to one extent or another,

1 and we have suffered significant tree and fruit loss  
2 as a result.

3           As reported in our questionnaire response,  
4 we are losing a certain percentage of our annual  
5 orange production due to canker, and we are having to  
6 remove a number of our trees each year due to the HLB  
7 infection. At the same time, Southern Gardens has  
8 been in the forefront working with the overall citrus  
9 industry, governmental officials and others in the  
10 fight against HLB in particular.

11           We've invested close to \$5 million treating  
12 our own orange groves and researching prospects for  
13 long-term disease mitigation. These efforts are  
14 directed towards controlling and mitigating the  
15 effects of the disease both in the short-term and  
16 hopefully to eradicating the disease in the long-term.  
17 For instance, the numerous disease research projects  
18 in which Southern Gardens is directly involved include  
19 the following:

20           1) Training the majority of all HLB growth  
21 inspection crews both domestically, as well as in many  
22 foreign countries, including Mexico, Costa Rica,  
23 Belize and others.

24           2) Two of the top 10 individuals in the  
25 world who have experience with HLB work for Southern

1 Gardens, Mike Irely and Tim Gast.

2           3) Southern Gardens is directly involved  
3 with multiple industry research projects, many of  
4 which involve significant collaboration with the  
5 Institute of Food and Agricultural Sciences at the  
6 University of Florida and with the USDA.

7           4) Southern Gardens developed a PCR lab  
8 facility, which is now available to all aspects of the  
9 industry free of charge to test for the presence of  
10 HLB in trees. Two hundred and thirty-five thousand  
11 such samples have been tested since 2006.

12           5) Southern Gardens was instrumental in the  
13 development of the Citrus Research and Development  
14 Foundation, which is responsible for the coordination  
15 and implementation of multiple research projects.  
16 There are currently 134 of these projects in place,  
17 which are being funded by the industry to the tune of  
18 \$15 to \$20 million per year. Southern Gardens'  
19 President, Rick Kress, is Vice President of the  
20 Foundation. Jim Snively, Vice President of Southern  
21 Gardens' Groves Division, is a member of their  
22 Research Management Team.

23           Southern Gardens is also continually  
24 resetting the grove areas from which we have removed  
25 trees in the last six years. From 2008 to the

1 present, Southern Gardens planted over 220,000 resets.  
2 In 2009, Southern Gardens planted the first research  
3 field trials of potential canker and HLB resistant  
4 trees in control plots on its Hendry County property.  
5 These trees, developed to be resistant to canker and  
6 HLB in the lab, were planted in small plots to  
7 determine whether they were also disease resistant  
8 under commercial growth conditions.

9 Just within the last two weeks, Southern  
10 Gardens announced a new trial using genetically  
11 engineered orange trees developed at Cornell  
12 University. The disease resistance of these trees has  
13 been shown in the labs and offers promise for similar  
14 results on a commercial level.

15 In summary, Southern Gardens has invested  
16 millions of dollars on research and disease  
17 mitigation. We fully intend to continue growing  
18 oranges and processing orange juice in Florida.

19 Revoking the order will likely result in a  
20 significant increase in the volume of imported  
21 Brazilian orange juice, which will negatively impact  
22 prices. As costs continue to rise, our ability to  
23 fight HLB and other diseases will thus be seriously  
24 eroded. This concludes my prepared remarks.

25 MR. BEHR: Good afternoon. Madam Chairman

1 and members of the Commission, my name is Dr. Robert  
2 Behr. I am Chief Operating Officer with Citrus World.

3 I have previously served as the Economic Research  
4 Director of the Florida Department of Citrus and was  
5 responsible for conducting orange juice supply and  
6 demand analysis, including the study of the impacts of  
7 Brazil's citrus industry.

8 I also have served on the Board of Citrus  
9 Associates of the New York Board of Trade, the  
10 governing body of the FCOJ futures market, and I was a  
11 member of the Florida Citrus Commission, which  
12 oversees sales and marketing activity for the state's  
13 citrus products.

14 Citrus World is Florida's oldest citrus  
15 processing company and is a federated cooperative  
16 representing about 1,100 orange producers. Citrus  
17 World processes oranges delivered by its member  
18 growers at our facility in Lake Wales, Florida, and  
19 packages both from concentrate and NFC products under  
20 a number of brands, including Florida's Natural.

21 When I testified before you five years ago I  
22 pointed out that most of our members had not seen a  
23 profit in years. Our growers were receiving orange  
24 returns that were less than the cost of production.  
25 In spite of reduced Florida crops, our grower returns

1 were at historically low levels in real terms. Many  
2 of our members at that time went out of business  
3 because of the depressed pricing conditions which  
4 threatened the health of our cooperative.

5           The pricing conditions were caused in large  
6 part by imports of low-priced orange juice from  
7 Brazil, which suppressed U.S. orange juice prices. As  
8 I testified five years ago, price discovery in the  
9 orange juice market occurs at the wholesale level.  
10 Bulk prices for orange juice are highly correlated  
11 with SCOJ futures prices. Causally, bulk prices have  
12 a strong influence on the price growers receive for  
13 fruit. Therefore, when subject imports suppress  
14 orange juice prices in the U.S. they also reduce the  
15 price that processors are able to pay growers.

16           As we look ahead, one of the biggest threats  
17 facing our industry is citrus greening, as you've  
18 already heard. In the past five years, citrus  
19 greening has substantially raised grower cost of  
20 production. The price discipline imposed by the  
21 antidumping order on subject imports has helped  
22 growers deal with these cost pressures.

23           However, many growers are still not  
24 replanting previously abandoned groves because of  
25 increased cost and the production risk associated with

1 citrus greening. Prices simply have not been high  
2 enough or long enough to provide economic incentive  
3 for growers to replant abandoned groves. The  
4 antidumping order provides hope that the trees will be  
5 replanted and that the Florida citrus industry will  
6 recover. Absent the antidumping order, however, we  
7 can expect an increase in low-priced imports which  
8 will inhibit this recovery and threaten survival.

9           The Brazilian industry wields extraordinary  
10 pricing power in the world orange juice market because  
11 of its dominant size and, perhaps importantly, its  
12 high degree of concentration. It maintains storage  
13 facilities around the world and has tanker ships that  
14 can shift exports anywhere in the world at any time.  
15 Although it has been said that Brazilian orange  
16 production is in decline, Brazil is producing a record  
17 crop this season, and its industry continues to invest  
18 in infrastructure to supply orange juice worldwide.

19           In addition, Brazilian processors have  
20 longstanding ties to the United States, including  
21 related importers and storage facilities and can  
22 increase U.S. imports as conditions dictate. For  
23 these reasons, the threat of imported price  
24 suppressing product is as great as ever.

25           Regarding the subject of blending, Florida

1 produces enough Valencia oranges to meet the needs to  
2 blend with early and mid season varieties. Our retail  
3 orange juice brand, Florida's Natural, is produced  
4 from 100 percent Florida oranges. Tropicana, which  
5 has traditionally blended Florida and Brazilian juice,  
6 has recently announced that it will start producing  
7 its Tropicana pure premium orange juice products using  
8 only Florida oranges. While blending with Brazilian  
9 juice may be convenient and may be cheaper, clearly it  
10 is not essential even with smaller Florida crops.

11           Turning to the subject of U.S. orange juice  
12 demand, as has been said, orange juice demand has  
13 declined over the past decade for a number of reasons,  
14 increasing the vulnerability Florida orange growers  
15 face from the threat of Brazilian orange juice  
16 dumping. The effect of diet conscience consumers and  
17 the increased availability of alternative beverages  
18 have significantly reduced consumer demand for orange  
19 juice, and these trends are not expected to abate. In  
20 fact, these trends are likely to become even more  
21 threatening down the road.

22           The recent finding of carbendazim in  
23 imported Brazilian juice could not have come at a  
24 worse time as our industry is spending significant  
25 resources to rebuild consumer demand. While the

1 carbendazim adulteration issue will likely be resolved  
2 quickly, the damage being done to U.S. orange juice  
3 demand will take years and significant public  
4 relations and marketing resources to fully overcome.

5 I have no doubt that if this order is  
6 revoked we can expect to see increased volumes of  
7 subject imports at suppressed prices in a market that  
8 continues to shrink. This will result in even lower  
9 prices for orange juice in the U.S. and lower prices  
10 for growers.

11 Given the challenges facing the U.S.  
12 industry and its increasing cost of production, the  
13 future of the industry will again be in jeopardy. We  
14 respectfully urge the Commission to keep the order in  
15 place for another five years so that the industry can  
16 continue to recover under price discipline created by  
17 the order.

18 MS. WARLICK: Good afternoon. My name is  
19 Amy Warlick. I'm an International Trade Economist  
20 with Barnes, Richardson & Colburn, counsel to Florida  
21 Citrus Mutual and the other petitioning parties in  
22 this investigation.

23 The U.S. orange juice industry has  
24 benefitted from the AD order imposed on subject  
25 Brazilian processors and is highly vulnerable to the

1 damage its termination would cause. The industry  
2 continues to deal with high and growing costs of  
3 production, exacerbated by the cost of battling citrus  
4 greening, canker and other citrus diseases. It also  
5 continues to suffer from the consequences of damaging  
6 weather events.

7           These challenges are faced in the midst of  
8 declining U.S. OJ consumption and stiff competition  
9 from abroad. Under these conditions, the industry is  
10 grateful for the price discipline brought by the  
11 order. It has allowed orange and wholesale OJ prices  
12 to move more freely and fairly in response to supply  
13 and demand forces.

14           When global supplies increase, prices  
15 decline, but have not become deep, multi-year troughs  
16 as they did before the order. When global supplies  
17 decrease, prices are allowed to rise to higher levels  
18 than before the order so that growers and processors  
19 can recoup enough gross earnings to stay afloat,  
20 despite their higher costs and lower production.

21           We did not file this case out of greed for  
22 greater profits. We filed this case so that we could  
23 have profits, which we didn't have in 2005. The  
24 industry is using these new profits to invest heavily  
25 in research and day-to-day citracultural practices to

1 solve the ills of greening, canker and the other  
2 diseases that plague our growers.

3           U.S. state and federal governments have also  
4 invested in the future of our industry via funding for  
5 citrus research and recovery in the wake of powerful  
6 and bacteria-spreading hurricanes in '04 and '05. We  
7 have focused our efforts on the replanting of dying  
8 groves with clean nursery stock and do not yet have  
9 the confidence to expand our groves. However, we are  
10 confident enough to say that it is realistic to  
11 believe that the U.S. orange juice industry is  
12 sustainable into the future and could grow if this  
13 order is maintained.

14           By contrast, Respondents have declared that  
15 the U.S. orange juice industry is highly profitable,  
16 has extremely high earnings, has experienced both  
17 revitalization and rejuvenation and is not vulnerable.  
18 They have even gone so far as to say that it's  
19 impossible that material injury will occur. This is  
20 not the experience of 99 percent of U.S. orange  
21 growers, and it's not the experience of U.S. or even  
22 Brazilian citrus processors in Florida.

23           Let's examine U.S. processors' financial  
24 status. First, Citrus World's data cannot be fairly  
25 aggregated with corporate processors since their

1 cooperative structure does not account for orange  
2 costs the same way. The remaining U.S. processors can  
3 in no way be characterized as highly profitable. They  
4 struggle with high orange, factory and labor costs.  
5 Yes, they've been more profitable since the imposition  
6 of the order, but those profits are based almost  
7 entirely on the current high price of bulk OJ, which  
8 is not sustainable given projections for Brazil's next  
9 two bumper crops.

10 Similarly, U.S. orange growers have been  
11 more profitable since the imposition of the order, but  
12 those profits are also based almost entirely on the  
13 current high price of oranges, which is also not  
14 sustainable.

15 Over the last nine years, U.S. growers'  
16 costs of production have soared. Exhibit 1 and 2 show  
17 the cost increase. You can back up, Steve, to the  
18 first one. Both the questionnaire data, as well as  
19 the public data published by the University of  
20 Florida, show grower cost per box of oranges rising  
21 from roughly \$5 for both Valencia and Hamlin oranges  
22 in '03-'04 to about \$7.50 for Hamlins and \$8 for  
23 Valencias during the past few years. So one of these  
24 charts shows the questionnaire data and one shows the  
25 public data.

1           This represents a 50 to 60 percent average  
2 increase with individual growers here today having  
3 experienced a doubling of costs. Fortunately,  
4 temporarily lower Brazilian orange supplies in '09-'10  
5 and '10-'11, coupled with the effects of the dumping  
6 order, have boosted the prices of both OJ and oranges,  
7 enabling Hamlin growers to earn a small profit and  
8 Valencia growers to earn a moderate profit since the  
9 order was imposed.

10           So long as orange prices remain above the  
11 rising cost of producing oranges, orange growers stand  
12 a chance of turning a profit. However, impending  
13 large supplies in Brazil threaten to depress prices  
14 and eliminate our profits in the immediate future.

15           In their prehearing brief, Respondents paint  
16 a picture of dwindling Brazilian production, capacity  
17 and inventories and dismiss the U.S. market as an  
18 afterthought. According to the GAIN report released  
19 last month by USDA, Brazilian production capacity  
20 actually grew by five million bearing trees between  
21 '05-'06 and '10-'11, and it's estimated to have grown  
22 by another four million bearing trees in the current  
23 '11-'12 marketing year.

24           Brazil does have disease problems, just like  
25 we do in Florida. However, while both countries share

1 the disease problems we do not share the solutions  
2 enjoyed by Brazil. Last September, *Food News* reported  
3 a \$3 billion Brazilian Government effort to begin  
4 irrigating for orange production in semi-arid parts of  
5 Brazil that are away from the disease contaminated  
6 tropical regions. Exhibit 4 shows the *Food News*  
7 article in its entirety.

8           Second, Respondents' alleged lack of  
9 interest in the U.S. market relative to the EU and  
10 Asian markets is disingenuous, considering that the  
11 United States remained the world's largest consumer of  
12 processed OJ in '10-'11, accounting for 38 percent of  
13 world consumption. All 27 EU countries together  
14 consume 40, and Japan, China and South Korea together  
15 only consume 7 percent.

16           In addition to its value as a large and  
17 lucrative market for Brazil, the United States has  
18 also served as an important outlet for Brazil's  
19 residual supplies of orange juice, which they don't  
20 want to dump in the EU market where they enjoy high  
21 prices and little competition.

22           Third, Respondents claim that Brazilian  
23 production and inventories are so low that "there is  
24 simply no juice available for Brazilian producers to  
25 export to the United States." This is absurd. They

1 are currently harvesting 506 million boxes of oranges,  
2 which is a 34 percent increase over last year.

3 Yes, '10-'11 was an unusually short crop for  
4 Brazil, and that marketing year is the last in the  
5 period of review, but they are now harvesting one of  
6 their largest crops ever. Exhibit 5 shows data that  
7 comes directly from the GAIN report that Foreign  
8 Agricultural Service of USDA published in December.

9 Brazilian orange growers are also projected  
10 to send 35 percent more oranges to Brazilian  
11 processors this year, and those processors are  
12 projected to produce 36 percent more orange juice.  
13 According to the questionnaires, Brazilian processors  
14 have been operating at only 57 to 70 percent of their  
15 production capacity during the last six years.

16 In addition, the questionnaires show an  
17 increase in capacity for total subject certain orange  
18 juice by over 5 percent from '05-'06 to '10-'11. By  
19 June 30 of this year, Brazil is expected to hold  
20 record inventories.

21 The GAIN reports only collect inventory data  
22 on what processors hold in their tank farms in Sao  
23 Paulo. So the 205,000 metric tons at 65 brix expected  
24 on June 30 of this year, up from only 5,000 last June,  
25 is only a portion of the total amount of Brazilian

1 orange juice that will be held. They also have tank  
2 farms elsewhere in Brazil, the EU, Japan and the  
3 United States.

4 To accommodate the increase in inventories,  
5 according to the staff report four Brazilian processor  
6 extractors reported increases of juice storage  
7 capacity. But wait. There is more. Brazilian juice  
8 is also being stockpiled under the Consecitrus  
9 program.

10 Consecitrus is not mentioned in the staff  
11 report, nor has it been discussed in the Respondents'  
12 briefs, but it's essential the Commission understands  
13 the details and ramifications of this Brazilian  
14 Government funded program, which was implemented on  
15 July 1, 2011.

16 Consecitrus involves up to \$200 million in  
17 low interest funds granted by Brazil's government to  
18 its OJ processors to purchase oranges subject to  
19 reference prices and process them into OJ that is  
20 required to be stockpiled for at least a year.  
21 According to reports, the new credit line was created  
22 to finance the stockpiling of up to 240,000 metric  
23 tons of orange juice at 65 brix, which is 17 percent  
24 of Brazil's anticipated OJ production in '11-'12 and  
25 equivalent to 37 percent of U.S. OJ production in

1 '10-'11.

2           According to the latest report so far this  
3 '11-'12 marketing season, Brazil's OJ industry has  
4 already used \$131 million of this credit line to buy  
5 oranges that will be processed into 100,000 metric  
6 tons of OJ at 65 brix for stockpiling until July 1,  
7 2012. So this stockpiled 100,000 metric tons will be  
8 held in addition to the 205,000 metric tons held by  
9 processors in Sao Paulo and the unknown amounts held  
10 by those processors outside of Sao Paulo.

11           In sum, within six months Brazilian  
12 inventories will likely be at least 305,000 metric  
13 tons, at least half of what Florida produces in a  
14 year. This well-documented information is what Mr.  
15 Dunn has just referred to as a slight of hand.

16           So now what happens to current high global  
17 prices when all that juice is eventually released onto  
18 the world market? It could be released as early as  
19 July 1, 2012, the beginning of the harvest of Brazil's  
20 next large crop. However, the Brazilian industry has  
21 an incentive to release these price depressing volumes  
22 during the harvest and marketing of Florida's '12-'13  
23 crop, which begins next January.

24           Whenever they are released, access to  
25 Brazil's tremendous accumulated stocks will cause the

1 FCOJ futures and orange prices to drop precipitously,  
2 returning the Florida processors and growers much  
3 lower profits, if any profits at all. To Florida  
4 growers and processors struggling with the multiple  
5 threats of disease, weather events and reduced demand  
6 from the Brazilian carbendazim event, the specter of  
7 those huge Brazilian OJ stockpiles flooding the world  
8 market is alarming.

9           So contrary to Respondents' brief, Brazilian  
10 OJ inventories are currently growing and are projected  
11 to reach the highest levels Brazil has ever had, and  
12 when that juice arrives in the United States expanded  
13 Brazilian owned storage facilities will be ready to  
14 receive it.

15           In January 2010, \$15.5 million in U.S.  
16 federal stimulus bond funds were granted to  
17 Citrosuco North America, soon to include Citrovita, to  
18 expand its terminal facility at the Port of Wilmington  
19 by constructing juice storage tanks capable of storing  
20 over 10 million gallons of imported Brazilian orange  
21 juice. Clearly, the Brazilian industry understands  
22 that these higher volumes of imports from Brazil are  
23 inevitable, and they're planning for them.

24           In its final determination in these sunset  
25 reviews, the U.S. Department of Commerce concluded

1 that if the orders were revoked dumping would recur at  
2 rates ranging from 12 to 60 percent. To project the  
3 impact of such an event, we've made the conservative  
4 assumption that dumping will occur at an average rate  
5 of 15 percent, which is essentially a license to  
6 reduce U.S. prices by 15 percent without antidumping  
7 consequences. A 15 percent decline in '10-'11 average  
8 futures prices of \$1.72 per pound solid is equal to 26  
9 cents per pound solid. The calculations are explained  
10 here in Exhibit 6.

11           Meanwhile, however, according to the  
12 questionnaire data growers' production costs have  
13 increased by 56 cents per pound solid between the  
14 preorder period, '02-'03 to '04-'05 and '10-'11. The  
15 resumption of dumping and potential decline in prices  
16 of 26 cents per pound solid would undercut growers'  
17 ability to recover these additional 56 cents per pound  
18 solid in costs, so growers' operating income of 26  
19 cents per pound solid in '10-'11 would be entirely  
20 eliminated by the recurrence of only 15 percent  
21 dumping, and growers will fall deeply into red ink.

22           Coke has argued that dumping should be  
23 allowed to recur and that it won't cause injury  
24 because the United States has residual demand that it  
25 cannot satisfy on its own. The problem is that when

1 ITC's residual demand calculations from the remand  
2 investigation are applied to data during the POR  
3 residual demand is only found in '06-'07, a year  
4 affected by the hurricanes. This is explained here in  
5 Exhibit 7.

6           So Coke added exports to the equation as  
7 unavailable U.S. supplies. However, they used  
8 inflated export data from a USDA website called PS&D  
9 Online instead of the U.S. processors' questionnaires.  
10 The exports they used include both retail package  
11 juice and imported juice that is re-exported. When  
12 this calculation is performed using the more accurate  
13 export data reported in the U.S. processors'  
14 questionnaires only a small amount of residual demand  
15 results in one additional year, '05-'06, the other  
16 year affected by the hurricanes.

17           All this tells us is that we weren't able to  
18 fulfill the needs of every orange juice processor in  
19 the United States after we took direct hits by four  
20 catastrophic hurricanes in two years. Our industry's  
21 occasional need for foreign orange juice supplies  
22 during a crisis does not entitle Brazil to dump in our  
23 market.

24           Brazilian juice is often imported at prices  
25 that undersell U.S. prices. It enters in volumes that

1 far exceed residual demand. It enters in years where  
2 there is no residual demand, and it enters regardless  
3 of whether or not U.S. imports from third countries  
4 have already satisfied any residual demand.

5           Finally, Respondents also allege that one of  
6 the more remarkable untold stories about the  
7 revitalization of the domestic industry is its vastly  
8 increased ability to export abroad. As discussed  
9 previously, the exports they're referring to are total  
10 exports from PS&D Online, which include retail  
11 packaged orange juice, U.S. juice blended with  
12 Brazilian juice and even straight Brazilian orange  
13 juice.

14           The data source closest to presenting a true  
15 picture of how much U.S. produced juice was exported  
16 is the U.S. processors' questionnaire data. Those  
17 data show a moderate decline in FCOJ exports during  
18 the first half of the POR, then a moderate increase  
19 during the second. The U.S. processors' questionnaire  
20 data also show a moderate increase in NFCOJ exports  
21 during the first five seasons of the POR, then a  
22 decline in '10-'11.

23           Mr. Casper has explained that much of the OJ  
24 that has been exported from the United States during  
25 recent years was exported by Brazilian owned U.S.

1 importers and processors transferring Brazilian and  
2 U.S. stocks to the EU to fulfill customers' orders.  
3 U.S. processors that are not Brazilian owned still  
4 have minimal and slow-growing export shipments and,  
5 quite unfortunately, their ability to export has not  
6 been revitalized. There is no remarkable untold story  
7 here.

8           Respondents will tell you that market  
9 conditions governing the production of orange juice in  
10 the U.S. have changed enormously. Not really. Low  
11 supplies still result in higher prices, and high  
12 supplies still result in lower prices. What has  
13 changed is that the AD order has enforced price  
14 discipline on subject Brazilian processors so that  
15 they cannot depress prices unnecessarily when supplies  
16 are high and they cannot suppress prices when supplies  
17 are tight. Instead, prices are allowed to fluctuate  
18 more naturally and more appropriate to the global  
19 market conditions.

20           For these reasons, we oppose removal of the  
21 antidumping duty orders. Thank you for your  
22 attention, and I would be pleased to answer any  
23 questions you may have.

24           MR. BARBEN: Madam Chairman and members of  
25 the Commission. My name is John Barben and I am Vice

1 President of Robert J. Barben, Inc., a fourth  
2 generation family citrus business. The business was  
3 founded in 1918 by my great grandfather who bought  
4 land which was cleared by hand and he planted his  
5 first orange grove. The corporation is now owned by  
6 my mother and father, 91 and 90 years of age, my two  
7 brothers and me, all of us involved in the daily  
8 operation of the business. The company owns 763  
9 acres, of which 705 acres are around oranges. We also  
10 manage another 617 acre around oranges for a total of  
11 1,380.

12           We grow our own nursery trees and my older  
13 brother and I own a harvesting company and we move  
14 about 2 million boxes of fruit a year through that  
15 company. Our family business has succeeded the old-  
16 fashion way, avoiding debt. Our management strategy  
17 is to never hold back on cultural practices, give the  
18 tree what it needs and in return it will give you the  
19 most it has to give. So even when we lost money with  
20 the low prices we had healthy trees with good crops  
21 when the market returned.

22           It seems like we have always had a threat to  
23 our existence. When I was a kid it was the burrowing  
24 nematode. We developed better root stocks which were  
25 less susceptible and we survived. Later we had the

1 leaf miner. We adapted. Next we had canker returned  
2 to our state for the third time in history. In 1995,  
3 it was discovered in the Miami area and eradication  
4 program was initiated which removed infected trees and  
5 those within a 1,900 foot radius. Before that program  
6 was ended in 2006, 87,500 acres of commercial citrus  
7 were removed and 4.3 million nursery trees were  
8 destroyed. This past year canker spread through most  
9 of our groves and costly spraying will be needed from  
10 April through July every 21 days, but we will survive.

11           Now we face the challenge which dwarfs past  
12 problems. In August 2005, citrus greening was  
13 discovered in yet again the Miami area. Scientific  
14 surveys of the area concluded that eradication was  
15 already infeasible. Citrus growers were advised that  
16 we should survey our groves and remove infected trees.  
17 Our family did this for three years when the  
18 percentage of infected trees was less than 5 percent.  
19 As the percentage rose we had to stop the removal  
20 process. In 2006 to 2008 we spent an additional \$100  
21 per acre just surveying looking for the infected  
22 trees which were then removed regardless of the  
23 condition of the trees as the cost is \$78 per tree and  
24 we lost the revenue of the fruit.

25           We also started spraying for the psyllids

1 which is the vector for the disease, and our spraying  
2 program has increased from three to four times in 2005  
3 to 11 times this past year, 2011, including both  
4 ground and aerial sprays which is for the psyllids and  
5 other pests, nutritional supplements and fertilizer.  
6 The cost to fight citrus greening has almost doubled  
7 our caretaking cost in 2005 from a average of \$1,200  
8 an acre to \$2,067 for the past four years.

9           Due to a very aggressive reset program we  
10 are trying to keep young trees coming to replace the  
11 trees removed that are no longer viable. The resets  
12 now are more costly because they require additional  
13 hand spraying to control psyllids.

14           The Florida citrus industry is currently  
15 taxing itself through a research box tax and diverting  
16 industry marketing dollars to help find a cure to this  
17 disease. I truly believe that the industry will  
18 survive despite canker, hurricanes, greening, labor  
19 issues and higher input cost. As farmers, we deal  
20 with Mother Nature and risk, even one potentially  
21 devastating is greening, but we must always balance  
22 the cost of these battles against other factors that  
23 erode our revenues.

24           Unfairly cheap imports can undercut the base  
25 fruit price we need to cover these doubled costs. For

1 the first time we have even invested in another crop,  
2 blueberries, to diversity in the face of this risk.  
3 My four and seven year old sons tell me they want to  
4 grow oranges like their dad every time they go to the  
5 groves with me just like I did as a kid. But for this  
6 to happen citrus growers must get a fair price for  
7 their product and not be at the mercy of dumped  
8 imports that reduce our returns.

9           Brazilian-owned processors have been very  
10 good to us recently in handling our fruit, but if  
11 their parent companies unload cheap product here as  
12 their output grows and our demand falls we won't be  
13 able to afford the extra cost and we will all suffer  
14 as a global industry. The antidumping order has  
15 prevented that and I am here today to ask you to keep  
16 it in place.

17           Madam Chairman and Commissioners, my sons  
18 dream of being orange growers, not blueberry growers.  
19 Thank you.

20           MR. MCGRATH: And Madam Chairman and members  
21 of the Commission, that concludes our direct  
22 testimony. We are all certainly available and happy  
23 to answers questions from everybody.

24           CHAIRMAN OKUN: Well, again, before turning  
25 to questions let me take this opportunity to thank

1 this panel, particularly the industry witnesses who  
2 have traveled to be with us today and answer our  
3 questions and for responding to questionnaires. Just  
4 a reminder again to repeat your name when you answer a  
5 question for the benefit of the court reporter, and we  
6 will begin our questions this afternoon with  
7 Commissioner Pearson.

8           COMMISSIONER PEARSON: Thank you, Madam  
9 Chairman. Welcome to all of you. It's good to see  
10 some familiar faces again. We don't get together very  
11 often but we appreciate these opportunities.

12           How should we understand the decline in U.S.  
13 consumption of orange juice? Is it due primarily to  
14 reduced consumer spending during the recession or is  
15 it more a function of just plain reduced supply?

16           MR. MCGRATH: I think perhaps Dr. Behr and  
17 Mr. Casper would both be pretty knowledgeable about  
18 that.

19           COMMISSIONER PEARSON: Please.

20           MR. BEHR: My name is Robert Behr. In  
21 response to Commissioner Pearson's question, I think  
22 when you look back over the last five years there has  
23 been a number of factors. Clearly the economy and  
24 consumer incomes have had an impact on orange juice  
25 consumption in the United States. I think studies

1 done by the Department of Citrus and others indicate  
2 that there is an income elasticity associated with  
3 orange juice consumption, so I think it's fairly clear  
4 that the recession and the ongoing weakness in the  
5 economy has had some impact.

6           Additionally, we are seeing changes in taste  
7 and preferences that I think began probably back in  
8 2003-2004, the Atkin's Diet, consumers looking for low  
9 calorie alternatives. That has also been a  
10 significant factor in orange juice demand.

11           Clearly supply changes, price changes, as  
12 prices go up consumption goes down and vice-versa.  
13 Those factors are really movements, if you will, up  
14 and down the demand curve, but truly we have seen some  
15 significant demand, reducing declines from whether it  
16 be alternative beverages that are now available, and  
17 there is a lot on the market today, the low calorie  
18 consciousness of the consumers as well as the reduced  
19 incomes that we see today with the struggling economy.

20           MR. MCGRATH: And if I could -- Matt McGrath  
21 again -- just add something to that. Perhaps it  
22 wasn't as clear during our earlier testimony.

23           The Florida Department of Citrus has been  
24 using self-assessed dollars from the industry for many  
25 years for product promotion. The economists at the

1 University of Florida have published a number of  
2 studies showing the relationship between marketing  
3 funding that's spent and consumption, and there is a  
4 relationship between them. It can be measured.

5           One of the many problems taking place right  
6 now is that there will be some negative impact caused  
7 by a reduction in that spending because growers are  
8 diverting a lot of those dollars into greening  
9 research, so money that would have been spent  
10 previously for marketing development by the DOC is now  
11 being re-channeled into other much more necessary  
12 expenses, but that will have some effect as well.  
13 It's probably nowhere as near as much over the long  
14 term, say the last five years as Dr. Behr has  
15 identified, but it is a new factor that's affecting  
16 consumption as well.

17           COMMISSIONER PEARSON: Okay. I appreciate  
18 the changes in consumer tastes and preferences that  
19 you reference because I know my kids drink things that  
20 certainly didn't exist when I was younger, and I don't  
21 know what the stuff is, frankly, but some of it may  
22 have some fruit juice in it but it's not a straight  
23 juice.

24           If consumers had wanted to consume more  
25 juice, where would it have come from? Was there

1 enough juice sloshing around the global market so that  
2 more could have been imported to maintain consumer  
3 consumption at closer to the levels we have seen in  
4 the past?

5 MR. BEHR: I think, as I alluded to, I think  
6 with reduced supply clearly prices had to go up to  
7 balance supply and demand. So, I think at the market  
8 clearing prices that we've seen over the last five  
9 years there certainly was sufficient volume to satisfy  
10 demand. The negative factors working against us, as  
11 we previously mentioned, have had an adverse impact on  
12 demand and I think the point that Mr. McGrath made  
13 regarding reduced generic advertising by the  
14 Department of Citrus over the last five years has also  
15 had a negative impact.

16 Had we had advertising, had we had not  
17 issues with diet consciousness, trying to reduce  
18 caloric intake, I think we would have seen higher  
19 prices. But basically to answer your question market  
20 price basically satisfied the demand that was out  
21 there.

22 COMMISSIONER PEARSON: Of course I  
23 understand that.

24 MR. BEHR: Sure.

25 COMMISSIONER PEARSON: The market cleared

1 and life went on happily enough, but the real question  
2 is was there enough supply available somewhere in the  
3 world to have kept consumption at a higher level in  
4 the United States if indeed it had been imported or  
5 were we looking at a situation of global tightness  
6 over several years that really did not facilitate  
7 bringing supplies in that would allow consumption to  
8 continue?

9 MR. MCGRATH: I think it's important to  
10 recognize -- I'm not the economist in this and I know  
11 that both Amy and Bob have certainly more  
12 qualification as agricultural economists, but it is  
13 consistent with the argument that we made five years  
14 ago. There is a concern here and our growers here  
15 have testified there is a concern about whether the  
16 return they are seeing based on prices they know are  
17 being paid in the market and therefore coming down to  
18 the growers are going to be sufficient to justify  
19 replanting, treating, doing what they need to do after  
20 hurricanes, for instance.

21 When we were here five years ago there was a  
22 lot of talk about a lot of groves being converted over  
23 to possibly being held for higher value for  
24 development purposes and that was removing a lot of  
25 stock from the industry. While the development

1 industry kind of went on the rocks, there is still  
2 property. The question that the grower has to decide  
3 is will I be seeing enough per pound in my production  
4 to cover my production when I see the pricing come in  
5 to justify planting.

6           Your question is totally legitimate. If  
7 there had been more juice, if there had been more  
8 demand, would there be enough juice in the world to  
9 satisfy it. There definitely would be more juice if  
10 the growers who already had been growing in that  
11 property felt the justification there to replant.  
12 When we were here the prices were much lower five  
13 years ago and the motivation for the growers they were  
14 very much on the borderline. A lot of them chose just  
15 not to pursue it.

16           So, from the growers standpoint some of  
17 these processors who are going to appear opposing this  
18 see it completely different, but from the growers  
19 standpoint if they can see that there is going to be a  
20 return there that motivates them to plant and stay in  
21 the business.

22           COMMISSIONER PEARSON: Since we last  
23 convened fortunately both the U.S. growers and  
24 processors have seen stronger economics, and that's  
25 reflected in our staff report. Is it reasonable to

1 assume that those higher returns came about in large  
2 part in response to reduced supplies?

3           The reason that I ask this is that I have  
4 some previous experience in commodity markets. If  
5 things get a bit tight, then there is an opportunity  
6 throughout the value chain to expand margins a little  
7 bit, and everyone comes out somewhat better. Is that,  
8 in essence, what happened here over the past five  
9 years?

10           MS. WARLICK: I think that we may be seeing  
11 that at the grocer retail level. In our brief I show  
12 a chart that shows when wholesale prices for orange  
13 juice go up retail prices will follow suit. When  
14 wholesale prices go down retail price stay the same,  
15 or they go down a little bit.

16           COMMISSIONER PEARSON: Right.

17           MS. WARLICK: So that there are shifting  
18 margins for the grocers at that retail level, so that  
19 occurs. I don't believe that's occurring at the  
20 wholesale level.

21           COMMISSIONER PEARSON: Okay, I'm less  
22 concerned about the retail sales because that's  
23 outside the scope, but somehow U.S. growers and  
24 processors have made more money than before, and so I  
25 had assumed that the margins had widened relative to

1 what was the case in the past, and I'm wondering what  
2 the explanation might be for that, Mr. Behr.

3 MR. BEHR: Yes, Commissioner Pearson.  
4 Certainly prices have gone up through the supply chain  
5 from growers all the way to retail, but I think what  
6 Matt was trying to say was that costs have also gone  
7 up, so I don't think that we're seeing the kind of  
8 returns or profits, if you will, throughout the supply  
9 chain. If we were seeing significant profits, we  
10 would be seeing significant expansion both at the  
11 grower level as well as at the processor level in  
12 Florida, and that certainly has not occurred. And as  
13 I mentioned and as I think the others have mentioned,  
14 it's extremely costly to produce citrus now and the  
15 risks are great, and the desire to plant, economic  
16 incentive to plant even with the higher pricing that  
17 we see today is simply not there.

18 COMMISSIONER PEARSON: Okay, thank you very  
19 much. Madam Chairman, my time has expired.

20 CHAIRMAN OKUN: Commissioner Aranoff.

21 COMMISSIONER ARANOFF: Thank you, Madam  
22 Chairman. I want to join my colleagues in welcoming  
23 all the witnesses on this morning's panel and also  
24 express my appreciation to those of you who hosted me  
25 and some of my colleagues when we came down late last

1 year to view the processing operations. That was much  
2 appreciated and was a good education in preparation  
3 for today.

4 I want to start by asking a question about  
5 inventories and the role of inventories. In the  
6 original investigation the Commission found that U.S.  
7 producers needed to maintain a certain amount of juice  
8 in inventory on hand at the end of a processing season  
9 to bridge the gap until the next harvest, and my  
10 recollection is the Commission found that 12 weeks of  
11 supply was the minimum needed and that processors  
12 preferred to hold stocks of 16 to 20 weeks. When I  
13 look at the discussion of inventories on the record in  
14 this review I've seen numbers ranging from saying that  
15 seven weeks of inventory was the necessary amount,  
16 some saying as much as 26 or even one place 39. I  
17 think we had also determined in the prior review that  
18 above a certain level inventories are a liability  
19 because they are costly to maintain.

20 So, for the processors who are here today  
21 can you just tell me what do you think is the minimum  
22 amount of inventory that you feel you really have to  
23 have on hand at the end of a season, how much you'd  
24 ideally like to have, and what's too much and it  
25 starts to become a financial liability?

1           MR. BEHR: Generally at the end of the -- I  
2 guess at the end of the processing season we need  
3 enough inventory to get us to the next processing  
4 season, but that really goes a bit beyond that because  
5 we have to have Valencia orange juice to get us to the  
6 next Valencia season. So processing ends say in June.  
7 We need juice to get us to the beginning of the next  
8 season which generally begins in mid-November to  
9 December. We have to have more than just that. We  
10 have to have juice that allows us to get to Valencia  
11 processing season which begins typically in mid to  
12 late March.

13           So, if you're looking at months supply at  
14 the end of June, we need roughly -- again at the end  
15 of June, at the end of a processing season about nine  
16 months of inventory to get us to March. Does that  
17 answer your question?

18           COMMISSIONER ARANOFF: Well, it does but I'm  
19 not sure it's comparable to what we were looking at in  
20 the prior investigation -- in the original  
21 investigation where we talked about oranges in terms  
22 of weeks of total supply and you're talking about how  
23 much Valencia supply, which doesn't translate directly  
24 into weeks of total supply because you're blending it  
25 with the early oranges.

1           MR. BEHR: Correct. Correct. For Valencia,  
2 so you need essentially nine months of Valencia supply  
3 at that point in time, and roughly from the end of  
4 June to March, and six months of early mid-season  
5 supply to meet our marketing requirements for our  
6 brands.

7           MR. MCGRATH: This though I think we should  
8 clarify. Dr. Behr is talking about his operation,  
9 which is for not simply supply of reproprocessors. His  
10 operation is unique in that it produces the finished  
11 package product at the same facility. So his amount  
12 of necessary inventory is not going to be the same as  
13 somebody who is just doing bulk supply to other  
14 processors, correct?

15           MR. BEHR: That's correct.

16           MR. MCGRATH: So, his amount -- perhaps Mr.  
17 Casper could comment on the situation I believe that  
18 you're talking about.

19           MR. CASPER: Dan Casper. Actually, Matt, it  
20 does work out very similar. As we look at what we put  
21 away at the end of the crop our customer needs require  
22 us to have both our limit of Valencia to carry them  
23 until new crop begins in the early-mid, and then to  
24 carry additional Valencia stocks to get us to the  
25 beginning of the Valencia season, so it is, in

1 essence, quite similar to what Dr. Behr described.

2 MR. MCGRATH: So, in terms of the quantities  
3 that are involved in that number of weeks that we're  
4 talking about here, I guess we will have to provide  
5 the information on exactly what those quantities might  
6 be. It's not -- I mean, just to tell if it's  
7 comparable to the level that you were referring to. I  
8 know the calculation that was discussed in the total  
9 amounts I think both of our witnesses here are talking  
10 about the kind of mix of product that they need for  
11 their period of anticipation of the next crop, but we  
12 will clarify what the volumes are.

13 MR. BEHR: My comments reflected our not  
14 from concentrate business. We do have a from  
15 concentrate business that we supply our market  
16 requirements with product taken off the futures  
17 market, and we do import product as well, and our  
18 inventory needs are substantially less because we can  
19 get product from our import source or from the futures  
20 market throughout the year, so we may not need much  
21 more than two months worth of inventory at any one  
22 point in time in order to supply our from concentrate  
23 business.

24 I would say that that's the smaller part of  
25 our business, but clearly on the not from concentrate

1 part of our business since we are producing the juice  
2 from our own members' fruit we have to have storage  
3 that would allow us to make our marketing requirements  
4 throughout the course of the year.

5 COMMISSIONER ARANOFF: Okay.

6 MS. WARLICK: Amy Warlick. I just wanted to  
7 add that there is also a difference as to what period  
8 you're talking about. In our previous briefs we have  
9 said that at the beginning of the marketing season for  
10 Florida, which would be October 1st, what is needed to  
11 get to the first harvest, and I believe that Mr. Behr  
12 is talking about starting in June.

13 COMMISSIONER ARANOFF: Okay.

14 MS. WARLICK: So, I would clarify that.

15 COMMISSIONER ARANOFF: For purposes of the  
16 post-hearing one of the things that I'm trying to do  
17 is replicate the calculation that the Commission did  
18 in the original investigation, those Commissioners who  
19 voted in the affirmative where we were trying to add  
20 up the total juice that was available to the U.S.  
21 market at particular points in time by counting what  
22 was in inventory plus what was produced during a  
23 season, and we did that by having certain measurements  
24 in terms of number of weeks of product in inventory,  
25 so I'm trying to get to something comparable to that.

1 Okay.

2 MR. MCGRATH: We will address that in the  
3 post-hearing.

4 COMMISSIONER ARANOFF: Okay. You will  
5 remember that was rather actively litigated.

6 MR. MCGRATH: Yes.

7 COMMISSIONER ARANOFF: Thanks a lot.

8 Just to clarify for the record, in the event  
9 that there is perhaps a very good season and so the  
10 U.S. industry ends the season on the high end in terms  
11 of what's held in inventory, perhaps higher than  
12 average or higher than what's ideal or higher than  
13 what's absolutely needed, does that affect the volume  
14 of oranges that processors buy in the next season or  
15 are processor always going to buy whatever the growers  
16 grow?

17 MR. BEHR: It's been my experience that  
18 virtually all the oranges are processed from one year  
19 to the next. That there are -- it's happening in  
20 grapefruit, but this not about grapefruit, but in the  
21 case of oranges I can't remember a time in my time in  
22 the industry where the oranges weren't completely  
23 processed.

24 MR. MCGRATH: I think it's fair to say we  
25 agree with the basic concept that all oranges that are

1 grown are processed. The amount of juice that is  
2 produced in a given year is -- in either country -- is  
3 driven by the number of oranges that are grown and  
4 they are all processed unless there was a very unusual  
5 situation, but we are more concerned with the price  
6 and what the price is for the delivery of those  
7 oranges, which is affected by the price for the juice.

8           COMMISSIONER ARANOFF: But nobody has ever  
9 run out of storage facilities by processing more  
10 oranges than they could store the juice for? It  
11 doesn't sound like it.

12           MR. MCGRATH: No. There are packing houses  
13 that are used for fresh fruit, but I don't think  
14 unless there are eliminations from packing houses that  
15 go to processing?

16           MR. BEHR: We've got to the point where  
17 storage tanks and drums were pretty much at capacity,  
18 and during those periods of time prices were extremely  
19 low for not only bulk juice but also for fruit.

20           COMMISSIONER ARANOFF: Okay. Thank you very  
21 much. I appreciate those answers. Thank you, Madam  
22 Chairman.

23           CHAIRMAN OKUN: Commissioner Pinkert.

24           COMMISSIONER PINKERT: Thank you, Madam  
25 Chairman, and I join my colleagues in thanking all of

1 you for being here today and helping us understand  
2 what's likely to happen to this industry if the order  
3 were revoked.

4           As you know even from just listening to the  
5 discussions today, Respondents argue that the decline  
6 in domestic orange production has actually made the  
7 domestic industry stronger by improving margins. Does  
8 it matter in evaluating this claim whether we're  
9 looking at the growers as opposed to the processors,  
10 or is the claim from your point of view erroneous  
11 regardless of whether we're looking at the growers or  
12 the processors?

13           MS. WARLICK: They seem to be claiming that  
14 without an economy of scale we become more profitable.  
15 I don't know of any economics book that would say  
16 there is a correlation between getting smaller and  
17 more profitable. We don't feel that that's the case.  
18 We have been -- you know, we have been investing in  
19 trees, but it hasn't expanded our production so we're  
20 at the point where we're trying to even out our  
21 levels.

22           The profitability looks different in the  
23 staff report between the growers and the processors,  
24 but I believe it's because Citrus World data needs to  
25 be looked at differently, but I do not believe that

1 there is a correlation between getting smaller or  
2 staying the same and getting more profitable.

3 MR. MCGRATH: If I could add to that, we  
4 took a look at where some of these inverse  
5 correlations might exist because I know it's of  
6 interest to some of the Commissioners. What we're  
7 finding in comparing profitability of growers with  
8 size of crop is that there is no defined correlation  
9 between them. It's gone both ways. Over the last  
10 five years in some cases where the crop size has gone  
11 down profitability has gone down, and then in another  
12 year the crop size has gone up the profitability has  
13 gone down. There is not a clearly defined inverse  
14 correlation between them, and we'll be happy to  
15 present that, I think, in the post-hearing brief  
16 because the data is fully available from the staff  
17 report. It's not the size of the industry that is the  
18 cause.

19 As these growers have testified here, it's  
20 going to vary quite a bit among growers depending on  
21 their experience. How much greening do they have, how  
22 much destruction from the hurricane was there? Some  
23 of the people that luckily escaped a lot of that  
24 destruction are going to be naturally in a more  
25 profitable position. But in terms of industry-wide

1 profit there is very good public data available and  
2 there is not a correlation that's suggested by the  
3 Respondents. Sometimes the size of the crop has gone  
4 down and the profit has gone down.

5 COMMISSIONER PINKERT: Just to be clear,  
6 when you say sometimes the size of the crop goes down  
7 and the profit goes down, are you referring to the  
8 size of an individual grower's crop or are you  
9 referring to the total?

10 MR. MCGRATH: Total.

11 COMMISSIONER PINKERT: For the U.S.  
12 industry.

13 MR. MCGRATH: For the total output in the  
14 U.S., yes. We have tables --

15 MS. WARLICK: Amy Warlick. I have some  
16 extra tables that were not part of my testimony, but  
17 we can even put them up on the screen. It's the U.S.  
18 crop size does not dictate profitability. You will  
19 see that profitability rose in '06-07 while U.S. crops  
20 fell. I understand that was a year that was a bit  
21 confused financially because of the government  
22 insurance payouts after the hurricanes.

23 However, if you look at '08-09, when U.S.  
24 production stayed high profitability fell, and in '09-  
25 10 when U.S. production fell profitability rose. So,

1 we don't see that correlation. There tends to be much  
2 more of a correlation between profitability and  
3 futures prices and orange prices.

4 COMMISSIONER PINKERT: Okay, now this takes  
5 me right back to my question because the chart that  
6 you've put up there has to do with U.S. growers'  
7 operating income, and so my question is, would this  
8 analysis be different if we were looking at the  
9 processors as opposed to the growers?

10 MS. WARLICK: I don't provide a similar  
11 graph with the processors' data because, of course,  
12 after you take out Citrus World it becomes  
13 confidential. But I believe that you would see the  
14 same pattern which is not a pattern. You would see  
15 the same lack of pattern.

16 COMMISSIONER PINKERT: Thank you. Mr. Behr?

17 MR. BEHR: Yes, I would like to comment a  
18 little bit. I think over the long haul it's hard to  
19 separate out the profitability differences between  
20 Florida growers and Florida processors. I think one  
21 needs the other, and I think the premise that the  
22 industry has seen enormous profits over the last five  
23 years is not right. I think certainly our revenues  
24 have gone up, but the costs have gone up very  
25 significantly. We haven't seen any growth in new

1 plantings for citrus. We haven't seen any growth in  
2 new processing capacity. I think those are indicators  
3 to me that the economic health of the industry is  
4 still a little shaky.

5           COMMISSIONER PINKERT: Thank you. Now,  
6 turning to the carbendazim issue. I understand the  
7 points that you've been making today about how that  
8 has an adverse impact on demand in the U.S. market.  
9 But my question is, does that issue have a greater  
10 adverse impact on the Brazilian industry than it does  
11 on the U.S. industry, on the domestic industry?

12           MR. MCGRATH: We'll all be anxious to hear  
13 their answer to the question, but from our standpoint  
14 it has an impact on everyone. I am sure that they  
15 will work very hard, and I'm not just talking about  
16 the Brazilian industry, it's the processors who sell  
17 the product in the United States, they sell the  
18 product that incorporates are fruit so everybody is  
19 affected. The concern is not so much whether there  
20 will be some sort of a government constrain on  
21 Brazilian juice coming into the market. We are  
22 assuming that at the end of this investigation and the  
23 process that's ongoing with FDA and the review of  
24 carbendazim there won't be a governmental constraint  
25 on the import of juice.

1           Our concern really has to do with consumer  
2 perception and the likelihood that consumers are going  
3 to leave juice. They are a fickle bunch. They find  
4 other things that they like, and they will move on to  
5 a different drink. Will they come back? I think  
6 everybody here, all of the marketers who will testify  
7 later too, everybody agrees that it is difficult to  
8 keep a customer base when they are gone, so that's the  
9 biggest concern.

10           I don't see that it will adversely affect  
11 them any worse. The only way it would affect them  
12 worse if there was an actual ban on imports of  
13 Brazilian juice, but it doesn't appear that this  
14 investigation is headed in that direction. It may be  
15 some time before the public is made aware of the  
16 scientific facts as to what poses a health problem or  
17 not. But by then there has been three weeks of  
18 adverse publicity. It's had its effect.

19           I think we were talking yesterday about, you  
20 know, where the marketers are in trying to predict  
21 what impact it will have. We're not at the point  
22 where we can quantify that yet, but I think it's fair  
23 to say it will probably impact both equally.

24           MS. WARLICK: This is Amy Warlick again.

25           I think if you're looking at the U.S. market

1 it seems to impact both industries equally. However,  
2 you have to understand that in the EU that fungicide  
3 is registered and it's allowed for citrus. So, to the  
4 extent that Brazil's largest market right now is the  
5 EU they are not hurt at all there. However, this is  
6 our largest market, so if you're looking at in a  
7 global sense I think we are hurt more.

8           COMMISSIONER PINKERT: Perhaps my follow-up  
9 question is appropriate for the post-hearing but I'll  
10 give you a quick chance to respond to it.

11           Looking at disease issues now, that is, crop  
12 disease issues, is the Brazilian industry more damaged  
13 right now than the U.S. industry? And I recognize  
14 that the statute does not ask us to make a  
15 vulnerability determination with respect to the  
16 Brazilian industry here but I am just wondering if you  
17 have a response that you could perhaps elaborate on in  
18 the post-hearing.

19           MR. SPARKS: It's our understanding that  
20 both countries have been hit hard by invasive pest  
21 diseases, and I've worked with a scientific research  
22 group and I don't believe there is any documentation  
23 which has been hurt harder one or the other, both  
24 really struggle with invasive pest and diseases.

25           MR. MCGRATH: If I could, we could certainly

1 try to quantify like what's the acreage and what's  
2 been the impact. I think those numbers are available.  
3 But as Amy testified earlier, one factor that Florida  
4 does not have is Brazil has more area. I mean,  
5 apparently there is investment in plantings and other  
6 areas that are away from invasive pests. That's one  
7 way to deal with it. How much they will be planting  
8 it's difficult for us to know right now, but that's an  
9 option that Florida doesn't have.

10 As far as their addressing greening, Florida  
11 has made a commitment to share its research and Brazil  
12 supports that, so whatever we can do with greening we  
13 feel it's best to share with Brazil to try to cure  
14 their greening problem as well as ours because it's  
15 just going to affect everybody if we don't.

16 MS. WARLICK: Amy Warlick again.

17 These diseases are primarily tropical diseases,  
18 and in Brazil you have tropical regions that are warm  
19 enough an ideal for citrus, and you have some arid  
20 regions that are not ideal for citrus because they  
21 need irrigation, so it's more expense but you won't  
22 have as much pest contamination. So, we don't have  
23 areas like that in the United States. You know, we  
24 deal with frost in most of our semi-arid areas, so we  
25 don't have the ability to move out of Florida, even to

1 move north of Florida.

2           COMMISSIONER PINKERT: Thank you. I am past  
3 the end of my time for this round, and I appreciate  
4 the forbearance, Madam Chairman.

5           CHAIRMAN OKUN: Commissioner Johanson.

6           COMMISSIONER JOHANSON: Yes, Thank you,  
7 Chairman, and thank you all also for appearing here  
8 today.

9           I'm going to begin with a question on the  
10 inventory and it's actually a very simple question,  
11 and that is, how long can orange juice be stored, and  
12 does the shelf life differ between frozen concentrated  
13 orange juice and not from concentrated orange juice?

14           MR. BEHR: Dan may be able to address this  
15 as well, but generally speaking we store not from  
16 concentrate up to a year. Frozen concentrate can stay  
17 in inventory two to three years, and when we've had  
18 the large inventories of orange juice worldwide often  
19 you've had frozen concentrate in inventory that length  
20 of time.

21           COMMISSIONER JOHANSON: Does that affect the  
22 quality if you get to that limit?

23           MR. BEHR: Certainly. The longer it stays  
24 in storage the more degraded the quality would be, but  
25 generally if it's kept in ideal storage conditions for

1 the type of product that you're storing it will stay  
2 pretty good. It's not going to be fresh orange juice  
3 of course but it's not bad.

4 COMMISSIONER JOHANSON: Thank you. I would  
5 also like to talk on other countries which export  
6 orange juice to the United States, and namely, do  
7 industries in Mexico, Costa Rica and Belize have the  
8 capacity to increase exports into the United States in  
9 the near term or the long term? Are they working to  
10 further develop the U.S. market?

11 MS. WARLICK: We were just discussing this  
12 yesterday. If Mexico had more, we believe given where  
13 prices are right now we would see it. It would seem  
14 that Mexico right now they are on their tippy toes.  
15 You know, that's about as much as they can produced.  
16 Mexico has been significant. It's something that we  
17 were worried about I remember during NAFTA, but it has  
18 not shown itself to be a fast moving industry. The  
19 same with Costa Rica and Belize, they have limited  
20 capacity, and perhaps Bob has something to say on  
21 that.

22 MR. BEHR: The infrastructure in Mexico is  
23 not anything like what we see in Brazil or in Florida.  
24 Their ability to expand production is fairly limited.  
25 They have a very, very strong fresh market where a

1 good portion of their oranges go, and really a small  
2 portion of their oranges are processed, and virtually  
3 all of it processed comes to the United States  
4 already.

5 COMMISSIONER JOHANSON: Thank you. And Mr.  
6 Behr, you mentioned a few minutes ago that Tropicana  
7 ia switching to U.S. only orange juice, and I was  
8 wondering why that is the case.

9 MR. BEHR: Well, I don't know. We've been  
10 very successful with Florida's natural brand, and  
11 selling all Florida, all U.S.A. product. I can't  
12 presume to know what's motivating Tropicana. We do  
13 know that the all Florida proposition is just for  
14 their pure premium, will continue to use imported  
15 product in some of their other product forms, but  
16 their premium product, apparently they feel that it's  
17 important in their marketing program to gain market  
18 advantage over the competition, and certainly our  
19 brand's success over the last 20 years, and  
20 particularly the last four or five years with the all  
21 Florida emphasis seems to have had traction with the  
22 consumers, and maybe Tropicana sees that and it wants  
23 to emulate that. But you would have to ask them why  
24 they are doing that.

25 COMMISSIONER JOHANSON: Okay, thank you.

1           And I would like to discuss likely volume,  
2 and this is another rather basic question, but how  
3 long does it take to increase the size of available  
4 crop? For example, how long does it take a tree to  
5 reach maturity and are there sufficient healthy trees  
6 in nurseries or seedlings to meet the replanting needs  
7 due to disease and weather loss at this time?

8           MR. MCGRATH: I think possibly Mr. Story or  
9 Mr. Barben both could answer that because they have  
10 direct experience.

11           MR. STORY: If I understood your question  
12 right, you asked how long it would take a tree from  
13 the time it acquires that disease until it does?

14           COMMISSIONER JOHANSON: No, just the time of  
15 planting to production.

16           MR. STORY: How long does --

17           COMMISSIONER JOHANSON: How long it takes a  
18 tree to go from when you plant a tree to when it can  
19 actually produce orange juice.

20           MR. STORY: Oh, I'm sorry. With the new  
21 cultural practices we have we've got fruit on the  
22 trees in about three years. It still take five to  
23 seven years for that tree to be profitable.

24           MR. BARBEN: John Barben. The issue we've  
25 got also is in our greenhouses we are fighting

1 production or getting nursery stock in. We currently  
2 grow about 13,000 trees every year and a half in our  
3 operation. We've got liners from another nursery man.  
4 In September got canker on those liners, had to pull  
5 them out, destroy them, and immediately that put our  
6 greenhouse in a quarantine effect. We got more trees  
7 from the same greenhouse when he was released, and in  
8 late November, early September, canker again. So  
9 those were 5,000 liners that we destroyed over a four  
10 month period.

11           So, availability of the nursery stock a lot  
12 of people are just -- nursery men are growing for a  
13 contract. You've got to put your order in, so it may  
14 be 18 months before you get your trees. The other  
15 thing that we're doing we're putting -- a lot of  
16 places going back and putting in two trees in the  
17 place of one tree so you've got additional cost, but  
18 those trees if you can get them through greening, the  
19 problem is you're seeing signs of greening on those  
20 resets, and the greening will take that reset out  
21 where it's not taking out the mature tree.

22           So, we're having to go through those trees  
23 every six to eight weeks by hand with a product to  
24 keep them from the psyllids feeding on them. We are  
25 also having to do treatment for foot rot if they get

1 vitafurin in them, and they happen to get the green  
2 disease, they crash, they die quickly. So, that's our  
3 big battle right now is getting those trees, getting  
4 them, getting them in the ground and getting them into  
5 production in three to five years. Even if you got  
6 them into production in three years they are probably  
7 not going to pay for themselves until year five to  
8 seven.

9           COMMISSIONER JOHANSON: Do you know how many  
10 have the -- approximately the percentage of seedlings  
11 that have to be taken out? I think you called them  
12 liners, that are being taken out at this time?

13           MR. BARBEN: For greening?

14           COMMISSIONER JOHANSON: Right.

15           MR. BARBEN: No, we took out -- what was  
16 that, 87,000 acres for canker, and that's what you're  
17 seeing happening in the industry now. We went in with  
18 eradication. We took all the trees out, plus 1,900  
19 feet around that tree, so you lost all those acreage.  
20 Then you had low prices in the nineties and two  
21 thousands, up to about 2005, and then you had real  
22 estate values that were very high. So, a lot of  
23 growers were selling their land saying, okay, I'm  
24 done. I can't take this anymore. Got out of farming.  
25 So we lost acreage due to real estate and canker,

1 then we had greening coming in. We were told that we  
2 also had to take out the infected trees there.

3           Right now you're seeing a lot of those  
4 canker acres replanted now by growers. Slowly but  
5 surely they are coming back because you've got the  
6 infrastructure in place. The land has already been  
7 developed for citrus. It's had citrus on it. It's  
8 got the irrigation, so you don't have those costs.  
9 What else are you going to do with it?

10           We can't put that many acres that were in  
11 citrus into an alternative crop. It's not going to  
12 work. So the only option is really go back in with  
13 these mass acreages into citrus, so you've got that  
14 effect, then you've got the effect of what we took out  
15 for several years with greening until most people said  
16 we can't afford to keep taking out the green trees.  
17 We're going to push ourself out of business like we  
18 would with the canker.

19           And then the availability, in that time  
20 period we also went from bare root trees into closed  
21 greenhouse trees to protect from the canker and the  
22 greening.

23           COMMISSIONER JOHANSON: Thank you. And I  
24 want to touch on U.S. exports as well. I know you all  
25 say that that was primarily or largely from Brazilian

1 owned processor in the United States, but just in  
2 general can you predict how the implementation of the  
3 free trade agreement with South Korea would impact the  
4 U.S. industry? Are we currently exporting to South  
5 Korea?

6 MR. MCGRATH: I think probably the most  
7 knowledgeable here would be Dr. Behr since he's been  
8 involved in marketing in Asia more than a lot of the  
9 other processors.

10 MR. BEHR: There may be an opportunity to  
11 export not from concentrate to South Korea, but I  
12 would think that the majority of the orange juice that  
13 would be exported to South Korea long term is going to  
14 be concentrated. It doesn't make sense to be -- it's  
15 expensive to ship in FC, and I can't imagine that  
16 there would be significant exports of concentrate out  
17 of the U.S. to Korea, but there may be some niche  
18 demand for Florida-based in FC products in South  
19 Korea.

20 COMMISSIONER JOHANSON: Is there already a  
21 market there?

22 MR. BEHR: I think there is for concentrate  
23 but I don't believe that we're exporting much  
24 concentrate there, and again I wouldn't expect to see  
25 a lot of Florida concentrate moving from the U.S. to

1 Korea. Most of the fruit that's produced in Florida  
2 is going into NFC. That's the highest value for the  
3 fruit, and I would think that if Korea was going to  
4 import concentrate to any extent it would likely come  
5 from Brazil.

6 COMMISSIONER JOHANSON: Even with the tariff  
7 removed?

8 MR. BEHR: Even with the tariff removed,  
9 yes.

10 COMMISSIONER JOHANSON: Okay. Thank you.  
11 My time is up.

12 CHAIRMAN OKUN: Thank you.

13 Mr. Behr, let me just stay with you on the  
14 tariff question because I was curious about that as  
15 well. One of the arguments the Brazilians have made  
16 about the attractiveness of both the European Union  
17 and Asian markets with respect to your opinion that  
18 the tariff is lower. Does anyone on the panel have  
19 knowledge of that? I mean, are the tariff levels  
20 favorable and are they favorable for Brazil or just  
21 that the EU has a lower tariff overall?

22 MR. MCGRATH: The EU does have a lower  
23 tariff than the U.S. tariff definitely, and prices --  
24 they have made it very clear that that's a preferred  
25 market. I think that the entire European Community

1 perhaps is the preferred market for Brazil. But on  
2 this point --

3 CHAIRMAN OKUN: Okay, so let me ask my  
4 question. You might be getting ready to respond to  
5 it, but I guess one of the arguments I was trying to  
6 understand and whether this was a difference from in  
7 the original investigation because, Ms. Warlick, you  
8 had in your testimony that the United States would  
9 serve as an outlet for Brazil's residual supplies of  
10 orange juice since they don't want to dump in the EU  
11 market where they enjoy high prices and little  
12 competition. I just want to make sure I understand.

13 You agree that they do have -- they do get  
14 higher prices in the EU than they do in the U.S.?

15 MS. WARLICK: This is Amy Warlick.

16 It depends on the product, I believe, and it  
17 depends on when. I believe that currently the NFC  
18 prices are higher in the EU than in the U.S., but not  
19 FCOJ. It fluctuates month to month. We are on the  
20 map though. We are not the lowest price market in the  
21 world like we were, you know, five years ago when I  
22 testified.

23 MR. MCGRATH: Well, if I could, just  
24 accepting their allegation, and I've heard this  
25 several times now, we presented an antidumping

1 petition six years ago alleging sales of less than  
2 fair value by Brazilian Juice at less than third  
3 country price because they have a very small home  
4 market. That's not much of a market base for  
5 antidumping comparison. Nonetheless it's still being  
6 used because there is just enough of a home market  
7 sale as the basis for the comparison.

8           But our dumping allegation was based on  
9 sales to Europe because that is by far a much bigger  
10 market. That is the big third country market. Their  
11 brief, it's right at page 40 in their brief, I mean,  
12 they are proud of showing the fact that their prices  
13 are much better into Europe than the prices that they  
14 can get selling into the United States over the last  
15 several years.

16           CHAIRMAN OKUN: Right. My point is not with  
17 respect to the dumping margin, but in looking at the  
18 incentive them have to shift around from a preferred  
19 market and how much volume that's likely to produce in  
20 the United States for the order to be lifted, and I  
21 think that's a slightly different inquiry when we look  
22 a prices overseas for purposes of figuring out what  
23 the incentive is to shift from that market.

24           MR. MCGRATH: It is an important incentive.  
25 I will get to answer that question. I just wanted to

1 observe this is called dumping. They are selling at a  
2 lower price here than they are in their largest third  
3 country market. That's not an issue in this case  
4 because the dumping is calculated with respect to home  
5 market.

6           But with respect to the incentive why would  
7 they shift product here? Well, this is part of the  
8 reason they produce this kind of consecitrus program  
9 in order to stockpile juice. There is a great concern  
10 in Brazil that too much juice from better years of  
11 production is going to come on the market and it's  
12 going to hurt their market price in their favored  
13 market in Europe. The Brazilians have said in their  
14 statements, well, Europe, that's where we care the  
15 most, that's where we want to go. But if they  
16 suddenly come on the market with larger inventories  
17 that have been stockpiled by a government program it's  
18 going to hurt their price into Europe, so what happens  
19 with their residual supply?

20           This is an easy place to off load it, in the  
21 United States. They have already got all of the --  
22 they have got the market here, they have got the  
23 infrastructure, the storage both in the northeast and  
24 in Florida. There is an incentive to sell more  
25 product here that they claim there isn't. I'm not

1 even sure why they are here if this is such an after  
2 market. But we do find and I think most of our  
3 industry agrees, they are very concerned that that  
4 incentive will be there.

5 CHAIRMAN OKUN: And do you know what the  
6 tariff level is for Brazilian exports is into South  
7 Korea and the Asian markets?

8 MS. WARLICK: Amy Warlick. I haven't looked  
9 at it just recently but I have looked at it in the  
10 past and it was quite high. They also have  
11 phytosanitary protocols that I know affect fresh fruit  
12 because they have a tiny, little industry. I think  
13 they are called Monchu oranges that they produce in  
14 Korea that they have been very heavily phytosanitary  
15 actions as well as tariffs. I don't know for sure. I  
16 need to look it up whether or not it affects the  
17 orange juice.

18 CHAIRMAN OKUN: And I will have a chance to  
19 ask them this afternoon, too. I was just curious.  
20 And the other thing I find interesting on the record,  
21 is the industry to the extent those who have been  
22 involved in exports, have you looked at China? I  
23 mean, I realize that on the record China's demand has  
24 not been a big factor, but given that China is often a  
25 big factor in other cases that we look at when their

1 demand finally comes on board. I was curious what's  
2 going on there and whether it's someplace that the  
3 industry looks at as a potential big market or not,  
4 and if not why?

5 MR. BEHR: Today, China is, I believe, the  
6 third largest orange producer in the world, and  
7 potentially could be a player in the orange juice  
8 commercial trade down the road. They do consume some  
9 orange juice there. Our company sells branded orange  
10 juice into the Chinese market, but I'd have to say  
11 that the scale and scope of that market is very small.  
12 We would sell not from concentrate, and the cost to  
13 move product from Florida to China is quite expensive.  
14 There is a tariff there as well, and so the retail  
15 price, if you will, for the juice in the Chinese  
16 stores is really quite expensive and only truly  
17 available to those that have the means to buy that.

18 I wouldn't expect to see a significant  
19 demand for Florida-produced NFC. I could see  
20 certainly niche markets, but nothing that's going to  
21 offer the industry significant export opportunity.

22 CHAIRMAN OKUN: Thank you. Appreciate those  
23 comments.

24 I wanted to come back on the inventory  
25 question and, Ms. Warlick, it maybe something that is

1 easy to explain to me because I may have been confused  
2 by the earlier exchange. But I know that you in your  
3 Exhibit 7 were responding to the Respondent's Exhibit  
4 1, Coca-Cola, about the calculation. In some ways I  
5 hate to wander into this because as you know I did not  
6 rely on this in the original investigation, but just  
7 in trying to understand the calculations.

8           Is the 12 weeks inventory not available for  
9 sell calculation on this chart a different inventory  
10 than Mr. Behr was talking about when he was talking  
11 about nine months?

12           MS. WARLICK: I, myself, need to research  
13 what Dr. Behr was talking about there because it has  
14 been my understanding that at the beginning of the  
15 year 12 weeks are absolutely necessary to make it to  
16 when our oranges that -- some of them are probably  
17 harvested in November, but you really need to get to  
18 January where you've got the harvest really picking  
19 up. So, 12 weeks absolutely necessary. Comfort zone  
20 being 16 to 20. After that, because of the cost of  
21 storing juice, we were talking before about, you know,  
22 what happens when you get so much inventory, do we  
23 have enough juice capacity. Yes, we do but it starts  
24 getting very pricy when there is a lot of demand for  
25 it, the storage capacity. That's when it becomes a

1 burden.

2           So, that is my understanding and I know that  
3 Coke in their brief, I just don't know if this was  
4 confidential, but I know that they had a different  
5 number. However, Coke is not an extractor. So it's  
6 going to be a little different. They have different  
7 concerns. They are serving the worldwide market, and  
8 it's going to be different demand schedules for  
9 different months, but that is my understanding of the  
10 majority of processors here, 12 weeks necessary, 16 to  
11 20 comfort zone.

12           CHAIRMAN OKUN: Okay. Mr. Behr?

13           MR. BEHR: I think, and I'd have to confer  
14 with Amy, but I think the point in the year where I  
15 was telling you that we need, or telling the  
16 Commission that we need -- inventory was June, and I'm  
17 not sure that's the same starting point that Amy was  
18 using in her analysis.

19           CHAIRMAN OKUN: Okay. So I would say for my  
20 purpose I would think that for post-hearing we would  
21 need to have more of this sorted out, about how that  
22 affects supply in the U.S. market during different  
23 parts of the year and how we look at that, so I would  
24 appreciate that.

25           I see that my time is going to run out

1 before I start my line of questioning about how the  
2 industry is doing so I will turn to Vice Chairman  
3 Williams and come back.

4           VICE CHAIRMAN WILLIAMS: Thank you, Madam  
5 Chairman. I too want to express my appreciation for  
6 the industry's testimony today.

7           I wanted to go back to the question if  
8 demand a little bit and get a better understanding of  
9 we talked about orange juice consumption I guess going  
10 down, and I was just wondering about some of the  
11 things that might change that. For example, what is  
12 the role of light orange juice? I think I've seen  
13 some boxes of it in the store but I wasn't sure, is  
14 that a significant demand in dealing with the folks  
15 who are concerned about diets?

16           I mean, the beer folks seem to have done  
17 pretty well with light.

18           MR. BEHR: Commissioner Williamson,  
19 certainly the marketers have identified that consumers  
20 are leaving the category because of concerns over the  
21 calorie content of orange juice and the carbohydrate  
22 content of orange juice. If those consumers have left  
23 the category and how the light products bring them  
24 back into the category, certainly that could help  
25 increase demand for orange juice solids.

1 I think a concern that our industry has  
2 though is that if you move consumers from pure orange  
3 juice, 100 percent orange juice to a 40 percent orange  
4 juice product you're reducing the demand for orange  
5 juice solid, so I can't tell you today where the  
6 consumption of light products is coming from. But to  
7 the extent that you move consumers away from the 100  
8 percent juice, it certainly could have a negative  
9 impact on overall orange juice solids demand.

10 VICE CHAIRMAN WILLIAMS: Okay. So is there  
11 sort of like a direct proportion between the calories  
12 and the amount of solids in the orange juice solids in  
13 the product?

14 MR. BEHR: I think that's a safe assumption,  
15 yes.

16 VICE CHAIRMAN WILLIAMS: Okay. What about  
17 orange juice being used in other products? You talk  
18 about people drinking other products. But like apple  
19 juice you used to see every sort of product, you see  
20 10 percent juice and stuff. Is orange juice -- does a  
21 significant amount go into other products?

22 MR. BEHR: I think that marketers are  
23 looking for ways and means to meet consumer demands,  
24 and I think if you look at a typical chill juice  
25 section in a grocery store you will see products, and

1 they may not be products that sell that much, but they  
2 are products that are put on the shelf to meet a  
3 specific consumer demand. You might see products like  
4 an orange mango, that type of thing, or an orange  
5 tangerine.

6 VICE CHAIRMAN WILLIAMS: Yes.

7 MR. BEHR: So you're trying to get the  
8 consumers to drink more of a particular brand and a  
9 particular brand's product. But I would say that most  
10 of orange juice that's consumed today is consumed as  
11 100 percent pure orange juice. I hate to put a number  
12 on it but I would hazard a guess it's well over 90  
13 percent.

14 VICE CHAIRMAN WILLIAMS: Okay. Yes, I was  
15 going to say in other words all this stuff is like  
16 kind of marginal. What about the trend towards -- I  
17 don't know how many of you producers are doing, the 59  
18 ounce container rather than the 64, and how  
19 significant might that be in terms of the amount of  
20 juice that's consumed?

21 MR. BEHR: Certainly a change in the product  
22 form can have an impact on overall consumption, and I  
23 think one of the things that marketers are doing to  
24 address the rising cost is to put less orange juice  
25 solids in the package. One of the major brands came

1 out with a carafe a number of years ago in the 59  
2 ounce container, and we have seen the rest of the  
3 industry follow suit particularly as costs, whether it  
4 be cost of packaging, energy cost, or even the cost of  
5 solids have gone up you have seen the marketers  
6 rationalize the size of the package in order to  
7 provide a product to the consumer without having to  
8 significantly increase price.

9 VICE CHAIRMAN WILLIAMS: But I guess for the  
10 growers that means less demand for oranges.

11 MR. BEHR: At the end of the day it could  
12 well unless consumers buy more of the packages to  
13 offset the difference, but I think at the end of the  
14 day we perceive that that's probably likely to have a  
15 negative impact on overall demand, yes.

16 VICE CHAIRMAN WILLIAMS: Okay. Thank you  
17 for that clarification. I do know of one place where  
18 you can still get the 64.

19 With regard to frozen concentrate orange  
20 juice is it ever produced at concentrations lower than  
21 the six to seven strength that is typical and would  
22 this provide any advantages in shipping, less water?

23 In other words, I guess there is a typical  
24 strength for shipping concentrated. Do people ever  
25 say let's make it even more concentrated and save on

1 costs, shipping costs?

2 MR. BEHR: I'm probably not the one to  
3 answer this but technically I think you probably run  
4 into some challenges at getting the juice at higher  
5 levels of concentration.

6 VICE CHAIRMAN WILLIAMS: Okay.

7 MR. MCGRATH: I do know that it is shipped  
8 at differing levels. It's not just a 64. Sometimes  
9 66, 67, but not much higher than that.

10 VICE CHAIRMAN WILLIAMS: Okay. What about  
11 in terms of the not from concentrate. Is it only  
12 always single strength?

13 MR. BEHR: By definition the juice would  
14 never be concentrated, so it's as squeezed.

15 VICE CHAIRMAN WILLIAMS: Okay. So you are  
16 always going to have to ship all that water. Okay,  
17 thank you.

18 In the original investigation the Commission  
19 determined to include orange growers as part of the  
20 domestic industry. In the current review there is  
21 only 15 growers have responded to the Commission's  
22 questionnaire. Why is there such a low response rate,  
23 and how would you respond to the Respondent's argument  
24 on page 20 of their preparing brief that the  
25 Commission should apply adverse inferences to the

1 Florida farmers failure to provide information?

2 MR. MCGRATH: Commissioner, the response  
3 rate to this is not much different from the response  
4 rate in the past. That's not to say that it shouldn't  
5 be higher but I don't think it's much different from a  
6 lot of agricultural commodities that the Commission  
7 looks at. One of the problems is there were some  
8 5,000 growers in the industry. There were about 400  
9 questionnaires that went out. We worked with the  
10 staff to try to identify a list that they could choose  
11 from. A number of those growers ended up responding -  
12 - a number of the addresses ended up out of business  
13 or nonresponsive, and the simple fact is a lot of  
14 these smaller growers -- most of the growers are  
15 smaller growers -- don't have the resources to respond  
16 to the questionnaire and many of them feel, just as  
17 some of our guests here today, that a lot of the data  
18 that they would be providing in response to that  
19 questionnaire is already very comprehensively  
20 collected by the State of Florida which they refer to  
21 give them guidance on how they are doing their  
22 business because the State of Florida does a lot of  
23 constant surveying of all this information.

24 We would like to have a higher response. I  
25 think the response rate that did come in account for 8

1 or 10 percent somewhere of total estimated production,  
2 but there are not facts that are changed from previous  
3 investigations that should suggest that you should  
4 apply adverse inferences especially when -- if you  
5 had, for instance, a 20 percent response rate or a 25  
6 percent response rate, or if you had 100 growers, 150  
7 growers respond out of 5,000 potential growers you  
8 would still be far better off using the publicly  
9 available information about the industry than  
10 anecdotal responses of 100 growers.

11 I don't know what to say other than there is  
12 sufficient data there that's probably better. I don't  
13 think it justifies applying adverse inferences. The  
14 growers do attempt to respond as best they can. Some  
15 of them can just see that if they are in the middle of  
16 their season, and I will say that a number of people  
17 that I've talked to, I talk to them in their offices,  
18 and that's usually a truck somewhere in a grove, in  
19 Florida that's the office, that's where they are  
20 trying to put together numbers which, as your staff  
21 will probably be able to attest, those numbers aren't  
22 going to be very reliable if they are just estimates  
23 from the truck.

24 VICE CHAIRMAN WILLIAMS: Okay, thank you.  
25 Thank you for that explanation.

1           A question, this consecitrus program I don't  
2 quite understand, why are they trying to build up  
3 stock if you're saying that -- I mean, they are going  
4 to ship it here. I don't quite understand what the  
5 motivation is for it for them. Is it like an  
6 insurance policy?

7           MS. WARLICK: This is Amy Warlick. We are  
8 trying to get as many of the details now as we can.  
9 There is more and more information that comes out, a  
10 lot that we've provided in our brief, but this has  
11 risen out of a cartel investigation that was filed  
12 many years ago, more than a decade ago by a grower's  
13 group in Brazil that was alleging that there was a  
14 cartel. In other words, the processors were dictating  
15 the prices to the growers, and then they realized  
16 there is something wrong here, so it's a way to figure  
17 out that situation.

18           So the juice that is bought on government  
19 credit is subject to reference prices. I'm sorry.  
20 The oranges that are purchased on government credit  
21 are subject to reference prices, so that solves that  
22 problem, but they also say they want to create a more  
23 stable, you've got up and down crops in Brazil as well  
24 as here, so more stable volume over the years. In  
25 addition, they want the prices to be highest when they

1 are harvesting and marketing their oranges, and that  
2 has been stated in the press that that is one of their  
3 goals. That's often stated as the priority goal, so  
4 that can only indicate to us that when those stocks  
5 are released they probably won't be released during  
6 the harvesting and marketing of Brazilian oranges. In  
7 any case it is a historical outcome of other issues in  
8 the Brazilian citrus industry.

9 VICE CHAIRMAN WILLIAMS: And who will  
10 control the release of it? My time has expired so I  
11 guess I'll come back.

12 MS. WARLICK: The government makes sure the  
13 stocks are not released until one year has passed, and  
14 then it's -- I haven't seen anywhere that there is a  
15 deadline for the release, so I believe that it's up to  
16 the processors to have it released at their  
17 discretion.

18 VICE CHAIRMAN WILLIAMS: Okay.

19 MS. WARLICK: That's my understanding.

20 VICE CHAIRMAN WILLIAMS: Thank you for that  
21 answer. If you have anything more, I appreciate it.  
22 Sorry for going over.

23 CHAIRMAN OKUN: Commissioner Pearson.

24 COMMISSIONER PEARSON: Thank you, Madam  
25 Chairman. Some concerns have been expressed relating

1 to the motivations of the Florida processors who are  
2 related to foreign firms. That would not be people on  
3 this panel, but perhaps some of them will be in front  
4 of us a little later. Are there reasons to think that  
5 those firms are not working toward a profitable future  
6 for the Florida industry? I mean, are they basically  
7 good corporate citizens, or is there something  
8 nefarious going on that we should be aware of?

9 MR. MCGRATH: I guess I better answer this  
10 because it's a sensitive question for the industry.  
11 Some of the people sitting back here buy some of our  
12 oranges and so, but it's a good one and it was asked  
13 five years ago as well. The Brazilian investors in  
14 Florida are interested in buying Florida oranges and  
15 turning a profit. There's no question about that, but  
16 they have mixed motives. They are operated, they are  
17 owned by much, much larger Brazilian entities who are  
18 looking at maximizing their profits and their  
19 worldwide business.

20 Their decisions are going to be made  
21 partially with respect to how much juice their  
22 affiliates are making here and partially with respect  
23 to where they can maximize their profits at a given  
24 moment. The fact that some of the Brazilian-owned  
25 companies are the ones that are purchasing fruit here

1 suggests that, you know, their job, their goal, I'm  
2 sure the business of these folks appearing here is to  
3 turn a profit, they're not looking to lose money, but  
4 their overall global decisionmaking is not being done  
5 by somebody who's in Lake Wales, Florida.

6           The global decisionmaking is being done by  
7 the owner of the conglomerate, and there are very few  
8 owners left. There's now one more big merger. There  
9 are only three large producers in the world. So the  
10 decisions are going to be made ultimately by, as to  
11 what serves the company best. For now, for any  
12 moment, it might simply be to serve the U.S. market by  
13 making juice in Florida and to try to serve as much of  
14 the European market as possible from juice that's made  
15 in Brazil.

16           If there's an excess, we refer to it as a  
17 residual supply. If there's an excess, this is a  
18 convenient place to move that juice. So we want to  
19 make sure that that doesn't happen. Your question,  
20 you know, is there a nefarious goal, there's a  
21 corporate goal and it's driven by the Brazilian owners  
22 of these companies.

23           COMMISSIONER PEARSON: Okay. Well, I  
24 understand that this is potentially a sensitive issue,  
25 so for purposes of the posthearing, if there's a sound

1 argument that somehow these firms would benefit if the  
2 Florida industry declines, you know, I'd like to hear  
3 that. Otherwise, if you think it's reasonable that  
4 they should want the Florida industry to prosper, then  
5 let us know that, too. So think on that and see what  
6 you can do in posthearing.

7           MR. MCGRATH: I think it's fair to say they  
8 want the Florida industry to continue to produce  
9 oranges that they can process and sell. This is all  
10 about price, though. Our concern is even though that  
11 may be their concern, they want to buy oranges, and  
12 they have been good to our growers and purchased  
13 oranges and entered into contracts, the very price at  
14 which they pay our growers for fruit is affected by  
15 the futures market and by import prices because the  
16 rise in these contracts -- I think Mr. Dunn made  
17 reference to it this morning so I'm sure we'll hear  
18 more this afternoon -- the contracts include a base  
19 price and a rise, and that rise, which is where their  
20 profit is built in for the grower, is going to be  
21 driven by spot prices and by the futures market, and  
22 that will be affected by import prices.

23           So they can be on both sides of the fence,  
24 just as they were five years ago. The Brazilian-owned  
25 U.S. processors do stand to benefit from not having to

1 pay as much for fruit because they want as much fruit  
2 as they can and the price will go down if there's more  
3 imports that's suppressing the --

4 COMMISSIONER PEARSON: Okay. And if those  
5 motivations are different than the U.S. processors,  
6 explain all that to me, if you could. You touched on  
7 an issue that was my next question. Do you see this  
8 as more of a price case than a volume case? Is that  
9 how we should understand it?

10 MR. MCGRATH: Yeah. I believe that it's  
11 always been a price case. We're always concerned not  
12 about any large volumes or small volumes. The volume  
13 movements that go on -- I know that there's been a lot  
14 of argument on the other side about inverse  
15 correlations between the volume of imports and the  
16 volume of production. We can challenge those  
17 correlations, but it's price that's really the issue  
18 here, which is why we've spent so much time talking  
19 about the doubling of the cost of production for the  
20 growers here, because that price is critical.

21 COMMISSIONER PEARSON: Well, we observe in  
22 the staff report that despite the doubling of those  
23 costs, the growers have been making some money, which  
24 is a good thing to see. This may be my last question  
25 and it deals with causation. There really are a

1 number of factors influencing supply, demand and  
2 profitability in this marketplace, okay? What on this  
3 record demonstrates a causal nexus between the subject  
4 imports and the fortunes of the domestic industry?

5           Because, frankly, I find it a little bit  
6 hard to sauce it out. You will recall from the last  
7 time around, I also had challenges in that regard. So  
8 is there something on this record that's going to make  
9 quite clear that there's a causal relationship between  
10 the subject imports and the fortunes of the domestic  
11 industry?

12           MR. MCGRATH: You mean the improving  
13 fortunes of the domestic industry?

14           COMMISSIONER PEARSON: The fortunes have  
15 been improving, but up or down, I mean is there  
16 causation here? Mr. Behr?

17           MR. BEHR: I'm going to refer to Amy's  
18 chart. We know that Brazil is by far the largest  
19 producer in the world, and, from a supply perspective,  
20 have a significant impact on world supply, which has  
21 an important impact on market clearing prices. I  
22 think the chart that you see here shows that as  
23 Brazil's production goes up and down, so do the amount  
24 of import, so does the import volume that is possibly  
25 correlated with Brazil production. I don't know if

1 that's, gets to your point of causation, but at least  
2 anecdotally it would appear to me that there may be a  
3 causation there.

4           COMMISSIONER PEARSON: Yes. I'm not sure  
5 whether it gets at causation if we consider this a  
6 price case rather than a volume case because that  
7 really looks to me like a volume effect. So I'm not  
8 sure whether that's probative in this case, but I  
9 would be interested, either now or in the posthearing,  
10 on elaborations on that.

11           MS. WARLICK: Amy Warlick. These charts  
12 weren't created to answer that specific question but  
13 maybe if I can explain. I wanted to pull these up  
14 when you were asking questions about consumption, as  
15 well. Then, in the previous investigation there was a  
16 lot of discussion about whether our low volumes were  
17 pulling in Brazilian imports, and I think that you can  
18 see very clearly here there is a definite correlation  
19 between Sao Paulo oranges that are processed and the  
20 imports.

21           When they have oranges, they send them here,  
22 and when they have less, we get less. It's not  
23 correlated very much with the oranges processed in the  
24 U.S. Then, Steve, if you can turn to the next one.  
25 Getting back to that subject of consumption, what's

1 driving consumption down? Just not enough oranges in  
2 the world to supply consumers that want to drink  
3 orange juice? I don't think so, because in this chart  
4 it shows you here in the POR that in '07, '08 there  
5 was -- and this is the combination of Sao Paulo and  
6 Florida oranges processed -- there was a lot of orange  
7 juice on the market.

8           This doesn't even consider the third  
9 countries. Yet the prices were, well, prices were,  
10 that caused prices to go down, but the consumption was  
11 going down all the while those stocks and inventories  
12 were building. There was plenty of orange juice.  
13 Consumption, I should have on this, just continues a  
14 steady pace down. Now, you were asking about the  
15 correlation between imports and profitability. When  
16 imports go down, the futures prices go up and there is  
17 a greater correlation between profits and price, and  
18 so when imports go down, futures go up when there's,  
19 you know, we're not over supplied.

20           COMMISSIONER PEARSON: Yes. I'm not sure  
21 that the relationship is quite as neat as you've just  
22 expressed it, but for purposes of the posthearing you  
23 might want to sort that out a little more clearly and,  
24 you know, put your best case forward.

25           MS. WARLICK: Okay.

1 COMMISSIONER PEARSON: Mr. Behr?

2 MR. BEHR: We'll do that in a posthearing  
3 brief for sure, but I think you probably would accept  
4 the causal argument that increased supply reduces  
5 price. Brazil's production is going to have a  
6 significant impact on supply. So if you think of it  
7 as a two-step process, you made the case that the  
8 chart proved a volume argument, but I think you can  
9 make the leap that it's also a price argument as well  
10 if you accept the argument that Brazil, being the  
11 world's largest producer of orange juice, has a causal  
12 impact on world pricing. We'll clarify that in the  
13 posthearing brief.

14 COMMISSIONER PEARSON: Okay. Thank you very  
15 much.

16 CHAIRMAN OKUN: Commissioner Aranoff?

17 COMMISSIONER ARANOFF: Thank you, Madam  
18 Chairman. There's been discussion today, and there  
19 was in the prior proceeding, about the futures market,  
20 and so I just want to clarify. Can someone please  
21 explain what it means to sell orange juice to the  
22 futures market or to buy orange juice from the futures  
23 market and whether that means that any juice actually  
24 physically goes anywhere?

25 MR. CASPER: Dan Casper. I'll attempt to

1 answer your question. The futures contract itself is  
2 the right and the obligation to either take, or make,  
3 delivery of a physical product. It can always be  
4 offset through taking the opposite position, and, you  
5 know, many times those positions are cleared out, but  
6 there are instances where product is taken off of the  
7 market and product is delivered into the markets, so  
8 it's the right and the obligation that constitutes the  
9 futures contract itself.

10 COMMISSIONER ARANOFF: Okay. Well, I can  
11 understand your entering into a contract which gives  
12 someone the right to get product or the right to, the  
13 obligation to sell product, but during the time that  
14 people hold these futures contracts, where is the  
15 product?

16 MR. CASPER: The product is supposedly in  
17 storage at some location. You know, at a delivery  
18 point that is designated by the exchange.

19 COMMISSIONER ARANOFF: Okay. And so when  
20 you make actual delivery of product in accordance with  
21 a futures contract, you don't actually put the product  
22 in a truck, you just kind of hand over the title to  
23 the product, wherever it's stored, to someone else.

24 MR. CASPER: That's correct. Then the buyer  
25 will make the decision of whether you carry it,

1 continue to carry it, or he will actually pull the  
2 physical product, or retender it to the market at a  
3 later time.

4 COMMISSIONER ARANOFF: Okay. Is there a  
5 futures market for orange juice in Brazil or in any  
6 third countries or is that uniquely in the U.S.?

7 MR. BEHR: It's uniquely in the U.S.

8 COMMISSIONER ARANOFF: Is it only U.S. juice  
9 that's bought and sold on the futures market, or it  
10 can include juice from any source?

11 MR. BEHR: Futures contract permits the  
12 delivery of juice. It either comes from the U.S.,  
13 Brazil, Costa Rica or Mexico. The delivery occurs in  
14 warehouses located in the U.S.

15 COMMISSIONER ARANOFF: Okay. What is the  
16 role of the futures market in the market for orange  
17 juice? Is it a beneficial role, and, if so, how?

18 MR. BEHR: Dan can explain it as well as I,  
19 but I'll take a first stab. I think the futures  
20 market provides price discovery for the players in the  
21 bulk FCOJ market. It is not a market in which there  
22 is a significant amount of delivery and taking of  
23 product. It's relatively small compared to how much  
24 orange juice, how much concentrate is transacted  
25 between parties in the United States. In my mind, its

1 primary role is in price discovery.

2 MR. CASPER: Dan Casper. I agree with Bob.  
3 You know, it is price discovery and it's basically  
4 the only tool that we have outside of physical sales  
5 contracts to manage risk in the marketplace.

6 COMMISSIONER ARANOFF: Okay. So when you  
7 say manage risk, you're saying that if one holds  
8 inventory and one believes that perhaps you have more  
9 than whatever this ideal amount that you're trying to  
10 achieve is, that would be a good time to sell some  
11 into the futures market. Is that how it works?

12 MR. BEHR: Again, very little of the  
13 commercial transactions of bulk concentrate in the  
14 U.S. go through the futures market. Most of the what  
15 we call hedgers, those in the trade that use the  
16 market for either hedging purchases that they are to  
17 make or hedging inventory that they plan to sell will  
18 use it only as a means to hedge risk, primarily as a  
19 means to hedge risk, and not deliver. So if, for  
20 example, we are buying concentrate from a third party  
21 and we expect to take delivery of that juice down the  
22 road and the price is yet to be determined, we would  
23 buy futures, potentially buy a futures contract to  
24 hedge that future purchase.

25 Normally we would buy the juice from the

1 third party that we do business with, and at the time  
2 we would execute a purchase with that third party, we  
3 would liquidate our futures position. By doing so, in  
4 the intervening period between the time we bought the  
5 futures contract and the time we executed the actual  
6 purchase, there may have been price fluctuations and  
7 we use the futures market to protect us against the  
8 price risk associated with buying that juice.

9           COMMISSIONER ARANOFF: Okay. Appreciate  
10 those answers. Commissioner Johanson had started to  
11 ask questions about third country imports from Mexico  
12 and Central America. I understood there was a  
13 discussion about the Mexican industry to some extent.  
14 Are any of the groves or processing facilities in  
15 Mexico, Costa Rica or the other third countries, are  
16 any of them invested by Brazilian producers or other  
17 producers from outside of those countries or are they  
18 all completely domestic to those countries?

19           MR. BEHR: I'm familiar perhaps most with  
20 the Mexican industry. I think most of the processing  
21 industry there is owned by local interests and not by  
22 foreign interests. I'm not aware that Brazil has any  
23 ownership interest in Mexico or Costa Rica.

24           COMMISSIONER ARANOFF: Okay. Is it your  
25 general impression that industries in these third

1 countries are not expanding, don't have room to expand  
2 because of land availability or for some other reason,  
3 or is there growth potential for any of these sources  
4 of supply?

5 MS. WARLICK: This is Amy Warlick. We've  
6 watched it fairly carefully and I'm always making sure  
7 because, you know, there is incentive for  
8 transshipment, and so I'm always making sure that  
9 what's coming out of those countries is, they have the  
10 trees to back it up. I have not seen tremendous  
11 growth. There's more growth into this market because  
12 prices are higher, they can compete. In looking at  
13 the data for, you know, some 15 years, I have not seen  
14 those industries grow real fast. Mexico has grown a  
15 little bit in recent years. I'll turn it over to Bob  
16 now. That's what I know.

17 MR. BEHR: I haven't seen significant growth  
18 in the Mexican industry. I think that the  
19 profitability to the Mexican industry, as well as the  
20 Costa Rican industry, has not been sufficient to  
21 stimulate increased planting or increased processing  
22 capacity being installed. I'm just not aware of it.  
23 We do buy juice from Mexico to support our from  
24 concentrate requirements and it appears, at least in  
25 my mind, that the crop has been relatively stable,

1 although, you know, it goes up and down depending upon  
2 weather conditions in any year, but I haven't seen  
3 significant new plantings there or in Costa Rica.

4           COMMISSIONER ARANOFF: Okay. In opening  
5 remarks, counsel for the Respondents was referring to  
6 the fact that one major change in the market since the  
7 Commission last looked at this industry was that a  
8 substantial amount of domestic sales -- I took that to  
9 mean sales of orange juice, not oranges, but I could  
10 be wrong -- are now being made under long-term  
11 contracts. Since I'm not going to be able to ask them  
12 to elaborate on that until after this panel is already  
13 complete, if you know what they're talking about, I  
14 was going to give you the opportunity to respond to  
15 that and tell me why it does, or doesn't, matter.

16           MR. MCGRATH: Let me introduce the topic  
17 because both of our growers here have contractual  
18 arrangements that are slightly different that  
19 developed I think since the time when we were looking  
20 at in the original investigation. There's still a  
21 fair amount of the market -- how much would you say is  
22 spot market sales? Twenty percent?

23           MR. BEHR: I'd say roughly 25 percent is  
24 spot sales and there's probably another 20 percent  
25 that's sold on some sort of participation that's tied

1 to retail, cooperative type --

2 MR. MCGRATH: At least 20 percent is sold on  
3 a spot basis.

4 COMMISSIONER ARANOFF: You're talking about  
5 oranges.

6 MR. MCGRATH: Of oranges. Just the fruit.

7 COMMISSIONER ARANOFF: Okay.

8 MR. MCGRATH: How much will a processor pay  
9 on that day. A number of growers now, including the  
10 two who appear here, have entered into contracts for  
11 varying periods of time with processors where, as Mr.  
12 Barben described, there is a floor price that's built  
13 in and then there's a rise which is determined under  
14 the contract based on an index. There are a number of  
15 indexes. One of them is a weekly report of what's the  
16 average spot price for juice on that week. Then they  
17 also have a third element which is a cap, a ceiling,  
18 so that the price can't go above a certain level since  
19 growers and processors I think are in agreement that  
20 there's certain, you can't get the full price of as  
21 much as you can charge for the juice if there's a  
22 shortage.

23 So they put a cap in as well. Those  
24 contracts could be a year, they could be three years.  
25 They're for varying periods of time. That is a

1 development that's become a little bit more  
2 predominant in recent years and it is still tied in  
3 directly to spot prices, which is it's the day-to-day  
4 price that's available and it references the other  
5 kinds of indexes, like the futures market. Futures  
6 plus a certain amount or futures minus a certain  
7 amount.

8 COMMISSIONER ARANOFF: Okay.

9 MR. MCGRATH: So that's the contract they're  
10 talking about. It doesn't protect the domestic grower  
11 from any kind of risk at all because if that import  
12 price and that spot price for fruit goes down, the  
13 average that's used for the rise, it lowers the return  
14 that they get on the rise and it could be down to  
15 their cost of production or it could be below their  
16 cost depending on what costs they have for that  
17 season. So it's not an absolute protection. I'm not  
18 sure what he was getting at.

19 COMMISSIONER ARANOFF: Okay. Well, I  
20 appreciate those answers, and I unfortunately have  
21 gone over my time, so I apologize. Thank you, Madam  
22 Chairman.

23 CHAIRMAN OKUN: Commissioner Pinkert?

24 COMMISSIONER PINKERT: Thank you, Madam  
25 Chairman. Staying with that question, Mr. McGrath,

1 can you, or perhaps Ms. Warlick, can you model for us  
2 what the impact of say, for example, a five percent  
3 reduction in spot market prices would have on the  
4 industry as a whole?

5 MR. MCGRATH: I'm sorry. Five percent  
6 reduction in spot prices?

7 COMMISSIONER PINKERT: Spot prices. Yes.

8 MS. WARLICK: I'll do my best, but I don't  
9 have -- I mean Exhibit 6, Steve, if you can turn to  
10 that, is probably the closest. It's not spot prices,  
11 but spot prices are dictated by the futures market.  
12 So we did this assumption. I think it was, what, 12  
13 to 60 percent.

14 MR. MCGRATH: Fifteen percent.

15 MS. WARLICK: Yes, but that the DOC said  
16 dumping would recur at if the order is removed. So we  
17 took a conservative estimate of 15 percent decline in  
18 futures and what that represents in pound solids and  
19 we looked at growers costs, we looked at operating  
20 income and determined that that would take care of all  
21 our operating income. So that is, I guess, you know,  
22 that would be the impact of a reduction of 15 percent  
23 on spot prices.

24 COMMISSIONER PINKERT: I thought you said  
25 that was future, futures prices.

1 MS. WARLICK: Well, futures, but there's a  
2 correlation that prices are passed up and down from  
3 the futures market. That's where price discovery  
4 takes place, so spot prices are going to be a function  
5 of futures. Let me make sure -- I mean, Bob --

6 MR. BEHR: Yes?

7 MS. WARLICK: -- did you have anything to  
8 add on that?

9 MR. BEHR: Yeah. I would agree to the  
10 general comment that as futures invoke prices change,  
11 so will the spot price of fruit. It's certainly  
12 highly correlated with the bulk market.

13 COMMISSIONER PINKERT: Well, perhaps for the  
14 posthearing if you could model the question of what  
15 would be the impact of -- and I'm just saying a five  
16 percent reduction in spot prices. That's not the key  
17 thing, but you could say 10 percent if you wanted.  
18 What would be the impact of that on the industry as a  
19 whole say over the period of a year?

20 MS. WARLICK: Okay. Yeah.

21 COMMISSIONER PINKERT: Okay. Thank you.

22 MS. WARLICK: Explain that.

23 COMMISSIONER PINKERT: Now, along similar  
24 lines, I'm interested in the degree to which there  
25 might be a difficulty for the Brazilians in shifting

1 from their focus on Europe and Asia back to the United  
2 States market. How much time would it take for them  
3 to effectuate a significant shift from those markets  
4 to the United States?

5 MS. WARLICK: Amy Warlick. I don't think it  
6 would take much time at all given the size of the crop  
7 that Brazil is currently harvesting, started  
8 harvesting last July. It's a very big crop and it's  
9 going to lead, especially with the amount of inventory  
10 that is projected, it will lead either late in 2012 or  
11 early in 2013 to a tremendous amount of inventory.  
12 They're going to have a residual supply. I know that  
13 they say that they have contracts in Europe and they  
14 don't want to divert product from Europe, but there is  
15 going to be residual that is not contracted and I  
16 think that it will come into the United States. I  
17 think they know that, which is why they've expanded  
18 their storage capacity here, especially in the Port of  
19 Wilmington.

20 COMMISSIONER PINKERT: Thank you. Again,  
21 now, we're looking down the road over say the next  
22 year, maybe the next 18 months, will nonsubject  
23 imports continue to increase in the reasonably  
24 foreseeable future?

25 MR. BEHR: Mexico may be the biggest

1 nonsubject import origin. In this current year  
2 they're having a 20 to 30 percent crop reduction, so  
3 we would expect, even with the high prices that we see  
4 here, in the U.S. market, that the amount of Mexican  
5 nonsubject import that enters the United States will  
6 be down from previous years, which I think touches on  
7 the point that I made earlier that virtually all of  
8 Mexicans processed orange juice comes to the United  
9 States, so the volume that comes here from one year to  
10 the next is sensitive to their production. It should  
11 be noted that their processed orange production is  
12 very, very small compared to the size and scope of  
13 Brazil, as well as Florida.

14           COMMISSIONER PINKERT: Is there any merit to  
15 the notion that the subject imports and the nonsubject  
16 imports are inversely related to one another in terms  
17 of quantity?

18           MR. MCGRATH: The nonsubject imports, I mean  
19 when you look at them over the five year period of  
20 review here they end up I think being roughly the  
21 equivalent amount as when the period started. I think  
22 there was some up and down movement of subject  
23 imports. The complicating factor here is that  
24 Citrovia is included in those nonsubject imports.  
25 That's the company that is now merging with the

1 company covered by the order. We have to take a look  
2 at the possible combination of those two, Brazil  
3 subject, Brazil nonsubject, as being what the actual  
4 likely of input is going to be. I don't think that  
5 there is a direct inverse relationship between them.  
6 No.

7 MS. WARLICK: This is Amy Warlick. You  
8 know, something I think has not been mentioned yet is  
9 that the juice from Mexico went free under NAFTA I  
10 believe it was 2007, and so part of that increase is  
11 that they don't have duty anymore. It might have  
12 something to do with, you know, Brazil not having the  
13 short crop, not being in as heavily here, but I think  
14 it also is just a matter of their products have become  
15 more competitive now because they don't have any duty  
16 under NAFTA.

17 MR. BEHR: And I would like to just  
18 elaborate again that I think if you look at the data  
19 over the last four or five years, that the amount of  
20 Mexican product that comes into the U.S. market goes  
21 up and down in accordance with their production.  
22 That's the factor that I think is driving the, at  
23 least the Mexican portion of the nonsubject imports  
24 and not so much the amount of Brazilian product that's  
25 covered under the order.

1           COMMISSIONER PINKERT: Thank you. Now, for  
2 this next question, I recognize that you're  
3 maintaining that there's one domestic like product  
4 that is comprised of both FCOJ and NFCOJ. I get that.  
5 I also understand that you're advocating changes to  
6 the profit calculations. So you probably can't really  
7 answer my question at this hearing, but I'll give you  
8 a chance anyway. If our final profit calculations  
9 show that there's a significant difference in the  
10 profitability between FCOJ and NFCOJ, what does that  
11 tell us? Is that indicative of different markets for  
12 those two types of subject product, or does it, what  
13 does that tell us?

14           MR. MCGRATH: We'll have to look at that  
15 more closely. We hadn't really divided them out  
16 because we've been treating them as a single like  
17 product. I'm assuming you're asking the question as  
18 what would happen if you find there's much higher  
19 profitability for NFC, lower for FCOJ. Again, that's  
20 complicated by some other issues, such as the only  
21 nonsubject Brazilian shipper is an FCOJ shipper, not  
22 an NFC shipper.

23           So in trying to sort out what's the effects  
24 of the dumping order, that's a complicating factor as  
25 well. As regards the difference in profitability, I

1 think our position remains the same that it is a  
2 single industry and the product is made in the same  
3 single line of production, the producers are the same,  
4 the growers are the same. There's no distinction  
5 between the fruit that's used for one or the other.  
6 So it's a single industry and it would be very  
7 difficult to separate them out.

8           COMMISSIONER PINKERT: What about the  
9 markets for the two products, or the two types of  
10 product?

11           MR. MCGRATH: What it might show is a  
12 reflection of the marketing efforts to increase the  
13 sales and the demand for NFC at the retail level,  
14 certainly, which has worked its way down to production  
15 and sales of bulk NFC because of the fact that some of  
16 the very fine marketers out there, like Coca-Cola and  
17 Tropicana, have put so much emphasis on selling that  
18 NFC product. That's something that's certainly being  
19 driven heavily by the retailers, but it doesn't  
20 necessarily indicate there's totally different markets  
21 since the person buying the juice, the consumers of  
22 the NFC, are also consumers of other juices, some of  
23 them partially reconstituted, some of them partially  
24 NFC. I think that the industry, certainly, that's  
25 producing it is a single industry. So we'll take a

1 closer look at it and comment on it for you. I hadn't  
2 separated them out for that purpose.

3 COMMISSIONER PINKERT: Thank you. Thank  
4 you, Madam Chairman.

5 CHAIRMAN OKUN: Commissioner Johanson?

6 COMMISSIONER JOHANSON: Yes. I thank you,  
7 Madam Chairman. I would like to discuss the merger of  
8 Citrosuco and Citrovita. This question is probably  
9 best addressed to Mr. McGrath, and that is when is the  
10 Department of Commerce's successor-in-interest  
11 determination due, or expected, regarding the merger?  
12 What does increased Brazilian producer concentration  
13 mean for competition in the U.S. market?

14 MR. MCGRATH: Excuse me. The second  
15 question again?

16 COMMISSIONER JOHANSON: What does increased  
17 Brazilian producer concentration mean for competition  
18 in the U.S. market?

19 MR. MCGRATH: Well, with respect to the  
20 first question, we have not been involved in a  
21 successor determination request to the DOC. I'm  
22 assuming we'll hear more from Citrosuco's counsel this  
23 afternoon as to when that decision is likely to be  
24 made. It will probably have to be made sometime soon,  
25 either at their request or ours, otherwise it wouldn't

1 be made until there was the next annual review, which  
2 wouldn't start until March. In terms of greater  
3 concentration, it has all of the negative  
4 ramifications that we discussed earlier today.

5           The greater the concentration, the more  
6 carefully the direction of the excess inventories can  
7 be maneuvered by the Brazilian industry. So we're  
8 very much concerned about greater concentration and  
9 the fact that this greater concentration is now being  
10 somewhat managed by government assistance in order to  
11 try to maintain peace with the growers by growing a  
12 large, untouchable stockpile of juice in Brazil which  
13 can then be released at some future time. What goes  
14 up must come down. That's the problem. Having  
15 greater concentration of all of these companies down  
16 to three producers now is going to make it that much  
17 more difficult for the U.S. industry to compete.

18           MS. WARLICK: Amy Warlick. Brazil's orange  
19 juice industry, as you know, is almost entirely  
20 export-oriented and so any impact it's going to have  
21 on the downward chain of distribution and on consumers  
22 is going to happen in other markets, not in Brazil. I  
23 believe that that's why the administrative council  
24 that looks over antitrust, this organization in Brazil  
25 called CADE, C-A-D-E, has determined that, you know,

1 the negative effects would occur offshore, not in  
2 Brazil.

3           They have allowed concentration like this  
4 over the decades until we now have three producers.  
5 So I do think that it is something that will, you  
6 know, already determined to have greater purchasing  
7 power in Brazil for oranges, but that it will have  
8 greater pricing power. In the short-term that may  
9 mean lower prices, but if this affects the industry  
10 enough and they can have their monopoly it would, you  
11 know, these sorts of things usually result in the end  
12 in increased prices to consumers, which is the end  
13 goal.

14           COMMISSIONER JOHANSON: Thank you. I'd now  
15 like to discuss a particular segment of the orange  
16 juice market, and that is organic orange juice.  
17 According to the staff report, the acreage dedicated  
18 to organic oranges for processing has declined as the  
19 need for more intensive pesticide spraying has  
20 increased to prevent the spread of HLB, or greening.  
21 Organic orange juice is rarely concentrated and  
22 typically sells for a significant premium. Does the  
23 organic market represent a sales opportunity for  
24 capable producers, and how large is this market?

25           MR. MCGRATH: I think it's fair to say,

1 discussing this with our growers and with the people  
2 in the industry, it's considered a teeny, tiny, little  
3 portion. Is that a technical term? Teeny, tiny,  
4 little portion of the market and not likely to be a  
5 bigger portion. The costs and the difficulties  
6 involved in maintaining organic acreage and organic  
7 production lines and following all the rules that are  
8 necessary to be certified organic pretty much assure  
9 no matter what the price levels are, what's likely to  
10 happen, it's going to be a very small portion of the  
11 market. Does anybody have any other thoughts they  
12 want to offer on that? I think that's it.

13           COMMISSIONER JOHANSON: I would think there  
14 would be quite a bit of demand for that just given the  
15 growth of organics in the U.S. market in the whole,  
16 but that's not the case? I guess the availability is  
17 not there? Is that what it comes down to?

18           MR. BARBEN: John Barben. I think the  
19 growers that I've seen that have gone into organic was  
20 that they weren't making any money as commercial  
21 growers so they saw this little window to move it into  
22 the organic and put less money into it, but I think  
23 what they're finding, to keep it viable, you can see  
24 some of these groves that nothing is being done on and  
25 they're organic, there's very little production on it,

1 so not a whole lot of return. Then the other growers  
2 where there is production, they're having to go in  
3 with the things that they can spray to control pests  
4 and disease, oils and everything like that. Very  
5 expensive, just as time-consuming. So that's, I just  
6 really don't see that expanding into a huge viable  
7 business.

8 MS. WARLICK: Amy Warlick. One, well here,  
9 in the United States, of course you all understand the  
10 problems we have with disease. Now, there are some  
11 organic methods that enable you to produce oranges but  
12 it's very expensive, from what I understand, and not  
13 much of it is done. I remember passing by some  
14 abandoned groves in Florida and someone saying there's  
15 our organic groves, which were no leaves on the trees  
16 anymore. There is organic imports coming in that,  
17 PEERS data will show our Citrovia imports.

18 They apparently are being processed through  
19 a contract with Montecitrus, which is a subject  
20 processor, but it's a toll processing agreement. So I  
21 do know about those coming in and serving organic  
22 demand. It's just a very hard product to produce  
23 organically.

24 COMMISSIONER JOHANSON: Thank you. Several  
25 companies have identified a market shift towards

1 nonfrozen orange juice from frozen concentrate in the  
2 U.S. market and they expect this trend to continue.  
3 Is nonfrozen orange juice increasing in popularity in  
4 other markets?

5 MR. BEHR: I assume that you are speaking to  
6 not from concentrate.

7 COMMISSIONER JOHANSON: Right.

8 MR. BEHR: Yes. Clearly here, in the United  
9 States, that seems to be the consumer preference.  
10 We've seen increasing share here. We're beginning to  
11 see more growth in Europe. Brazil is actively  
12 supplying the European market for not from  
13 concentrate. We're seeing, as I mentioned earlier, we  
14 sell a teeny, weeny amount, teensy, bitsy amount in  
15 China. We sell a little bit in Singapore, too. So I  
16 think around the world there is increasing demand for  
17 the not from concentrate form of orange juice. I  
18 think consumers perceive there to be, it to be a  
19 fresher product and generally better tasting product.

20 COMMISSIONER JOHANSON: Thank you. Domestic  
21 interested parties argue -- and this is getting back  
22 to Citrosuco and Citrovida, and hopefully you all will  
23 be able to answer this -- domestic interested parties  
24 argue that the Commission should presume that future  
25 imports from Citrosuco, Citrovida's joint venture are

1 subject to the order absent a contrary successor-in-  
2 interest determination by Commerce. How do you  
3 suggest that we evaluate volume from that entity?  
4 Should we simply combine their prior year capacities  
5 or production?

6 MR. MCGRATH: For purposes of doing your  
7 evaluation, and you're not really evaluating whether  
8 on a retroactive basis they have caused injury, you're  
9 just taking a look at what's likely to happen in the  
10 future, and what we're arguing and we think is the  
11 appropriate approach that the Commission has taken in  
12 similar situations in the past is, yes, aggregate the  
13 volume that has come from Citrovia with the volume  
14 that is covered merchandise and see what sort of  
15 trends you feel that might bring to this market.

16 It is the same product. It's FCOJ. There's  
17 no difference in the quality. It's just that it's  
18 limited to FCOJ. In fact, you know, that has been a  
19 matter of concern not only for domestic producers, but  
20 for the Brazilians as well, that there is this one  
21 substantial supplier out there that has been able to  
22 sell at lower prices outside of the coverage of the  
23 dumping order. We suggest for valuation that's what  
24 you should do, combine them.

25 COMMISSIONER JOHANSON: Thank you. My time

1 is about up so that's all of my questions.

2           CHAIRMAN OKUN: Thank you. I think just a  
3 couple of things left for me. One is could you  
4 respond to the Respondents' argument with respect to  
5 what it means in describing, as they say, that the  
6 antidumping order has had no meaningful impact in the  
7 U.S. market or on the industry's coalition. A couple  
8 of things that they point to that I'd ask you to  
9 respond to. One is that market share has done almost  
10 nothing during the time, and that also, and I believe  
11 Commissioner Pinkert raised this issue, that, in fact,  
12 subject volume has been replaced by nonsubject volume  
13 and therefore that the removal of the record would  
14 mean that the subject import volume would be at the  
15 expense of nonsubject imports. Can you respond to  
16 those couple of points?

17           MR. MCGRATH: My immediate reaction to that  
18 is that I don't believe we've ever come in with a  
19 target for how much of the market share we wanted to  
20 have in the United States from U.S. grown oranges.  
21 Our goal was to have higher prices. I believe the  
22 record shows very definitively that there are higher  
23 prices. Now, I'm sure that the Respondents will say  
24 those higher prices had absolutely nothing to do with  
25 the existence of an antidumping order.

1           We believe that those higher prices  
2 definitely had something to do with the existence of  
3 an order where the marketplace knew that Brazilian  
4 juice, which could be available in very large  
5 quantities from one year to the next, was going to be  
6 subject to the pricing discipline of an antidumping  
7 review. The higher price is what's important. I  
8 don't think that their claim that there's been no  
9 increase in our market share between the beginning of  
10 the year and the last year -- and that market share  
11 has gone up and down, by the way.

12           It's just that it happens to be that at the  
13 end year of the period it's roughly the same. That's  
14 not an indication that the order has had no effect.  
15 For us, we look at the price. Yes, the order  
16 certainly has had an effect.

17           CHAIRMAN OKUN: And are you arguing then  
18 because the nonsubjects that did come in and replace  
19 the subject imports that went out of the market did so  
20 at prices that helped lead it, and how does that  
21 relate to the discussion we were having about the  
22 futures market and the many different impacts on  
23 prices here? I mean, again, because we can look at  
24 today and say, okay, yes, there's a big Brazilian crop  
25 out there, but, by the way, futures prices are higher

1 than they've ever been, reacting to disease and  
2 perhaps the FDA findings, so again, kind of this  
3 complicated nature of pricing in this market and  
4 helping us sort it out, how it relates to the order  
5 itself.

6 MS. WARLICK: This is Amy Warlick. That's a  
7 good question. If Brazil has all this orange juice  
8 that is coming on the market, why are prices still  
9 high this year? The answer is complicated because,  
10 first of all, it's just the beginning. A lot of the  
11 players in the market don't yet see this Brazilian  
12 juice because so much of it has been stockpiled  
13 already. In order to get these very low interest  
14 government loans from the Brazilian government, they  
15 have to process it and stock it, so it's not  
16 available. It's as if it doesn't exist until July 1  
17 of this year.

18 CHAIRMAN OKUN: Just kind of, just to be  
19 sure on that, I don't want to interrupt your train of  
20 thought, but on that because I'm a little bit, I guess  
21 we don't have that much information about the program  
22 yet, the Brazilian program, and I'm not sure if our  
23 record reflects what you were just describing. It  
24 might, but just for the Brazilian inventory levels and  
25 others, I mean is this information not currently on

1 our record that --

2 MS. WARLICK: We provided information on it  
3 in our prehearing briefs. I've looked and I have not  
4 seen it in the staff report. You know, we hoped that  
5 there would be some illumination on it from the  
6 questionnaires. I think this is not something that  
7 they want to make available to you easily. It may be  
8 because they don't know enough about it yet.

9 CHAIRMAN OKUN: Okay. I'm sorry. I  
10 probably did --

11 MS. WARLICK: I'm surprised that I'm the  
12 only one who's brought it up.

13 CHAIRMAN OKUN: Okay. Sorry. Continue on.  
14 I just, I wanted to make sure that I understood  
15 what --

16 MS. WARLICK: Of course, the other reason  
17 why prices are still high, you know, they're quite  
18 high, is a real and psychological impact of the  
19 carbendazim scare which has driven prices up I think  
20 record over the last week, two weeks.

21 CHAIRMAN OKUN: Mr. Behr, you wanted to add?

22 MR. BEHR: Yeah. I'd like to make a comment  
23 on that point. Brazil does have a large crop, if not  
24 a record crop, this year. The prospect was that we  
25 would see more imports coming into the market. The

1 carbendazim issue certainly has locked the doors, if  
2 you will, for Brazilian product to come into this  
3 market until the issue is resolved. To me, if  
4 nonsubject imports and subject imports were  
5 substitutes for one another, we would see freely  
6 nonsubject imports coming into the market to resolve  
7 the supply/demand issue that's being created by the  
8 carbendazim issue.

9           So I think it goes against the grain to say  
10 that because subject imports have gone, nonsubject  
11 imports come in to replace that gap. If that were the  
12 case, we wouldn't see the kind of market reaction that  
13 we're seeing today.

14           CHAIRMAN OKUN: Okay. And then just what I  
15 think is my final question, Respondents have argued  
16 that the change in the contracting process means that  
17 they're, have a large volume, as I understand it,  
18 under contract, long-term contracts, and again, that  
19 that would limit volume. You know, we focused on the  
20 price impact, but, and I will have a chance to talk to  
21 the Respondents about that and try to get more  
22 information, but if they were to provide the  
23 information showing a large percentage of their  
24 product is under contract, does it matter for your  
25 volume or your price argument?

1 MR. MCGRATH: I'm sorry. You mean a large  
2 portion of their volume --

3 CHAIRMAN OKUN: Committed to European or  
4 Asian under long-term contracts that --

5 MR. MCGRATH: We'd have to take a close look  
6 at it because I don't think their arguments took into  
7 account any of this additional inventory that we've  
8 been talking about that's growing up both through the  
9 Montecitrus program and through the supply that  
10 increased this year from the much higher crop, and  
11 next year's much higher crop as well. I think it's  
12 still we end up being the target or the outlet point  
13 for residual supply and that's what concerns most of  
14 the industry here.

15 CHAIRMAN OKUN: Mr. Behr?

16 MR. BEHR: And to elaborate on that point,  
17 too, I think the one graph that Amy shows and we keep  
18 on going back to shows that as Brazil's production  
19 goes up and down, the amount of product coming into  
20 this market goes up and down, so that sort of goes  
21 against the grain that they have contracts with other  
22 countries that creates a permanent market and a  
23 permanent home for their product. Clearly, there's a  
24 correlation between what they produce and what comes  
25 to the United States.

1 MS. WARLICK: It's Amy Warlick. This chart  
2 here is what I believe Bob was referring to. Now, the  
3 '11, '12 forecast for U.S. imports is suspect, I'll  
4 admit that, because it's based on only two months.  
5 It's based on October to November, the first two  
6 months of the U.S. current marketing year. You can  
7 see that our imports from Brazil are already  
8 responding to this sizeable crop, even if the futures  
9 market hasn't been able to.

10 This tells me that there is a lot of  
11 Brazilian juice that is not committed to Europe  
12 because that is quite a spike. It is just two months,  
13 but why is it so high if all their juice is committed  
14 to Europe? I think those contracts may be a little  
15 overstated in a situation where they've got a bumper  
16 crop coming.

17 MR. MCGRATH: I think we've also, if I could  
18 just conclude it by saying we've also put the  
19 information in the record, but the staff report has it  
20 showing that demand in Europe has been down. It's not  
21 just gone down here. There's been a decline in demand  
22 in Europe as well. So the commitments that we're  
23 talking about for sales to Europe might also be  
24 declining volumes of commitments for sale to Europe.

25 CHAIRMAN OKUN: Okay. I appreciate all

1 those responses. Let me turn to Vice Chairman  
2 Williamson.

3 VICE CHAIRMAN WILLIAMSON: Thank you, Madam  
4 Chairman. I have just a few more questions, too. Mr.  
5 McGrath, you may have already answered this. Besides  
6 Citrovia, are there other producers of, or exporters  
7 who are excluded from the order, and how significant  
8 are they if they're --

9 MR. MCGRATH: Branco Peres is one small  
10 producer that was excluded from the order. I think  
11 they do still operate and produce juice but nowhere  
12 near the volumes of the other three.

13 VICE CHAIRMAN WILLIAMSON: Okay. Are they,  
14 get a from concentrate only exporter?

15 MR. MCGRATH: I don't know, frankly. They  
16 did respond to the questionnaire, but I can't say what  
17 they said, so we'd be happy to respond to that.

18 VICE CHAIRMAN WILLIAMSON: Okay.

19 MR. MCGRATH: There's also, we feel there  
20 are some relationships there that should be on the  
21 record with the other processors that might be of  
22 interest. So we'll reply to that confidentially.

23 MS. WARLICK: It's Amy Warlick. I just  
24 wanted to add one additional thing to that is that  
25 soon after CADE approved the merger of Citrovia and

1 Citrosuco they also approved Cutrale's acquisition of  
2 a Branco Peres production plant that is, I'm going to  
3 mispronounce this, I think it's called Torolinga,  
4 something like that is the name of the city where this  
5 processing plant is, and so they have now acquired  
6 some of that processing capacity from Branco Peres and  
7 they have more of the infrastructure to be sending  
8 NFC, so it may now be used for NFC. That is public  
9 knowledge, that they have acquired that processing  
10 facility.

11 VICE CHAIRMAN WILLIAMSON: We also have the  
12 same question there about whether or not that's going  
13 to, that juice is covered by the order.

14 MS. WARLICK: I believe that that will be  
15 considered Cutrale juice because they own the oranges  
16 and now they are, they own the processing plant.

17 VICE CHAIRMAN WILLIAMSON: Okay. Thank you  
18 for that. You talked about the amount of I guess  
19 storage capacity that some of the Brazilian processors  
20 are building in the U.S. and you're saying that is  
21 handled as bumper crop.

22 MS. WARLICK: Uh-huh.

23 VICE CHAIRMAN WILLIAMSON: Are they making  
24 that investment just for this year and maybe next  
25 year's bumper crop or is this a long-term strategy?

1 MS. WARLICK: I think the number that I read  
2 for the Wilmington plant was some \$23 million, of  
3 which \$15.5 million was federal U.S. stimulus bonds  
4 because they wanted to support 21 workers in the Port  
5 of Wilmington. No comment.

6 VICE CHAIRMAN WILLIAMSON: I go by there  
7 every Monday.

8 MS. WARLICK: I don't think you would make  
9 that kind of investment just for these next two crops.  
10 That is going to be there for a long time. I don't  
11 think you would make an investment like that -- they  
12 are loans, they have to pay them back. I don't think  
13 you'd make an investment like that if you didn't  
14 foresee a use that you were going to fill this  
15 capacity. In some of the press reports they said it  
16 was for apple juice, and then other press reports said  
17 it was orange juice, but we know that, looking at  
18 PEERS data, a very small portion of what they bring in  
19 is apple juice. I believe that this was for orange  
20 juice.

21 VICE CHAIRMAN WILLIAMSON: Okay. So you're  
22 saying that in addition to the bumper crop, that  
23 basically they're just getting ready to be more active  
24 in the U.S. market, it sounds like.

25 MS. WARLICK: I believe they're expecting

1 more residual supply and they would like to bring it  
2 here. Might get more in Europe as well. Depends on  
3 their contracts.

4 VICE CHAIRMAN WILLIAMSON: Okay. Thank you.  
5 Okay. Mr. Story, you talked about going towards  
6 seasonal contracts. I was just wondering, any  
7 indication of how many other companies or growers are  
8 doing the similar thing? You mentioned in response to  
9 I guess Citrovia's influx that you started using a  
10 different pricing mechanism.

11 MR. STORY: Yes.

12 VICE CHAIRMAN WILLIAMSON: I was curious as  
13 to find out how pervasive is that practice.

14 MR. STORY: How pervasive is it?

15 VICE CHAIRMAN WILLIAMSON: I mean yes. Are  
16 there, most other growers doing the same thing? How  
17 significant is this?

18 MR. STORY: Yes. Well, obviously it's an  
19 attempt by us to try to level out and to cover our  
20 fixed-base costs on that base price, and then, also,  
21 it gives us an opportunity at a profit. Right now, as  
22 I said in my statement, basically those fixed costs  
23 are taking, that base contract is about what it's  
24 costing me to produce and to pay my debt and just  
25 basically stay in business, so any profit that I see

1 is on the right side. Then, also, the processors and  
2 we have come to an accommodation about the cap.

3           There's a cap on those contracts because we  
4 realize that they have a certain level that they can  
5 go to without it being a real burden for them in the  
6 marketplace, to price the juice in the marketplace.  
7 So we're willing to forego that unlimited ceiling, if  
8 you will, to guarantee ourselves survival basically.

9           VICE CHAIRMAN WILLIAMSON: Good.

10           MR. MCGRATH: Commissioner, we can try to --  
11 sorry to interrupt, but we can try to estimate the  
12 volumes there. I'm sure that Cutrale will be able to  
13 tell you how many growers they have under contracts,  
14 and Citrusuco can tell you the same thing. In terms  
15 of Florida-wide, it has changed a bit in the last few  
16 years. We'll try to get an estimate of the breakdown  
17 as to how many growers have gone to that.

18           VICE CHAIRMAN WILLIAMSON: Yes. How  
19 significant is this trend, and what impact does it  
20 have on the growers?

21           MR. MCGRATH: Yes. Yes. Right.

22           VICE CHAIRMAN WILLIAMSON: I guess and on  
23 the industry is really what the --

24           MR. MCGRATH: Which is why I mentioned  
25 previously there still is a risk factor built into it.

1 It doesn't eliminate the risk or the downside risk  
2 for all the growers who sign onto it, but more of the  
3 growers are interested in seeing that they have a home  
4 for their fruit and that's an important factor for  
5 them now. So there's still going to be 30 percent of  
6 the market that sells on the spot market and that is  
7 what drives the rise that's built into the contract,  
8 but it is a slightly different arrangement than  
9 before. We'll try to estimate what the breakdown  
10 might be in the industry as to who's got that kind of  
11 --

12 MR. BEHR: Matt, I might add, some of the  
13 contracts are relatively old and the floors in those  
14 old contracts are probably below cost of production,  
15 so I think that's an important point to make. Just  
16 because there's a lot of fruit that's going out under  
17 floored contracts with ceilings, some of those floors  
18 may not be sufficient to cover costs today.

19 VICE CHAIRMAN WILLIAMSON: Okay.

20 MR. STORY: I might add also, those are a  
21 mix in our particular business. We still have fruit  
22 that we sell on a spot market basis and we still have  
23 fruit that we sell on a seasonal basis, so that's just  
24 a mix that we try to use. To be honest with you,  
25 after that 80 valencia year, there's a number of

1 growers went to that. We just can't, we can't survive  
2 and recover our industry at below cost. Thank you.

3 VICE CHAIRMAN WILLIAMSON: Okay. Thank you  
4 for that clarification. I have no further questions  
5 and thank the witnesses for their testimony.

6 CHAIRMAN OKUN: With that, having checked  
7 with my colleagues, I don't believe we have anymore  
8 questions from the dias. Let me turn to staff to see  
9 if they have questions for this panel.

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

12 CHAIRMAN OKUN: Let me turn to counsel for  
13 those in opposition to the order to see if they have  
14 questions for this panel.

15 MR. DUNN: We have no questions.

16 CHAIRMAN OKUN: Okay. For the benefit of  
17 the court reporter, Mr. Dunn said they have no  
18 questions. All right. So not a great time to take a  
19 break, but I think it's the time we'll get to take a  
20 brief break, so before doing so let me remind  
21 everyone, the witnesses, that this room is not secure,  
22 therefore, please don't leave any confidential  
23 business information. We will break for 20 minutes.  
24 Come back at 3:05.

25 (Whereupon, a short recess was taken.)

1           CHAIRMAN OKUN: This hearing will now  
2 resume. Mr. Dunn, Mr. Kalik, I see that your  
3 witnesses have been seated. Are you ready to proceed?

4           MR. DUNN: We are, Madame Chairman. My name  
5 again for the record is Chris Dunn. With me today is  
6 Bob Kalik, counsel to Citrosuco. And the Commission  
7 will be hearing today from representatives of by far  
8 the largest domestic producers of orange juice in  
9 Florida.

10           First, we'll begin with Hugh Thompson of  
11 Cutrale Citrus Juices. Then we'll go to Nick  
12 Emmanuel, of Citrosuco North America and finally to  
13 Randy Freeman of Louis Dreyfus Citrus, Inc. Thank  
14 you.

15           MR. THOMPSON: Good afternoon, Madame  
16 Chairman and Commissioners. First I'd like to thank  
17 you for the lunch break. That was very much  
18 appreciated.

19           My name is Hugh Thompson, and I am president  
20 of Cutrale Citrus Juices USA, headquartered in  
21 Auburndale, Florida. Cutrale Citrus Juices is one of  
22 the largest processors of oranges in Florida. Our  
23 facilities in Auburndale are physically among the  
24 largest in Florida. And this year we will process  
25 approximately 25 percent of the Florida orange crop,

1 both as FCOJ and not-from-concentrate in FC juice.

2           The Florida facilities represent a massive  
3 commitment by the Cutrale companies to the domestic  
4 production of orange juice. In the past 15 years plus  
5 the investments that we are making in 2012, Cutrale  
6 will have spent approximately \$300 million in  
7 upgrading and expanding our facilities in Florida,  
8 bringing new jobs to the community and making a  
9 significant contribution to the economic welfare of  
10 the state.

11           Today, we employ over 800 people in our  
12 Florida facilities. Let me be very clear. The  
13 primary purpose of these facilities is to process  
14 Florida oranges and to store Florida juice. The  
15 implication in some of the Petitioner's briefs that  
16 the increases in storage capacity among Brazilian-  
17 owned producers in Florida will increase imports is  
18 just not correct.

19           Our Florida facilities are intended for  
20 Florida juice. We have short-term and multi-year  
21 contracts with Florida growers that this harvest  
22 season provides us 25 percent of the Florida orange  
23 crop for processing into juice. We are one of the  
24 largest purchasers of Florida oranges dealing with 400  
25 to 500 Florida growers each year. Given the extent of

1 Cutrale's commitment to Florida juice and its  
2 strategic partnership with the Coca-Cola Company to  
3 process Florida oranges, Cutrale must have a strong  
4 Florida industry.

5           We have heard much from the Petitioners  
6 about how we also import juice from Brazil. Well,  
7 that is certainly true. The juice we import is needed  
8 to meet the demand for high-quality orange juice in  
9 the U.S. market, a market where Florida production is  
10 inadequate and will continue to be inadequate to meet  
11 demand.

12           When two of the commissioners visited our  
13 Auburndale facility in November, we discussed the need  
14 to import juice at various times during the season  
15 when the oranges being produced by Florida growers do  
16 not provide -- excuse me. We discussed the need to  
17 import juice at various times during the season when  
18 the oranges being produced by Florida growers do not  
19 provide adequate color or meet USDA score in order to  
20 meet customer specifications.

21           At those times, it is necessary, and always  
22 will be necessary, to import juice. The point of our  
23 Brazilian imports is to complement domestic  
24 production, not to weaken it.

25           Now let me tell you something about what has

1 happened to the Florida orange juice industry in the  
2 years since the Commission originally investigated it.  
3 As a result of the hurricanes and widespread disease,  
4 the Florida orange crop has been reduced from 240  
5 million boxes in 2003-2004 to less than 150 million  
6 boxes today. These crop sizes are clearly  
7 insufficient to meet domestic demand, and as a result  
8 of U.S. juice inventories have been drawn down  
9 considerably, there is just not enough fruit to go  
10 around.

11 In 2011, due to shortages in Florida and  
12 Brazil, customers experienced high prices, product  
13 shortages, and delays in product. Furthermore,  
14 because of the persistence of disease and a lack of  
15 replanting by Florida growers, industry experts are  
16 forecasting that Florida crops will remain at or below  
17 150 million boxes for the years to come.

18 The permanent 40 percent reduction in the  
19 size of the Florida crop, the potential effect of HLB  
20 or greening, and the reluctance of the grower to  
21 replant in significant amounts has fundamentally  
22 changed our industry for the foreseeable future. I  
23 has caused prices for orange juice to rise to levels  
24 that are three times what they were when the  
25 Commission conducted its original investigation. Let

1 me be clear about this. It is the Florida crop size  
2 and diseases, not imports from Brazil or elsewhere  
3 that have caused orange prices to rise as they have.

4           And given the long-term situation for  
5 Florida crops, there is simply no chance that price  
6 levels will drop back anywhere near those that the  
7 Commission saw six years ago. With these domestic  
8 crop sizes and prices, the domestic industry has  
9 become substantially more profitable than it was when  
10 crop sizes were higher and inventories were greater.

11           We at Cutrale Citrus Juices have been  
12 profitable and continue to be so, as the Commission  
13 from our questionnaire response. We believe this  
14 improved profitability has been experienced throughout  
15 the industry, both for the grower and the processor,  
16 and should continue for the foreseeable future.

17           As I indicated, we believe the grower  
18 profits have been very good as a result of the lower  
19 crop size, even with higher costs for caretaking  
20 related to energy and disease. With early season cash  
21 prices -- and I mean this season -- ranging from \$1.60  
22 to \$2 per pound solid, and long-term multi-year  
23 contracts with floors that range from \$1.35 to \$1.65  
24 per pound solid, with rises to a cash index and also  
25 ceilings, the grower profitability is very healthy.

1 And as one of the largest purchasers of Florida  
2 oranges, it is our assessment of the Florida fruit  
3 market that the high fruit prices that have been  
4 generated by smaller Florida crops are going to  
5 continue for the foreseeable future.

6           Today, more than 80 percent of Cutrale  
7 Citrus Juices' fruit contracts are long-term, multi-  
8 year contracts. Let me say that again. Today, more  
9 than 80 percent of Cutrale Citrus Juices' fruit  
10 contracts are long-term, multi-year contracts. And we  
11 know that other processors have these same type long-  
12 term, multi-year agreements.

13           These contracts are generally three-year  
14 agreements that give the grower a floored price and a  
15 rise to a cash index with a ceiling. That means that  
16 the high prices that farmers are receiving now for  
17 their fruit are going to continue for years, even if  
18 the price of orange juice were to fall. But prices  
19 are not going to fall significantly over the next few  
20 years because demand for Florida fruit at 150 million  
21 boxes appears to be increasing.

22           For example, on January 16th, 2012,  
23 Tropicana announced that they would use only Florida  
24 oranges in their primary NFC product, pure premium.  
25 Earlier in 2011, Minute Maid announced that they would

1 convert their chilled, reconstituted product, a  
2 product from concentrate, to NFC, not from  
3 concentrate. With a crop that cannot meet current  
4 demand, the price pressure will heighten on Florida  
5 oranges due to the major brands' desire to have  
6 Florida juice for their not-from-concentrate products.

7           At the current crop level, 150 million  
8 boxes, the current favorable profitability of Florida  
9 growers is going to continue for years to come.

10           In summary, Cutrale Citrus Juices USA needs  
11 a strong and vibrant Florida citrus industry. Our  
12 first and foremost objective in our Florida plants is  
13 to process Florida oranges, not to import. We have  
14 committed over \$300 million in the past 15 years to  
15 upgrade our facilities to process and store Florida  
16 juice. We have long-term contracts with both  
17 customers and growers to process Florida oranges.

18           Fundamental changes within Florida industry,  
19 such as lower crops, greening, customers' desire for  
20 Florida NFC, and grower long-term contracts cause us  
21 to conclude the current high fruit prices will be  
22 maintained for years to come.

23           As a result, we believe there could not be  
24 any material injury to the Florida industry as a  
25 result of revoking the antidumping order. Thank you.

1           MR. EMMANUAL: Good afternoon. My name is  
2 Nick Emmanuel, and I'm the president of Citrosuco  
3 North America. Citrosuco North America is a U.S.-  
4 based manufacturer, importer, and exporter of both  
5 frozen concentrate orange juice and not-from-  
6 concentrate orange juice. Citrosuco is a part of a  
7 worldwide group of Fischer companies that includes the  
8 large worldwide juice manufacturing, transportation,  
9 and delivery system.

10           Citrosuco North America is considered a  
11 large Florida processor, with the capability of  
12 processing 25 million boxes of orange and grapefruit  
13 during a processing season. Our profitability is  
14 dependent on processing as many oranges and grapefruit  
15 as possible relative to our capacity.

16           Over the past five years, we have not been  
17 able to consistently source all of the fruit that we  
18 would need. Simply there have not been sufficient  
19 supplies of orange and grapefruit available.  
20 Unfortunately, due to the shortage of fruit and the  
21 lack of potential for increased fruit production in  
22 the next five years due to disease and loss of  
23 acreage, we will be continuously challenged to  
24 maintain profitability.

25           I'd like to directly address and answer a

1 few of the claims that Petitioners are making with  
2 respect to the threat that juice imports from Brazil  
3 poses to the U.S. industry should this Commission vote  
4 to sunset the order. As the Commission is aware, the  
5 domestic orange juice market demand as continued to  
6 shift significantly to require more supply as NFC  
7 juice, as Hugh just mentioned.

8 Citrusuco has in fact added significant  
9 storage capacity, 7.2 million gallons to be exact, for  
10 NFC in Florida, and a small amount of storage capacity  
11 in Wilmington, Delaware, which has already been the  
12 subject of some discussion.

13 The Florida storage capacity that was added  
14 is strictly for the purpose of storing our Florida-  
15 produced NFC to specifically meet long-term  
16 commitments for that product for our customers. We do  
17 not deliver NFC from Brazil to our Florida plant.  
18 Only on the rare occasion where imported juice needs  
19 to be reworked will we bring imported NFC to our Lake  
20 Wales facility.

21 To suggest that we built this NFC storage  
22 capacity to be able to import NFC is simply not  
23 correct. The overall increase in NFC storage capacity  
24 that has been built or is planned to be built in the  
25 U.S. is drive by one thing: an increase in the demand

1 to store more Florida NFC to meet market demand, and  
2 not for any other reason. This supports our domestic  
3 NFC business, which is the most profitable segment of  
4 our business.

5           Now, with respect to the small amount of  
6 storage capacity that was built in Wilmington, this  
7 facility has a capacity of 4.5 million gallons. To  
8 put it in perspective, 4.5 million gallons is less  
9 than 8/10ths of 1 percent of the NFC that is produced  
10 and consumed in the U.S. on an annual basis. It's  
11 simply insignificant. And this facility was built  
12 again for a specific set of obligations with specific  
13 customers, and is based on a long-term commitment.  
14 And that commitment includes volume requirements from  
15 not only imported product from Brazil, but also for  
16 product from Florida oranges for this customer.

17           Petitioner's assertions that the end of the  
18 dumping order will lead Brazil to shift all of its  
19 inventory to the U.S. market is, in a word, absurd.  
20 The U.S. market imports from Brazil now represent only  
21 10 to 11 percent of Brazil's worldwide sales of orange  
22 juice. USDA projections show that with only a slight  
23 increase in total exports from Brazil to all  
24 destinations, we will have only eight weeks of  
25 inventory at the end of June 2012. It will clearly

1 take more than one season with average crops in Brazil  
2 to bring Brazil inventories up to levels that we would  
3 say are comfortable or manageable or at a level that  
4 we can adequately serve our demand of diverse and  
5 challenging customer specifications.

6           In the case of Citrosuco North America, 100  
7 percent of our small volume of NFC sales commitments  
8 for imported product are under long-term contracts,  
9 ranging from seven to ten years in length. These  
10 contracts are not solely for Brazilian NFC, but for an  
11 annualized supply of both Florida and Brazilian NFC.  
12 These customers require that we have Brazilian NFC  
13 available when Florida NFC is not available, and when  
14 blending is required.

15           These contracts are not conducive to massive  
16 swings in import product from Brazil to be applied to  
17 meet our commitments. One of our customers,  
18 Tropicana, declared that its pure premium NFC would be  
19 produced with 100 percent Florida orange juice. We  
20 welcome this decision. It's likely that this will  
21 result in an increased NFC demand from us from our  
22 Lake Wales facility, thus supporting continued  
23 profitability through the demand for our domestic  
24 production.

25           With respect to imported FCOJ, we have

1 typically limited our sales to long-term contract  
2 customers over the past several years. These long-  
3 term import commitments have been and will continue to  
4 be supportive of a vigorous and significant export  
5 program through the usage of Customs duty drawback  
6 program making exports from Florida competitively  
7 priced in many markets.

8           There is no doubt that the Florida citrus  
9 industry has been subjected to significant challenges.  
10 For over a decade ago, that started with over-  
11 production and an unexpected and steady drop in  
12 consumption. This oversupply was followed by an  
13 historic crop reduction due to hurricanes, citrus  
14 canker, and the overwhelming and ongoing threat of  
15 citrus greening.

16           While it's easy to blame the problems on  
17 imports, such claims are baseless. Citrosuco did not  
18 invest over \$200 million in Florida processing and  
19 storage capacity to turn around and use its Brazilian  
20 production to drive itself into bankruptcy. In fact,  
21 the claim could not be further from the truth.  
22 Citrosuco North America Florida operations are  
23 profitable, and at the same time, imports are down 60  
24 percent.

25           But the price increases resulting from the

1 reduction in supply since 2005 and the profitability  
2 of the Florida grower segment, we are extremely  
3 optimistic about the industry's future. Thank you.

4 MR. FREEMAN: Madame Commissioner and  
5 Commissioners, good afternoon. My name is Randy  
6 Freeman. I am the senior president at Louis Dreyfus  
7 Citrus, Incorporated. I've been in the citrus  
8 business in Florida since about 1988 and have  
9 variously been president and then chairman of the  
10 governing body of the futures market for frozen  
11 concentrated orange juice, and was on the board of  
12 directors in the New York Board of Trade until that  
13 entity was bought by ice futures.

14 Louis Dreyfus Citrus, Incorporated has been  
15 active in Florida since 1988-1989. Today, we process  
16 oranges into frozen concentrated orange juice for  
17 manufacturing in a factory in Indiantown, and we  
18 package retail frozen concentrated orange, apple,  
19 grape, and blended fruit juices in Winter Garden. Our  
20 investment in fixed assets is a bit over \$105 million.  
21 Our employment roll is 356 as of December 31st.

22 By a long way, our largest investment is the  
23 factory in Indiantown, where we have a processing  
24 capacity for between 20 and 25 million boxes a season.  
25 Due to the crop size in Florida, we have not been

1 operating at that level ever since the hurricanes in  
2 2004. In a perfect year for us, we would process 11  
3 million boxes of early- and mid-season oranges, 11  
4 million boxes of Valencia oranges, package it into 12-  
5 and 16-ounce frozen concentrated retail packages, sell  
6 it, do it again the next year, and never have to deal  
7 with any of our Brazilian colleagues.

8           We haven't had perfect years. As explained  
9 in our domestic processor and extractor questionnaire,  
10 we've had to purchase additional FCOJM for three  
11 primary reasons. The most important one has been to  
12 blend with our Florida-produced product in order to  
13 bring the Hamlin orange juice up to a marketable  
14 grade. The second is to obtain duty drawback to keep  
15 our export business healthy. And the third is to  
16 cover a shortfall of our Florida production relative  
17 to our customer base.

18           Prior to the antidumping order on certain  
19 orange juice from Brazil, we sourced this product from  
20 our affiliated company in Brazil when there was a  
21 shortage in the United States. When there wasn't a  
22 shortage in the United States, we sourced our  
23 requirements by processing Florida fruit and buying  
24 concentrate from other Florida processors.

25           In the dumping case when it was put on, our

1 affiliate company in Brazil was assigned a deposit  
2 rate of 16 percent. This rate was determined by using  
3 the weighted average of customers which were  
4 investigated. Our affiliate wasn't investigated,  
5 wouldn't have been investigated had it asked to be  
6 investigated, and if it had been investigated would  
7 have presented an interesting question. How do you  
8 establish a dumping rate for a foreign manufacturer  
9 who did not sell any subject merchandise into the  
10 United States during the period of investigation?  
11 Nonetheless, it's 16 percent.

12           Due to the cost of undergoing annual  
13 administrative reviews effectively forever, our  
14 affiliate in Brazil chose to abandon the U.S. market  
15 completely as of the date the order into effect in  
16 March of 2006. So we at Louis Dreyfus Citrus,  
17 Incorporated in Florida bought the Brazilian product  
18 we needed from producers of nonsubject Brazilian FCOJM  
19 and increased our purchases from other nonsubject  
20 sources, mostly Mexico.

21           All that has happened is that increases in  
22 nonsubject imports of orange juice have replaced  
23 subject imports. The quantities imported into the  
24 United States haven't been affected by the order. The  
25 only effect has been to change around the chairs. In

1 the 11 months ended November 30th, 2011, the top five  
2 suppliers of nonsubject merchandise are, in  
3 alphabetical order: Belize, Brazil, Canada, Costa  
4 Rica, and Mexico.

5           If anyone has benefitted from the imposition  
6 of the antidumping order on certain orange juice from  
7 Brazil, it is companies in these and other nonsubject  
8 countries. This antidumping order has totally failed  
9 to increase the domestic growers' and processors'  
10 share of the U.S. market. It has simply helped  
11 certain manufacturers of nonsubject merchandise, none  
12 of whom have a presence in Florida or the United  
13 States at all, at the expense of firms affiliated with  
14 the three Florida processors at this table,  
15 enterprises who have collectively invested over \$600  
16 million in fixed assets in Florida since 1996.

17           Florida's round orange crop is at best going  
18 to average 145 million boxes for at least the next  
19 four years. One year it will be 120, the next year it  
20 will be 165. The average is going to be 145-ish.  
21 Don't shoot me if it's 146. There aren't enough trees  
22 in the ground to do otherwise.

23           Unlike the 1980s, when trees that were  
24 killed by cold weather were immediately replaced, the  
25 tree losses of the early 2000s have just been accepted

1 as the new normal. The reasons are many, but they are  
2 irrelevant to this proceeding. What is relevant is  
3 simply this. The Florida tree inventory can't grow  
4 enough oranges to meet domestic U.S. demand, not even  
5 the reduced demand the industry is facing.

6           The Petitioners are working in an idealized  
7 world where there are no events. Much has been made  
8 about the recent volatility in the futures market and  
9 the rise that was given. If you go back and read the  
10 press and look at what happens sequentially, there  
11 were two freezes in Florida and one freeze in  
12 California during the period. Often the trend follows  
13 the news in the futures market, or the news follows  
14 the trend in futures markets, in their hunt for  
15 reasons.

16           I'd argue that the freezes and the possible  
17 loss of production on those would be equally  
18 important. Also, on January the 12th, the USDA cut  
19 its estimate of the current Florida crop from 150 back  
20 to 147 million boxes. The rise in the futures prices  
21 is not entirely attributed to the antifungal problem  
22 in Brazil.

23           Now, I would like to emphasize a point that  
24 was made in our prehearing brief about the lack of  
25 responses to questionnaires from the Florida growers.

1 The staff report shows that 11 growers responded, and  
2 that these growers represent 11 million boxes out of  
3 the 147 million boxes being grown this year in  
4 Florida.

5 I'm going to go on a very short limb and say  
6 this. There is not a single industry person in this  
7 room who couldn't reach 20 percent of the Florida  
8 round orange crop calling just five growers. Three of  
9 them he might have to catch in their airplane, but  
10 they have phones there. Or if they wanted a bigger  
11 representation, make 20 phone calls and reach 40  
12 percent of the Florida growers. Yes, 25 individual  
13 growers, growing entities, companies, produce 40  
14 percent of the crop. And everybody knows it, and  
15 everybody knows who they are.

16 That the Petitioners allowed such a pitiful  
17 response indicates clearly the need to apply adverse  
18 inferences in this proceeding. In their prehearing  
19 brief, Petitioners have made assertions about the 2011  
20 and 2012 Brazilian crop, and about projected  
21 inventories in Brazil, and about government  
22 development schemes that are simply wrong. I glanced  
23 at it, and mostly saw that the information was derived  
24 from what we refer to as the second rate weekly --  
25 monthly -- excuse me, monthly publication that covers

1 the food industry, orange juice in particular, which  
2 is called *Food News*. They didn't approach the right  
3 people to ask the questions.

4           Let's talk about Consecitrus first. One of  
5 the worrying trends in Brazil over the past years --  
6 and it has been going on forever -- has been the  
7 continuing exodus of small growers from the sector.  
8 As that land gets turned from citrus into sugar cane,  
9 the number of jobs that that land creates diminishes,  
10 even though sugar cane is also an important objective  
11 of Brazil because they run their cars on ethanol. And  
12 the objective of this scheme is to at least slow, if  
13 not stop, that trend of the small growers  
14 disappearing.

15           We in the United States are not the only  
16 agricultural nation that believes in supporting the  
17 family farm. That's what Consecitrus is all about.  
18 And to induce the processors to pay the prices they  
19 paid, which were 10 reals a box plus a rise, they made  
20 available government lines of credit with which we  
21 store -- against which we store inventory.

22           Second, the large project in the northeast  
23 of Brazil that Ms. Warlick referred to is in sort of a  
24 desert area, and it is entirely destined for fresh  
25 fruit production. The oranges that you grow up there

1 make juice that you can't drink. The only oranges  
2 that get to processing are ones that just aren't good  
3 enough to be sold in the fresh market. It's the  
4 reason California orange -- it's similar to  
5 California.

6            Californian orange juice is undrinkable  
7 unless you do a whole lot of things with it. It's  
8 just the nature of the orange that they grow and the  
9 nature of the climate that they grow the oranges in.  
10 This project is a fresh fruit project. This  
11 proceeding is about frozen concentrated orange juice  
12 and NFC.

13            Third on inventories. One lesson the  
14 industry has learned over the past couple of years is  
15 that inventories should not be allowed to, quote, "go  
16 to zero," unquote. This is what happened in 2010-  
17 2011. Starting in late 2010 and continuing until  
18 September of 2011, Brazilian inventories just went  
19 totally dry.

20            There are four primary distribution  
21 terminals owned by the Brazilians in Belgium and  
22 Holland. These terminals receive orange juice from  
23 the ocean-going carriers, and then ship it out ratably  
24 over time until the next vessel arrives. There were  
25 many weeks during that time period when three of the

1 four terminals were empty and couldn't supply  
2 customers until the next boat arrived. So all of  
3 those customers went to the fourth terminal and  
4 emptied that one. And then a boat came in.

5           There were out-of-stock situations that were  
6 driving our customers made in Europe. And let me  
7 share something with you. This is not a business  
8 model that works. It is not something that we should  
9 be proud of. It's something we're ashamed of, and  
10 it's something we're not going to let happen again.

11           The increase in stocks that the petitions  
12 are pointing to is only a return to a manageable level  
13 of inventory. The massive percentage increases are  
14 often just a tiny base, an empty inventory situation.  
15 What we're doing is we're filling a pipeline that was  
16 empty.

17           Brazilian requirements for inventory in that  
18 pipeline are increasing as more and more product heads  
19 to Asia. Further, more than one of the major bottlers  
20 and packages that we know of have resolved to increase  
21 their own inventory levels that they had carried as a  
22 result of experiences they suffered during the last  
23 year and a half.

24           An example of the need to lengthen the  
25 pipeline is the new, relatively new, bulk terminal in

1 Korea. It just takes a long time for the bulk to get  
2 there from Brazil. And so you need more inventory  
3 afloat today to service that and the other markets in  
4 Asia that Brazil is developing.

5           As to China, yes, China is a major orange  
6 grower -- major citrus grower. Most of the oranges  
7 are mandarins. They're not that big and round  
8 oranges, and what round oranges they grow are almost  
9 entirely destined for the domestic market. China is a  
10 large and growing importer of frozen concentrate that  
11 has done impressive annual year-on-year percentage  
12 increases off a very small base.

13           Reading the Petitioner's prehearing brief  
14 would make one think that all of this increase in  
15 Brazilian inventory is subject merchandise. That is,  
16 merchandise processed by affiliates of the three guys  
17 that you see here today. It isn't, of course. The  
18 share of nonsubject Brazilian production is both large  
19 and increasing, and it's not all Citrovita by any  
20 means.

21           As illustrated in our prehearing brief,  
22 nonsubject Brazilian exports of orange juice to the  
23 U.S. relative to subject exports to the U.S. are  
24 trending in a way that will make the nonsubject  
25 imports larger than the subject imports in about a

1 year and a half. As I said before, all that this  
2 order has done is rearrange the chairs on the deck.

3 Over the past decade, Brazil has  
4 consistently -- has shipped in a range of 8.6 to 13.6  
5 of its production to the United States, never more.  
6 The reason for that is simple: quality. As even the  
7 Petitioners admit, there is a need for imported orange  
8 in the United States for blending with part of  
9 Florida's crop to make it marketable.

10 The most recent reminder of that came  
11 earlier this month, when the Florida Department of  
12 Citrus instructed the USDA to waive the rules  
13 regarding color of product, and I quote, "due to the  
14 recent FDA testing of all Brazilian imports and the  
15 negative impact the holding of the imported product  
16 could have on the Florida industry." They waived the  
17 rule because there isn't enough Valencia. There is  
18 enough Valencia for the NFC, but there is not enough  
19 Valencia for the concentrate.

20 Dr. Behr asserted, correctly, that NFC could  
21 make it. Yes. But that leaves the concentrate, which  
22 definitely can't. And further, NFC makes it by  
23 foregoing USDA grading. There is no USDA grading on  
24 NFC in the marketplace. That's because for a good  
25 portion of the year, were it subjected to USDA

1 grading, it would come out not grade A, but grade B  
2 for color. It's wonderful orange juice. It tastes  
3 good. It's good for you, but it's color just doesn't  
4 make grade A.

5           However, frozen concentrated orange juice  
6 for manufacturing has to make grade A, has to have a  
7 color score of 37.0, which means a color number of  
8 35.5 before it's acceptable in the marketplace, and,  
9 of course, the futures market.

10           So Brazil takes only the best part of her  
11 production to supply the United States market. A  
12 change in the mix of fruit grown in Brazil has  
13 resulted in even less of the total Brazilian crop  
14 being good enough to ship to the U.S. Brazil is also  
15 growing Hamlin oranges.

16           In conclusion, the antidumping order on  
17 certain orange juice from Brazil has not helped the  
18 U.S. industry in the slightest. All it has done is  
19 shift around where the U.S. imports come from, helping  
20 growers and processors in Mexico, Costa Rica, Belize,  
21 and other growing countries, and helping packagers in  
22 countries that don't grow orange juice at all, but  
23 just package and send it into the United States,  
24 primarily Canada, but a whole list of others as well.

25           The U.S. industry's remarkably improved

1 financial performance is a result of the lower crops  
2 in Florida, and it has nothing to do with the  
3 antidumping order. It's the movement of these crops  
4 from the 240 million level to the 145 million level  
5 that's behind the profitability. It follows that the  
6 only result coming from sunseting this order will be  
7 to put to an end to the distortions in the marketplace  
8 that the orders created.

9 Thank you, and are there any questions?

10 MR. DUNN: Members of the Commission, our  
11 next witness is -- and final witness is the largest  
12 purchaser of orange juice in the United States, and  
13 one of the largest purchasers of oranges in the United  
14 States, Coca-Cola. Mr. Jim Horrisberger.

15 MR. HARRISBERGER: Madame Commissioner and  
16 Commissioners, I'm Jim Horrisberger. I'd like to do a  
17 little bit of background, my background. My three and  
18 a half years -- recently, I've been the director of  
19 North American procurement for juices for the Coca-  
20 Cola Company. I'm also a commissioner on the Florida  
21 Department of Citrus Commission. Previous to that, I  
22 had 30 years with Cargill, including 13 years in  
23 management positions in the juice business.

24 My present responsibilities include  
25 purchasing the oranges for Coca-Cola that Cutrale

1 processes for Coke. I also purchase juice for Florida  
2 processors and juice from Brazil and Costa Rica. What  
3 is Coca-Cola's place in the marketplace? Well, first  
4 of all, we're the largest consumer of Florida orange  
5 juice in the world. We have several billion dollar  
6 brands to support, namely Minute Maid and Simply  
7 Orange brands.

8           We're the largest supplier of food service  
9 in the U.S., and one of our larger customers is  
10 McDonald's. That makes us the largest customer of  
11 Florida growers and processors that you've heard from  
12 today. Between the oranges we buy and the juice we  
13 buy, we buy about a third of the oranges that are  
14 grown in Florida that end up in juice. And that's  
15 critical on the pricing, long-term pricing, the floors  
16 that we'll get to in a few minutes.

17           In my opinion, the revocation of the  
18 antidumping order on orange juice from Brazil will not  
19 lead to the continuation or recurrence of material  
20 injury to the domestic industry. And there are three  
21 points I'd like to make today that form the basis of  
22 my opinion.

23           First, from Coke's perspective, the price of  
24 orange juice is driven by the price of Florida  
25 oranges, not futures. The juice price drives the

1 futures price. The round orange drives the futures  
2 price. And I will go through that with our  
3 contracting process and how that works.

4           Also, Florida's commitment to the -- Coca-  
5 Cola's commitment to the Florida, we have invested  
6 over \$650 million in capital investment in Florida in  
7 the last 10 years, most recently \$450 million in  
8 Auburndale, Florida that includes a pipeline to  
9 Cutrale's plant. From that plant that we've invested  
10 \$450 million worth in the last eight years, we employ  
11 over 450 people of average salaries and benefits of  
12 over \$70,000 a year. It is Coke's largest plant in  
13 the world, not just juice plant, carbonated water,  
14 that one plant in Florida. And I believe you were  
15 there, a couple of the commissioners, about two months  
16 ago.

17           Also, we're working with Florida growers on  
18 a long-term new grove development. That will be a  
19 commitment from Coca-Cola, 20-year contracts. It will  
20 be over a billion dollar commitment. And most  
21 recently, we signed a contract with Cutrale for them  
22 to build an additional 31.5 million gallon NFC storage  
23 facility, which will be ready by next March. So by  
24 the end of next season, we can fill it up 100 percent  
25 with Florida Valencia juice.

1           We also this year have a long-term agreement  
2 with Peace River for an additional 8 million gallons  
3 of storage that they should complete in the next one  
4 to two months, which we will fill up with Florida  
5 Valencia juice. That's an additional 40 million  
6 gallons of inventory that we will be sitting on at the  
7 end of the processing season next year.

8           And the reason I make that point is we are  
9 the ones that are sitting on at the end of our season  
10 at least 39 weeks of inventory at the end of the  
11 Florida processing season, for one reason, for  
12 quality. Now, we do import Brazil juice, but we have  
13 39 weeks sometime in June and July of inventory  
14 sitting there at the end of June at that time period.

15           Okay. The second item I'd like to address  
16 is the interchangeability between U.S. orange juice  
17 and Brazilian juice. That does not mean the products  
18 may be substituted any time for each other.  
19 Interchangeability depends on the quality of juice.  
20 We do not think the U.S. market for juice is  
21 competitive and price sensitive because the price of  
22 orange juice from Brazil does not drive our purchasing  
23 decisions.

24           Our purchasing decisions are based on the  
25 characteristics and quality of juice available for

1 Florida oranges. Subject imports of orange juice into  
2 the United States meet residual demand in the United  
3 States, and are necessary to ensure essential quality  
4 characteristics of Coca-Cola's orange juice products.  
5 And that's exactly what Mr. Freeman was talking  
6 about, the color issue.

7           We do have enough, but the rest of the  
8 industry at present is short on color. They're short  
9 on Valencia. We had enough inventory to get through  
10 this over the next weeks. So that's one of the  
11 issues. Brazil meets residual demand for the U.S. In  
12 any given year, it is about 10 percent of Coca-Cola's  
13 annual supply or demand.

14           Third, inventories of the right quality are  
15 not adequate to ensure production of a consistent  
16 premium product such as our Minute Maid or Simply  
17 Orange products. And once again, that's why we have  
18 in the end of June about 39 weeks of inventory sitting  
19 in our tanks and tank farms at Cutrale's that we have  
20 long-term agreements to lease.

21           Okay. I would now like to address each of  
22 those three points a little more in depth. First,  
23 from Coca-Cola's perspective, the price of orange  
24 juice is driven by the price of Florida oranges, not  
25 futures. We are the largest purchaser of Florida

1 juice, which is driven by a minimum food price for  
2 Florida orange. We have long-term contracts with a  
3 floor price based on information given to us by  
4 growers that provide for a grower to make a return in  
5 the worst of times.

6           About three and a half to four years ago, I  
7 sat down with a coop that Coca-Cola has been doing  
8 business with for 52 years now. We're their only  
9 customer. We buy approximately 6 million boxes of  
10 oranges from them, and I sat down and said, we need a  
11 long-term contract with floors. And I said the floor,  
12 if you will do business with us, will be what you tell  
13 me it costs you to operate your growth, like Mr. Story  
14 -- he's not one of the growers. But they came back  
15 and said it's going to be \$1.20 per pound solid.

16           We set the floor to \$1.30 for the first  
17 year, and we added onto that. The concept was if they  
18 work with Coke, they will make a minimal profit during  
19 the worst of times, but it has rise clauses, like now,  
20 so at all times they will be in business. We need  
21 Florida juice for our products. We are going to make  
22 sure that Florida growers, if they know what they're  
23 doing, are going to make money. I mean, that's all  
24 there is to it.

25           The last thing I need to do is go to my

1 management and say, well, take Simply off the shelf.  
2 McDonald's, we're out of juice, or Minute Maid. I'll  
3 be looking for a new job. That's not an option, okay?  
4 And by the way, the prices we have on these contracts  
5 are supported by the Florida Department of Citrus  
6 studies, okay?

7           Once again, we cannot succeed if the Florida  
8 growers do not succeed. This allows Coca-Cola to  
9 ensure continuity of supply because we get the juice  
10 of the quality we need. And also, like I said, we've  
11 invested \$450 million in a plant over the last eight  
12 years that's connected to Cutrale's via pipeline for  
13 juices. Okay. And we have also added an additional  
14 31-1/2 million gallons of storage to this plant that  
15 should be ready in 14 months. And once again, we're  
16 developing and working with a major grower to develop  
17 a 20-year contract so we can get new plantings in  
18 Florida. It will be a billion-dollar commitment by  
19 Coke, and it will be a long-term liability on our  
20 balance sheet of a billion dollars, is what we  
21 estimate now. And hopefully, there will be more of  
22 that.

23           That is just the first one, and that will  
24 only be for 5 million boxes. And we need at least 35  
25 million boxes to 40 million boxes a year. Our long-

1 term objective may be a third of our production comes  
2 from these contracts. And it has been years since  
3 anyone has made that commitment.

4           Secondly, the interchangeability between  
5 U.S. orange and Brazilian orange juice does not mean  
6 the products may be substituted any time for each  
7 other. Interchangeability depends on the quality of  
8 juice. We do not think the U.S. market for orange  
9 juice is competitive and price sensitive because the  
10 price of the orange juice from Brazil does not drive  
11 our purchasing decisions.

12           So basically, our purchasing decisions from  
13 Brazil come after we figure out Florida, and our  
14 Brazil price basis is our Florida price. So if we're  
15 paying the growers above the Florida floor, we're  
16 doing the same with Brazil. So all of our Brazil  
17 prices are greater to than equal to -- all of our  
18 Brazil prices are greater than our Florida prices.  
19 But we only take that as residual needs to meet our  
20 quality needs.

21           Okay. We need Brazilian juice to ensure  
22 that we meet our production targets and maintain the  
23 consistent taste and quality of our leading Minute  
24 Maid and Simply products. And Coca-Cola provides a  
25 premium product at retail and creates premium

1 characteristics in its orange juice in order to  
2 achieve the level of freshness and taste customers  
3 demand.

4           Also, beyond that, we talk about this  
5 300,000 tons in Brazil. None of that will meet our  
6 quality specs because we have a minimum spec on all  
7 concentrate, and none of that will meet that quality  
8 spec. So for Coca-Cola, who is going to bring in  
9 about a third of the juice out of Brazil in a normal  
10 year, we can't use any of that juice because of our  
11 quality specs.

12           My final point is the relevance of inventory  
13 depends on the quality of juice in inventory.  
14 Currently, inventories of the right quality are not  
15 adequate to ensure production of a consistent premium  
16 product such as our Minute Maid or Simply products.  
17 And once again, our investment in the new tank farms  
18 so that we can hold a higher volume of Florida  
19 inventory is for the continuity of supply.

20           So in conclusion, the price of oranges  
21 drives the price of orange juice, not futures. Our  
22 long-term contract with Florida growers were developed  
23 with growers to guarantee growers a return, and the  
24 Florida orange juice forms the basis of our price for  
25 Brazil. This is in our best interest because we need

1 Florida orange juice for continuity of supply and for  
2 the quality of our products. Our investments in  
3 Florida show our belief in the viability of the  
4 Florida industry, even if this order is revoked.

5           Brazilian imports are essential because of  
6 the quality of the imports from Brazil. The quality  
7 is necessary for continuity of supply and for the  
8 quality of products. The dumping order has no effect  
9 on these considerations. Revocation of the order  
10 therefore will not cause material injury to Florida  
11 growers or processors.

12           MR. DUNN: That concludes our witness  
13 testimony in the afternoon.

14           CHAIRMAN OKUN: Thank you. And before we  
15 begin our questions this afternoon, I want to take the  
16 opportunity to thank this panel for being here and for  
17 being available to answer our questions, and for the  
18 information you've submitted. And with that, just a  
19 reminder to state your name for the record and for the  
20 court reporter, and we will begin our questions this  
21 afternoon with Commissioner Aranoff.

22           COMMISSIONER ARANOFF: Thank you, Madame  
23 Chairman. I join the chairman in welcoming this  
24 afternoon's panel. I appreciate your taking the time  
25 to be with us today. And I also want to express my

1 gratitude to those of you who showed us around your  
2 facilities late last year down in Florida. I very  
3 much appreciate the opportunity.

4           One of the issues that came up this morning  
5 was the issue of increasing exports by the U.S.  
6 industry. That was an issue that was referenced in  
7 your briefs as a sign of health of the domestic  
8 industry. The Petitioner's panel earlier today  
9 refuted that, arguing that that was a one-time event  
10 based on shortages of supply because of a bad  
11 Brazilian crop. It wouldn't be repeated, and in any  
12 event, was all U.S. affiliates of Brazilian companies  
13 supplying customers in Europe of those Brazilian  
14 companies.

15           So I wanted to get you to respond to that.  
16 Is that an accurate description of what was going on  
17 in the market at the time? And can we expect that  
18 that level of U.S. exports was a one-time event?

19           MR. FREEMAN: The surge in exports was  
20 partly attributable to a shortage in Europe. However,  
21 the increase in imports, ignoring that surge in that  
22 one year, have showed a steady and consistent increase  
23 over the past five or six years as a result of efforts  
24 by firms such as mine, and the big ones are all  
25 Brazilians. I mean, you know, they shoot at us

1 because we're Brazilians, and only if other people  
2 export juice from the United States does it count.

3           We have made a concerted effort in our firm  
4 to export juice. We've developed an export business  
5 in the Middle East that is the envy of our Brazilian  
6 colleagues. We've established a foothold -- well,  
7 it's not a foothold, but we've established a very  
8 strong market in Korea, and that's only going to  
9 increase as that duty goes from 57 percent to zero.  
10 It remains at 57 percent for Brazil. And, yes, a part  
11 of the increase was attributable to that.

12           But the main part of the -- in that one  
13 particular year. But a main part of the overall trend  
14 line is attributable to people who are selling frozen  
15 concentrated orange juice for manufacturing to  
16 countries outside the United States.

17           MR. EMMANUAL: I'll just add to what -- Nick  
18 Emmanuel. I'll just add to what Mr. Freeman said,  
19 very much similar to what he said, and that is the  
20 fact that with the infrastructure that we have  
21 available to us, it's really quite simple and  
22 straightforward. We've taken advantage of that to the  
23 benefit of the Florida grower, and we have targeted  
24 customers that want Florida juice, that pay for  
25 Florida juice, and I would argue time and time and

1 time again, it enables us to go to the marketplace in  
2 Florida, literally to source juice specifically for  
3 that reason. And the Florida grower benefits from it  
4 directly.

5 MR. DUNN: Commissioner Aranoff, I just  
6 wanted to say, if you -- the idea that it's a one-time  
7 event is refuted by the numbers over six years.  
8 Compare them to the numbers that the Commission looked  
9 at before. There is an increase. Yes, the last year  
10 is larger, but there is an increase in exports.

11 And second, the idea that, well, it's only  
12 the Brazilians who are doing this, these are American  
13 producers. They're exporting American juice. The  
14 idea that somehow our DNA is tainted by the fact that  
15 we have foreign ownership, and therefore that  
16 shouldn't count as real American exports is, to my  
17 mind, insulting.

18 COMMISSIONER ARANOFF: Okay. Point taken.

19 MR. FREEMAN: Commissioner Aranoff, and I do  
20 -- I just realized, I do need to go on the record.  
21 Contrary to the Petitioner's assertions, Louis Dreyfus  
22 is not Brazilian owned. We're a French company.

23 MR. HARRISBERGER: I would like to address  
24 one more point on Korea because Coca-Cola owns half  
25 the terminal there. They have already started calling

1 me. And by the way, it's delivered on a Brazilian  
2 best vessel, and it will be out of Florida to be  
3 delivered on a Brazilian vessel. But the Koreans are  
4 calling because the 57 percent duty is on everything,  
5 including freight.

6           So it doesn't take long to figure out this  
7 Brazilian vessel can stop in Florida and pick up  
8 Floridian juice. And they're already calling me and  
9 saying, okay, when will you have product put on  
10 Cutrale's vessel to go to Korea.

11           Now, it will be looked at as a Brazilian  
12 company doing this. But Coke happens to own half the  
13 terminal at the other end.

14           COMMISSIONER ARANOFF: Okay. Thank you for  
15 all of those answers. Several of us were asking  
16 earlier today about non-Brazilian nonsubject  
17 suppliers, and basically whether the supply of orange  
18 juice from Mexico and Central American suppliers is  
19 essentially maxed out, whether there is just no more  
20 production there to be tapped into for purposes of the  
21 U.S. market.

22           So I'm interested in that, and I'm also  
23 interested in the issue I raised earlier today about  
24 who owns or is investing in those producers.

25           MR. FREEMAN: Randy Freeman. In the case of

1 Mexico, they grow a lot of oranges there every year.  
2 None of it is irrigated, so the size of the crop  
3 fluctuates dramatically with the weather. In Mexico,  
4 as in Brazil, a lot of the people are relatively poor.  
5 And when there is a very big crop of oranges, oranges  
6 become food. And the fresh fruit trade in Mexico is  
7 very, very big.

8           When prices get high enough in the United  
9 States, something that very rarely happens in a  
10 commodities market will happen. The juice market will  
11 buy away fruit that otherwise goes fresh and turn it  
12 into juice and bring it to the States. So Mexico,  
13 sort of maxed out, but the more you increase the  
14 prices, the more they'll send.

15           In the case of Costa Rica, there are two  
16 players there. Both of them are very, very good. One  
17 is better than the other. And they are continuing to  
18 expand. I do not know the details of the expansion.  
19 I just know by gossip that they're expanding. None of  
20 them are American or Brazilian-related owned.

21           In the case of Belize, I don't know very  
22 much about it. There are a couple of processors.  
23 It's all British Honduras. There are some problems.  
24 One of the larger fruit players is a Floridian. A  
25 Floridian interest owned a bunch of the groves in

1 Belize. And that's all I know.

2 MR. HARRISBERGER: This is Jim Harrisberger.  
3 I'd like to address Costa Rica. There are two  
4 processors down there, and we buy 80 to 90 percent of  
5 the juice coming out of Costa Rica, did it prior to  
6 the order, continue to do it. And it's owned by a  
7 Costa Rican. And that is at maximum capacity, and we  
8 believe it will grow by about 40 to 50 percent over  
9 the next eight years. And we're contracted to bring  
10 all that into the U.S. It comes into Tampa, as it  
11 has, and it will continue. And the driver is the  
12 quality.

13 It's high color, low viscosity, and it goes  
14 into our food service pack.

15 MR. KALIK: Commissioner Aranoff, just to  
16 clarify one point, which I know you were asking -- Bob  
17 Kalik. We are not aware of any Brazilian ownership of  
18 any of the facilities or operations in any of the  
19 countries that are being discussed, Mexico, Belize,  
20 Costa Rica.

21 COMMISSIONER ARANOFF: Okay. That's  
22 helpful. With respect to these long-term contracts  
23 that processors are entering into with growers --  
24 well, I guess two questions. One is when did this  
25 start happening, that people started entering into

1 these multi-year contracts? It sounds like some of  
2 them are maybe 3 years, and some of them are as long  
3 as 20 years.

4           One of the points that the domestic  
5 producers on the first panel were making was, well, we  
6 don't know when those contracts were entered into, so  
7 when they were looking at what costs were in terms of  
8 looking at what a return would be, they may not have  
9 been taking account of some of the escalation in costs  
10 recently due to disease, rising labor costs, and other  
11 things that have been discussed.

12           So anything that you can tell me about when  
13 these sort of arrangements started being entered into  
14 or at least started being entered into for very long  
15 periods of time relative to costs would be helpful.

16           MR. HARRISBERGER: I'd like to address that  
17 first. Jim Harrisberger again. I'd like to address  
18 that first. Between ourselves and Cutrale and their  
19 agreements, it's about 30 percent of the oranges  
20 processed. Most -- in fact, I would say 99 percent of  
21 those contracts are three to five years, and they were  
22 all reevaluated over the last one or two years. So  
23 they all includes floors that take into account the  
24 greening. And I think that's the main disease we're  
25 talking about. And they have rise clauses. So I

1 don't think there is many that do not meet that.

2           The 20-year has to do with an agreement  
3 we're working on for a new planting, and we'll  
4 hopefully have that done by this summer so they can  
5 start working on it this fall. But we rally won't see  
6 any significant production for five years, and they  
7 won't see a return on it for basically the first 12  
8 years. So that's a different subject.

9           MR. THOMPSON: Hugh Thompson. Long-term  
10 contracts have been a part of the industry -- I guess  
11 I've been in the industry 43 years, and they pretty  
12 much have been a part of the industry forever. They  
13 vary from time to time. The reasons for long-term  
14 contracts today are because there is a shortage of  
15 fruit. At the time that you had 200, 240 million  
16 boxes of fruit, a processor wouldn't go that far out.  
17 They wouldn't have 80 percent of their fruit tied up  
18 in long-term contracts because they'd prefer to go to  
19 the cash market.

20           But the times have changed, and this  
21 changing times is going to continue. And I see that  
22 these long-term contracts are going to be a very  
23 integral part of the industry as we move forward. we  
24 not only have 80 percent of our fruit for this season  
25 in contracts, we probably have 80 percent of our fruit

1 next year already in contracts.

2 COMMISSIONER ARANOFF: Okay. Thank you very  
3 much for those answers. Thank you, Madame Chairman.

4 CHAIRMAN OKUN: Commissioner Pinkert.

5 COMMISSIONER PINKERT: Thank you, Madame  
6 Chairman. And I join my colleagues in thanking all of  
7 you for being here today and for helping us to  
8 understand what is happening and likely to happen in  
9 this industry.

10 You heard the testimony this morning about  
11 whether the Brazilian industry was more or less  
12 damaged by the disease issue than the U.S. industry.  
13 Do you have any comments on what you heard earlier  
14 today?

15 MR. THOMPSON: Brazil and Florida, I  
16 believe, are equally affected by greening. It was  
17 found in Brazil first. Only in the last five years  
18 has it been found in Florida. But everything I can  
19 understand, Brazil is affected by this disease just as  
20 bad as Florida. So I don't think we're in -- either  
21 industry is at an advantage to each other.

22 We are also a grower in Florida. And what  
23 we have seen in Florida is we planted a new grove  
24 recently, and that grove today is about three years  
25 old. And we're finding that the incident of HLB or

1 greening in that grove is probably -- we're losing 7  
2 to 10 percent of our trees a year in these young  
3 trees. And Brazil is experiencing the same thing. As  
4 they replant, their young trees are going to be  
5 dramatically affected.

6 MR. KALIK: Commissioner Pinkert, one  
7 additional point because I know this morning there was  
8 a discussion about the inability to change crop in  
9 terms of the costs of growing fruit in Florida. In  
10 Brazil, it's a little bit different. If a grower is  
11 in a position where the costs just don't bear out the  
12 ability to continue to grow oranges, they will shift  
13 to sugar cane. And I think Randy Freeman mentioned  
14 that earlier. And there is an ongoing reality in  
15 Brazil because sugar cane is an alternative, high-  
16 value crop that they can shift to without having to  
17 deal with the disease control that greening brings  
18 with it.

19 COMMISSIONER PINKERT: What about the  
20 carbendazim issue? And in particular, what I'm  
21 interested in is, is the damage in terms of customer  
22 perception damage that accrues to everybody in this  
23 industry, whether Brazilian or U.S., or is it more  
24 specific to the imported product?

25 MR. FREEMAN: We are probably the largest

1 private label packer of frozen concentrated orange  
2 juice, the old-fashioned kind that you mix with three  
3 cans of water. We have had a number of phone calls  
4 where we have Brazil on the label, and we've had a  
5 number of returns to stores where we've had Brazil on  
6 the label.

7           In the short term, I think to the extent it  
8 benefits anyone, it will benefit the all-Florida  
9 people. I think that it will be proved to be a  
10 tempest in a teapot, a very big tempest in a very big  
11 teapot, but nonetheless a tempest in a teapot, and  
12 will be forgotten except when you start to really  
13 think about it and remember it, certainly by the first  
14 quarter of -- the second quarter of this year.

15           I mean, this is a temporary problem.  
16 They're going to find a solution to it. The  
17 Petitioners are correct in that. I disagree about the  
18 amount of demand that we will lose as a result of  
19 this. I think that orange juice demand is a function  
20 -- the loss of demand or the increased loss of demand  
21 we felt over the last 18 months is entirely  
22 attributable to price. And until we stabilize the  
23 prices, we're going to continue to lose it.

24           COMMISSIONER PINKERT: Thank you. Now,  
25 you've already answered some questions about the long-

1 term contracts that we've been discussing today. But  
2 the flip side of the long-term contracts is the spot  
3 market. And what you heard earlier from the earlier  
4 panel is that reduction in prices in the spot market  
5 works its way through to the entire industry, that  
6 there is an impact on the entire industry.

7           And, of course, I'm looking for impacts that  
8 would occur within, say, a year. Do you have any  
9 testimony about the impact of changes, specifically  
10 reductions in spot market prices, on the entire  
11 industry?

12           MR. FREEMAN: Could you rephrase that a  
13 little bit?

14           COMMISSIONER PINKERT: Well, the idea was  
15 that -- let's say that 20 percent of the industry is  
16 not -- of the U.S. industry is not engaged in the  
17 long-term contract, but that that 20 percent, the spot  
18 market would have an impact on the fortunes of the  
19 entire industry.

20           MR. FREEMAN: Okay. Now, when you say --  
21 remember, when we say 20 percent, it isn't -- it's  
22 reserved for the spot market. It's the same -- a  
23 grower, and a smart grower, often does this. I have  
24 100 boxes of fruit to sell. I'm going to sell 80 of  
25 them on a long-term contract with a floor and a rise,

1 and maybe a ceiling, maybe not a ceiling -- not all of  
2 them have ceilings. And I'm going to take my chances  
3 on the other 20 percent.

4           So it's the same growers that have the long-  
5 term contracts that are also selling their 20 percent  
6 on the spot market. There is, however, one  
7 significant grower who we estimate grows about 7  
8 million boxes a year, and that's just one grower, who  
9 always just has a policy of selling on the spot  
10 market. He's getting \$2.50 plus for Valencias today,  
11 \$2.50 plus for Valencias.

12           And so for the next year, unless -- I can't,  
13 you know -- are there any studies? No. Is it  
14 possible that Florida will have 190 million box crop?  
15 No. But -- and I don't think it's 20 percent either.

16           COMMISSIONER PINKERT: I thought I heard the  
17 20 percent figure bandied around -- bandied about on  
18 this panel, but --

19           MR. FREEMAN: Well, we did -- it went from  
20 20 to 30 percent this morning. No one knows for sure  
21 what the percentage is.

22           COMMISSIONER PINKERT: Well, perhaps this is  
23 a question that would be better addressed in the post-  
24 hearing. I'm just interested in the quantitative  
25 impact of some reduction, say 5 percent or 10 percent

1 reduction in the spot market, what impact does that  
2 have on the industry as a whole.

3 MR. DUNN: We can take a shot at it in the  
4 post-hearing, Commissioner Pinkert. But there is  
5 really no studies that have been done on it. There is  
6 no evidence there to look at to see the elasticities  
7 and the correlations. Twenty percent of the market is  
8 as reasonable as any. What you heard our panel  
9 testify was 80 percent of their contracts are long-  
10 term. But 20 percent may be a good number. But as  
11 Mr. Freeman points out, if it's the same grower who  
12 has got 20 percent out there, he's 80 percent  
13 protected.

14 So what is the impact of him? He's not  
15 sitting there with all of his -- most of them are not  
16 sitting there with all of their stuff on the spot  
17 market. So what is the impact of that on the industry  
18 when you have growers who are 80 percent protected?  
19 It's really, really difficult to quantify.

20 MR. HARRISBERGER: Jim Harrisberger  
21 speaking. And I'll even go one step. If you say it's  
22 20 percent, that's 30 million boxes. One grower has 7  
23 million. There is two or three more that probably have  
24 another 8 million in all. They sell both ways. So  
25 probably there is three or four growers that are

1 playing -- or have half that spot market. I mean, and  
2 they are outside of the one who has 100 percent. The  
3 rest are -- we have long-term agreements with, and  
4 they're -- you know, maybe one-third to one-half of  
5 their product is on the spot market because they know  
6 they'll make enough profit on our long-term  
7 agreements. No matter what the spot market is,  
8 they'll do fine.

9           But right now, I think I'd like to --  
10 everybody would like to be on the spot market. I  
11 think they'd all like to get out of their long-term  
12 contracts. Now, two years ago or two years from now,  
13 it will be the exact opposite because then they'll be  
14 at the floors and they'll be guaranteed a profit. And  
15 that's the concept. I mean, that's where the win-win  
16 comes in. They will be in the business long-term.

17           COMMISSIONER PINKERT: Thank you. Thank  
18 you, Madame Chairman.

19           CHAIRMAN OKUN: Commissioner Johanson.

20           COMMISSIONER JOHANSON: Yes. I thank you,  
21 Madame Chairman. I was wondering if one of you or  
22 more than one of you could answer how exchange rates  
23 have affected exports of orange juice to the United  
24 States from Brazil.

25           MR. FREEMAN: They have done -- how they

1 have affected it? Well, first, orange juice is dollar  
2 priced everywhere in the world. So if you buy it in  
3 Europe, if you buy it in Asia, if you buy it in  
4 Canada, or the former Soviet Union, you always pay  
5 dollar prices.

6           Brazil has enjoyed a remarkable economic  
7 recovery over the past 15 years. The first time I  
8 went to Brazil, I never saw a coin. Inflation was  
9 thousands percent. It was a Zimbabwe-style situation.  
10 Today, Brazil is fighting its interest rates with 10  
11 percent -- fighting its risk of inflation with 10  
12 percent internal interest rates. That has resulted in  
13 a very strong real against the dollar.

14           So the impact is that the exporters make  
15 less money from Brazil. I mean, that's the end of it.  
16 That's the end of it. In a simple word, the  
17 exporters get burned -- are being burned because of  
18 Brazil's strong currency.

19           MR. DUNN: Commissioner Johanson I'd just  
20 like to add on that. The Petitioners, in their  
21 inimitable way, have looked at what has happened to  
22 the exchange rate for the real in the last six months.  
23 And to be sure, the real has strengthened in the last  
24 six months.

25           Look at what has happened over that last

1 three years. When I went down to Brazil to do a  
2 verification on orange juice two and a half years ago,  
3 it was 2.20, 2.20 reals to the dollar. Then it went  
4 to 1.60, and now it's back up to 1.65. So to say, oh,  
5 my gosh, the Brazilian currency is weakening, that's  
6 the last six months. It's still substantially  
7 stronger, it has been substantially stronger over the  
8 past six years, than it was before the investigation.  
9 And that is a real impingement on Brazil as a  
10 country's ability to export.

11 That's a real restraint. And you go to  
12 Brazil, even at \$1.70 -- or I should say 1.75 reals to  
13 the dollar. It's still expensive. Brazil still feels  
14 expensive.

15 MR. KALIK: I'd like to add to that, if I  
16 can. The economic crash -- at the time of the  
17 economic crash of late 2008, the real was about 1.65,  
18 1.62. It flipped over to 2.20 when the crash occurred  
19 over the next three or four months. And then it  
20 slowly strengthened back as our exchange rate  
21 strengthened back, to the point about nine months ago,  
22 I believe it was teetering below 1.60 to the dollar.

23 And then it has eased back a little bit off  
24 of, frankly, the market uncertainty back in August.  
25 And so a lot of European market uncertainty is driving

1 these adjustments in the real.

2 COMMISSIONER JOHANSON: Thank you. And this  
3 question is for Mr. Freeman. You spoke of Louis  
4 Dreyfus' infrastructure, fairly substantial  
5 infrastructure, in Asia and the Middle East. Could  
6 you perhaps describe that a bit further?

7 MR. FREEMAN: If I said -- the  
8 infrastructure there are sales offices and agents. So  
9 if I said infrastructure, I misspoke. We don't have a  
10 big infrastructure. We just have a lot of customers.

11 COMMISSIONER JOHANSON: Do you intend to  
12 build infrastructure, major infrastructure, in those  
13 regions in the near future?

14 MR. FREEMAN: Probably not.

15 COMMISSIONER JOHANSON: No?

16 MR. FREEMAN: We're not -- we are the small  
17 Brazilian, amongst --

18 COMMISSIONER JOHANSON: Okay. I -- okay.

19 MR. FREEMAN: There are four, not three.  
20 And we're the little one.

21 COMMISSIONER JOHANSON: How about any of the  
22 other companies in Brazil? Are you aware of plans to  
23 increase the construction of infrastructure around the  
24 world?

25 MR. EMMANUAL: Nick Emmanuel, Citrosuco. I

1 think again the answer is similar to what Mr. Freeman  
2 said. When we talk about infrastructure, we basically  
3 talk about what is necessary to serve the customer and  
4 develop the market, whether it be salespeople and/or  
5 knowledge and understanding of what it takes to  
6 deliver product. But to the extent that there is a  
7 market, we will exploit it no matter -- we will try to  
8 exploit it for the benefit of product coming from the  
9 U.S. or product coming from Brazil, to the extent that  
10 we can.

11 MR. KALIK: To be a little clearer on that,  
12 Citrosuco and Cutrale -- correct me if I'm incorrect  
13 -- have facilities, have storage facilities, tank  
14 farms, like they had in Wilmington, Delaware, in  
15 Japan, and they have for many, many years. So the  
16 Japanese market has had significant infrastructure  
17 investment for -- I don't remember how far back that  
18 tank farm was built at this point. So 20 years.

19 MR. DUNN: And both those companies have  
20 significant tank farms in Rotterdam, in Europe. And  
21 those are longstanding. If you're talking about plans  
22 to increase capacity, I don't know of any. But they  
23 have large infrastructure commitments, the European  
24 market.

25 COMMISSIONER JOHANSON: So is it safe to say

1 that the major storage facilities are in -- and  
2 distribution facilities are in the United States,  
3 Brazil, Rotterdam, and Japan?

4 MR. EMMANUAL: That's correct.

5 MR. FREEMAN: And Korea.

6 COMMISSIONER JOHANSON: And Korea?

7 MR. EMMANUAL: Yeah.

8 MR. KALIK: Well, there are a number of  
9 different European facilities, so there is one in  
10 Rotterdam, one in Ghent, Belgium. There is --

11 MR. HARRISBERGER: Cargill has one in  
12 Amsterdam, and then Cargill has two in Japan.

13 MR. KALIK: And Tropicana also has -- I  
14 forget where they are.

15 MR. FREEMAN: There are a bunch of them  
16 scattered around the world.

17 COMMISSIONER JOHANSON: Okay. Thank you.  
18 And, Mr. Emmanuel, I believe that you stated that  
19 Citrosuco imports orange juice into its facility in  
20 Delaware from Brazil, and that that orange juice needs  
21 to be reworked. Did I hear that correctly? And if  
22 so, how is it reworked? What does that entail?

23 MR. EMMANUAL: From time to time, when you  
24 ship a product in a septic system, you may have a  
25 microbial upset where you have to access a pasteurizer

1 to rework the product, to make it stable.

2 COMMISSIONER JOHANSON: Okay. So it's a  
3 fairly --

4 MR. EMMANUAL: Simple and straightforward  
5 repasteurization to stabilize the juice for long-term  
6 storage.

7 COMMISSIONER JOHANSON: Okay. Thank you.  
8 The staff report presents import data by the crop  
9 year. What would an analysis of monthly import data  
10 show us? And should we be looking at monthly data?

11 MR. FREEMAN: Remember that the majority of  
12 the product that comes from Brazil comes on big ships.  
13 The largest is 40,000 tons, Nick? Right, 40,000  
14 tons. And so that ship comes and departs. Well,  
15 you've just got 90 days worth of imports until the  
16 next one. That's not NFC.

17 The way that we do it is to look at them  
18 monthly, and then look at them on a rolling monthly  
19 basis, and looking at the quarterly as well. I mean,  
20 you can't -- unfortunately, I can't give -- the answer  
21 is yes to all of them. You need to look at all -- you  
22 need to look at them in all those different ways to  
23 truly understand what is going on.

24 COMMISSIONER JOHANSON: Yes.

25 MR. DUNN: But I think, Commissioner

1 Johanson, one of the problems that you have if you  
2 rely solely or exclusively or primarily on monthly  
3 data is what Randy was alluding to, you get a lot of  
4 what can be called interference because you get -- if  
5 a ship arrives on the 27th of January, and another  
6 ship arrives on the 2nd of February, those are really  
7 intended for the same season. But you -- if that  
8 first ship is delayed into February because of --  
9 emerge the port or whatever, port facility problems.  
10 All of a sudden you get double that shipment. You get  
11 nothing in January and twice as much in February.

12           So to look at any one month, you're going to  
13 see lots of jumps. And it's hard to make sense of it  
14 unless you do -- you know, unless you do it the way --  
15 really, the way the Commission has done, looking at  
16 annual crop year basis.

17           COMMISSIONER JOHANSON: Okay. Yes.

18           MR. KALIK: One last point on that. For the  
19 overwhelming majority of not-from-concentrate that  
20 comes in from Brazil is exported in a very finite  
21 period between August and December. That's during the  
22 season. It's not stored. It's moved straight  
23 through. So depending on how you look at the  
24 statistics, your NFC from Brazil, depending again  
25 whether it's in a bonded warehouse, whether it's in

1 foreign trade zone, how it's being handled, will  
2 change when the actual Customs entry takes place.

3 COMMISSIONER JOHANSON: Okay. Thank you.  
4 My time is up.

5 CHAIRMAN OKUN: Thank you again for all the  
6 responses so far. Mr. Freeman, in your testimony, you  
7 addressed the Consecitrus program and what you knew  
8 about it and its relevance to the product here. For  
9 purposes of post-hearing, whatever information -- I  
10 guess I would direct this to counsel, you know, to  
11 make sure that our record is clear about that, since  
12 we don't have much information yet, and kind of have,  
13 you know, you describing one program, and the panel  
14 this morning describing what could be something else.  
15 So --

16 MR. FREEMAN: I'll see to it that it's in  
17 the brief.

18 CHAIRMAN OKUN: Okay. I appreciate you  
19 providing that information. And then, let's see,  
20 Mr. -- well, I don't know if this is a fair question  
21 for you, Mr. Freeman, but since you raised it, or  
22 since you brought it up, I'm just going to ask you,  
23 which is you talked about the low grower response  
24 rate, and that anybody could call and get them. So  
25 I'm wondering whether you would see it in your

1 interest to call. I mean, you know, again, if you  
2 think what the growers -- these big growers, as you  
3 describe them, what they would provide to us would  
4 support your story, could we get more growers? I  
5 mean, I guess, you know --

6 MR. FREEMAN: I'm not in a position to tell  
7 the growers what to do. Florida Citrus Mutual and  
8 Matt McGrath are.

9 CHAIRMAN OKUN: All right. So and it may be  
10 included -- again, we -- I mean, I think it's a true  
11 statement that often in these agricultural cases we  
12 don't have a very good response rate. The grower  
13 distribution, I guess, in terms of size that you  
14 describe, I'm not sure everything is on the record  
15 that would help me understand whether I think it's  
16 different in this case than it would be in another  
17 case, where I would say, you know, we don't have a  
18 good grower response rate, but we have to look at the  
19 industry as a whole, and we take what we have. And I  
20 wouldn't normally consider adverse inferences at all,  
21 and haven't ever in an ag case with a low response  
22 rate.

23 But if you think the structure of the grower  
24 industry is different here, then I would look at that  
25 again. So just I will leave that for you and counsel

1 to decide because, you know, again, in these ag cases,  
2 it has been interesting. But you describe an  
3 interesting dynamic out there that I'm not sure I  
4 completely understand from the record at this point.

5           Mr. Emmanuel, turning to you -- and I don't  
6 know if this is confidential or if it could be  
7 supplied. But with respect to the Tropicana shift in  
8 purchasing Florida versus Brazilian for its premium  
9 product, is that information available that could be  
10 provided for the post-hearing?

11           MR. EMMANUAL: Yes. I think in fact --  
12 again, I'm not 100 percent sure, but in fact I think  
13 they've made that public, in several statements, and  
14 they may have been quoted even in *The Wall Street*  
15 *Journal* in recent weeks as to their plans with pure  
16 premium.

17           CHAIRMAN OKUN: Yes, Mr. Kalik.

18           MR. KALIK: Madame Chairwoman, I would point  
19 the commissioners to a letter that Tropicana submitted  
20 on the record, which referenced exactly that fact.  
21 So --

22           CHAIRMAN OKUN: I mean, is there any  
23 information about what impact that would have on  
24 pricing or any differences? I mean, again I'm trying  
25 to think in terms of --

1 MR. KALIK: Not in what they have submitted.

2 CHAIRMAN OKUN: Right.

3 MR. KALIK: They have simply stated the  
4 changeover. In terms of information, if we can find  
5 something, we certainly will provide it in post-  
6 hearing.

7 CHAIRMAN OKUN: Okay. And then I wanted to  
8 ask a question about the argument with respect to the  
9 European supply and what that means for buying.  
10 Because again, I think as we observed with the first  
11 panel, this was -- and I think has always been  
12 considered -- a price more than a volume case. And so  
13 the argument from this morning's panel is, you know,  
14 it's -- I mean, I think if I'm looking for changes or  
15 not changes, Brazilians have always had a good EU  
16 market or a strong presence there, even during the  
17 original investigation. And this is really about them  
18 being able to bring in this -- what they describe as  
19 residual demand at a lower price, and that it's not  
20 really about one -- like in some cases, the evidence  
21 of a long-term commitment to another market is very  
22 important because it says their volumes can't move  
23 much.

24 If I understand the argument here, you know,  
25 maybe the volumes don't change very much, but the

1 prices do, and that's what they care about. So help  
2 me understand your argument with respect to prices and  
3 whether the commitment to a European market and the  
4 long-term contracts is important to the pricing case,  
5 I guess. I don't know if that's a clear question.

6 But I guess I understand what you're saying  
7 about the commitment to the EU market, and I'm just  
8 asking about price, which seems to be a better focus.

9 MR. FREEMAN: On the subject of prices, I've  
10 heard Dr. Behr multiple times explain that, and it's  
11 half jocular, and it's half not. The more juice we  
12 import into Florida, the better off we are, because  
13 what that says is that you've got very high prices  
14 that are attracting juice.

15 What happened over the years is that  
16 starting in about 2000 and culminating in 2003-2004,  
17 multiple years of Florida producing essentially 100  
18 percent in volume of what the U.S. drank and still  
19 needing to import a little more made the U.S. surplus  
20 juice.

21 The minute the U.S.'s surplus juice, it has  
22 to go to world price, and the benefit of the tariff  
23 disappears. As long as the U.S. doesn't produce 100.5  
24 percent of U.S. consumption, it is protected by a very  
25 healthy tariff. The minute it produces 100.5 percent

1 of U.S. production, it goes to world price. So that's  
2 the issue.

3           That is not my analysis. It is from Tom  
4 Spreen, who the Petitioners have quoted, and who we  
5 have quoted as an authority on the industry. And Bob  
6 Behr will confirm that that's his opinion as well. So  
7 the issue then is will Florida produce enough juice in  
8 the next five years to meet U.S. demand. And the  
9 answer is no because there aren't enough trees in the  
10 ground.

11           MR. KALIK: Chairwoman, Bob Kalik. In this  
12 case, going back to a question that Commissioner  
13 Pinkert asked earlier, NFC and NFCOJ become an  
14 important point. I think I am correct -- and I will  
15 ask other panelists to correct me if I'm wrong. But  
16 to my knowledge, 100 percent of the NFC that is  
17 produced certainly by the two main producers of NFC  
18 are committed worldwide under contract.

19           In other words, they are producing NFC to  
20 long-term contract requirements. And those long-term  
21 contract requirements anticipate certain levels of  
22 juice being exported to Europe, to Asia, and to the  
23 U.S. as well. And so when you look at this long-term  
24 what is going to happen in Europe, will it calm, will  
25 it be shifted over here, from an NFC perspective, I'm

1 sure it's possible that there could be additional NFC  
2 produced at some point if there is a market for it.  
3 But at this point, the Brazilian companies are  
4 producing for those long-term contracts.

5 So I think that that really needs to be  
6 understood.

7 CHAIRMAN OKUN: Mr. Dunn.

8 MR. DUNN: Yes, Madame Chairman. I just  
9 wanted to say I don't think I'm saying anything that  
10 anybody else in the room would disagree with when I  
11 say you can't say something is just price or just  
12 volume. Volume is going to affect the price. It has  
13 been our contention for six years that the price in  
14 the U.S. market is primarily determined by the volume  
15 of juice that is produced in Florida.

16 Now, the fact is that the Petitioners have  
17 conjured up this image of all of this massive increase  
18 in inventory in Brazil, and they would have you  
19 believe that the Brazilian producers are sitting there  
20 like some sort of South American Nosferatu just  
21 holding onto that inventory for the right moment to  
22 pounce into the United States market.

23 That's preposterous. That inventory is  
24 there to serve worldwide demand to have, as Mr.  
25 Freeman said, enough in the pipeline. And on a price

1 basis, what we know is for the last two and a half  
2 years, more than two and a half years, the price in  
3 Europe has been higher than the price in the United  
4 States.

5           We know that there are long-term contracts  
6 in Europe. We know that the shift in the Brazilian  
7 producers' attention has been overwhelmingly towards  
8 Europe and Asia. And the idea that they're just  
9 sitting there waiting to bring this stuff back to the  
10 United States really just - it won't wash.

11           CHAIRMAN OKUN: Okay. My time is going to  
12 expire, so I'll ask a followup on my next round.  
13 Thank you very much. Vice Chairman Williamson.

14           VICE CHAIRMAN WILLIAMSON: Thank you, Madame  
15 Chairman. I want to thank the witnesses for their  
16 testimony. Just to sort of follow up on what Mr. Dunn  
17 has said -- and I was wondering, Mr. Horrisberger  
18 could address this. If I understood you correctly,  
19 you're saying that at least at certain points of the  
20 year you want to have almost like -- was it 39 weeks  
21 of Hamlin supply available in inventory?

22           MR. HARRISBERGER: Well, basically, on -- I  
23 will say June 15th. Let's assume the season in  
24 Florida ends then. I'm going to be sitting on 40 -- a  
25 little over 40 weeks of Valencia juice, both NFC and

1 concentrate, and about 32 weeks of early mid. So if  
2 you take the two average, and it gets involved, but  
3 it's going to be there are about 38 to 39 weeks.  
4 That's to get me to the new crop.

5           Now, ideally, I'd like to on December 1  
6 start using the early mid, but there are years the  
7 early mid quality isn't good until January 15th. So  
8 I've got to have enough high quality early mid to go  
9 to January 15th, even though last year we started  
10 processing right after Thanksgiving.

11           Okay. Now, Valencia, the same issue.  
12 Ideally, we -- I mean, we're sitting on a lot of  
13 Valencia now. The season is going to start early.  
14 But there are years when the Valencia won't start  
15 until, you know, early to mid April.

16           VICE CHAIRMAN WILLIAMSON: Okay. Let me cut  
17 you off because I think you established that. What  
18 I'm wondering -- and I haven't tried to do the numbers  
19 and all. But it seems like the points that Mr.  
20 Freeman has made is to have said that in order for the  
21 system to work well, there has to be a lot more  
22 inventories than maybe Petitioners have acknowledged  
23 or that has been indicated before. And I was just  
24 wondering if there was any truth to that and what --  
25 you know, how these sort of support that, if that is

1 the case.

2 MR. HARRISBERGER: Well, I'd like to address  
3 that, Commissioner Williamson.

4 VICE CHAIRMAN WILLIAMSON: Yes.

5 MR. HARRISBERGER: I have a brand to  
6 support, and that's the key. I cannot, like I said --  
7 I mean, I don't care if it's McDonald's. We supply  
8 100 percent -- well, 99 percent of them globally. We  
9 supply Minute Maid in the U.S. We supply Simply. We  
10 cannot be off the shelf because some of our fine  
11 competitors in this room will take our shelf space.

12 VICE CHAIRMAN WILLIAMSON: Yes.

13 MR. HARRISBERGER: And it just does not  
14 work.

15 VICE CHAIRMAN WILLIAMSON: And you'll lose  
16 your job, as you said.

17 MR. HARRISBERGER: Yeah. So that's the  
18 issue. We are sitting -- and we're the ones that are  
19 sitting on -- and this was actual numbers. I think it  
20 was 39 weeks in -- I mean, we took our total pound  
21 solids, divide it by our weekly sales, and we got 39  
22 weeks. I mean, it's not a -- you know, it's not  
23 something that is real good, but it's a necessity for  
24 us to survive. In other words, Coca-Cola, the Minute  
25 Maid, the Simply business. Does that answer your

1 question, sir?

2 VICE CHAIRMAN WILLIAMSON: I think that's  
3 answering the question. And maybe either post-hearing  
4 or Petitioner's post-hearing if you want to address  
5 this question -- normally we talk about just-in-time  
6 inventory. It seems in this business it's different.

7 MR. HARRISBERGER: Well, this is actual  
8 inventory.

9 VICE CHAIRMAN WILLIAMSON: Yes.

10 MR. HARRISBERGER: We can't control Mother  
11 Nature. We'd like to, though. We'd like to go just  
12 in time, and on November 1 have good quality and cut  
13 our inventory back to 20 weeks. That would make more  
14 sense. But we're not making a car, I don't think.

15 VICE CHAIRMAN WILLIAMSON: No. I  
16 understand, because I want my orange juice when I want  
17 it. Thank you, sir.

18 MR. HARRISBERGER: Thank you.

19 VICE CHAIRMAN WILLIAMSON: Okay. Let's see.  
20 Mr. Emmanuel, could you just address the merger of  
21 Citrovia and the status of it, and the Southern  
22 Garden's legal arguments, or at least the arguments  
23 about whether or not -- how we should consider that.

24 MR. EMMANUEL: I'm going to let Mr. Kalik  
25 answer.

1 VICE CHAIRMAN WILLIAMSON: Okay, sure.

2 MR. KALIK: I think it's worth two minutes  
3 of a little bit of history here as to why Citrovia is  
4 not subject to this order. At the time of the  
5 original investigation, which occurred -- the petition  
6 was filed just after the multiple hurricanes had  
7 occurred. There was a dumping order already in place.  
8 Citrovia was the only producer from Brazil still  
9 subject to that dumping order. And that dumping order  
10 was coming up for sunset in a couple of months.

11 Petitioner -- and, you know, I don't blame  
12 them one bit for this -- chose the best investigation  
13 period they could have. And in doing that, they were  
14 not willing to wait for the sunset in order to see  
15 that all Brazilian processors were taken in under the  
16 order.

17 So Citrovia was sunsetted, and they were  
18 nonsubject. They remained nonsubject throughout. And  
19 I will encourage the Commission -- I know that  
20 Citrovia has submitted a questionnaire response, and  
21 I would encourage you to look very carefully at that  
22 questionnaire response, particularly who has been  
23 buying all this nonsubject juice. Having said --  
24 beyond Mr. Freeman, who has already said he was doing  
25 that.

1           With that said, the question of the -- it is  
2 not a merger. It is a joint venture agreement. The  
3 present status of that joint venture agreement is it  
4 has not been concluded. The suggestions in the  
5 prehearing brief by Petitioner are just outright  
6 wrong. There in fact has been final government  
7 clearances for antitrust purposes from the various  
8 government agencies that had to review that.

9           But in fact, there has not been a closing.  
10 There is no closing date at this point. And I do not  
11 anticipate a closing date in the near future. There  
12 are a number of reasons for that, most of which have  
13 nothing to do with -- or none of which have anything  
14 to do with this proceeding. But in the end, going  
15 back to Commissioner Johanson's question, this issue,  
16 there has been no joint venture created. It is  
17 publicly known as a 50/50 joint venture.

18           While the Petitioners believe it's a fait  
19 accompli that Citrovia will become subject to this  
20 order should in fact the Commission decide to go ahead  
21 and not sunset the order, that is not a fait accompli  
22 at all. At one point in time, the issue will be taken  
23 up by the Department of Commerce. They're very aware  
24 of it. They've asked the question in the last review,  
25 what the status is. They have asked for status

1 reports. And if and when -- and I will again correct.  
2 Because this is a 50/50 joint venture -- I mean, it  
3 is not going to be a successor in interest question  
4 before the Department of Commerce, in my opinion.

5           Petitioners have once before tried to bring  
6 Citrovia in through a changed circumstances petition  
7 during the time this order has been in place, and they  
8 were not successful in that. And I think it's  
9 incredibly speculative to even guess if and when the  
10 Department of Commerce would come to such a decision  
11 if and when this deal does ultimately close, and if  
12 and when a request for the Department of Commerce to  
13 review it even comes up. Everything is pure  
14 speculation at this point.

15           Having said that, there is really no issue  
16 here because if the Commission sunsets the order,  
17 Citrovia has never been subject to this order, and  
18 won't be subject to a sunset. There is no imminent  
19 factor that changes this from non-subject to subject  
20 that would fundamentally change any of the reality in  
21 the marketplace today.

22           And as -- you know, I will just throw in one  
23 point on the fungicide issue. While there is a lot of  
24 optimism in this room today about the outcome of that,  
25 as someone who has been involved from day one since

1 this occurred, I'm very, very hopeful that that  
2 optimism prevails. But it's certainly not clear. I'm  
3 happy to answer any --

4 MR. DUNN: I just wanted to add on that,  
5 just to make clear something that Mr. Kalik was  
6 saying, and that is it's important that you understand  
7 that the issue of Citrovia being subject or not  
8 subject juice is not under consideration by the  
9 Department of Commerce. There is no legal basis for  
10 considering them subject juice right now. The  
11 Commission can't determine that they're subject juice.  
12 That is the role of the Commerce Department, and they  
13 are not considering it.

14 VICE CHAIRMAN WILLIAMSON: Okay. Thank you  
15 for that answer. It looks like my time is about to  
16 expire. I'll pass.

17 CHAIRMAN OKUN: Commissioner Pearson.

18 COMMISSIONER PEARSON: Thank you, Madame  
19 Chairman. Welcome to all of you on the afternoon  
20 panel. This is one of those very pleasant experiences  
21 where I have Cargill alums on both sides of the issue.  
22 And, you know, it just reminds me of some years ago  
23 when I worked at the company, being in the midst of  
24 things, firm positions, strongly held, clearly  
25 articulated, discussions running late in the day such

1 that we got home, you know, after supper. This is  
2 just like old times. So welcome to all of you.

3           There have been some comments on the future  
4 prospects for orange juice production in Brazil, and I  
5 just want to go back and quickly clarify. The  
6 Petitioners are claiming that 2011-12 will likely see  
7 a bumper crop for Brazil, and your position is  
8 basically that production will decline over 10 years.  
9 Are both of those correct?

10           MR. FREEMAN: Yes.

11           COMMISSIONER PEARSON: Okay. So there is  
12 a --

13           MR. FREEMAN: And this is an outlier.

14           COMMISSIONER PEARSON: A good crop coming  
15 now.

16           MR. FREEMAN: I mean, if you take a chart of  
17 -- take the numbers, and go like that, you know, you  
18 get -- one year it's a little bit below, but next year  
19 it's above, next year it's above. The trend line is  
20 lower, flat. But it's not like that. It's just  
21 lower. And this is an outlier up above, following  
22 three outliers way below.

23           COMMISSIONER PEARSON: And driven basically  
24 by challenging economics of production, given the  
25 disease issues and --

1 MR. FREEMAN: Weather.

2 COMMISSIONER PEARSON: -- weather and other  
3 value for land, better --

4 MR. FREEMAN: Weather.

5 COMMISSIONER PEARSON: Weather.

6 MR. FREEMAN: Weather.

7 MR. EMMANUAL: As far as the outlier this  
8 year.

9 MR. FREEMAN: Oh, as far as the outlier this  
10 year.

11 MR. EMMANUAL: Yeah.

12 MR. FREEMAN: Is also weather.

13 MR. EMMANUAL: Yeah.

14 COMMISSIONER PEARSON: It's all the weather  
15 for this year. But in looking at your 10-year  
16 projection for continued decline --

17 MR. FREEMAN: The 10-year projection --  
18 excuse me. That has competition for land  
19 considerations in it as well and, you know the disease  
20 issues and everything else.

21 COMMISSIONER PEARSON: Okay. Thank you.

22 MR. DUNN: And let me just, Commissioner  
23 Pearson -- Chris Dunn. I just wanted to point out  
24 that our projection there is not our industry  
25 projection. That is a projection that we submitted in

1 an exhibit that is a Florida agricultural economist  
2 looking at the data and the effects of disease and  
3 competition for crops, alternative crops, and so  
4 forth. And he has -- it's Thomas Spreen, and he has  
5 best case, worst case projections. Even best case  
6 shows a slight decline, as we pointed out in our  
7 brief.

8 Worst case shows a significant decline. But  
9 -- and Randy is quite correct. If you look at the  
10 Petitioners, even the Petitioner's chart of production  
11 in Brazil, it went down for three straight years.  
12 There are up years. This particular year is a big  
13 year, but it's not bigger than other big years over  
14 the past ten years.

15 COMMISSIONER PEARSON: Mr. Kalik, did you  
16 have something to add?

17 MR. KALIK: No.

18 COMMISSIONER PEARSON: Mr. Emmanuel?

19 MR. EMMANUAL: No.

20 COMMISSIONER PEARSON: Okay. The  
21 Consecitrus program has been mentioned. Can you in a  
22 nutshell explain how it changes the incentives that  
23 face Brazilian growers and processors? Is the program  
24 well enough understood so we know what incentives are  
25 there that are going to be different than what has

1 been the case in the past?

2 MR. FREEMAN: The incentive is that the  
3 processors pay what is now called in Brazil the  
4 government price, which is a -- often in bumper crops,  
5 prices go down, and in short prices go up. The idea  
6 is to incentivate smaller and medium sized growers to  
7 stay in the business, and the processors, in order to  
8 drag the processors into the transaction, they said,  
9 you know, lend us the money or something, because  
10 otherwise they wouldn't have done it.

11 It's a government project designed with this  
12 help this family farm purpose.

13 COMMISSIONER PEARSON: Okay. So potentially  
14 processors could be left with a quantity of juice at  
15 an above-market price because they acquired it a set  
16 price, and the market might be worth less?

17 MR. FREEMAN: We will answer those details  
18 in the post-hearing brief. It's not impossible that  
19 that happens, but it's a little more complicated than  
20 that.

21 COMMISSIONER PEARSON: Okay, good.

22 MR. EMMANUAL: This is Nick Emmanuel.

23 COMMISSIONER PEARSON: Yes.

24 MR. EMMANUAL: I would just add to what Mr.  
25 Freeman said, and that is it's a relatively small

1 amount of the crop that was harvested from this season  
2 that was affected by that program because most of the  
3 fruit was already contracted. So again, this was for  
4 the relatively small grower that hadn't already  
5 contracted his fruit, and otherwise may have been  
6 subjected to a situation where with an oversupply of  
7 fruit right in front of you, they might not have  
8 gotten what they needed to continue to perpetuate  
9 their production.

10 COMMISSIONER PEARSON: Okay. And is this  
11 funded by the BNDES?

12 MR. EMMANUAL: I don't know the answer to  
13 that. But it is modeled after some other programs  
14 that they have had in other commodities in Brazil on a  
15 small scale.

16 COMMISSIONER PEARSON: Okay. But as you are  
17 seeing it at this point, it does not look like a  
18 factor that would have major cost issues for the  
19 Brazilian government or major effect on the structure  
20 of the orange juice industry over time.

21 MR. FREEMAN: No. I mean, the -- Nick's  
22 point I had forgotten. Nick's point is right. The  
23 people it helped were the small number of growers who  
24 hadn't had their fruit forward contract. I mean,  
25 that's --

1           COMMISSIONER PEARSON: That's the guys who  
2 were selling on the spot market in Brazil.

3           MR. FREEMAN: The guys who were selling 100  
4 percent on the spot market, it was designed to help.  
5 And those tend to be the smaller growers. And, I  
6 mean, the tonnage that's involved is not a lot in the  
7 grand scheme of things. But we'll give you as many  
8 details as we can dig up in the post-hearing brief.

9           COMMISSIONER PEARSON: Okay. Thank you. Do  
10 foreign-owned firms in this business fundamentally  
11 have a different world view than the U.S.-owned  
12 processors? And if so, are there reasons for that?  
13 Because I'm hearing two different stories from  
14 processors in Florida who are trying to make a living  
15 in this business. And if there is any way you could  
16 elaborate on that, it would be great to hear.

17           MR. FREEMAN: One of the processors in  
18 Florida who is trying to make sense of it is the  
19 United States sugar company. And I think that they  
20 have a world view that is not different than that of  
21 my company or Nick's company. The other one is --

22           MR. DUNN: That's Southern Gardens.

23           MR. FREEMAN: Southern Gardens is the United  
24 States sugar company. The other processor that was  
25 here, Citrus World, who are sufficiently sophisticated

1 to have their NFC in Singapore and Hong Kong. That  
2 illustrates a world view as well. Citrus World has  
3 been a marketing company that has had a world view of  
4 things ever since I was first introduced to it in  
5 1988. They're the same, just talking out of a  
6 different side of the mouth.

7           COMMISSIONER PEARSON: Okay. So you're not  
8 seeing really a greatly different orientation in the  
9 firms that were on the earlier panel compared to your  
10 panel. I mean, you're all in the same business, but  
11 for various reasons on different sides of this current  
12 investigation. Okay.

13           MR. THOMPSON: Hugh Thompson with Cutrale.  
14 I think Cutrale has a different view of the world. I  
15 think we see the world as just one big, huge  
16 opportunity. And we -- and back in 1996, we made a  
17 very strategic decision to form this relationship with  
18 the Coca-Cola Company, and it's a relationship we had  
19 for 30 years before that, but really changed the  
20 relationship in that we wanted -- we saw that the  
21 world orange juice industry needed to be developed.  
22 And we wanted to be with someone who could do that.  
23 And that was the purpose of the strategic relationship  
24 that we developed with Coke.

25           So I think Cutrale versus a Southern Gardens

1 certainly has a totally different view of the world  
2 than what Southern Gardens would.

3           COMMISSIONER PEARSON: Okay. Well, thank  
4 you very much. Madame Chairman, my time is expiring.  
5 I think I have no more questions, so I would like to  
6 express my appreciation to this panel.

7           CHAIRMAN OKUN: Commissioner Aranoff.

8           COMMISSIONER ARANOFF: Thank you, Madame  
9 Chairman. There has been a lot of discussion today  
10 about the reasons for, the needs for holding juice in  
11 storage at various times of the year. And I want to  
12 make sure that I understand all the players in the  
13 market who are actually holding inventories. Is it  
14 only U.S. processors and importers who actually  
15 control storage capacity? Or are there purchasers who  
16 have their own storage capacity in addition to that  
17 where they may be holding product, or are there other  
18 people who have storage capacity, either in the U.S.  
19 or elsewhere?

20           MR. THOMPSON: Hugh Thompson. One of the  
21 things that we've done with our relationship with Coke  
22 is we have built significant storage, as I've  
23 indicated to you before, over the years. And we lease  
24 that storage to the Coca-Cola Company. So they have  
25 -- really that particular storage is dedicated to

1 them. So once we process the product and put it into  
2 inventory, it could be in either or name, or it could  
3 either be in the Coca-Cola name.

4 COMMISSIONER ARANOFF: Okay. So I think  
5 what that tells me is it's the processors who have the  
6 storage capacity, but sometimes the product that's in  
7 it might be titled to somebody else. Is that correct?

8 MR. HARRISBERGER: Jim Harrisberger  
9 speaking. That is correct. Cutrales own the storage.  
10 We own the juice. Does that answer your question?

11 COMMISSIONER ARANOFF: Well, it answers it  
12 as to your company, yes. I don't know if that's the  
13 same for other major purchasers, or whether they might  
14 hold their product a different way.

15 MR. HARRISBERGER: No. I was answering it  
16 for us only.

17 COMMISSIONER ARANOFF: Okay.

18 MR. EMMANUEL: Nick Emmanuel, Citrosuco. We  
19 have similar arrangements with some of our customers,  
20 where they owned product in our facility, as well as  
21 us carrying inventory on behalf of customers. And  
22 that goes for all geographies, not just in the U.S.

23 COMMISSIONER ARANOFF: Now, the product that  
24 is being held in storage, that would include unblended  
25 juices that you're saving from the harvest as well as

1 product that has been blended to its final retail  
2 formula, or just the unblended?

3 MR. EMMANUAL: Not exclusively, but  
4 typically unblended.

5 MR. FREEMAN: In the main, nobody blends  
6 until the last minute because you don't know --  
7 because as sure as shooting, if you blend a month  
8 early, you blended the wrong stuff. And once you  
9 blend it, you can't unblend it. So what you do is you  
10 keep everything unblended until the last minute.

11 I was just going through mentally, there are  
12 cases where end user customers have storage at their  
13 own facilities. But in the main, the storage is  
14 controlled by and located at the processor's facility,  
15 and/or -- in the case of the Brazilian companies,  
16 their distribution centers in the North Sea, the  
17 northeastern United States, Japan, Korea, and  
18 Australia.

19 COMMISSIONER ARANOFF: Okay. Now, and when  
20 you talk about blending at the last minute, and you're  
21 talking about NFC, because you've got your --

22 MR. FREEMAN: All of them.

23 COMMISSIONER ARANOFF: So you're unblended  
24 frozen concentrated that gets blended when it's  
25 reconstituted for retail?

1           MR. FREEMAN: No, no, no. We're holding --  
2 we have multiple tanks in the tank farm. And one tank  
3 is nothing but early, mid of one particular profile.  
4 It has got a ratio, which is a level of sweetness of  
5 this. It has got a color level of this. In another  
6 tank, another tank of early, mid that is a different  
7 level of sweetness, a different level of color. And  
8 in other tanks, Valencia or Mexican or Brazilian  
9 juice. And those, we blend those as we need the  
10 juice.

11           COMMISSIONER ARANOFF: Right, right. But  
12 you have some tanks that are storing product that's to  
13 be frozen, and some tanks that are storing product  
14 that's frozen, right?

15           MR. FREEMAN: All that we have -- we don't  
16 make not-from-concentrate. We're all strictly FCOJ.

17           COMMISSIONER ARANOFF: Okay. A number of  
18 the producers here have talked about the fact that  
19 their affiliated companies in Brazil are committing --  
20 I don't know, all or most or a lot of their production  
21 volumes to Third Country markets under long-term  
22 contracts. And I'd like us, to the extent possible,  
23 to be able to quantify that for the record. So let me  
24 ask whether -- are those long-term contracts, or at  
25 least the specific terms of those contracts on the

1 record?

2 MR. DUNN: Commissioner Aranoff, they are  
3 not. We obviously would have to do that in a  
4 confidential post-hearing submission. And it's going  
5 to take some time to get those contracts, some of  
6 which may have to be translated from Dutch or German  
7 or Portuguese, and some of which will be in English.

8 But we would have to -- we'll have to ask  
9 the companies to provide us -- and they're going to  
10 say, what do you mean by long-term contracts. That's  
11 going to be their first question when I send them the  
12 email. So I would assume that by long-term contract,  
13 you're talking about a year or longer. Is that right?  
14 Or six months.

15 COMMISSIONER ARANOFF: Well, normally -- I  
16 mean, that's normally how the Commission defines it.

17 MR. DUNN: Right.

18 COMMISSIONER ARANOFF: But I think in this  
19 case, where people are agreed that the reasonably  
20 foreseeable future is two or three years out, I think  
21 that's what people have been talking about based on  
22 why you can anticipate, based on the number of trees  
23 in the ground and what they might produce. I mean,  
24 the question is, over the next year, two years, three  
25 years, if you want to, how much Brazilian volume can

1 you show me is spoken for. And, you know --

2 MR. DUNN: What we can -- I just want you to  
3 understand this. What many of these customers have is  
4 long-term contracts that are renewed annually. And  
5 the quantities may change and the price may change.  
6 That may have had that overarching agreement for ten  
7 years. They may have it for ten years more. But  
8 they're going to modify it year to year, or maybe not,  
9 maybe more frequently, although I would think year to  
10 year.

11 That to me -- and I think for your purposes  
12 would have to be considered a long-term contract  
13 because you don't take a customer that you ship to for  
14 one year and then say bye-bye at the end of the year.

15 COMMISSIONER ARANOFF: No, no. I mean, I  
16 think that's absolutely right. I mean, what the  
17 Commission has looked at -- and I think you know this,  
18 Mr. Dunn, in your past reviews. Obviously, if  
19 somebody has got a signed and sealed contract that  
20 says, we're selling 100 percent of our product to, you  
21 know, whoever for the next ten years at this price,  
22 well, that shows you that 100 percent of their product  
23 is spoken for.

24 But the Commission has certainly looked at  
25 other kinds of evidence that show that there are

1 steady customers to whom, you know, producers sell  
2 every year, even if the amount and the price might  
3 vary some. So whatever your clients can put on the  
4 record that, you know, the Commission would give  
5 weight to with respect to showing that this production  
6 has a home and isn't sitting around waiting to come  
7 into the U.S. market is obviously going to be helpful.

8           So I invite you to submit whatever you can  
9 on that point. And if it's -- you know, it's great if  
10 we can have the contracts, you know, translated into a  
11 language that we can read. But if that's too  
12 difficult, you know, I'm sure that there are other  
13 vehicles for people to, you know, attest to what the  
14 terms are.

15           MR. DUNN: Okay. Thank you.

16           COMMISSIONER ARANOFF: I appreciate that.  
17 Well, at my peril, I will turn for my last question  
18 back to the perennial question of blending. I think  
19 that the Commission concluded the last time that we  
20 looked at this industry that you could come up with a  
21 marketable product that people like using only U.S.  
22 oranges, although you do have to blend varieties, or  
23 you could do it by blending U.S. and imported juice.

24           But so that the impetus -- so I think the  
25 Commission rejected the idea that you have to import

1 in order to blend because some people don't. Some  
2 people blend just domestic product. And in fact, that  
3 seems to be increasing.

4           So I just want to make sure that I'm not  
5 wrong about that, and that if one is blending, it's  
6 because you couldn't get enough of what you need to  
7 hit your formula characteristics from what is  
8 available domestically. Is that a correct  
9 understanding?

10           MR. HARRISBERGER: Speaking for Coca-Cola,  
11 that is a correct understanding. Since the price  
12 doesn't enter into this because we're going to pay  
13 whatever we are for Florida juice, for a blended  
14 product out of Brazil, it's going to be the higher  
15 quality. And believe it or not, Brazil on NFC can't  
16 deliver us any product, I would say, for the first  
17 three months of their production season because it  
18 will not meet our quality characteristics.

19           And it's very similar in the U.S., that the  
20 NFC we make, we don't start making -- although the  
21 season my start in November, it's sometime in January  
22 before we make one drop of NFC. So it's the quality  
23 characteristics that are necessary for our Simply  
24 brand that didn't exist eight years ago, and it's got  
25 30 percent of the market in eight years. It's a

1 premium, high quality premium product.

2 COMMISSIONER ARANOFF: Mr. Freeman, did you  
3 want to add something?

4 MR. FREEMAN: Randy Freeman. There are two  
5 bell curves with the harvest of oranges in Florida.  
6 You start in November, you peak, you go down, and you  
7 go forward, and you start on the Valencias and do it  
8 again. The difference between the requirements about  
9 blending now and blending back then are that more is  
10 required now because the more NFC you make, the more  
11 you take out from the cream of the crop, which is the  
12 middle of the bell curve.

13 And the stuff that is on -- that Mr.  
14 Horrisberger from Coca-Cola just pointed out, we don't  
15 touch that stuff for NFC. Well, what do you do?  
16 Well, we turn it into concentrate. Well, it's no more  
17 drinkable as concentrate than it would have been for  
18 NFC, so is it drinkable? No, not unless you blend it  
19 with something.

20 And as the amount of NFC increases, the  
21 amount of lower quality juice that is processed at the  
22 beginning of harvest and at the end of harvest  
23 increases. And the cream of the crop is saved for  
24 NFC.

25 COMMISSIONER ARANOFF: Okay. All right. I

1 appreciate those responses, and I want to thank you  
2 all for your answers this afternoon. I don't have any  
3 further questions.

4 CHAIRMAN OKUN: Commissioner Pinkert.

5 COMMISSIONER PINKERT: Thank you, Madam  
6 Chairman. I was intrigued by something that you said,  
7 Mr. Kalik, about NFCOJ and FCOJM, and I'm wondering  
8 how you would answer the question that I asked the  
9 panel this morning about whether the two products are  
10 sold in two distinct markets.

11 MR. KALIK: Well, just being a lawyer and  
12 not a marketer, what I will say to you is that in the  
13 original investigation, we very, very adamantly argued  
14 that, in fact, NFC should not be subject to this  
15 order, that there was no basis for that. The  
16 Commission did make a decision to define this product  
17 as a single product. And so, we take that definition  
18 of the product as it is. I'm not sure I'm the right  
19 one to answer your question, though, in terms of the  
20 market.

21 COMMISSIONER PINKERT: Well, we have other  
22 people on the panel that can address the factors in  
23 the marketplace.

24 MR. HARRISBERGER: Sir, could you rephrase  
25 the question, so I fully understand it? I was

1 listening. I'm trying to understand it a little  
2 better.

3           COMMISSIONER PINKERT: Certainly. I'm  
4 wondering whether the NFSOJ and the FCOJM are sold  
5 into separate markets. We'll have whatever data we  
6 have in the final staff report that shows the  
7 profitability for the two types of product. But, I'm  
8 wondering, just from a practical, down to earth point  
9 of view, are those markets distinct?

10           MR. HARRISBERGER: First of all, from buying  
11 the oranges from a Florida producer, no. We just buy  
12 an orange. We buy 50 percent early mids, 50 percent  
13 Valencia. So, the producer in Florida has no  
14 distinction whatsoever. And then, we -- because  
15 Mother Nature from year to year has a tendency to give  
16 us a different set of cards every year, we have to  
17 blend every year and we watch the season start and we  
18 figure out how to blend. We might start -- next year,  
19 we might start saving NFC in December because it's  
20 high quality. We, also, look at our inventories.  
21 But, we know the amount of oranges we have come in and  
22 then our blending staff has to figure out how we're  
23 going to utilize them for the year, to meet our  
24 premium quality product.

25           We know this year we're going to need --

1 between us, Cutrale, and our outside juice, we're  
2 going to need 40 -- about 40 million of boxes of  
3 oranges coming from Florida and we know it's going to  
4 be half or mid-half Valencia. I knew that on, let's  
5 say, November 1. Then, that's when we start the  
6 allocation process to meet our company's demand and  
7 the quality characteristics that Mother Nature has  
8 given us. Does that answer your question, sir?

9 COMMISSIONER PINKERT: Yes, it does. Thank  
10 you.

11 MR. DUNN: Commissioner Pinkert, I just  
12 wanted to get a little -- I am not a marketing person  
13 either and I can't answer the question, whether there  
14 are separate markets. But, when you asked a similar  
15 question this morning -- well, it may have been this  
16 afternoon, but to the prior panel, you talked about  
17 the fact that -- you seemed to be implying that there  
18 are different market niches for the two products. And  
19 I think that's true -- I mean, NFC costs more, so  
20 people who want it are people who are going to pay  
21 more or willing to pay more and able to pay more. I  
22 think one of your questions was leaning towards the  
23 fact that we all know from the record, that the profit  
24 levels on NFC are a lot higher than they are in FCOJ.  
25 So, as the market moves to NFC, that should mean

1 greater profitability for the domestic industry.

2           COMMISSIONER PINKERT: Thank you, yes. I  
3 didn't mean to make a statement about niches, so much  
4 as I was talking about looking at the profitability  
5 data and what does that tell us about whether the  
6 markets are somewhat distinct.

7           MR. FREEMAN: Excuse me, Commissioner. If  
8 you buy all the oranges at one price, half Valencias  
9 and half growing mids, and if you process the good  
10 ones into NFC and sell that for more money and the bad  
11 ones into FCOJ and sell it for less money and don't  
12 adjust the price of the oranges into the NFC and the  
13 FCOJ, you're conning yourself. And that's what, I  
14 believe, is going on, is that people aren't adjusting  
15 the price of the oranges that go in to compensate for  
16 the fact we're going to buy all these oranges and all  
17 the oranges are bought at the same price. We're  
18 paying the same price for the good ones and the bad  
19 ones. We're picking the good ones to go in this  
20 direction, the bad ones to go in that direction. So,  
21 it's a question of cost accounting.

22           COMMISSIONER PINKERT: Thank you. That's  
23 helpful. Now, my next question is one that I think is  
24 more appropriate for the post-hearing, but I'll put it  
25 out here for anybody to try to answer here. If you

1 look at the FCOJM data on market share, domestic  
2 industry market share, and you look at the change in  
3 domestic industry market share from '05 to '06, to  
4 '06, '07, and from '07-'08, to '08-'09, so if you look  
5 at that change, it looks like it's highly correlated -  
6 - or actually inversely correlated, but strongly  
7 inversely correlated with subject import market share.  
8 So, what I'd like you to do for the post-hearing is  
9 look at those changes in domestic industry market  
10 share for FCOJM and tell me whether there is, in fact,  
11 a strong inverse correlation with subject import  
12 market share.

13 MR. DUNN: We will certainly do that,  
14 Commissioner Pinkert. I happen to have only the  
15 public record here, so I can't see the numbers. So,  
16 we will do that in the post-hearing.

17 COMMISSIONER PINKERT: Very helpful, thank  
18 you. And my final question, and please don't take  
19 this final question as any kind of indication that  
20 I've made up my mind about this issue, but I do recall  
21 that in the original investigation, Respondents were  
22 arguing very strongly that the Brazilian imports were  
23 simply meeting residual demand in the U.S. market.  
24 And, of course, you're making that argument here  
25 today. So, I'm wondering, does one have to accept the

1 argument in both instances. In other words, what was  
2 right for the investigation is right for this review  
3 or what's wrong for the investigation is wrong for  
4 this review? Or can we make a distinction when  
5 arguing or when thinking about the meeting residual  
6 demand point? Can we make a distinction between what  
7 we saw at the time of the investigation and what we  
8 see in this review?

9 MR. FREEMAN: I walked away from the last  
10 investigation wondering about that question, about why  
11 did imports from Brazil continue to flow when it  
12 looked like our inventories in the United States were  
13 going up the way they were. As I mentioned earlier in  
14 my presentation, we didn't bring any. I mean, it just  
15 made no sense to us. I've subsequently think I  
16 figured it out and I'd like to submit it as business  
17 proprietary information in the post-hearing brief,  
18 please.

19 COMMISSIONER PINKERT: That would be  
20 terrific.

21 MR. KALIK: We will respond to that in the  
22 post-hearing brief, but I think we would say -- well,  
23 no, I'm going to let it go until the post-hearing  
24 brief. Thanks.

25 COMMISSIONER PINKERT: Well judged. And

1 with that, I thank the panel. I appreciate all the  
2 answers. I look forward to the additional information  
3 in the post-hearing. Thank you.

4 CHAIRMAN OKUN: Commissioner Johanson?

5 COMMISSIONER JOHANSON: Yes. I thank you,  
6 Madam Chairman. I appreciate that you all have  
7 participated fully in this review here at the  
8 Commission and that you have provided us with  
9 questionnaire responses. I'm curious, though, as to  
10 why you did not file substantive comments with the  
11 Department of Commerce, with respect to its review of  
12 the order.

13 MR. DUNN: Commissioner Johanson, the  
14 Commerce Department, out of 200 and some  
15 investigations of antidumping and countervailing duty  
16 orders, has found that the order should be continued  
17 in 99.9 percent of the cases. And the reason that  
18 they do that -- well, aside from whatever bias they  
19 may have, the reason that they do that is because  
20 under their regulations, they are required to take the  
21 original margins, dumping margins found and ignore  
22 what has happened over the previous five years and  
23 they are required to say that the dumping that was  
24 found in the original investigation is the most likely  
25 level of dumping that will occur. Automatically, a

1 means b and they completely disregard whatever margins  
2 have occurred. So, our advice to our clients was,  
3 don't waste your money on this one. There is nothing  
4 there. You can't win this case.

5           And by the way, I did, for another client in  
6 another industry, challenge a determination once where  
7 we showed that in a subsidies case, the subsidies had  
8 completely been eliminated. All the subsidies under  
9 investigation had completely been eliminated and they  
10 said, we believe that the order should be continued.  
11 They, then, said, we believe that the likely margin of  
12 subsidization will be zero, but we believe the order  
13 should be continued. Now, what's the payoff to  
14 spending the money to argue that kind of case?

15           COMMISSIONER JOHANSON: Okay, thank you for  
16 informing me on that. This morning, the domestic  
17 industry spoke at some length about the impact of  
18 government programs in Brazil on the Brazilian  
19 industry and I was wondering how governmental programs  
20 in Brazil have affected tree plantings and inventory  
21 held of orange juice in the past year.

22           MR. FREEMAN: As I mentioned earlier, the  
23 primary tree planting is a project in northeast of  
24 Brazil, which is a poor region of Brazil. It's arid  
25 up there and it's a fresh fruit program. The other

1 ones, I would ask that we be permitted to respond in  
2 the post-hearing brief.

3 COMMISSIONER JOHANSON: That's fine.

4 MR. DUNN: And I would just add,  
5 Commissioner Johanson, it's important to bear in mind  
6 that if they had, which I don't believe they have, but  
7 if they had radically increased their tree plantings,  
8 it's four years before those trees start to bear fruit  
9 and, as you heard this morning, it's five to seven  
10 years before they're really productive. So, even if  
11 they had increased their plantings, that wouldn't be  
12 necessarily an increase in crop.

13 COMMISSIONER JOHANSON: Okay, thank you.  
14 You all have stated that the capacity for orange juice  
15 should be determined by the number of available fruit-  
16 bearing trees -- fruit-bearing orange trees, rather  
17 than in terms of industrial facilities. Why should  
18 the Commission look at the number of trees as a  
19 relevant capacity factor, rather than the actual  
20 orange that's produced?

21 MR. DUNN: I think you heard, we addressed  
22 that question to some extent earlier. The fact is  
23 that crops, individual crop years vary. They go up  
24 and down depending on weather conditions and they're  
25 affected long-term by disease. The plantings tell you

1 what we applied the trees as, as capacity. That tells  
2 you what it's -- you know, what the average is likely  
3 to be, can tell you what the average is likely to be.  
4 That average can go down with greening, but it's going  
5 to go up and down depending on weather conditions.

6 MS. NOONAN: Commissioner, Nancy Noonan from  
7 Arent Fox on behalf of the Coca-Cola Company. I just  
8 wanted to add that I think what we are saying is  
9 consistent with the testimony you heard earlier from  
10 Dr. Behr, where he said, to his knowledge, you know,  
11 every piece of fruit gets processed that is available  
12 and that's still not enough to hit 100 percent  
13 capacity utilization.

14 MR. KALIK: Bob Kalik. And the number --  
15 all you can process is 100 percent of the fruit. So,  
16 you can have a bigger capacity of a plant, but the  
17 goal has always been of these plants to pick the fruit  
18 as close to the perfect ripeness as possible and  
19 process as many pieces of fruit in a 24-hour period,  
20 to get the maximum yield and the maximum flavor out of  
21 them. So, you know, facility -- of course, in this  
22 industry, facilities remain dormant during the off  
23 season. It's how much fruit can be produced in that  
24 plant and all you can do is look at how much fruit is  
25 actually grown to know what capacity really exists.

1           COMMISSIONER JOHANSON: Okay. Well, thank  
2 you. Once again, that's all the questions I have.  
3 This is the first hearing for me to participate in. I  
4 was sworn in as a Commissioner only about five or six  
5 weeks ago and I found today's hearing very informative  
6 and interesting. I'd like to thank both the domestic  
7 industry representatives and the importer and foreign  
8 producers, which I'll say, the Respondent community  
9 for being here, as well. Thank you.

10           CHAIRMAN OKUN: Let's see, I think I just  
11 have a couple of things left. I know that  
12 Commissioner Aranoff has asked if you could provide  
13 information on the contracts, which, I agree, has been  
14 important to us in other cases. And so, to the extent  
15 that can be provided, I think it's really helpful,  
16 again, in understanding what the commitments are. And  
17 then, just again, just a post-hearing request on what  
18 that means for pricing in this market and I think, Mr.  
19 Dunn's argument, but just to go back to that.

20           And I wondered if I could just turn back  
21 quickly, Mr. Horrisberger, just to get your  
22 perspective a little bit more on pricing in this  
23 market, because you've described a number of things  
24 that your company is doing in terms of how it sets up  
25 contracts and the amount of product you buy and the

1 amount you process. And in some ways, I think that  
2 you are a different large purchaser than we sometimes  
3 see in these cases. So, I guess --

4 MR. HARRISBERGER: I could say that our  
5 major competitor has the same infrastructure and the  
6 same contracts we do. We hope we have a little bit of  
7 an advantage, but I'm just kidding myself. So, I  
8 would say at least 65 percent of the market has these  
9 type of three- to five-year contracts right now and  
10 the rest of the market has got to be competitive with  
11 them. Otherwise, the growers wouldn't go to those  
12 other processors.

13 CHAIRMAN OKUN: Okay. And I know that you  
14 have provided a pre-hearing brief already but for  
15 post-hearing, if there's any other additional details,  
16 you know, obviously treat it business proprietary,  
17 that can help us understand some of the pricing  
18 strategies you've talked about and what the impact  
19 would have. I think it relates to a number of  
20 questions today about even if a lot of things are  
21 under these longer-term contracts and you've talked a  
22 lot about where the spot prices play or don't play,  
23 but just, I guess, helping me understand the riser in  
24 the ceiling and what that means in the market.  
25 Because, one of the arguments that was raised from the

1 panel this morning about how profitable do you need to  
2 be when your costs of production are going up, and we  
3 haven't spent a lot of time on that with this panel,  
4 but I am trying to understand that argument about, if  
5 you've locked in on this contract, where you still  
6 make money, as you've explained it, but prices change  
7 and your costs are going up, you know, how does that  
8 translate in the riser in the ceiling.

9 MR. HARRISBERGER: Jim Harrisberger  
10 speaking. What we did is the contract every year goes  
11 up, because we've known -- they sat there, the first  
12 contract -- we just initiated a five-year agreement  
13 for about six million boxes this year, the first of  
14 five years. It's got a rise clause every year,  
15 because they know if the greening costs in the next  
16 year is higher and higher and higher, and it's their  
17 best estimate and also the Florida Department of  
18 Citrus, using their statistics. Now, I do know the  
19 first one I started three years ago, if you look back  
20 at that, an average grower has made very good money,  
21 even off the floors, not to mention the rise clause.

22 So, once again, our objective is at the  
23 floor, they make a profit, because they have to exist.  
24 We will provide you information on those contracts  
25 that I think will significantly prove what we're

1 saying.

2           CHAIRMAN OKUN: Okay and I think that will  
3 be very helpful for the record. And with that, I  
4 don't think I have any other questions, but want to  
5 join everyone in thanking you for all your responses  
6 this afternoon. Vice Chairman Williamson?

7           VICE CHAIRMAN WILLIAMSON: I just have two  
8 questions for post-hearing for both Petitioners and  
9 Respondents. One concerns, given all the factors that  
10 we've discussed, any recommendations on what we should  
11 consider the reasonable period of time in thinking  
12 about what would happen if we decide not to continue  
13 the orders, what is the reasonable period of time that  
14 we should be looking at.

15           And the second question deals with FCOJM and  
16 NFC. And I know we have a single product here, but in  
17 our analysis, do we have to look at these two products  
18 different in thinking what might happen if -- thinking  
19 about whether we should continue the orders or not.  
20 And the reason I ask that, I mean, the questions  
21 about, you take the premium products -- Mr.  
22 Horrisberger, you're talking about which products  
23 you're going to take and put in NFC and which oranges  
24 are going to go into the concentrate. And there's a  
25 difference in shipping costs and I think some of you

1 just export the concentrate.

2           So, we've talked -- we've covered a lot of  
3 subjects today and sometimes, I've often trying --  
4 been figuring out, hey, does that apply to FCOJ and  
5 what applies to NFC. And so maybe as post-hearing, if  
6 you could just address anything that you think is  
7 relevant that we should take into account between  
8 these two different forms of orange juice in our  
9 analysis. And I would just leave it at that because  
10 I'm not sure exactly what the answers are going to be,  
11 but I do think it's worth having some more insights on  
12 that.

13           MR. DUNN: Commissioner Williamson, we will  
14 try to do that. We are a little bit -- I want you to  
15 understand that we did not, as a legal matter,  
16 challenge the idea that there was one like product  
17 here. And so, we have dealt with everything, to the  
18 extent possible, as one like product. And so, how far  
19 we really can go with that, with differences between  
20 NFC and FCOJ is somewhat limited. And we can look at  
21 obvious differences, but I think we're constrained in  
22 our ability to be able to really -- we're not arguing,  
23 we're not challenging the argument that it's one like  
24 product. So, it puts a little bit of a --

25           VICE CHAIRMAN WILLIAMSON: No, I understand

1 that, but I guess what -- if I'm trying to think out,  
2 okay, what's going to happen, you know, the counter-  
3 factor argument that we have to consider, and I just  
4 wanted to know is there any differences that we should  
5 be taking into account in doing that.

6 MR. DUNN: We'll be happy to do that.

7 VICE CHAIRMAN WILLIAMSON: Okay, thank you.

8 CHAIRMAN OKUN: If no other questions from  
9 Commissioners, let me turn to staff to see if they  
10 have questions of this panel.

11 MS. HAINES: Elizabeth Haines, staff has no  
12 questions.

13 CHAIRMAN OKUN: I hear Vice Chairman  
14 Williamson, you did have another question?

15 VICE CHAIRMAN WILLIAMSON: I'm sorry. Again  
16 for post-hearing, Florida Citrus brief at page 13  
17 states the Brazilian authorities have recently  
18 approved Cutrale's operation of Branco Peres juice --  
19 processing facilities in Sao Paulo. And I was just  
20 wondering if you could indicate whether this is  
21 correct and, if so, provide details about the facility  
22 and Cutrale's intentions?

23 MR. DUNN: As representing Cutrale, I have  
24 done -- I'm not exactly sure, but as I recollect, they  
25 were talking about Cutrale's purchase of the old -- of

1 the Itapolis in the State -- facility in the State of  
2 Sao Paulo, which was completed during the original  
3 investigation and has been treated and Cutrale has  
4 reported it as subject juice, as part of its subject  
5 production since the original investigation, in every  
6 single administrative review. And Petitioners know  
7 that or they should, if they've looked at any of our  
8 responses to the Commerce Department.

9 VICE CHAIRMAN WILLIAMSON: Okay.

10 MR. DUNN: So, that is Cutrale production.  
11 We're not talking about -- if that's what they're  
12 referring to, we're not talking about non-subject  
13 juice becoming subject juice.

14 VICE CHAIRMAN WILLIAMSON: Okay. Maybe, you  
15 ought to look at their -- look at whatever they say in  
16 their brief and see if -- just respond to that in the  
17 post-hearing.

18 MR. DUNN: We'll do that.

19 VICE CHAIRMAN WILLIAMSON: Good, thank you.  
20 I'm sorry.

21 CHAIRMAN OKUN: Do those in support of  
22 continuation have questions for this panel?

23 MR. MCGRATH: We have no questions.

24 CHAIRMAN OKUN: All right. Well, before I  
25 talk about the remaining time, I just want to take

1 this opportunity to, again, thank this panel for your  
2 participation and, again, staying with us to the early  
3 evening here. Let me just go over -- before we send  
4 this panel back, let me go over the time remaining.  
5 Those in support of continuation have a total of 11  
6 minutes, six minutes from direct and five for closing.  
7 Those in opposition to continuation have a total of  
8 15 minutes, 10 from direct and five for closing. If  
9 the counsel don't object, we would just proceed with  
10 our normal course of combining those times and having  
11 you present your closing and rebuttal together.

12 MR. MCGRATH: That's fine with us.

13 CHAIRMAN OKUN: Okay. So let's just take a  
14 couple of moments to let our witnesses move to the  
15 back of the room and bring counsel back up.

16 (Pause.)

17 CHAIRMAN OKUN: You may proceed.

18 MR. MCGRATH: Thank you, very much. Matt  
19 McGrath for the Petitioners. And it has been a long  
20 day. I want to thank, as always, the staff for a  
21 tremendous amount of work that went into the report  
22 and tremendous amount more work that they will have to  
23 do, as we've already found in talking with them. We  
24 know that it's usually a very tight schedule and it's  
25 difficult for them to do.

1           We had a couple of points that we would like  
2 to talk about and Ms. Warlick would like to make a  
3 point. But, I can't help but start off by thanking  
4 Mr. Freeman for conferring such tremendous power on  
5 me, personally, as being able to control all of the  
6 growers and get them to answer questionnaires. All  
7 5,000 of them, they do what Matt McGrath says. I  
8 can't get my daughter to take out the garbage, but I  
9 can get 5,000 growers to answer questionnaires.

10           I do need to respond to that because the  
11 implication from it is, as I believe was in the brief,  
12 that if growers don't answer the questionnaires, it's  
13 implicit that somehow the information we would be  
14 providing is going to be negative to our cause. It's  
15 going to be contrary to our interest and, therefore,  
16 you should presume that that's the case and,  
17 therefore, I or Florida Citrus Mutual must have been  
18 out telling these growers don't respond to this  
19 because it's going to be negative to the case. That  
20 didn't happen.

21           What happened is exactly what I explained  
22 earlier, it's very difficult to get a lot of growers  
23 to respond to these things when you start off by  
24 saying, here are a bunch of questions for five years  
25 of data and it's going to take 20 hours to do this and

1 it's in the middle of the season. And I thought it  
2 was a good question for Mr. Freeman, who didn't want  
3 to answer it, if there are five people he could go to  
4 and cover 25 percent of the industry, why not? Why  
5 wouldn't he go to them? Maybe, he didn't feel that  
6 the answers would be favorable to him.

7           Anyway, I'd like to turn this over, first of  
8 all, to Ms. Warlick, to I think clarify an issue that  
9 came up this morning on inventories and how  
10 inventories are treated. So, I'll just --

11           MS. WARLICK: The issue of inventories came  
12 up in the previous hearing because we were alleging  
13 that inventories were rising to a level that were  
14 burdensome. And we were looking for a way to measure,  
15 because during the processor's year, during the  
16 grower's year, inventories for processors are going to  
17 be going up and down because of the way the harvests  
18 are. You're not harvesting oranges all year. So, we  
19 decided we have to come to one point in each year to  
20 come back to, measure those inventories at that time.  
21 And we selected October 1st, because that is the  
22 beginning of the marketing year for the crop and that  
23 is also what the Florida Department of Citrus uses  
24 when they are putting together their processor's  
25 reports that they do. It's always on an October to

1 September year. So, we chose the beginning of the  
2 year and how many weeks do you need to get to when the  
3 Hamlins are first starting to be processed, which is  
4 about January 1st.

5 Now, when Mr. Behr was talking earlier and  
6 also Dan Casper, they were looking at it, at what they  
7 have defined as the beginning of their processor year,  
8 which apparently differs by three months -- yeah, I  
9 believe they said it was July 1st. So, they were  
10 giving you an assessment of what would be needed for  
11 Valencias and Hamlins at the beginning of their  
12 processing year.

13 Now, if you'd like, I can go through the  
14 processor reports and I can report on that, and I  
15 believe we would still see the same pattern of  
16 inventories rising when U.S. and Brazilian -- imports  
17 from Brazil and U.S. production are high. When there  
18 is an oversupply, you will see inventories rising.  
19 So, we'll try to discuss that, as well, in our post-  
20 hearing briefs and try to clear up what I believe is a  
21 semantic difference.

22 MR. MCGRATH: Next, Mr. Lowe would like to  
23 discuss one of the issues that was raised, both during  
24 the direct and during the afternoon session.

25 MR. LOWE: For the record, my name is

1 Jeffery Lowe with the law firm Mayer Brown. We're  
2 here representing Southern Gardens Citrus Corporation.  
3 And one issue that came up concerns the merger  
4 between Citrovida and Citrosuco and Southern Gardens  
5 did -- we did focus on this issue in our brief. The  
6 response given by the Respondents was not adequate to  
7 the question. And I just wanted to point out a few  
8 things very briefly.

9           The Commission, as you well know, is  
10 required to analyze what is likely over a reasonably  
11 foreseeable time period, in terms of volume and price  
12 and the likely impact on the domestic industry.  
13 There's been a few -- some discussion of what would be  
14 a reasonably foreseeable time period I this case,  
15 whether it's one year, one-and-a-half years, or two  
16 years, or somewhere in that neighborhood. If you keep  
17 that in mind, it is not speculative, as Respondents'  
18 counsel said, whether the merger is going to happen.  
19 It is happening or it already has. It's been  
20 finalized. All the final approval has been given by  
21 the Government of Brazil and the European Union.

22           Second, it should not be speculative that  
23 the merger will be a 50-50 jointly run enterprise.  
24 That's on the public record before the European  
25 Community -- or Union rather. We included that in our

1 brief, the attachment from the Commission, the  
2 European Commission's decision, and I would refer you  
3 to that evidence. And it is also finally not  
4 speculative or it should not be speculative what the  
5 Commerce Department will find. A 50-50 merger of this  
6 type, as described by the parties, is likely to be  
7 found by Commerce to be a jointly operated entity and  
8 that means that the merged entity is likely to be  
9 subject to the order.

10           So, the issue for the Commission here is  
11 what it must do in this review. And from our  
12 standpoint, you must presume either one of the other:  
13 either it's likely that the merged entity will be  
14 subject to the order for purposes of assessing the  
15 likely increased volume and price effects and the  
16 impact on the industry or you have to assume that it's  
17 likely that it would not be. And the evidence from  
18 our -- in our opinion, it substantiates a conclusion  
19 that this merged entity will be a jointly run  
20 enterprise and will be subject to the order. And so,  
21 we urge you, in considering the likely effects to  
22 include Citrovita's volume and the price effects and  
23 otherwise in your analysis for what's likely, in the  
24 event the order is revoked. That's all that I have.

25           MR. MCGRATH: Thank you. And I do have a

1 few more points, if I have a few minutes here. There  
2 were a couple of times this afternoon when both  
3 Cutrale and Citrosuco made a point of emphasizing  
4 their large investment in Florida. Their commitment  
5 to Florida, basically, they're overwhelming commitment  
6 to Florida and the fact that imports were not  
7 something that they were in business to do, I would  
8 just simply encourage you to look closely at Table 3-  
9 10 of your staff report and see who is doing the  
10 importing, who is doing the production, and see what  
11 the relationship is between the imports and the  
12 production.

13           Another point that I wanted to make is that  
14 Mr. Freeman and Mr. Emmanuel had commented on the  
15 export -- growth of the export market and they both  
16 said that the export market is growing. It's steady.  
17 There's an increase in it. There's more exports  
18 being made all the time. Mr. Dunn was very concerned  
19 that we were discriminating against anybody of  
20 Brazilian blood. I'm not sure how many people with  
21 Brazilian DNA are in the room. But, the bottom line,  
22 take a look at Table 3-7. The growth in imports just  
23 is not there -- or the exports. The growth in exports  
24 was a one-off deal, it truly was. I think anybody in  
25 the industry would agree with that. And we're not

1 saying there's anything wrong with a Brazilian  
2 company, who makes Florida orange juice, who finds a  
3 market to export that to. What we're just simply  
4 pointing out is a lot of the exports that showed up in  
5 those numbers that year were Brazilian juice that came  
6 into the United States and got re-exported to serve a  
7 Brazilian market that would otherwise have been served  
8 from Brazil directly to Europe.

9           At one point this afternoon, Mr. Thompson  
10 had talked about -- had made mention of the fact,  
11 after we had quite a bit of discussion of the long-  
12 term contracts and how they were helping growers and  
13 they would probably protect growers against declines  
14 in prices in the future. Mr. Thompson did -- I'm glad  
15 he mentioned it, because it reminded us of the  
16 discussion we had five years ago. These long-term  
17 contracts, with a floor and a rise and a ceiling, are  
18 nothing new. These have been around for a while. We  
19 can debate what form they've been here in and how long  
20 they've been extended for and what the bases are and  
21 what's the -- what has been the means of negotiation  
22 of these contracts, but it's not a fundamentally new  
23 approach. We're still concerned about the influence  
24 of the futures market and the spot prices on that  
25 return to those growers and how that affects both the

1 base and the rise.

2           There was another reference at one point, I  
3 believe Mr. Freeman, once again, and this is a good  
4 example of the difference in perceptions of the size  
5 of these industries. I think he said that the 100,000  
6 metric tons that we were talking about, that was in  
7 Consecitrus storage was a drop in the bucket, was a  
8 very tiny amount. It amounts to about 16 percent of  
9 one year of U.S. production.

10           The Brazilian industry is just simply much  
11 bigger. A volume of that size in inventory is going  
12 to have an effect. And I'm not surprise that the  
13 Brazilian industry thinks of that as a drop in the  
14 bucket. In terms of what the size of the market is  
15 here, it's not.

16           Finally, I don't think it was mentioned very  
17 much, but underselling was found in the questionnaire  
18 responses to be pervasive, both for NFC and FCOJ.  
19 Additional information was submitted. We would ask  
20 that you look very closely to find out the source of  
21 that information and what exactly is in there. We  
22 submitted some corrections. We explained what they  
23 were. We have no idea what these corrections are, in  
24 terms of pricing. But even with the corrections that  
25 have been submitted, there is still underselling for

1 both NFC and FCOJ during the period. That's an  
2 indication that Brazil has the capability -- if  
3 they're already underselling with the dumping order in  
4 place, they have the capability to sell at lower  
5 prices. So, we would urge you to look very closely at  
6 that.

7           And in conclusion, we simply ask that this  
8 order be affirmed and remain in place, in order for  
9 the growers and the processors of Florida to stay in  
10 business. Thank you.

11           CHAIRMAN OKUN: Thank you. Are you going to  
12 proceed from there?

13           MR. KALIK: I can if it makes things easier.

14           CHAIRMAN OKUN: Whatever you're comfortable  
15 with. You can either move up, you can go there or --

16           MR. KALIK: Madam Chairwoman, Commission,  
17 first, I would like to thank you. You've had a much  
18 longer day than we have, so I had hope to do about a  
19 minute-and-a-half wrap-up until Petitioner's wrap-up,  
20 so I have to respond to a couple of points that they  
21 made. But before I do so, I do want to thank the  
22 staff and they've been extremely help, diligent as  
23 always, and we really appreciate all their hard work.  
24 And as Mr. McGrath pointed out earlier, I know they  
25 have a lot of hard work coming in the next month-and-

1 a-half.

2 I really didn't plan on spending anymore  
3 time on the Citrovia-Citrosuco joint venture, 50-50  
4 joint venture. But, I have to respond to the fact  
5 that whether or not this deal ultimately closes, I  
6 have no idea and most players who are involved in the  
7 deal directly generally believe, yes. They wouldn't  
8 have worked for the last two years to make it happen  
9 and close. But, it hasn't. I want to underscore,  
10 just because there's been regulatory approval does not  
11 mean a deal is closed. When that deal is closing is -  
12 - I have no idea. Knowing this would be an issue,  
13 before this Commission today, I talked directly to  
14 those involved and they're not even sure. I've  
15 gotten, you know, general assumptions, probably six  
16 months from now, but I can't tell you that that's the  
17 case.

18 But, it's not an issue for this Commission.  
19 It's an issue for the Department of Commerce, if and  
20 when, if and when this order is continued. The  
21 product that Citrovia has been bringing is has  
22 already been imported. You can see what it is, you  
23 can see what pricing it's at, and you can make your  
24 decisions accordingly as to what effect that is,  
25 whether it becomes subject or not. But, it won't

1 become subject the day the deal closes. And whatever  
2 happens with that deal, a merger -- sorry, a joint  
3 venture, because it's not a merger, joint venture of  
4 this size is a massive undertaking to just figure out  
5 what's going on.

6           As far as the pricing question that Mr.  
7 McGrath just raised, yes, in looking at the staff  
8 report, both Mr. Dunn and I were very surprised to see  
9 the pricing analysis. And so, we looked carefully at  
10 why that happened and what the company submitted and  
11 we saw that there were errors. Actually, the errors  
12 were pretty much the same for both companies, but  
13 different times. Having said that, we have all the  
14 confidence in the world that the data that's been  
15 submitted, because it's the same data that's been  
16 submitted to the Department of Commerce over the last  
17 five years. It's been verified. It's been part of  
18 those records. So, we have full confidence of what  
19 they are. And I believe we informed the staff, I know  
20 I informed the staff, as to the origin of the error at  
21 the time.

22           With that said, I think Commissioner Pearson  
23 asked the key question to day, what's the causation.  
24 There's no question, there isn't anyone sitting in  
25 this room, whether it be Petitioners, Respondents, who

1 don't understand and recognize the difficulties and  
2 the challenges that the Florida orange industry faces  
3 and the world orange juice industry faces, including  
4 the Brazilian growers. The devastation coming from  
5 the hurricanes, leading to the spread of disease, was  
6 pervasive today in the testimony. The disease, as was  
7 discussed earlier, replantings didn't occur after the  
8 hurricanes the way they did after the devastating  
9 freezes in the 1980s, which was the subject of the  
10 original antidumping case back in 1987. You don't  
11 have any prospect, other than a spike year in  
12 production, based on Florida's own estimations of any  
13 increase in fruit production beyond the 150 million  
14 box level. When we were here six years ago, they had  
15 just concluded 240 million, which was a spike year but  
16 225 was the norm.

17           Brazilian plantings have remained stable.  
18 Mr. Freeman talked about the plantings in the  
19 northeast for fresh fruit but for juicing trees, the  
20 Brazilians are trying to keep up with their disease  
21 losses. And their disease losses mean not only the  
22 cost of replanting and trying to maintain those  
23 plants, but the loss of plantings over the sugarcane  
24 and to other uses for the property, for the orange  
25 groves.

1           Inventories during this period are at record  
2 lows. Mr. Dunn indicated earlier, you know, Brazil's  
3 inventory levels after three years of low crop and low  
4 availability of inventory in the U.S., eight weeks of  
5 inventory for worldwide commitments, not for U.S., for  
6 worldwide commitments. And you've hear all different  
7 testimony about what levels are acceptable in this  
8 market for inventories. No one ever talked about  
9 anything as low as eight. It was stated, it's going  
10 to take more than a year, probably two seasons to  
11 rebuild inventories to levels required to meet  
12 Brazil's commitments around the world.

13           Prices to the grower -- prices in the  
14 futures market are at record levels and record levels,  
15 even now with the FDA issue, but two months ago, they  
16 were at record levels. After the fear of the freeze,  
17 reduction in crop, there's -- as you've heard from  
18 several of those testifying today, Mr. McGrath alluded  
19 to it in his closing, the growers are locked in. A  
20 large portion of the growers are locked in to long-  
21 term contracts that guarantee them profitability.  
22 It's not a new thing for long-term contracts, but  
23 fundamental part of that long-term contract is the  
24 floor that exist in that contract. They're guaranteed  
25 not to get paid anything less than an acceptable

1 price, which has been laid out as being cost, plus  
2 making a reasonable profit in the best situation.

3           The major brands have all indicated, you  
4 know, Tropicana made it clear, Coca-Cola, they're  
5 moving to all Florida for their premium products.  
6 Those are NFC products. They're going to take less  
7 from Brazil. The imports for those products will not  
8 be included in those products going forward.

9           Finally, I want to make a note back on the  
10 export issue, because I know it so well. The exports  
11 that have occurred over the years, even with the spike  
12 for last year, is domestic Florida product that's  
13 being shipped. It makes no sense to ship orange juice  
14 from Brazil to the United States, to store it and then  
15 re-ship it out to Europe. The only instance where  
16 that happens is where there's needed product in Europe  
17 and there's nowhere else to get it from. It's  
18 domestic product, as Mr. Emmanuel talked about,  
19 utilizing the drawback system. In fact, one should  
20 argue, as you look at the numbers, that the actual  
21 imports should be reduced by the exports, based on the  
22 fact that there's a net effect on it.

23           With that said, I just want to thank you for  
24 your patience. I want to point out that, obviously,  
25 we do not believe this order should be continued. We

1 did not believe that it should have been put in place  
2 to begin with. And I will end by noting that this  
3 year marks the 30th anniversary of Mr. McGrath and I  
4 arguing before this Commission over Brazil and Florida  
5 orange juice. Thank you.

6 CHAIRMAN OKUN: Thank you. Post-hearing  
7 briefs, statements responsive to questions, and  
8 requests of the Commission, corrections to the  
9 transcript must be filed by February 2, 2012. Closing  
10 of the record and final release of data to parties is  
11 March 1, 2012, and final comments are due March 5,  
12 2012. With no other business to come before the  
13 Commission, this hearing is adjourned.

14 (Whereupon, at 6:03 p.m., the hearing in the  
15 above-entitled matter was concluded.)

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**CERTIFICATION OF TRANSCRIPTION**

**TITLE:** Certain Orange Juice from Brazil  
**INVESTIGATION NO.:** 731-TA-1089 (Review)  
**HEARING DATE:** January 24, 2012  
**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 24, 2012

**SIGNED:** LaShonne Robinson  
Signature of the Contractor or the  
Authorized Contractor's Representative  
1220 L Street, N.W. - Suite 600  
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).

**SIGNED:** Rebecca McCrary  
Signature of Proofreader

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:** Gabriel Gheorghiu  
Signature of Court Reporter